

AGENDA
CLALLAM COUNTY SOLID WASTE ADVISORY COMMITTEE
Clallam County Courthouse, Room 160
223 East 4th St Port Angeles, WA
July 27, 2022 – 3:00 p.m.

****ATTENTION****

Clallam County Solid Waste Advisory Committee meetings will also be available virtually at:

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 938 0529 7962 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit <https://zoom.us/join> and use Meeting ID: 938 0529 7962 and passcode: 12345

This meeting can be viewed on a live stream at this link: <http://www.clallam.net/features/meetings.html>

Public comment and questions can be directed to County Public Works-Roads at 360-417-2290 or sgray@co.clallam.wa.us

A. WELCOME/CALL TO ORDER/ROLL CALL

B. REQUEST OF MODIFICATIONS/ADDITIONS TO AGENDA

C. PUBLIC COMMENT – Please limit comments to three minutes

D. APPROVAL OF PREVIOUS MEETING MINUTE(S): June 22, 2022

E. REPORTS AND PRESENTATIONS

1. Clallam County Department of Public Works staff changes related to Committee administrative support and Department Solid Waste Management work.
2. New and upcoming SWAC Appointments
3. Continued Hearing on Olympic Disposal Systems Solid Waste Transfer Facility and Recycling Facility Conditional Use Permit in Carlsborg.
4. Clallam County Solid Waste Grant Agreement with Ecology and Related Project Tasks
5. Other Member Reports

F. CONTINUING MATTERS

1. SWAC Bylaws Review Sub-Committee

G. NEW BUSINESS ITEMS

H. NEXT-MEETING/FUTURE AGENDA ITEMS DISCUSSION – Confirm next meeting date and targeted discussion items.

I. PUBLIC COMMENT – Please limit comments to three minutes

J. ADJOURNMENT

Clallam County Solid Waste Advisory Committee (SWAC) June 22, 2022 Meeting Minutes

Acronyms: Clallam County (ClaCo), City of Port Angeles (CoPA), City of Sequim (CoS), City of Forks (CoF), Waste Connections/Olympic Disposal (WC), Environmental Health (EH), Public Works (PW), Washington State University (WSU), Dept. of Ecology (ECY), Board of County Commissioners (BOCC), Clallam County Solid Waste Management Plan (SWMP)

Call to Order

1. Attendance: quorum highlighted

Members:

Jenson, Ag Rep	Eli Owens, ClaCo EH
Brian Tate, WC alt	Charlie McCaughan, CoPA
David Hanna, ClaCo alt	David Pater, ECY
Steve Johnson, Business	Staff:
Christy Cox, Citizen At-large	Chad Young, WC
Ann Soule, CoS alt	Meggan Uecker, ClaCo/WSU
Rachel Anderson, CoS	Joe Donisi, ClaCo PW
	Public:
	Sefla (phone in)

2. No modification/additions to Agenda
3. No Public Comment
4. ***It was moved/seconded to approve 5/25/22 minutes. Motion carried.***

Reports & Presentations

1. Three new/returning member applications to BOCC in July. Joe Donisi noted PW recommended all three apps to BOCC.
2. Consultant hired to update ClaCo website so some links may be down.

Continuing Matters

1. CoPA updates and response to prepared SWAC questions compiled in June agenda moved to end of meeting; no CoPA staff present to respond to questions at this time.

Business Items

1. Vacancies/Recruitment/Positions
 - a. Per last meeting discussion, concerns that “tribal council” position isn’t adequate representation of four tribal nations in Clallam. Bylaw review and changes needed to change this. Quorum impact should be considered. ***It was moved/seconded that a subcommittee be convened to review bylaws and determine a plan of action.***
 - i. Christy Cox suggested “Associate Member” designation similar to Clallam Co. Conservation District.
 - ii. It was noted RCW ([70A.205.110](#)) mandates minimum members numbers (9), but only instructs a “balance of interests including, but not limited to, citizens, public interest groups, business, the waste management industry, agriculture, and local elected public officials” providing flexibility to change local SWAC bylaws list of members.
 - iii. Volunteers included Joe Donisi, Dave Hanna and Jenson.
 - iv. ***Motion carried.***
2. Joint Meeting with Jefferson Co. SWAC
 - a. ***It was moved/seconded to schedule a joint meeting with Jeff Co. SWAC in early '23.***

- b. Steve Johnson asked about purpose. Dave Hanna said to learn what other SWACs are doing. David Pater noted that Jefferson Co. is reviewing new sites for transfer station(s) and there are opportunities for collaboration.
- c. **Motion carried.**

Next Meeting Date

- 1. ***It was moved/seconded for meetings to continue monthly on 4th Wed at 3 pm.***
 - a. Noted that 11/16 correct date to hold November meeting to avoid holiday conflicts.
 - b. **Motion carried.**

Other Items for Discussion

- 1. Ann Soule shared about WA Stormwater Center's Dumpster Outreach Group as a resource for outreach materials.
- 2. Ann also shared that she is entering semi-retirement, working for CoS as consultant but won't be at next SWAC. Members noted her input to SWMP and other discussions has been priceless!
- 3. Steven Johnson shared he received email from ClaCo re: Open Public Meetings Act training on 6/28/22 and wondered if this was required. Meggan noted that training was annually provided to SWAC, perhaps this is new method with online training. Dave Hanna will find out more information.
- 4. Meggan share ECY has produced a climate analysis materials recycled v. landfilled for Recycling Development Center. She would like to share this at future meeting to compare to SWMP's Table of Recommendations and begin review of recommendation progress/status.
 - a. Steve Johnson interested in learning more about plastic recycling development or ways to keep recycling local. Meggan shared opportunity for circular economy development support in new program [NextCycle Washington](#) or more local program [CoastWorks](#).

Continuing Matters, continued.

- 1. Thomas Hunter or qualified CoPA staff not present to answer prepared questions.
- 2. Eli Owens answered the following from the list:
 - a. Status of permits: CoPA has submitted revised permits to ClaCoEH; 45 day review period as begun.
 - i. Chad Young asked about gate time. Eli noted gate time opening of 6 am contained in permit under review.
 - b. Yard waste not being composted but CoPA has said it is being actively managed. 2000 cubic yards of biosolids approved by ECY for disposal in Roosevelt Landfill.
 - i. Steve Johnson asked if yard waste is being ground; this is unknown. In his experience as Lazy J Farms proprietor, space can be an issue.
 - c. David Pater asked Chad about WC's MSW export. No process at this time all MSW going to Regional.
- 3. Christy Cox expressed frustration over lack of information for SWAC members and public on status of Regional Transfer System transfer stations and operations. Asked what actions could be taken and offered to attend CoPA City Council on behalf of SWAC.
 - a. Joe Donisi said if SWAC comments were to deviate from prepared agenda questions these could be sent ahead of meeting to elicit better answers.
 - b. Meggan noted that CoPA has approved '23 Capital Improvement Program which is referenced as SWMP's solid waste system capital improvement program. Large solid

waste expenditures include fleet section and solid waste section. Rate, enterprise fund impacts relevant to SWMP and whole system and need attention.

- c. Meggan suggested that SWAC's role is to recommend to BOCC. Also action at council-BOCC level may be occurring.
- d. It was proposed that SWAC members work with BOCC or SWAC member Mark Ozias to determine best way to address concerns and/or develop a statement. Christy would like to participate; Joe Donisi and Dave Hanna will lead from PW.

Meeting adjourned at 4:02p

hollywood Beach in Port Angeles on Tuesday. The pair, both from Port Angeles, were taking advantage of a sunny summer day on the sand.

PAN July 20, 2022

Waste facility hearing postponed

Specific November date not yet announced

BY MICHAEL DASHIELL
Olympic Peninsula News Group

CARLSBORG — A public hearing on a proposed waste transfer facility and recycling center in Carlsborg, which was originally set for Thursday, was postponed on Tuesday until November.

Thursday's public hearing had been set five-and-a-half months after the original hearing was scheduled.

On Tuesday, Clallam County officials agreed to postpone the public hearing before a hearing examiner until November. A specific date has not been announced.

In a 20-page report to the hearing examiner on Jan. 26, just prior to the originally scheduled Feb. 3 public hearing, Clallam County staff recommended that Olympic

Disposal System's Zoning Conditional Use Permit be denied.

Following a pre-conference hearing on Feb. 3, Clallam County senior planner Donella Clark said the public hearing would be continued on July 21. Representatives from Citizens for Carlsborg, the City of Port Angeles and Olympic Disposal/Waste Connections agreed to continue the public hearing based on the staff's recommendations and a county environmental review, Clark said.

Following a discussion between Clark and representatives with Olympic Disposal in late June, however, legal representatives for the company asked the hearing examiner to continue the hearing once more, and to set a new hearing date for November.

"Olympic requires additional time to complete and submit the traffic study and landscaping plans and to provide them to DCD for review and consideration substantially in advance of the hearing," the company noted in a motion to the

Hearing Examiner on July 13.

A decision on the application will be made by the county hearing examiner within 10 working days after the record closes, county officials noted; any person may submit a written request to the Department of Community Development to receive a notice of the decision once it is made.

Contact Clark at 360-417-2594 or donella.clark@clallamcountywa.gov for more information or to comment.

View the proposal and corresponding documents at clallam.net/LandUse; click on "Hearing Examiner," and then "Open Hearing Examiner Cases."

The proposal has met with numerous objections from community members, business leaders — including the Citizens For Carlsborg Group (see carlsborg.org) — and, in a letter to the county hearings examiner in June, from the Clallam County Economic Development Council.

See WASTE, Page A3

A former Washington State Ferry worker and U.S. Marine Corp veteran, Binns said he was running because leaders at the state and national level were abusing their power.

"There's a con, an agenda

about access to abortion.

"I don't believe there is a necessity for federal legislation," Bloom said, noting he is personally opposed to abortion. "It's not the prerogative of the federal government."

sent out to voters. The top two primary will narrow the field to two candidates for the Nov. 8 general election.

Reporter Peter Segall can be reached at psegall@soundpublishing.com

Thursday through Saturday.

Man airlifted Road rolled

BY MATTHEW NASH
*Olympic Peninsula
News Group*

SEQUIM — A 21-year-old Port Angeles resident was in critical condition as of Tuesday morning following a rollover wreck in Sequim last Friday.

Aminjan Mindubaev was airlifted to Harborview Medical Center in Seattle; no further information was available as of

Tue
C
Bri
was
on
Fric
\$10
gati
250
F
noi
we
was
thr

Briefly ...

Community build concert

PORT TOWNSEND
— New Life Country will perform a benefit for Community Build from 4 p.m. to 7 p.m.

on
gra
ery
Pa
bu
fit
en

Case: Ker

CONTINUED FROM A1

Ward was found deceased with multiple sharp-force injuries on her neck on May 19 in her home west of Sequim after a requested welfare check by her sister, court documents state.

Kenney was living with Ward after being released from incarceration on Jan. 14.

He was pulled over at the Third Avenue and Washington Street intersection by Martinez at 4:31 a.m. on May 19, court documents state.

ag
tar
sto
M
in
de
ar
de
st
ca
of
Mi
th
wl
Pu

chimacum
corner

Waste: Carlsborg proposal

The proposed Olympic Disposal Transfer Station would be about 14,000 square feet and 36 feet tall, with an 831-square-foot recycling center less than 20 feet tall. Also in the plans are a 2,000-square-foot office and a 260-square-foot pay booth. Surrounding the site will be an 8-foot-tall sight-obscuring fence along with landscape buffers.

"The transfer station proposed in the application is inconsistent with the CCSWMP [Clallam County Solid Waste Management Plan], would generate an immense amount of traffic not viable for the location, would create a safety hazard for Greywolf Elementary School, and is not supported by hundreds of members of the public," EDC representatives wrote on June 10. "The application should be denied."

County staff wrote in their recommendation, "Numerous nuisances, such as odor, noise, traffic, and even an aesthetic impact have been identified that will be created by this proposal."

"The proposal does not align with the vision of the Carlsborg Industrial zone located within the Carlsborg UGA, where the allowed uses are intended to be low nuisance, low intensity industrial uses."

About the project

In mid-November, Olympic Disposal filed a conditional use permit with Clallam County's Department of Community Development to place a municipal solid waste transfer station, commercial recycling center and consolidation bay and offices on a currently vacant 5.46-acre site at the northeast corner of Carlsborg Road and the Carlsborg Business Loop.

The proposed Olympic Disposal Transfer Station would be about 14,000 square feet and 36 feet tall, with an 831-square-foot recycling center less than 20

feet tall. Also in the plans are a 2,000-square-foot office and a 260-square-foot pay booth. Surrounding the site will be an 8-foot-tall sight-obscuring fence along with landscape buffers.

According to representatives of Sitts & Hill, a Tacoma-based engineering firm, about 180-205 of the estimated 513 vehicles entering the facility each day will be heavy vehicles and/or trucks. Those traffic estimates are based on traffic patterns observed at the Grays Harbor Transfer Facility in Montesano, the representatives state.

The transfer station would process about 120 tons per day as operations begin. The proposed transfer station and recycling center would be open from 7 a.m. to 7 p.m. daily, except holidays, for disposal of solid waste and recycling, company representatives stated.

Staff concerns

County staff said the proposal failed to meet four separate conditions of the conditional use permit as well as mitigating concerns addressed through the State

Environmental Policy Act.

"The County would request an analysis of both need and location be received from the applicant concerning options for Waste Connections to operate a transfer station on the east end of the County," staff wrote.

"The applicant should review the Clallam County Solid Waste Management Plan and work with the Clallam County Solid Waste Advisory Committee to determine a more appropriate location if a need is determined."

Staff also noted in the report a significant number of citizens opposed to the proposed facility.

"Community members have voiced their concerns, and though not a determining factor for projects, indicates both an understanding and investment in the vision of Carlsborg and what is reflected in the Comprehensive Plan," staff wrote.

Michael Dashiell is the editor of the Sequim Gazette of the Olympic Peninsula News Group, which also is composed of other Sound Publishing newspapers Peninsula Daily News and Forks Forum. Reach him at editor@sequimgazette.com.

A3

PDJ
July 20, 2022 CONTINUED FROM A1

**BEFORE THE HEARING EXAMINER
FOR CLALLAM COUNTY**

In the Matter of the Application of	)	No. CUP2021-00005;
	)	No. ECL2021-00019
	)	
Olympic Systems Properties	)	Olympic Systems Properties CUP
	)	
	)	DECISION AND ORDER ON
	)	APPLICANT'S SECOND MOTION
<u>For a Conditional Use Permit</u>	)	FOR CONTINUANCE

TO PARTIES OF RECORD:

BACKGROUND

“Olympic Disposal, LLC” (Applicant) submitted the *current* application for approval of a conditional use permit (CUP) to allow construction of a “Municipal Solid Waste Transfer Station with a Commercial Recycling Consolidation Bay and Community Recycling Center,” on a vacant and unaddressed 5.46-acre property identified by Tax Parcel Number 043015-409010 and owned by “Olympic Systems Properties, LLC,” on November 12, 2021.¹ On November 30, 2021, Clallam County (County) determined that the CUP application was complete and assigned it application numbers CUP2021-00005 and ECL2021-00019. The County then scheduled an open record public hearing on the proposal for February 3, 2022.

Subsequently, the County issued a Mitigated Determination of Nonsignificance (MDNS) associated with the proposal under the State Environmental Policy Act (SEPA) on January 11, 2022. Attorney Tom Ehrlichman filed an appeal of the MDNS to the Hearing Examiner on behalf of several individuals, businesses, and other groups. Laudably, Mr. Ehrlichman’s appeal acknowledged potential conflicts between information provided by the County’s MDNS about the appeal process related to the MDNS and information otherwise dictated by the County’s municipal code. Around the same time that Mr. Ehrlichman filed the SEPA appeal, the County also “issued” its Staff Report on the proposal (on or about January 26, 2022), in which the County recommended denial of the CUP application, for reasons independent of SEPA. In light of these developments, the Applicant (and others) requested that the Hearing Examiner hold a pre-hearing conference to address various issues related to these matters.

Accordingly, the Hearing Examiner held a pre-hearing conference with those parties applicable/necessary for any SEPA appeal hearing that might occur as part of the required consolidated hearing process associated with the open record hearing on the CUP application

¹ As detailed in the Application, identified as “Exhibit 2.”

(including representatives for the County, the Applicant, Mr. Ehrlichman on behalf of his clients, and Attorney Stephen DiJulio representing the City of Port Angeles as the City sought intervention in the SEPA appeal and requested it otherwise be included in all matters associated with the proposal or any appeals) to discuss jurisdictional concerns about the SEPA appeal, approximately two hours *prior* to the planned commencement of the open record hearing on the CUP application on February 3, 2022, along with discussion of a request by the Applicant that the CUP hearing itself be postponed.

Following discussion between the Hearing Examiner and the various parties, the Hearing Examiner ruled that he lacked jurisdiction to address any SEPA appeal(s) associated with the proposal and, also, that it would be appropriate to postpone the underlying CUP hearing following consideration of the Applicant's request for a continuance to obtain/produce necessary technical reports and other information to address concerns identified by the County in its Staff Report. The pre-hearing conference concluded shortly before the scheduled start time of the CUP application hearing. Thus, shortly after the conclusion of the pre-hearing conference, County staff informed interested members of the public (including those participating "in person" and through remote technology) that the open record hearing on the CUP application would be postponed until July 21, 2022.

The Hearing Examiner subsequently issued an "Order Following Pre-Hearing Conference," on March 3, 2022, memorializing the oral rulings he previously made, including: dismissing the various SEPA appeals associated with the proposal, without prejudice, in light of the Hearing Examiner's lack of jurisdiction to address such matters because the municipal code does not allow for an administrative appeal of a DNS/MDNS in these circumstances; determining that the MDNS issued on the proposal contained significant errors related to the comment and appeal period such that the County must reissue the SEPA determination, reopen the applicable comment period, and provide accurate and clarifying information in such materials about the County's SEPA appeal process; requiring that the County re-notice the open record hearing associated with the CUP application in a timely manner and as dictated by the municipal code, to convey that the hearing would commence on July 21, 2022, and additional written comments would be accepted until such hearing commenced; and, finally, that the County update the "document list" (potential "exhibit list") associated with the CUP application hearing now scheduled to commence on July 21, 2022, to ensure that all materials associated with the (now dismissed) SEPA appeal be properly included in the record, along with any additional written comments, reports, agency comments, or other documents received in advance of commencement of the postponed hearing. Finally, the order noted that the parties participating in the pre-hearing conference on February 3, 2022, all stated they would have the ability to participate in the CUP hearing scheduled for July 21, 2022. *Order Following Pre-Hearing Conference, dated March 3, 2022.*

*Decision and Order on Applicant's
Second Motion for Continuance
Clallam County Hearing Examiner
Olympic Systems Properties CUP
No. CUP21-00005; No. ECL2021-00019*

MOTION TO CONTINUE HEARING

Despite suggesting at the pre-hearing conference, on February 3, 2022, that it would be ready to move forward with the CUP application hearing by July 21, 2022, the Applicant (through its attorneys Alexander M. Wu, Amit D. Ranada, and Stephen H. Roos) filed a motion on July 13, 2022, requesting that the CUP hearing be continued a second time. In its motion, the Applicant expressed surprise that the County expected submission of several studies in advance of the July hearing – despite requesting the initial hearing postponement precisely for this reason.

Applicant's Motion to Continue Hearing, dated July 13, 2022. More importantly, though, the Applicant raised an entirely new issue warranting further delay of a hearing on the current CUP application: analysis and review of an approved CUP from 2017 associated with property it owns to the north and the impact of development of that property on this proposal.

Specifically, in its motion, the Applicant contends that, in its 2017 application for a CUP (No. CUP2021-00005) related to property directly north of the subject site (across from the Olympic Discovery Trail), the Applicant sought approval of phased development to allow: use of existing facilities on-site as well as approval to park up to 50 solid waste collection trucks for maintenance (Phase One); construction of a 10,000 square foot maintenance facility/shop (Phase Two); and construction of an “11,250 square-foot transfer/bailing facility to transfer loads from solid waste collection trucks to trailers for long-hauling to landfills and to bale recyclables” (Phase 3). *Applicant's Motion to Continue Hearing, dated July 13, 2022.* The Hearing Examiner approved this CUP application request on May 22, 2017. Accordingly, the Applicant suggests that the current proposal should be treated in the same manner and a continuance is appropriate to allow the Applicant and County to discuss this issue further:

Olympic believes the sharing of information and discussions with DCD may lead to modifications to the staff report and recommendations regarding the current CUP application, perhaps narrowing the issues to address at the hearing. These are reasonable grounds for a continuance. Olympic requests that the Hearing Examiner continue the hearing and set a new hearing date in November 2022.

Applicant's Motion to Continue Hearing, dated July 13, 2022; with Declaration of Alexander M. Wu in Support of Applicant's Motion to Continue Hearing, and Declaration of Chad Young in Support of Applicant's Motion to Continue Hearing.

The Hearing Examiner has reviewed the materials provided by the Applicant with its motion, including his own decision from 2017, and has serious concerns with how the 2017 CUP approval has been characterized. In particular, the Hearing Examiner's 2017 decision (based on submitted materials) characterized the potential third phase of the proposal as involving construction of a “transload or bailing facility,” the Applicant's materials explicitly stressed that no “waste storage” would occur on-site and, further, never identified this third phase as involving a substantial operation involving the “transfer [of] loads from solid waste collection trucks to

*Decision and Order on Applicant's
Second Motion for Continuance
Clallam County Hearing Examiner
Olympic Systems Properties CUP
No. CUP21-00005; No. ECL2021-00019*

trailers for long-hauling to landfills and to bale recyclables” as suggested by the Applicant. Moreover, nothing in the 2017 materials suggested or contemplated an even larger facility being developed on property to the south across the Olympic Discovery Trail. Clearly, further discussion and communication between the Applicant and County concerning the 2017 CUP is warranted.

The Clallam County Rules of Procedure for Proceedings before the Hearing Examiner on Hearings on Permit Applications and Other Hearing Matters, Sec. 9.7(2) provide:

Any party of record may request continuance of a hearing. The request, if made prior to the hearing, must be in writing and state reasonable grounds for a continuance. If the request is made orally at the hearing it must be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance. It shall be the policy of the Hearing Examiner that a maximum of two (2) continuances be granted in a matter.

In light of the fact that the Applicant (a) intends on submitting additional studies and information that may impact or clarify the current proposal and (b) has identified a new issue – arguing, essentially, that a 2017 CUP approval may impact the current application – warranting additional analysis and consideration by the County, a second continuance of the current CUP application hearing is appropriate. Accordingly, the Applicant’s motion to continue the hearing until November 2022 is **GRANTED**.

OTHER MOTIONS

In addition to the Applicant’s motion, the Hearing Examiner received a motion to intervene from Attorneys P. Stephen DiJulio, Jason Donovan, and Andrea Bradford, on behalf of the City of Port Angeles, requesting the ability to participate in the CUP hearing and, also, noting that witnesses the City anticipates calling to testify are only available on July 21, 2022. *City of Port Angeles’ Motion to Intervene, dated July 12, 2022*. In addition, Attorney Tom Ehrlichman, on behalf of A-M Systems, LLC, and Arthur B. Green III, submitted a motion requesting time to present witness testimony and evidence, including a right to present rebuttal witnesses or evidence, a right of cross examination, a right to present opening argument/summary and closing argument, and a right to file a post-hearing brief addressing the evidence and legal argument presented at hearing, prior to the close of the record. *A-M Systems, LLC, and Arthur B. Green III’s Motion for Time at Hearing, dated July 12, 2022*.

The CUP application open record hearing will be conducted under the Clallam County Rules of Procedure for Proceedings before the Hearing Examiner on Hearings on Permit Applications and Other Hearing Matters, which already provide, in Sec. 6.1 Rights of Parties of Record, that:

*Decision and Order on Applicant's
Second Motion for Continuance
Clallam County Hearing Examiner
Olympic Systems Properties CUP
No. CUP21-00005; No. ECL2021-00019*

Every party of record shall have the right to present evidence and testimony at hearings. The right of parties of record to cross-examine, object, and submit motions and arguments shall be at the discretion of the Hearing Examiner. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony. At the Hearing Examiner's discretion, irrelevant or unduly repetitious testimony may be excluded or bypassed.

Accordingly, the City of Port Angeles does not need to "intervene" in a CUP application hearing to submit comments or testimony. Nor do A-M Systems, LLC, and Arthur B. Green III, need to reserve time to participate, etc., although it is helpful to know the number of witnesses that may testify. These parties shall have the right to participate in the open record hearing associated with the CUP application (noting, however, that the Hearing Examiner retains discretion to limit and/or control such participation as necessary). Thus, the Hearing Examiner **DENIES** these two motions to the extent that participation in open record hearings is clearly delineated in the Hearing Examiner's rules.

ORDER

As detailed above, the open record hearing on the current CUP application is **GRANTED**, while the other motions are **DENIED**. That said, the Hearing Examiner has already granted one continuance to the Applicant and no further continuances shall be granted. This matter shall commence no later than the end of November 2022. Alternatively, the Applicant may withdraw its application at any time, as a matter of right.

Based on the above, the Hearing Examiner requests that the Applicant and County contact the Clerk to the Hearing Examiner by **Noon, October 21, 2022**, concerning the status of this CUP application and when the CUP open record hearing will be scheduled. Moreover, the County shall notify parties of record and the public that the hearing scheduled for July 21, 2022, has been postponed pending further review.

SO ORDERED this 18th day of July 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

In Re:
Conditional Use Permit Hearing for
Olympic Systems Properties
File No. CUP2021-00005, and

Appeal by:
Citizens for Carlsborg;
Sequim Valley Airport and Ande Sallee;
Old Mill Café, LLC and Valdena Culp;
A-M Systems, LLC and Arthur B. Green, III

of the *Mitigated Determination of
Nonsignificance for Olympic Systems
Properties*
(March 22, 2022)
File No. ECL2021-00019

APPLICANT'S MOTION TO CONTINUE HEARING

Applicant Olympic Disposal Systems (“***Olympic***”) requests a continuance of the hearing currently scheduled for July 21, 2022 (the “***July CUP Hearing**DCD***”), where Ms. Clark notified Olympic that DCD staff had expected to receive various studies required by the MDNS well before the July CUP Hearing despite the staff’s recommendation that Olympic’s CUP application be denied. Olympic is working on preparing and submitting those studies to DCD. Additionally, as permitted by the Conditional Use Permit granted to Olympic on May 22, 2017

HILLIS CLARK MARTIN & PETERSON P.S.
999 Third Avenue, Suite 4600
Seattle, WA 98104
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 under Conditional Use Permit Application No. 2017-00005, Olympic has submitted an
2 application for a building permit to construct a transfer facility approximately 200 feet north of
3 the site proposed in Olympic's current CUP application. Olympic has initiated discussions with
4 DCD about whether DCD's staff recommendations regarding the current CUP application are
5 consistent with the those in the staff report and recommendations submitted in CUP2017-00005.
6 Olympic believes the sharing of information and discussions with DCD may lead to
7 modifications to the staff report and recommendations regarding the current CUP application,
8 perhaps narrowing the issues to address at the hearing. These are reasonable grounds for a
9 continuance. Olympic requests that the Hearing Examiner continue the hearing and set a new
10 hearing date in November 2022.
11
12

13 II. STATEMENT OF FACTS

14 A. THE 2017 CUP AUTHORIZES CONSTRUCTION OF A TRANSFER FACILITY IN THE 15 CARLSBORG INDUSTRIAL ZONE.

16 On March 8, 2017, Olympic submitted a conditional use permit application (the "**2017**
17 **CUP Application**") for its property at 970 Carlborg Road, Sequim, Washington 98382 (the
18 "**North Parcel**"). Wu Decl.¹ Ex. B (at Ex. 2). The 2017 CUP Application was assigned hearing
19 examiner number CUP2017-00005. *See id.* The North Parcel is located immediately north
20 (separated by the Olympic Discovery Trail) of the property (the "**South Parcel**") that is the
21 subject of the pending CUP application, hearing examiner number CUP2021-00005 (the "**2021**
22 **CUP Application**"). Young Decl.² ¶ 2. Both the North Parcel and the South Parcel are zoned
23
24
25
26

27 ¹ Declaration of Alexander M. Wu in Support of Applicant's Motion to Continue Hearing ("**Wu Decl.**").

28 ² Declaration of Chad Young in Support of Applicant's Motion to Continue Hearing ("**Young Decl.**").

1 Carlsborg Industrial for “low nuisance industrial” uses. Ex. 1³; Wu Decl. Ex. A.

2 In the 2017 CUP Application, Olympic sought to develop the North Parcel as its base of
3 operations in three phases. Wu Decl. Ex. A (at Finding 1). In the first phase, Olympic would use
4 the already-existing office and shop and would park up to 50 solid waste collection trucks on the
5 eastern portion of the North Parcel. *Id.* In the second phase, Olympic would construct a 10,000
6 square-foot truck maintenance facility/shop. *Id.* In the third phase, Olympic would construct a
7 11,250 square-foot transfer/baling facility to transfer loads from solid waste collection trucks to
8 trailers for long-hauling to landfills and to bale recyclables. *Id.*

9
10
11 The County issued an MDNS on April 6, 2017 with a memorandum from County Senior
12 Planner Donella Clark dated April 4, 2017. Wu Decl. Ex. B (at Ex. 6). DCD issued its staff
13 report and recommendations on April 27, 2017. Wu Decl. Ex. B (at Ex. 1). DCD recommended
14 approval of the 2017 CUP Application with conditions. *Id.*

15
16 Hearing Examiner Andrew Reeves held an open record public hearing on May 4, 2017,
17 and heard testimony from County Senior Planner Donella Clark, Olympic representative Chris
18 Giraldez, and nearby residents Chuck Parrish and Theresa Clark West, and considered numerous
19 documentary exhibits. Wu Decl. Ex. A (at Summary of Record). In his Findings, Conclusions,
20 and Decision dated May 22, 2017, Hearing Examiner Reeves concluded that the 2017 CUP
21 Application, including the proposed 11,250 square-foot transfer/baling facility, was consistent
22 with the Clallam County Comprehensive Plan and, with conditions, the Carlsborg Industrial
23 zone. Hearing Examiner Reeves approved the 2017 CUP Application with 14 conditions (the
24 “**2017 CUP**”). *See* Wu Decl. Ex. A (at Conclusions 1 and 2, and Decision).

25
26
27
28 ³ Exhibits listed in and attached to Exhibit Log for Conditional Use Permit Application CUP 2021-00005 for February 3, 2022 Public Hearing.

1 Olympic has completed phases one and two of the 2017 CUP, and has submitted an
2 application for a building permit to construct the phase 3 transload/baling facility on the North
3 Parcel. Young Decl. ¶ 4.

4
5 **B. DCD STAFF EXPECT TO RECEIVE REPORTS REQUIRED BY THE MDNS BEFORE THE**
6 **JULY CUP HEARING.**

7 On June 30, 2022, Olympic representatives Chad Young, Kelly Kincella, and
8 Kathy Hargrave met with Senior County Planner Donella Clark to discuss the 2021 CUP
9 Application regarding the South Parcel and the pending application for a building permit to
10 construct the transfer/baling facility under phase three of the 2017 CUP. Young Decl. ¶ 2.
11 Substantial portions of DCD's January 26, 2022 staff report and recommendations regarding the
12 2021 CUP Application appear to directly contradict the April 27, 2017 staff report and
13 recommendations regarding the 2017 CUP Application. *Compare* Ex. 1 with Wu Decl. Ex. B
14 (at Exhibit 1). It is not clear how the County is distinguishing between an 11,250 square-foot
15 transfer facility on the North Parcel and a 15,000 square-foot transfer facility on the South
16 Parcel, approximately 200 feet away. At the June 30, 2022 meeting, Ms. Clark revealed that
17 DCD expected to receive the traffic study and landscaping plans required by the MDNS issued
18 January 5, 2022 well before the July CUP Hearing. Young Decl. ¶ 3. Olympic requires
19 additional time to complete and submit the traffic study and landscaping plans and to provide
20 them to DCD for review and consideration substantially in advance of the hearing, as now
21 requested by DCD. *Id.*

22
23
24
25 **III. AUTHORITY AND ARGUMENT**

26 A hearing may be continued for good cause. CCC § 26.04.050(9). Prior to the hearing,
27 any party may request a continuance by stating reasonable grounds for the continuance. Clallam
28

1 County Administrative Manual 921-8 § 9.7(2). A party may request a continuance before the
2 hearing in writing. Clallam County Administrative Manual, Policy 921-8, § 9.7(2). The
3 requesting party need only state the “reasonable grounds” for a continuance. *Id.* The Hearing
4 Examiner may, in his discretion, grant up to two continuances. *Id.*

6 Here, multiple reasonable grounds justify continuing this hearing to a later date. On
7 June 30, 2022—only 21 days before the July CUP Hearing—DCD revealed that it had expected
8 the traffic study and landscaping plans required by the January 5, 2022 MDNS well before the
9 July CUP Hearing. Olympic needs additional time to complete and submit the traffic study and
10 landscaping plan in the time frame now requested by DCD, such that DCD will have time to
11 review and comment on the reports before the CUP hearing. Additionally, as the studies are
12 prepared and submitted to DCD, further discussions with the County regarding these studies and
13 the inconsistencies between the staff reports and recommendations regarding the 2017 and 2022
14 CUP Applications may lead to narrowing or elimination of issues to address at the hearing.
15 Finally, a continuance will not disadvantage or prejudice any party. Olympic’s request for a
16 hearing continuance should be granted, and the hearing continued to November 2022.

19 DATED this 13th day of July, 2022.

21 HILLIS CLARK MARTIN & PETERSON P.S.

22 By s/ Alexander M. Wu
23 Alexander M. Wu, WSBA #40649
24 Amit D. Ranade, WSBA #34878
25 Stephen H. Roos, WSBA #26549
26 999 Third Avenue, Suite 4600
27 Seattle, WA 98104
28 (206) 623-1745
alex.wu@hcmp.com
amit.ranade@hcmp.com
steve.roos@hcmp.com

Attorneys for Applicant

APPLICANT'S MOTION TO CONTINUE HEARING - 5

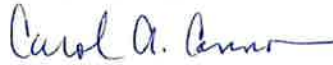
HILLIS CLARK MARTIN & PETERSON P.S.
999 Third Avenue, Suite 4600
Seattle, WA 98104
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF FILING

I, Carol A. Cannon, am a legal assistant at Hillis Clark Martin & Peterson P.S. and hereby certify that I caused this Motion to Continue Hearing to be filed electronically on Donnella Clark, Clerk for the Hearing Examiner (the Clallam County Department of Community Development), dclark@co.clallam.wa.us, with electronic copies to Chief Civil Deputy Prosecuting Attorney, Elizabeth Stanley, estanley@co.clallam.wa.us, Counsel for Carlsborg Village Properties, Inc., Tom Ehrlichman, tom@dykesehrlichman.com, and the applicant's contact persons: Chad Young, chady@wasteconnections.com and Kathy Hargrave, Sitts & Hill, kathyh@sittshill.com.

Signed, July 13, 2022:



Carol A. Cannon, Legal Assistant

1 **BEFORE THE HEARING EXAMINER**
2 **FOR CLALLAM COUNTY**
3 **AND**
4 **BEFORE THE SEPA RESPONSIBLE OFFICIAL**
5 **FOR CLALLAM COUNTY**

6 In Re:
7 Conditional Use Permit Hearing for
8 Olympic Systems Properties
9 **File No. CUP2021-00005**, and

Hearing Examiner File No.
CUP2021-00005

DCD File No.
ECL2021-00019

10 Appeal by:
11 Citizens for Carlsborg;
12 Sequim Valley Airport and Ande Sallee;
13 Old Mill Café; LLC and Valdena Culp;
14 A-M Systems, LLC and Arthur B. Green, III

DECLARATION OF ALEXANDER M. WU
IN SUPPORT OF APPLICANT'S MOTION
TO CONTINUE HEARING

15 of the *Mitigated Determination of*
16 *Nonsignificance for Olympic Systems*
17 *Properties*
18 (March 22, 2022)
19 **File No. ECL2021-00019**

20 Pursuant to RCW 9A.72.085, the undersigned hereby declares that:

21 1. I am an attorney with the firm of Hillis Clark Martin & Peterson P.S., which
22 represents the Applicant in this action. I have personal knowledge of the matters set forth in this
23 declaration and am competent to testify in this matter.

24 2. Attached as **Exhibit A** is a copy of the Findings, Conclusions, and Decision issued
25 by Hearing Examiner Andrew Reeves in Hearing Examiner No. CUP2017-00005, together with the
26 associated Notice of Decision and Declaration of Mailing.

27 3. Attached as **Exhibit B** is a copy of the Exhibit Log and associated exhibits
28 considered in Hearing Examiner No. CUP2017-00005.

DECLARATION OF ALEXANDER M. WU IN SUPPORT OF
APPLICANT'S MOTION TO CONTINUE HEARING - 1

HILLIS CLARK MARTIN & PETERSON P.S.
999 Third Avenue, Suite 4600
Seattle, WA 98104
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 I hereby declare, under penalty of perjury under the laws of the State of Washington, that
2 the foregoing is true and correct.

3 DATED this 13th day of July, 2022 at Seattle, Washington.

4
5 s/ Alexander M. Wu
6 ALEXANDER M. WU
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE HEARING EXAMINER
FOR CLALLAM COUNTY
AND
BEFORE THE SEPA RESPONSIBLE OFFICIAL
FOR CLALLAM COUNTY**

In Re:
Conditional Use Permit Hearing for
Olympic Systems Properties
File No. CUP2021-00005, and

Appeal by:
Citizens for Carlsborg;
Sequim Valley Airport and Ande Sallee;
Old Mill Café; LLC and Valderna Culp;
A-M Systems, LLC and Arthur B. Green, III

of the *Mitigated Determination of
Nonsignificance for Olympic Systems
Properties*
(March 22, 2022)
File No. ECL2021-00019

**Hearing Examiner File No.
CUP2021-00005**

**DCD File No.
ECL2021-00019**

**DECLARATION OF CHAD YOUNG IN
SUPPORT OF APPLICANT'S MOTION TO
CONTINUE HEARING**

The undersigned hereby declares that:

1. I am a District Manager at Waste Connections of Washington, Inc., and manage on its behalf Olympic Systems Properties ("*Olympic*"), the Applicant in this action. I am over the age of eighteen and competent to testify in this matter. I make this declaration based on my personal knowledge and the records maintained by the Applicant in the ordinary course of its business.
2. On June 30, 2022, I met with Applicant co-representatives Kelly Kincella and Kathy Hargrave and Senior County Planner Donnella Clark about Olympic's pending application for a conditional use permit, Hearing Examiner File No. CUP2021-00005 (the "*2021 CUP Application*"), to build and operate a 15,000 square-foot transfer station, a 1,000 square-foot recycling center, a <2,000 square-foot office and employee breakroom, and a 400 square-foot scale

*DECLARATION OF CHAD YOUNG IN SUPPORT OF
APPLICANT'S MOTION TO CONTINUE HEARING - 1*

HILLIS CLARK MARTIN & PETERSON P.S.
999 Third Avenue, Suite 4600
Seattle, WA 98104
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 house on the property with Assessor's parcel number 043015-409010 (the "**South Parcel**").
2 Olympic has also submitted an application for a building permit to construct a 11,250 square-foot
3 transfer/baling facility on its property at 970 Carlsborg Road, Sequim, Washington 98382 (the
4 "**North Parcel**"), which is immediately north of the South Parcel. The North Parcel and the South
5 Parcel are separated by the Olympic Discovery Trail. Olympic has the right to use the North Parcel
6 to operate a transfer facility under the conditional use permit approved in Hearing Examiner
7 File No. CUP2017-00005 (the "**2017 CUP**"). From Olympic's perspective, the staff report and
8 recommendations submitted for the 2017 CUP contradict those submitted in connection with the
9 2021 CUP Application, and Olympic sought to understand the basis for the contradictions.
10

11 3. At the June 30 meeting, Ms. Clark informed us that DCD had expected to receive a
12 traffic study and landscaping plans required by the MDNS issued in connection with the 2021 CUP
13 Application well before the July 21, 2022 open record hearing regarding the 2021 CUP
14 Application. Olympic requires additional time to complete and submit the traffic study and
15 landscaping plans and to provide them to DCD for review and consideration substantially in
16 advance of the hearing, as requested by Ms. Clark.

17 4. Olympic has submitted an application for a building permit under the 2017 CUP to
18 construct an 11,250 square-foot transfer facility on the North Parcel, approximately 200 feet north
19 of the location of the proposed 15,000 square-foot transfer facility on the South Parcel.

20 I hereby declare, under penalty of perjury under the laws of the State of Washington, that
21 the foregoing is true and correct.

22 DATED this 13th day of July, 2022 at Seattle, Washington.

23
24 
25 CHAD YOUNG

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF FILING

I, Carol A. Cannon, a legal assistant at Hillis Clark Martin & Peterson P.S. and hereby certify that I caused this Declaration of Chad Young in Support of Motion to Continue Hearing to be filed electronically on Donnella Clark, Clerk for the Hearing Examiner (the Clallam County Department of Community Development), dclark@co.clallam.wa.us, with electronic copies to Chief Civil Deputy Prosecuting Attorney, Elizabeth Stanley, estanley@co.clallam.wa.us, Counsel for Carlsborg Village Properties, Inc., Tom Ehrlichman, tom@dykesehrlichman.com, and the applicant's contact persons: Chad Young, chady@wasteconnections.com and Kathy Hargrave, Sitts & Hill, kathyh@sittshill.com:

Signed, July 13, 2022:



Carol A. Cannon, Legal Assistant

1
2
3
4
5
6
7
8
9
10
11
12
13
14

**BEFORE THE HEARING EXAMINER
FOR CLALLAM COUNTY**

In Re:
Conditional Use Permit Hearing for
Olympic Systems Properties
File No. CUP2021-00005, and

Comment on
*Mitigated Determination of
Nonsignificance for
Olympic Systems Properties*
(March 22, 2022)
File No. ECL2021-00019

**Hearing Examiner File No.
CUP2021-00005**

**DCD File No.
ECL2021-00019**

A-M SYSTEMS, LLC
AND
ARTHUR B. GREEN III's
PREHEARING BRIEF

15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

A-M Systems, LLC and Arthur B. Green, III (A-M Systems), for their pre-hearing brief offer the following. A-M Systems is the property owner directly adjacent to and to the east of the proposed site for a large waste transfer center. Mr. Green is the President and CEO of A-M Systems and has worked there for over 20 years. The proposed conditional use permit must be denied because the proposed use is dissimilar to any of the permitted uses listed in the Clallam County Zoning Code for the applicable Carlsborg Industrial zoning classification.

The Hearing Examiner's decision on this CUP application involves a special exercise of zoning authority conferred by the County Commissioners, requiring a specialized inquiry into the nature of the use, to determine whether it is similar to any industrial use currently authorized in the Carlsborg Industrial zone. This threshold CUP zoning evaluation of the nature of the use is necessary because a garbage collection and transfer facility is not listed as an allowed use, either through permit or conditional use permit.

1 The Examiner's authority, to allow a use that is not permitted, is limited to what the
2 definitions and zoning uses actually say, as adopted. Inventing a more relaxed interpretation
3 of what the zoning code allows ventures into the legislative realm and is not permitted. A-M
4 Systems maintains that those definitions and criteria are precise and unambiguous. Solid
5 waste collection and transfer facilities are not included as permitted uses because they are
6 high-intensity, nuisance generating activities that go beyond the adopted planning vision for
7 the Village Center in the Carlsborg Urban Growth Area subarea plan. Clallam County Code
8 ch. 32.05. The proposed waste transfer system must be denied because: (a) it is not similar to
9 any of the definitions for permitted uses; (b) it goes beyond the type of localized village uses
10 contemplated in the adopted comprehensive plan; (c) there are no changed circumstances to
11 justify a change in zoning; and (d) the CUP criteria have not been met.

12 At hearing, A-M Systems intends to present argument, evidence and testimony in support
13 of the following briefing.¹

14 II. STANDARD OF REVIEW

15 This permit application is a special request to approve a conditional use permit for a
16 use that is not listed as a permitted use in any of the County zoning definitions. A-M Systems
17 will contend at hearing that the applicant has not met its burden of showing that a waste
18 transfer facility is similar to any listed permitted use.

19 A. Burden of Proof.

20 Under County law, the applicant has the burden of proof in this Conditional Use Permit
21 hearing:

22
23
24 ¹ The question of SEPA compliance is not before the Hearing Examiner in this administrative proceeding. For the record,
25 we note that each of the application's failures under the County zoning code and plan also comprise probable significant
26 adverse environmental impacts under the State Environmental Policy Act, RCW ch. 43.21C ("SEPA"). A-M Systems
27 intends that the submittal of this briefing into the record also serve as a comment in this respect on the Mitigated
28 Determination of Nonsignificance issued on March 22, 2022 by Planning and Development Services. A-M Systems
requests that the CUP decision include mention of these matters as part of the background underlying the permit decision.

1 **9.8 Evidence**

2 **(1) Burden of proof**

3 In each proceeding, the applicant shall have the burden of proof to show
4 compliance with applicable laws and regulations of Washington State and
5 Clallam County.

6 *Clallam County Administrative Manual*, Policy 921 (Rev. 12/13/2011). Similarly:

7 **33.27.110. Burden of proof.**

8 At every stage of the conditional use permit process, the burden of
9 demonstrating that any proposed development is consistent with the
10 Comprehensive Plan, and the spirit and intent of this chapter and is compatible
11 with the permitted uses in the zone in which it will be located is upon the
12 applicant.

13 Clallam County Code (CCC) § 33.27.110.

14 In a case where the Hearing Examiner believes the staff or the applicant has not
15 provided information necessary to determine whether that burden of proof has been met, the
16 Hearing Examiner has authority under the code to continue the hearing for up to 30 days:

17 **33.27.040 Hearing Examiner action.**

18

19 (3) When the Hearing Examiner determines that additional information is necessary,
20 action on said application shall be continued until such information is available;
21 provided, that the extension shall not exceed thirty (30) days unless the applicant
22 consents to a longer period. Following its review of the additional information, the
23 Hearing Examiner shall take action on the application.

24 Under these standards, it is not the job of the Hearing Examiner, County Staff or the public to
25 prove anything. The entire burden rests with the applicant to prove that "any proposed
26 development is consistent with the Comprehensive Plan, and the spirit and intent of" the code
27 governing conditional use permits, at CCC ch. 33.27.

28 **B. Criteria for Approval of a CUP.**

 The code sets out the unambiguous criteria for Hearing Examiner approval of a CUP.
 The applicant must demonstrate that:

- 1 (a) The proposed action is consistent with the spirit and intent of the Clallam County
2 Comprehensive Plan.
3 (b) The proposed action is consistent with this title [Title 33, Zoning].
4 (c) The proposed action is consistent with land uses within the zoning district in which
5 it is located and in the vicinity of the subject property.
6 (d) The proposed action will have no unreasonable adverse impact on the surrounding
7 land uses which can not be mitigated through the application of reasonable
8 conditions.

9 CCC § 33.27.040(1)(a) – (d) (Hearing Examiner Action).

10 Criterion (b) is logically the starting point in this particular CUP case. That is because
11 the applicant has come in under a special provision of the zoning code for the Carlsborg Urban
12 Growth Area, as follows:

13 **Chapter 33.20**
14 **CARLSBORG URBAN GROWTH AREA**
15 **33.20.040 Use tables.**

16

- 17 (3) Any person may request that an unclassified use be authorized as similar to an
18 allowed or conditional land use pursuant to CCC 33.40.050, General Requirements.
19 Unclassified uses may be allowed through the issuance of a conditional land use
20 pursuant to CCC 33.05.010, Land Use Zones.

21 CCC § 33.20.040(3).

22 Under this procedure, the applicant is contending that their proposed garbage collection
23 and transfer facility is "similar to" an industrial use authorized by the zoning code in the
24 Carlsborg area. The General Requirements for the zoning code further elaborate on the tests
25 for that type of CUP process:

26 CCC § 33.40.050 Authorization of similar uses:

27 The Hearing Examiner may rule that a use not specifically named in the permitted uses
28 of the zone shall be allowed if it is of the same general type and is similar to one or
more of the permitted uses specified for the zone involved.

1 CCC § 33.40.050. The test is therefore clarified to require that, in this case, the comparison
2 look at the uses specifically allowed in Carlsborg Industrial zone.

3 In summary, the County's adopted standards for review of this type of application make
4 it clear that the burden of proof is on the applicant in this entire proceeding. The Hearing
5 Examiner's first inquiry is whether the proposed use is similar to at least one use allowed in
6 the applicable zone. If not, the project is denied. If the specific proposed use does qualify for
7 CUP review, the Examiner then proceeds to apply the conditional use permit approval criteria
8 to the proposed use.

9 III. ARGUMENT

10 Based on the foregoing standards, the proposed garbage collection and transfer facility
11 fails in two respects. First it conflicts with:

- 12 (a) the specific definitions and limitations for industrial uses allowed in the Carlsborg
13 Industrial (CI) zone under CCC § 33.03.010(47) and CCC § 33.20.030(6); and
- 14 (b) the general type of uses contemplated under the comprehensive plan codified at
15 CCC § 31.03.350 (Carlsborg UGA plan).

16 The project must be denied because, as a threshold matter, it is ineligible for the CUP review
17 process set up under CCC § 33.40.050 and § 33.20.040(3).

18 After that threshold inquiry, in the event the Hearing Examiner disagreed and were to
19 find that the proposed use can go forward for review of substantive CUP criteria, A-M
20 Systems will show that the applicant has failed to demonstrate facts sufficient to show
21 compliance with the "consistency" and "adverse impacts" tests for approval of a CUP, cited
22 above.

23 A. The Proposed Use is not Currently Allowed in the Zone.

24 Before beginning the zoning analysis, it is important to note that the applicant's zoning
25 analysis contains an incorrect conclusion:
26
27
28

1 A transfer station and recycle center is allowed in the zone upon issuance of a Conditional
2 Use Permit (CUP).

3 Letter to Clallam County dated November 2, 2021 from Sitts & Hill at 3-4. The applicant
4 does not dispute that the site is designated "Carlsborg Industrial" (CI) under the zoning code.
5 Yet none of the permitted uses listed in the zoning code for that CI zone includes a "transfer
6 station and recycle center." CCC § 33.20.040, Use Table at § 33.20.040(A). The applicant's
7 statement is not found in the code.

8 **B. The Use is not Similar to Other Industrial Uses Authorized in the CI Zone.**

9 As described above, this is an application for review under CCC § 33.40.050 and §
10 33.20.040(3). In this particular land use application, the applicant describes its proposed use as
11 a "Municipal Waste Transfer Station and Recycling Facility." A-M Systems maintains that a
12 more accurate description of the primary use is a "high volume garbage collection and transfer
13 facility, with recycling."² The issue is whether the proposed garbage collection and transfer
14 facility "is of the same general type and is similar one or more of the permitted uses specified
15 for the zone involved."

16 **1. The Code Limits the Term "Industrial Use" to Certain Uses.**

17 Based on our review of the code, we find that "Industrial use" is permitted within the
18 Carlsborg Industrial zone, but the use proposed in this application is not similar to the uses set
19 forth in the definition for "Industrial Use" in the zoning code:

20
21 (47) "Industrial use" means **any premises devoted primarily to the manufacturing of**
22 **finished or semi-finished products, and the processing of materials.** This definition
23 includes **accessory facilities such as but not limited to storage facilities, transfer**
24 **facilities,** warehousing, heavy vehicular storage and repair, log storage milling and
25 sorting.

26 ² The record and history of these facilities demonstrate that collection and transfer of recycling will also be a high volume
27 use, but will be secondary to the collection of garbage.

1 CCC § 33.03.010(47). Notably, the zoning code definition does not authorize “transfer
2 facilities” as a primary use. And it generally limits the types of primary uses to the
3 manufacturing of finished or semi-finished products, and the processing of materials.

4 **2. This Type of Storage and Transfer Facility is not an Accessory Use.**

5 By its plain, express language, the code limits approval of “transfer facilities” under this
6 definition to those that are accessory to manufacturing. This limit is unambiguous and definite,
7 and the Hearing Examiner must give effect to the words in the code. Those limits are presumed
8 to be purposeful and designed to govern the extent to which transfer facilities would be allowed
9 within the industrial zones of the County.³ This application describes that garbage collection
10 and transfer activity as the primary activity on the site, with ancillary uses for baling recycling
11 and minor office use.

12 **3. The Proposed use is Neither Manufacturing or Processing.**

13 By its express terms, the definition of "Industrial Use" is limited to primary uses that
14 are "premises devoted primarily to the manufacturing of finished or semi-finished products,
15 and the processing of materials." CCC § 33.03.010(47). Under this standard, the garbage
16 facility would need to involve a primary use that is devoted to both "manufacturing" and
17 "processing."

18 The transfer of garbage or recycling from one container or vehicle to another is not
19 manufacturing and processing of materials. The intent of the County's zoning code was
20 explicit and approved those uses that involved processing and creation of finished or semi-
21 finished products, not temporary warehousing of refuse or transportation services as primary
22 uses. The proposed garbage transfer use does not fit the County's adopted zoning ordinance
23

24
25 ³ A strict limit on siting garbage transfer facilities as primary uses in industrial zones is consistent with the County's
26 adopted *Comprehensive Solid Waste Management Plan Update* updated by the County in July 2021 (predating this
27 application). On Pages iii – iv, the plan finds that there is no need for new transfer facilities: “Based on population
28 projections, Clallam County has estimated future MSW quantities and infers that the existing collection system, transfer
stations and drop box facilities should be able to handle the future expected quantities of solid waste. .

1 and its definition of "Industrial Use."

2 **4. The Proposal is not "Low Nuisance" or "Low Impact."**

3 This same analysis of whether the garbage facility is "similar to an allowed or
4 conditional use" requires application of an additional standard of review. The zoning code
5 contains a section that is specific to the Carlsborg Urban Growth Area, codified at CCC ch.
6 33.20. There, the County Commissioners added special restrictions on the types of industrial
7 uses allowed within the Carlsborg Industrial zone:

8 (6) Carlsborg Industrial (CI). The purpose of the Carlsborg Industrial designation is to
9 allow for low nuisance uses.

10 CCC § 33.20.030(6).

11 The codified comprehensive plan makes clear that the range of uses allowed in the
12 Carlsborg Industrial designation also must be "low intensity." CCC § 31.05.350(9)(b)(vi).
13 The proposed garbage collection and transfer facility is not an accessory transfer facility; it is
14 not a manufacturing and processing industrial use; and the type of activity inherently involves
15 high levels of traffic, noise, odors and dust and therefore cannot be classified as a "low
16 nuisance use." *Id.*

17 The proposal fails the threshold test under the zoning code of whether it is similar to
18 existing, authorized industrial uses in the Carlsborg Industrial zone. The CUP application
19 must be denied because it does not qualify for the CUP review process set up under CCC §
20 33.40.050 and § 33.20.040(3).

21 **5. The Hearing Examiner's Powers Under § 33.40.050 are not Unlimited.**

22 With respect to the Hearing Examiner's threshold decision on whether the proposal is
23 similar to another allowed use, under CCC § 33.20.040(3), A-M Systems maintains that the
24 Hearing Examiner's authority to approve an unclassified use is limited and that "similarity" is
25 to be construed narrowly. As seen above, the zoning code expressly limits the scope of the
26 term "industrial" at CCC § 33.03.010(47) and then, as applied within the Carlsborg UGA that
27 term is further expressly limited under CCC § 33.20.030(6).

1 Nothing in the CUP review process utilized here under CCC § 33.20.040(3) or CCC
2 § 33.40.050 or elsewhere suggests the Commissioners intended to grant the Hearing
3 Examiner broad discretion to redefine or expand zoning those zoning limitations as applied to
4 specific areas within the Carlsborg UGA. It is axiomatic that a Hearing Examiner has only
5 those powers expressly authorized by code and that he or she has no discretion to exempt a
6 landowner from limitations in the zoning code, i.e. based on what the applicant deems
7 equitable without regard to statutory requirements and the need for substantial evidence to
8 meet statutory requirements. *Chaussee v. Snohomish County Council*, 38 Wn.App. 630, 689
9 P.2d 1084 (1984) (administrative agencies are without inherent of common-law powers and
10 may exercise only those powers conferred either expressly or by necessary implication).

11 **6. There are no Changed Circumstances Justifying a new Use Authorization.**

12 Uses are authorized and limited by zoning ordinances adopted by the local legislative
13 body, in this case the County Commissioners. As described above, in this case "Industrial
14 Uses" are a defined term with express wording limiting them to a certain class of uses. CCC §
15 33.03.010(47). Those words do not include a garbage collection and transfer facility, or any
16 kind of transfer facility except as an accessory use to a primary manufacturing or materials
17 processing plant. As argued, the legislative authority to expand the limited list of permitted
18 uses was not delegated to a hearing examiner under CCC § 33.40.050 or § 33.20.040(3).

19 For the sake of alternative argument, only, even if the Hearing Examiner or reviewing
20 court were to find that these provisions granted authority for the Hearing Examiner to issue a
21 CUP for other types of Industrial Uses not described in the zoning code definition, adding a
22 new use would effectively be a rezone. As such, the government action would still require
23 conformity with well-developed case law that wards against rezoning specific sites for the
24 benefit of a single landowner, without a showing of changed circumstances and a public
25 purpose ("spot zoning").⁴ *Phoenix Development, Inc. v. City of Woodinville*, 171 Wn.2d 820, 834---

26
27 ⁴ See Richard L. Settle, *Washington Land Use and Environmental Law and Practice* § 2.11(c) (1983):

1 35, 256 P.3d 1150 (2011); *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947
2 P.2d 1208 (1997); *Parkridge v. City of Seattle*, 89 Wn.2d 454, 460, 573 P.2d 359 (1978).

3 Based on decades of jurisprudence, the Hearing Examiner must conduct the
4 "similarity" analysis under CCC § 33.20.040(3) with care, in an administrative rather than
5 legislative capacity, adhering to the code as written. Upon application of those principles A-
6 M Systems believes the Hearing Examiner must decline the applicant's request to read CCC §
7 33.40.050 and § 33.20.040(3) as a broad approval authority. Without that avenue, the
8 proposed use is not authorized and no additional CUP review is necessary or appropriate. In
9 other words, the issues of consistency and impact analysis are not reached.

10 **C. The Proposed Use Conflicts With the Comprehensive Plan Vision for Carlsborg**
11 **and Land Uses in the Vicinity.**

12 In the event a contested hearing goes forward on the merits of the CUP application,
13 under CCC § 33.27.040(1), the CUP must be denied because it fails to meet CUP approval
14 criteria. The garbage collection and transfer facility is *inconsistent* with the comprehensive
15 plan and triggers adverse impacts to the surrounding community, under the CUP criteria CCC
16 § 33.27.040(1)(a), (c), (d).

17 **1. The Proposal Conflicts with the Adopted Carlsborg Comprehensive Plan.⁵**

18 The CUP must be denied because it does not meet the following CUP criterion
19 requiring that:

20
21
22
23 The vice of "spot zoning" is not the differential regulation of adjacent land but the lack of public interest justification for
24 such discrimination. Where **differential zoning merely accommodates some private interest** and bears no rational
25 relationship to promoting legitimate public interest, it is "arbitrary and capricious" and hence "spot zoning." [Citing
Citizens for Mount Vernon v. Mount Vernon, 133 Wn.2d 861, 872-875, 947 P.2d 1208 (1997)] (emphasis added).

26 ⁵ The County's adopted comprehensive plan goals and policies for the Carlsborg UGA serve as the blueprint for
27 determining the meaning of "low nuisance" industrial zoning under the zoning code for Carlsborg, at CCC Ch. 33.20. This
section of the brief is directly relevant to the preceding discussion on what was intended when the County Commissioners
adopted the Carlsborg Industrial zoning classification.

1 (a) The proposed action is consistent with the spirit and intent of the Clallam County
2 Comprehensive Plan.

3 CCC § 33.27.040(1)(a). Specifically, the proposal flies in the face of the extensive planning
4 adopted for the Carlsborg Village Center.

5 The most relevant provisions of the comprehensive plan are those adopted specifically
6 for the Carlsborg UGA. Unlike other jurisdictions, Clallam County has codified its
7 comprehensive plan in CCC ch. 31.05, and it contains a section specific to the vision for the
8 Carlsborg UGA, in CCC § 31.03.350.

9 The codified Carlsborg comprehensive plan described three general planning areas
10 within the UGA: Highway Commercial, Carlsborg Village Center, and Urban Residential.
11 CCC § 31.03.350(2). Of these three areas, the plan explains that the Carlsborg Village Center
12 includes the Carlsborg Industrial Park:

13 (b) Carlsborg Village Center – generally defined as that area adjacent to Carlsborg
14 Road between Runnion Road and the Olympic Discovery Trail (**including the**
15 **industrial parks**), and property abutting Streit Road between Spath and W. Runnion,
16 and no further east than the boundary of the Carlsborg Industrial Park. This area also
includes those properties on the north side of Runnion Road, east of the
Carlsborg/Runnion Road intersection.

17 CCC § 31.03.350(2)(b) (emphasis added). Thus, the proposed site of the Olympic Systems
18 Properties garbage facility lies within the **Carlsborg Village Center** planning area of the
19 comprehensive plan.

20 The plan for the Carlsborg Village Center included development of a zoning scheme
21 that would provide a mix of uses designed to protect and develop a sense of place or "local
22 orientation:"

23 (4) Carlsborg Village Center (CN) is intended to provide for high-density residential
24 development and small scale commercial **uses that can be located within and serve**
25 **residential neighborhoods within the historic village center of Carlsborg.** The
26 standards for the district are intended to reinforce the established scale and ambiance of
neighborhood retail that is oriented toward the pedestrian while ensuring adequate
27
28

transit and automobile access. **The purpose of the Village Center is to promote local orientation** and to limit adverse impacts on nearby residential areas.

CCC § 33.020.030(4).

In the first instance, the County Commissioners implemented that vision through other adopted comprehensive plan policies limiting the types of uses that would be allowed within the Carlsborg UGA:

(c) Policy 3. The commercial and industrial activities within the Carlsborg UGA will generate revenue through the creation of family wage jobs. **These activities will be conducted in a manner which promotes community viability blending well with the local character while maintaining environmental stewardship for the benefit of residents, workers, customers, and the entire community.** These activities will also be planned for and conducted in a manner consistent with the guidance provided by the Growth Management Act.

CCC § 31.03.350(1)(c) (emphasis added).

Thereafter, the County Commissioners implemented the vision for this Carlsborg Village Center by matching the plan designations with specific zoning classifications. In CCC § 31.05.350(9)(b), Policy 29, the Commissioners described "the purpose of land use zones established under this section," including the Carlsborg Industrial zone, as follows:

(vi) Carlsborg Industrial (CI). The purpose of the Carlsborg Industrial designation is to allow for **low nuisance, low intensity industrial uses.**

CCC § 31.05.350(9)(b)(vi) (emphasis added).

The limitation on the intensity of industrial uses in the Village Center was intentional and well thought out. The County conducted a multi-year community planning process for the Carlsborg Urban Growth Area (the "UGA") with the intent of developing a workable, planned center that would support a localized work/live community. According to the testimony of the committee members appointed by the County Commissioners to lead that community discussion, a garbage facility was never contemplated as an exception to that planning vision.

At hearing, A-M Systems will create a further record as to the meaning of the Carlsborg Village Center as adopted by the County Commissioners. A-M Systems intends to

1 call witnesses who worked with the County Commissioners and the Planning Department on
2 the multi-year community visioning process. The testimony will confirm that the Carlsborg
3 Village Center plan emphasized protection and enhancement of the historical heart of
4 Carlsborg and its proximity to the Discovery Trail. The community vision sought to create
5 opportunities for pedestrian use of workplace, recreation, and shopping for nearby residents,
6 enjoying new housing in the village center.

7 The proposed garbage collection and transfer facility would be inconsistent with and
8 undermine the ability of the community to realize that vision for the Carlsborg UGA.

9 **2. The Facility is in Conflict With Surrounding Land Uses.**

10 Applying the remaining criteria for review of a CUP, A-M Systems will contend that
11 the Examiner must deny the proposed use because it cannot meet the following two standards:

12 (c) The proposed action is consistent with land uses within the zoning district in which
13 it is located and in the vicinity of the subject property.

14 (d) The proposed action will have no unreasonable adverse impact on the surrounding
15 land uses which can not be mitigated through the application of reasonable
16 conditions.

17 CCC § 33.27.040(1)(c), (d) (Hearing Examiner Action).

18 In reviewing the surrounding area and determining whether the proposal is consistent
19 with present and future land uses, A-M systems intends to argue at hearing that the facility is a
20 high-intensity generator of traffic, noise, odors and dust that will be in conflict with other uses
21 in the vicinity. A-M Systems will bear the brunt of the adverse impacts, because it is located
22 on the parcel directly adjacent to and to the east of the proposed garbage collection and
23 transfer facility. Traffic will generate noise, dust and delays in deliveries. Odors from hosing
24 down the tilt floor, roadways and trucks will emanate from that water, regardless of where it is
25 directed. If the water is directed to collection tanks, odors and bacteria will emit as the water
26 is hosed down and directed to the tanks and channels. Equipment used to load and compact
27
28

1 garbage and recycling will emit dust particles. Closed buildings will mitigate some of that but
2 no door can remain closed all of the time, and frequent opening and shutting to accommodate
3 new traffic and haul-outs will result in releases of odors and dust. Heavy equipment is
4 typically used in a facility handling the amount of material proposed for this facility annually,
5 and that equipment emits noise. The hours of operation are long and occupy most of the work
6 week when A-M Systems operations take place. A-M Systems employees will be subject to
7 delays and health issues related to noise, odors and dust. A-M Systems operations and
8 manufacturing are especially sensitive to contamination. For decades, the medical and dental
9 communities across North America and Europe have relied on A-M Systems to produce viral-
10 bacterial filters for use in surgeries, ventilators, spirometry, and more. That critical public
11 service in the Covid-19 era is in jeopardy.

12 Approval of this garbage collection and transfer facility will directly and adversely
13 affect A-M Systems' ability to maintain regulatory certifications. The proposed use, therefore,
14 is not "consistent with other land uses" within the Carlsborg Industrial zoning district. CCC §
15 33.27.040(1)(c). The proposal is not compatible with the low-nuisance industrial uses in the
16 Carlsborg Business Loop

17 The record submitted by the public in this case is full of evidence as to the surrounding
18 land uses that will experience adverse effects of the proposal, even with proposed mitigation,
19 such as it is. The applicant has not met their burden of proof as to the proximity of residential
20 uses, the community school, and the limited truck parking and service facility to the north.
21 The existing transport challenges at Greywolf Elementary are well documented in the record.

22 The high volume of public comments in opposition demonstrate that operation of the
23 project will likely undermine the attractiveness and viability of Carlsborg's future village
24 center, through a public perception of intensive traffic, fear of harm to pedestrians and school
25 children walking to school, a well-grounded perception that odors and dust will emanate from
26 the garbage sitting in trucks waiting to enter or transfer garbage out of the site, and the well-
27

1 grounded fear of unavoidable and incessant noise of hundreds of trucks per day braking and
2 accelerating as they approach and depart the facility.

3 **IV. CONCLUSION**

4 A-M Systems will suffer direct adverse impacts from the proposed garbage collection
5 and transfer facility. At hearing, A-M Systems will provide further testimony, filed exhibits,
6 and argument demonstrating that the criteria for approval of the Conditional Use Permit under
7 County Code have not been met by this application. We respectfully request a decision
8 denying the proposed use with prejudice.

9 Respectfully submitted this 12TH day of July, 2022,

10
11 **DYKES EHRLICHMAN LAW FIRM**

12
13 

14
15 _____
16 Tom Ehrlichman, WSBA No. 20952
17 Counsel for A-M Systems, LLC and
18 Arthur B. Green, III

19 **CERTIFICATE OF SERVICE**

20 I, Tom Ehrlichman, am a partner at the Dykes Ehrlichman Law Firm. I hereby certify that on July 12,
21 2022 I caused this *Prehearing Brief* to be filed with the Clerk for the Clallam County Hearing
22 Examiner, and served upon counsel for the applicant at Hillis Clark Martin & Peterson, counsel for
23 the City of Port Angeles at Foster Garvey, and upon Chief Civil Deputy Prosecuting Attorney,
24 Elizabeth Stanley, all via electronic mail.

25 Signed, July 12, 2022:

26
27 

28 _____
Tom Ehrlichman, WSBA No. 20952

1
2
3
4
5
6
7
8 **CLALLAM COUNTY**
OFFICE OF THE HEARING EXAMINER

9 IN RE:
10 **CONDITIONAL USE PERMIT HEARING**
11 **FOR OLYMPIC SYSTEMS PROPERTIES**
12 **FILE NO. CUP2021-00005**

No. ECL2021-00019, CUP2021-00005

CITY OF PORT ANGELES'S
PREHEARING BRIEF

TABLE OF CONTENTS

	Page
I. INTRODUCTION	3
II. ARGUMENT	3
A. THE APPLICATION MUST BE EVALUATED IN THE CONTEXT OF REGIONAL SOLID WASTE PLANNING.	3
B. THE PROPOSED TRANSFER STATION IS PROHIBITED BY THE SOLID WASTE MANAGEMENT PLAN	5
C. THE APPLICATION IS INCONSISTENT WITH THE INTERLOCAL AGREEMENT BETWEEN THE CITIES OF PORT ANGELES AND SEQUIM AND THE COUNTY	5
D. THE APPLICATION DOES NOT MEET THE CRITERIA IN CLALLAM COUNTY CODE 33.27.040 FOR A CONDITIONAL USE PERMIT	8
1. The Application is Inconsistent with the Comprehensive Plan	8
2. The Application is Inconsistent with the County's Zoning Code	9
3. The Application is Inconsistent with Land Uses Within the Zoning District Where It Is Located and in the Vicinity of the Property	10
4. The Application's Proposed Transfer Station Will Unreasonably and Adversely Impact Surrounding Land Uses	11
III. CONCLUSION	12

I. INTRODUCTION

The City of Port Angeles (“City”) supports the County’s recommendation to deny Olympic Systems Properties’ application for a conditional use permit for a transfer station, CUP No. 2021-00005 (“Application”).¹ The Application should be denied on multiple grounds. The proposed use will impact the handling of solid waste in the region in direct contravention of regional long-term solid waste planning, including the County’s Solid Waste Management Plan, the County’s Comprehensive Plan, and the Interlocal Agreement Regarding Regional Solid Waste Export and Transfer System Cooperation and Implementation, an agreement to which the County, City of Port Angeles, and City of Sequim are all parties. In addition, the proposed use is inconsistent with the low nuisance, low intensity industrial use required for the site, and will result in odor and aesthetic impacts, impacts to the surrounding land uses including the Olympic Discovery Trail, and traffic impacts, which have not been adequately disclosed or evaluated. The transfer station is not allowable under the criteria for a conditional use permit provided by the Clallam County Code.²

II. ARGUMENT

A. The Application Must Be Evaluated In The Context of Regional Solid Waste Planning.

While this matter comes before the hearing examiner on a private entity’s conditional use permit application, the permitting of solid waste handling facilities in the State of Washington is heavily regulated and is not left to the vicissitudes of private enterprise. For over a century, the U.S. Supreme Court has recognized that solid waste collection and disposal are core

¹ The City is also submitting this brief as additional comments on the SEPA MDNS.

² In April 2005, the City and Waste Connections of Washington (WCI) entered into a Services Agreement. Under that Services Agreement, WCI agreed to design, develop, construct and operate the regional transfer station located in the City of Port Angeles for the full twenty year term of the Services Agreement. In early 2021, the City determined it was in the public’s best interest to terminate the Services Agreement and assume operations of the regional transfer station. On March 18, 2021, the City notified WCI of the City’s intent to terminate the Services Agreement. On November 12, 2021, Olympic Systems Properties, an entity affiliated with WCI, submitted the current Application for a conditional use permit to construct a new transfer station in Carlsborg.

responsibilities of local governments. *E.g., California Reduction Co. v. Sanitary Reduction Works*, 199 U.S. 306 (1905); *Gardner v. Michigan*, 199 U.S. 325 (1905). The Washington Supreme Court has similarly held:

The handling and disposal of solid waste is a governmental function. RCW 70.95.020 provides that while private entities may contract with local government for solid waste handling, the primary responsibility is that of the local government.

Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 40, 873 P.2d 498 (1994) (private disposal site must be evaluated as public facility).

Consistent with this longstanding precedent, the legislature grants all Washington counties authority to establish a system or systems of solid waste handling for their unincorporated areas and for those cities participating in the County's solid waste management planning. RCW 36.58.040 (counties); RCW 35.21.130 (cities). Each county manages its solid waste handling system, in part, through a comprehensive solid waste management plan. *Id.*; chapter 70A.205 RCW. Clallam County has followed the Legislature's directives and committed to a County-wide solid waste management program, both in its contracts and its plans, including the recent Clallam County Solid Waste Management Plan ("SWMP") dated May 2021. <http://www.clallam.net/publicworks/docs/SWMPFinalDraft202105.pdf>; Exhibit 19.³

In addition to the SWMP, the County, along with the City of Port Angeles and the City of Sequim, is a party to the Interlocal Agreement Regarding Solid Waste Export and Transfer System Cooperation and Implementation ("ILA"). Exhibit 18. As explained further below, the SWMP and the ILA together provide that the existing regional solid waste export and transfer system will be the only designated transfer and export system in the county east of Lake Crescent, and would prohibit the operation of the transfer station. Given the comprehensive regulatory framework over solid waste that exists in Clallam County, the Application must be evaluated within that regional framework.

³ The City notes that the version of the SWMP currently available on the County's website as Exhibit 19 does not appear to be a complete version of the document.

1 **B. The Proposed Transfer Station Is Prohibited by the Solid Waste Management Plan**

2 The Application directly conflicts with, and attempts an end-run around, the County's
3 adopted SWMP. The SWMP does not authorize any new solid waste transfer station in the
4 County. *See* SWMP at C-2 ("No new public facilities are proposed in this Plan."); SWMP (Ex.
5 19) Section 2.4 & Figure 2-4 (identifying existing solid waste facilities in eastern Clallam County
6 as the Port Angeles Regional Transfer Station and Blue Mountain Transfer Station). Any new
7 public or private transfer or disposal facility would require a revision to the SWMP. *See* SWMP
8 (Ex. 19) Section 1.7 (describing process and schedule for updating SWMP). The SWMP
9 specifically provides that the waste transfer system in Clallam County is "working well" and the
10 Plan "recommends continuing that system." SWMP (Ex. 19) at ES-2. With respect to waste
11 disposal, the SWMP notes "perhaps the most important recommendation is to begin the process in
12 2023 for a new waste export and disposal contract for the Regional Transfer Station." SWMP (Ex.
13 19) at ES-2. The City will continue to operate the Regional Transfer Station and has already
14 converted to a new waste export and disposal contract.

15 The Application attempts to circumvent the SWMP through a land use permitting process,
16 but the law does not allow such evasion. Because the proposed transfer station is inconsistent with
17 the SWMP, the County Health Department is without authority to authorize a solid waste handling
18 permit for such a facility. RCW 70A.205.130 ("Every permit issued by a jurisdictional health
19 department under RCW 70A.205.125 shall be reviewed by the department [of Ecology] to ensure
20 that the proposed site or facility conforms with . . . (2) The approved comprehensive solid waste
21 management plan."). The SWMP does not allow the County to permit a new transfer station for
22 waste that is directed by law to the regional system.

23 **C. The Application is Inconsistent With the Interlocal Agreement Between The Cities**
24 **of Port Angeles and Sequim and the County**

25 The SWMP incorporates the 2007 ILA between the City of Port Angeles, City of Sequim
26 and the County. *See* SWMP (Ex. 19) at 1-3, Section 1.5 (noting SWMP operates in a framework
 including the ILA); SWMP at 4-1 (noting "primary local rules and regulations addressing the

1 transfer facilities are included in Chapter 41.10 of Clallam County's code and in an interlocal
2 agreement. An interlocal agreement (ILA) has been executed between Clallam County, the City
3 of Port Angeles, and the City of Sequim for cooperation and implementation of the regional solid
4 waste transfer and export system"); SWMP at 10-10 ("This ILA defines the roles and
5 responsibilities of the signatories to provide for Regional Solid Waste Export and Transfer System
6 facilities and services; promote the health, safety and welfare of the County's residents; and protect
7 the natural environment in the County"); SWMP Appendix A; SWMP at 10-5, 10-7, 10-8
8 (referencing ILA).

9 This long-term interlocal agreement addressed the need to plan for solid waste management
10 on a regional level and addressed closure of the City's regional landfill. See ILA (Exhibit 18). Of
11 particular note is the ILA's commitment that the Regional Solid Waste Export and Transfer System
12 facilities will be located at the current site of the Port Angeles Landfill and will be utilized by the
13 City of Port Angeles, City of Sequim, and the County and private solid waste collection companies
14 that serve the City and unincorporated area of the County from Lake Crescent eastward.

15 That Agreement provides for a 20-year term, at least through 2027. Under the ILA, the
16 County has specific obligations at Section 2 including that:

17 A. . . . The Regional Solid Waste Export and Transfer System will be the only
18 designated Export and transfer System in the County East of Lake Crescent for
the term of this Agreement.

19 B. Process consideration of amendments to the County's zoning code, solid
20 waste facility permitting process ordinance and other applicable ordinances to
21 prohibit solid waste transfer and export facilities that are not consistent with the
22 Plan and to designate the Regional Solid Waste Export and Transfer System as
the County's solid waste system consistent with the Plan and RCW 36.58.040,
to the extent permitted by law

23 E. [The County] Shall not construct or have constructed any municipal solid
24 waste and transfer station in the eastern part of Clallam County without
approval of the Joint Solid Waste Advisory Board.

25 The Application proposes a transfer station that would violate the ILA. The ILA requires
26 that the Regional Solid Waste Export and Transfer system be "the only designated Export and

1 transfer System in the County East of Lake Crescent” for the term of the ILA and prohibits the
2 County from constructing or having constructed any municipal solid waste and transfer station in
3 the eastern part of Clallam County without approval of the Joint Solid Waste Advisory Board. *See*
4 ILA at Section 2. The transfer station identified in the Application has not been approved by the
5 JSWAB and would violate the ILA.

6 Further, these contracts provide for a directed waste stream (or, flow control). In addition
7 to helping governments assure they are meeting recycling and hazardous waste disposal
8 requirements, flow control provides a steady stream of revenue to public solid waste system
9 owners in the form of tipping fees. This revenue funds numerous mandatory programs, including
10 the costs associated with closed landfills (both actively managed public facilities and abandoned
11 private sites). Additionally, and importantly, a single regional transfer station can operate more
12 efficiently and economically than two competing facilities. Permitting two facilities would
13 ultimately increase the costs of solid waste collection and disposal in eastern Clallam County. The
14 SWMP specifically identifies these issues, including capital costs for the environmental controls
15 at the old City Landfill.

16 Solid waste collection is an essential function of government, and solid waste planning
17 must be driven by the best interests of the community and efficient provision of services. *See*
18 *Weyerhaeuser*, 124 Wn.2d at 40. The efficient and economical handling of solid waste is a vital
19 interest of government with a fundamental relationship to the health, safety, and wellbeing of the
20 entire community. *Id.* State law does not permit the number and location of solid waste facilities
21 to be left to the whims of entrepreneurs. Here, the governments of the County, City of Port
22 Angeles and City of Sequim have recognized that the current solid waste facilities adequately serve
23 Clallam County.

1 **D. The Application Does Not Meet the Criteria in Clallam County Code 33.27.040 for a**
2 **Conditional Use Permit**

3 In order to issue a conditional use permit, the hearing examiner must find that (1) the
4 proposed use is consistent with the spirit and intent of the County's comprehensive plan; (2) the
5 use is consistent with the County's zoning code; (3) the use is consistent with land uses in the same
6 zoning district and in the vicinity of the subject property; and (4) that the proposal will result in
7 "no unreasonable adverse impact on the surrounding land uses which can not be mitigated through
8 the application of reasonable conditions." CCC 33.27.040(1). The Applicant bears the burden of
9 demonstrating these criteria are met. CCC 33.27.110. The Hearing Examiner should deny the
10 Application because it does not meet these criteria.

11 **1. The Application is Inconsistent with the Comprehensive Plan**

12 Clallam County Code 33.27.040(1)(a) requires that conditional use permits be consistent
13 with the Clallam County Comprehensive Plan. The City agrees with the County that the proposed
14 transfer station is inconsistent with the County's Comprehensive Plan and will not repeat all those
15 arguments here. *See* Staff Report to the Hearings Examiner – Conditional Use Permit – CUP2021-
16 00005 ("Staff Report") (Exhibit 1).

17 The Comprehensive Plan incorporates the Solid Waste Management Plan (SWMP). *See*
18 Clallam County Resolution 82 (2018), Finding 14, [https://www.clallam.net/LandUse/documents/](https://www.clallam.net/LandUse/documents/g2018_082.pdf)
19 [g2018_082.pdf](https://www.clallam.net/LandUse/documents/g2018_082.pdf) (noting County's comprehensive plan and GMA goals are implemented through a
20 number of other plans including the solid waste management plan); *Id.* at Finding 36, (listing
21 SWMP as part of County capital facility planning efforts); Clallam County Solid Waste
22 Management Plan (May 2021), [http://www.clallam.net/publicworks/docs/SWMPFinalDraft](http://www.clallam.net/publicworks/docs/SWMPFinalDraft202105.pdf)
23 [202105.pdf](http://www.clallam.net/publicworks/docs/SWMPFinalDraft202105.pdf), Section 1.5 (SWMP functions "within a framework created by other plans and
24 programs" including the Comprehensive Plan). As discussed above, the Application directly
25 conflicts with the SWMP, which does not authorize an additional solid waste transfer station in
26 the County.

1 The Application is also inconsistent with the spirit and intent of the comprehensive plan's
2 vision for the Carlsborg UGA. The Clallam County Comprehensive Plan provides for the purposes
3 of land use zones within the Carlsborg UGA, and specifically provides that the purpose of
4 Carlsborg Industrial zoning is "to allow for low nuisance, low intensity industrial uses." CCC
5 31.03.350(9)(b)(vi). The odor and aesthetic impacts of a transfer station do not meet this criterion.
6 The transfer station will involve a significant amount of traffic including heavy truck traffic. A
7 transfer station is a high nuisance use presenting a variety of undesirable impacts and public safety
8 issues which are inconsistent with the vision of the Carlsborg UGA set forth in the County's
9 comprehensive plan.⁴

10 **2. The Application is Inconsistent with the County's Zoning Code**

11 Clallam County Code 33.27.040(1)(b) provides that proposed conditional uses must be
12 consistent with Title 33 of the County's Code. Since 1995, the County's zoning has allowed a
13 "transfer facility" as an industrial use. CCC 33.03.010. But a "transfer facility" does not include
14 a solid waste transfer station. See CCC 33.03.010(47) (defining industrial use as "any premises
15 devoted primarily to the manufacturing of finished or semi-finished products, and the processing
16 of materials. This definition includes accessory facilities such as but not limited to storage
17 facilities, transfer facilities, warehousing, heavy vehicular storage and repair, log storage milling
18 and sorting."). A municipal waste transfer station is not a "premises devoted primarily to the
19 manufacturing of finished or semi-finished products and the processing of materials," and it is not
20 an "accessory" facility. CCC 33.03.010(47). Further, at the time this use was added to the
21

22 ⁴ The hearing examiner may take judicial notice of the following sources which illustrate a variety
23 of impacts and public safety issues at transfer and recycling centers across the country. See, e.g.,
24 Dangerous Working Conditions Uncovered in the Recycling Industry, [https://www.wnyc.org/
25 story/dangerous-working-conditions-uncovered-recycling-industry/](https://www.wnyc.org/story/dangerous-working-conditions-uncovered-recycling-industry/); Everett fire strikes recycling
26 center; no injuries reported, [https://www.seattletimes.com/seattle-news/smoke-from-everett-fire-
can-be-seen-for-miles/?utm_source=email&utm_medium=email&utm_campaign=
article_left_1.1](https://www.seattletimes.com/seattle-news/smoke-from-everett-fire-can-be-seen-for-miles/?utm_source=email&utm_medium=email&utm_campaign=article_left_1.1); Massive 3-Alarm Fire Sends Smoke Towering Over Ontario Area,
<https://ktla.com/news/local-news/fire-sends-smoke-towering-over-ontario-area/>; N.J. Recycling
Plant Employee Killed by Forklift, [https://www.waste360.com/safety/nj-recycling-plant-
employee-killed-forklift](https://www.waste360.com/safety/nj-recycling-plant-employee-killed-forklift); Minneapolis Recycling Plant Catches Fire,
<https://www.waste360.com/recycling/minneapolis-recycling-plant-catches-fire>.

1 County's zoning in 1995, the Port Angeles landfill was in operation and there was no prospect of
2 it being discontinued. Therefore, it is highly unlikely that the "transfer facility" language was
3 intended to encompass a municipal solid waste transfer station. At that time, all solid waste went
4 to local landfills, switching to the transfer station model of handling solid waste would have been
5 a huge alternation of the existing system, and that alternation was not within anyone's
6 contemplation.

7 **3. The Application is Inconsistent with Land Uses Within the Zoning District**
8 **Where It Is Located and in the Vicinity of the Property**

9 Clallam County Code 33.27.040(1)(c) requires that proposed conditional uses must be
10 consistent "with land uses within the zoning district in which it is located and in the vicinity of the
11 subject property." The proposed transfer station is inconsistent with land uses in the immediate
12 vicinity, in particular, the Olympic Discovery Trail.

13 The Olympic Discovery Trail is a significant recreational and multi-modal transportation
14 asset enjoyed by community members throughout Clallam County. The mitigation proposed is
15 insufficient to address the impacts of locating a transfer station and its attendant odor and traffic
16 issues immediately adjacent to an outdoor recreation area. These uses are plainly inconsistent.
17 Locating a transfer station in such proximity to an important outdoor recreation landmark would
18 interfere with the community's use of the Olympic Discovery Trail.

19 The City has a strong interest in maintaining the Olympic Discovery Trail as a regional
20 recreational asset. The City maintains a portion of the trail within City limits, has entered into an
21 MOU with the Peninsula Trails Coalition, and allocates \$593,000 in capital costs to the Olympic
22 Discovery Trail. The City's own comprehensive plan repeatedly recognizes the importance of the
23 Olympic Discovery trail to the community. *See* City of Port Angeles Comprehensive Plan (2019),
24 <https://www.cityofpa.us/DocumentCenter/View/6689/2019-Comprehensive-Plan>, at 1-10
25 (introduction noting that "Port Angeles' trail system builds on the Olympic Discovery Trail and
26 miles of local trails, contributing to the local quality of life by inviting community residents and

1 visitors of all ages to wander and explore”); Policy P-10A.08 (“Continue to participate as a partner
2 in the extension of the Olympic Discovery Trail through the City to the western City limits”);
3 Action A-4.01 (noting as an action item “Design and develop the following segments of the
4 Olympic Discovery Trail”).

5 **4. The Application’s Proposed Transfer Station Will Unreasonably and**
6 **Adversely Impact Surrounding Land Uses**

7 In order to issue a conditional use permit, Clallam County Code 33.27.040(1)(d) requires
8 the hearing examiner to find that there is “no unreasonable adverse impact on the surrounding land
9 uses which can not be mitigated through the application of reasonable conditions.”

10 In addition to the negative impacts identified above to the Olympic Discovery Trail, the
11 transfer station is deleterious to citizens and businesses in eastern Clallam County. The transfer
12 station would also adversely affect a nearby aquifer. The traffic, odor, and environmental impacts
13 of the proposed transfer station support denial of the permit.

14 And as mentioned above, the proposed transfer station will also significantly increase the
15 costs of solid waste transport and disposal on the peninsula. Citizens of this County know well
16 the costs associated with environmental cleanup. The closure of the City’s old regional landfill
17 adjacent to the Strait of Juan de Fuca came with substantial cost. *See* SWMP at Table 1-1 (noting
18 priority of obtaining state and federal grant funding for corrective actions at Port Angeles Landfill).
19 Waste had been received at that landfill for decades from throughout the County—not just from
20 the City of Port Angeles. SWMP at 5-2 (“The Port Angeles Landfill was originally a regional
21 dump site purchased by the City of Port Angeles in 1947. Through 2006, this landfill provided
22 disposal services to residential, commercial, and industrial customers throughout Clallam
23 County.”). The cost of that ongoing remediation is supported by the fees at the Regional Transfer
24 Station. SWMP at 5-2 (“Reserve accounts for closure and post-closure costs for the closed landfill
25 are being funded by a portion of the solid waste tipping fee” and that certain “remedial actions
26 were financed by a bond that is being paid from tipping fee revenues at RTS and the Blue Mountain

1 Transfer Station.”). Diversion of waste and attendant fees would directly impact the regional goal
2 and commitment to that remediation effort.

3 Finally, the Application fails to provide information relating to mitigation measures that
4 would reduce impacts to a level of non-significance. Specifically, the duration, severity, and
5 cumulative odors from the project in addition to existing uses in the area should be adequately
6 described and mitigated, but they are not. The project proponents submitted an EPA publication
7 (Waste Transfer Stations: A Manual for Decision-Making), which lists mechanical systems such
8 as water misting and deodorization systems as an odor mitigation tool. There are additional
9 ventilation filtration systems that exist for similar purposes. But not enough information is
10 provided by the Applicant to demonstrate how an enclosed structure can adequately control odor
11 impacts. An enclosed structure may not go far enough as a mitigating condition. An analysis of
12 any mechanical means to reduce odors should be provided for analysis.

13 III. CONCLUSION

14 The transfer station proposed in the Application is inconsistent with the SWMP and the
15 ILA, critical elements of the region-wide planning process regulating solid waste; this context
16 cannot be ignored in evaluating this Application. Further, the Application fails to meet the criteria
17 for a conditional use permit. The Application should be denied.

18 DATED this 12th day of July, 2022.

19 FOSTER PEPPER PLLC

20 

21 P. Stephen DiJulio, WSBA #7139

22 Jason Donovan, WSBA #40994

23 Andrea Bradford, WSBA #45748

24 1111 Third Avenue, Suite 3000

25 Seattle, Washington 98101-3299

26 Telephone: (206) 447-4400

Email: steve.dijulio@foster.com

j.donovan@foster.com

andrea.bradford@foster.com

Attorneys for the City of Port Angeles

CERTIFICATE OF FILING

I, P. Stephen DiJulio, am a principal at Foster Garvey P.C. and hereby certified that I caused this Prehearing Brief to be filed electronically on Anastasia White, Clerk for the Hearing Examiner (the Clallam County Department of Community Development), awhite@co.clallam.wa.us, Donella Clark, dclark@co.clallam.wa.us, with electronic copies to Chief Civil Deputy Prosecuting Attorney, Elizabeth Stanley, estanley@co.clallam.wa.us; the Applicant's counsel, Alexander M. Wu, alex.wu@hcmp.com and Stephen H. Roos, steve.roos@hcmp.com; and counsel for A-M Systems LLC and Arthur Green, Tom Ehrlichman <tom@dykesehrlichman.com>.

Signed, July 12, 2022:



P. Stephen DiJulio, WSBA #7139
Attorneys for the City of Port Angeles



Agreement No. SWMLSWFA-2021-ClaCPW-00071

SOLID WASTE MANAGEMENT LOCAL SOLID WASTE FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CLALLAM CO PUBLIC WORKS

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and CLALLAM CO PUBLIC WORKS, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	IMP Clallam Co PW
Total Cost:	\$84,906.67
Total Eligible Cost:	\$84,906.67
Ecology Share:	\$63,680.00
Recipient Share:	\$21,226.67
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	06/30/2023
Project Type:	Planning & Implementation

Project Short Description:

CCPW will revise or amend the Clallam County Comprehensive Solid and Hazardous Waste Management Plan. CCPW will spend \$66,667 to update the CCCSWMP to reflect current conditions. CCPW will contract with WSU Extension for \$18,239.67 on an organics study and plan.

Project Long Description:

See the Scope of Work section for more detailed information related to individual Tasks.

Overall Goal:

Provide regional solutions and intergovernmental cooperation; prevent or minimize environmental contamination through planning and project implementation; and comply with state and local solid and hazardous waste management plans and laws.

Agreement No: SWMLSWFA-2021-ClaCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

RECIPIENT INFORMATION

Organization Name: CLALLAM CO PUBLIC WORKS

Federal Tax ID: 91-6001298

DUNS Number: 075739235

Mailing Address: 223 E 4th St., Ste 6
Port Angeles, WA 98362

Physical Address: 223 E 4th St., Ste 6
Port Angeles, Washington 98362

Organization Email: dhanna@co.clallam.wa.us

Contacts

Agreement No: SWMLSWFA-2021-ClaCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

Project Manager	David Hanna Utilities Program Manager 223 E 4th St., Ste 6 Port Angeles, Washington 98362 Email: dhanna@co.clallam.wa.us Phone: (360) 417-2441
Billing Contact	Hilary Steeby Fiscal Specialist 223 E 4th St., Ste 6 Port Angeles, Washington 98362 Email: hsteeby@co.clallam.wa.us Phone: (360) 417-2441
Authorized Signatory	Mark Ozias Commissioner 223 East 4th Street Port Angeles, Washington 98362 Email: mozias@co.clallam.wa.us Phone: (360) 417-2000

Agreement No: SWMLSWFA-2021-ClaCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Solid Waste Management
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Solid Waste Management
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	David Pater PO Box 47775 Olympia, Washington 98504-7775 Email: DAPA461@ecy.wa.gov Phone: (360) 790-5771
Financial Manager	David Pater PO Box 47775 Olympia, Washington 98504-7775 Email: DAPA461@ecy.wa.gov Phone: (360) 790-5771

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

CLALLAM CO PUBLIC WORKS

By: Laurie Davies Digitally signed by Laurie Davies
Date: 2022.03.08 18:15:25 -08'00'

By: Mark Ozias

Laurie Davies
Solid Waste Management
Program Manager
Date

Mark Ozias
Chair
Commissioner
Date
3-1-22
Board of Clallam County Commissioners

Template Approved to Form by
Attorney General's Office

SCOPE OF WORK

Task Number: 1 Task Cost: \$18,239.67

Task Title: General Planning

Task Description:

The 2021 Clallam County Solid and Hazardous Waste Management Plan (CCSHWMP) has a goal to decrease organics in the waste stream to below 10% by 2025. In order to reach the goal set in the CCSHWMP, the RECIPIENT will contract with the WSU Clallam County Extension Office to develop a study of current conditions and an Organics Plan for Clallam County.

The CCSHWMP outlines several recommendations in section 8.5 (Recommendations for Organics) for achieving the target reductions, including:

- Work to eliminate illegal dumping and burning of yard waste and consider separate collection of yard waste in the county
 - Continue to develop end uses such as mulch, hog fuel, and compost, and other uses that may also be identified
 - Investigate economical and efficient options for handling residential, commercial and institutional food waste
- Specific actions for Organics, including those for this Task, are listed in Table 11-1 under Chapter 8, Organics.

Activity: Organics Study and Plan:

WSU Clallam County Extension will undertake a study of the current landscape of organics waste in Clallam County, further research the feasibility of the recommendations outlined in the plan, and work with stakeholders to develop a detailed plan of action for organics reduction.

This will include:

- Convene and facilitate a workgroup of the SWAC to guide the work: meetings every other month throughout the grant period
- Assess current organics waste streams in Clallam County
- Research municipal best practices
- Assess the economic and climate mitigation impacts of organics reduction in Clallam County
- Engage key stakeholders on developing organics reduction strategies
- Develop detailed program priorities and associated actions for reaching target
- Present results of the study to key stakeholders including Clallam BOCC, Port Angeles City Council, and Sequim City Council

Costs eligible for reimbursement with supporting documentation include:

- RECIPIENT employee time to implement the task, including outreach/planning/coordination/travel
- Contracted services costs with WSU Clallam County Extension to implement the task
- RECIPIENT employee time to attend trainings and workshops preapproved in writing by Ecology
- Costs not listed here but pre-approved in writing by Ecology

Costs not eligible for reimbursement:

- Overtime compensation (all hours are calculated at the regular rate of pay)
- Costs not specifically identified or pre-approved in writing by Ecology

Agreement No: SWMLSWFA-2021-ClCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

Task Goal Statement:

Develop a detailed plan of action for organics reduction, including prioritized strategies and recommended steps for implementation for reaching the target reductions set in the CCSHWMP of reducing organics in the waste stream to 10% by weight by 2025. These goals shall be consistent with Chapter 8 of the CCSHWMP (Section 8.5) and Table 11.1.

Task Expected Outcome:

With the task cost the RECIPIENT will develop 1 organics current conditions study

With the task cost the RECIPIENT will develop 1 organics plan

Recipient Task Coordinator: David Hanna**General Planning****Deliverables**

Number	Description	Due Date
1.1	Task Expected Outcomes are the deliverables and achieved incrementally throughout the biennium.	

SCOPE OF WORK

Task Number: 2 Task Cost: \$66,667.00

Task Title: Solid and Hazardous Waste Mgt. Plan Maintenance

Task Description:

In response to anticipated changes in the Clallam County solid waste system; the RECIPIENT shall prepare an amendment/revision to the 2021 Clallam County Solid & Hazardous Waste Management Plan (CCSHWMP). The amendment/revision process shall be consistent with CCSHWMP section 1.7 Process and Schedule for updating the Plan and available Department of Ecology Solid Waste Planning Guidance.

To assist with the CCSHWMP update, the RECIPIENT will convene Clallam County SWAC meetings, attend JSWAB meetings and meetings with persons, groups, and organizations as the parties begin working with and adapting to the revised CCSHWMP. Partners shall include the SWAC, JSWAB, and parties to the CCSHWMP Interlocal Agreement, in addition to other interested persons, parties and organizations. Coordination will be necessary to ensure the Plan's successful inauguration. Information such as minutes of meetings and verbal and written comments from these activities will inform revisions to the CCSHWMP.

Revisions to the CCSHWMP will be made to accommodate changes in the management of solid waste in Clallam County. The extent of these changes will be determined by information gathered during the implementation of the Plan and by activities of local partners as the Plan is more fully implemented. This includes meetings, submittals, reports, approvals, etc., as necessary for the extent of changes made to the CCSHWMP.

Work Plan and Reimbursement Schedule:

O3: Prepare a request for proposal for contract services

Q3-Q4: Gather input from SWAC and other solid waste management organizations and local groups to assist with preparing the first draft amendment/revision to the CCSHWMP

Q5: Review first draft of the CCSHWMP amendment/revision and prepare a preliminary draft for Ecology informal review.

Q6: Finish public and municipal review of the Plan amendment/revision; submit preliminary draft to SWAC and other participating groups for comments, review comments and revisions

Q7: Incorporate comments and revisions, prepare Final Draft of CSWMP, and carry out Municipal Adoption of CCSHWMP Plan amendment/revision

Q8: Submit final draft amendment/revision for Ecology's review and approval

Costs eligible for reimbursement with supporting documentation include:

- Contracted services to assist RECIPIENT with the SHWMP plan amendment or revision
- RECIPIENT employee time to implement the task, including outreach/planning/coordination/travel
- RECIPIENT employee time to attend trainings and workshops preapproved in writing by Ecology
- Costs not listed here but pre-approved in writing by Ecology

Costs not eligible for reimbursement:

Agreement No: SWMLSWFA-2021-ClCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

-Overtime compensation (all hours are calculated at the regular rate of pay)

-Costs not specifically identified or pre-approved in writing by Ecology

Task Goal Statement:

The overall goal is a revised or amended CCSHWMP that is harmonized with the actual solid waste operations in the County and reflects the future solid waste system.

Task Expected Outcome:

With the task cost a locally adopted CCSHWMP plan amendment or revision

Recipient Task Coordinator: David Hanna**Solid and Hazardous Waste Mgt. Plan Maintenance****Deliverables**

Number	Description	Due Date
2.1	Task Expected Outcomes are the deliverables and achieved incrementally throughout the biennium.	

State of Washington Department of Ecology
Agreement No: SWMLSWFA-2021-ClaCPW-00071
Project Title: IMP Clallam Co PW
Recipient Name: CLALLAM CO PUBLIC WORKS

BUDGET

Funding Distribution EG220448

NOTE: The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: Clallam Co Public Works Funding Type: Grant
Funding Effective Date: 07/01/2021 Funding Expiration Date: 06/30/2023
Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)

Fund:

Type: State

Funding Source %: 100%

Description: Local Solid Waste Financial Assistance

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%
Recipient Match %: 25%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

Clallam Co Public Works	Task Total
General Planning	\$ 18,239.67
Solid and Hazardous Waste Mgt. Plan Maintenance	\$ 66,667.00

Total: \$ 84,906.67

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Clallam Co Public Works	25.00 %	\$ 21,226.67	\$ 63,680.00	\$ 84,906.67
Total		\$ 21,226.67	\$ 63,680.00	\$ 84,906.67

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

If the scope of this Agreement includes recycling activity managed or performed by the RECIPIENT at a recycling center (such as a transfer station or drop box location) or other locations, Ecology will not reimburse disposal costs for materials collected or advertised as collected for recycling/reuse or marketed for recycling/reuse under this Agreement, unless approved in writing by Ecology. RECIPIENT must immediately notify ECOLOGY when the RECIPIENT becomes aware that disposal of materials occurred or may occur due to the market conditions for recycled/reused materials. ECOLOGY may deny new costs or require repayment of costs already reimbursed or remove the task from the Agreement or terminate the Agreement.

Ecology will conduct a risk assessment of all Local Solid Waste Financial Assistance recipients. The level of risk determines the level of oversight required by Ecology throughout the biennium. If the RECIPIENT's performance or project circumstances change, Ecology may reassess risk and notify the RECIPIENT of any changes to administrative requirements.

RECIPIENT shall update the Spending Plan and Outcomes Data Collection form at least quarterly. The Spending Plan and Outcomes Data Collection form must be completed concurrent with the submittal of each payment Request/Progress Report. RECIPIENT shall report outcomes in a manner consistent with instructions in the Local Solid Waste Financial Assistance guidelines.

RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial (including payment requests), performance, and other reports required by this Agreement. Ecology shall have the right to deny reimbursement of payment requests received after this date.

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements

Agreement No: SWMLSWFA-2021-ClaCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

contained in the certification, they must provide an explanation as to why they cannot.

2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsrs.gov <http://www.fsrs.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsrs.gov <http://www.fsrs.gov>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE

Agreement No: SWMLSWFA-2021-ClacPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232 <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management (SAM) <https://sam.gov/SAM/> exclusion list.

GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.

* For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

Agreement No: SWMLSWFA-2021-ClaCPW-00071
Project Title: IMP Clallam Co PW
Recipient Name: CLALLAM CO PUBLIC WORKS

- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff, volunteers, and contractors working at the project site.
- Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

Agreement No: SWMLSWFA-2021-ClaCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 - 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 - 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

Agreement No: SWMLSWFA-2021-ClaCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
 - b) Be kept in a common file to facilitate audits and inspections.
 - c) Clearly indicate total receipts and expenditures related to this Agreement.
 - d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.
- RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

Agreement No: SWMLSWFA-2021-ClaCPW-00071

Project Title: IMP Clallam Co PW

Recipient Name: CLALLAM CO PUBLIC WORKS

event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions



Clallam County Solid Waste Advisory Committee

223 E. 4th Street
Port Angeles, WA 98362

CLALLAM COUNTY SOLID WASTE ADVISORY COMMITTEE

BY-LAWS

(Updated April 2017)

NAME

The committee shall be known as. "The Clallam County Solid Waste Advisory Committee" hereafter referred to as SWAC.

PURPOSE

The SWAC is established pursuant to RCW 70.95.165(3) to fulfill and perform all the functions required of local solid waste advisory boards.

Specifically, the purpose and charge of the SWAC shall be to:

- Advise Clallam County Commissioners on all aspects of solid waste management planning.
- Assist Clallam County in the development of programs and policies concerning solid waste management.
- Review and comment on proposed solid waste management rules, policies, or ordinances prior to their adoption.
- Advise Clallam County on other solid waste matters as assigned by the Board of County Commissioners.

COMPOSITION AND TERM OF MEMBERS

The SWAC shall consist of ten members appointed by the Clallam County Board of County Commissioners as follows:

- One representative each to be designated by the Cities of Forks, Port Angeles, Sequim and Clallam County.
- Two representatives of the solid waste industry in Clallam County.
- One individual representing the business community of Clallam County and/or Cities within the County.
- One individual representing Tribal governments in Clallam County.
- One individual representing the agricultural committee.
- One citizen-at-large.

City and County members serve until the respective jurisdiction designates a new representative. All other members shall serve a 3-year term from date of appointment.

ALTERNATES

Each member appointed to the SWAC may designate an alternate. Alternates must be designated in writing by a letter addressed to the chair. Alternates will have the full voting rights of the appointed member at any meeting for which the appointed member is not in attendance.

OFFICERS AND DUTIES

There shall be a Chair and Vice Chair. Officers will be elected by the Committee sitting in regular open public meetings. Officers of SWAC shall serve for one year from the date of election.

The Chair will preside over SWAC meetings. The Chair will sign all correspondence originated by SWAC on behalf thereof.

The Vice Chair will preside over SWAC meetings in, the absence of the Chair.

The SWAC may remove any officer whom they elect by the following procedure:

Any member of SWAC may offer a motion for removal at a meeting. If the motion is seconded, it will be considered and voted on by secret ballot at the next regular meeting of the Committee. Approval of a motion for removal will require a two-thirds majority of the members present and voting.

COMMITTEES

The Chair may appoint such standing and ad hoc sub-committees as may be considered useful and appropriate to investigate any matter of interest to the SWAC. Individuals need not be SWAC members to serve on sub-committees, however at least one SWAC member will serve on each sub-committee.

ABSENCES

A Committee member who accrues three consecutive, unexcused absences from regular meetings be removed from the Committee by the Chair with the concurrence of the majority of the members.

MEETINGS

All regular and special meetings of the SWAC shall be held in a place that is open and easily accessible to the public. The Committee is subject to, and will conform to the provisions of Clallam County Policy and Procedure 952, Boards and Committees. Members may participate in meetings by telephone.

All meetings will be conducted in general accordance with Robert's Rules of Order.

QUORUM

A quorum is required to be present before an official, regular or special meeting of the Committee can take place. Five appointed members of the Committee, or their alternates, shall constitute a quorum.

VOTING

Each member shall be allowed one vote on items considered by the Committee. Designated alternates will be allowed a proxy vote. Motions are adopted by an affirmative vote of a majority of members (or alternates) present at any meeting.

REPORTS, RECOMMENDATIONS AND CORRESPONDENCE

Reports, recommendations and correspondence submitted to the Board of County Commissioners shall be forwarded on behalf of a majority of the members over the signature of the Chair. Minority reports, if any, shall be attached to, and forwarded with such reports, recommendations or correspondence without comment by the chair.

CONDUCT OF MEETINGS

The meeting agenda will be constituted as follows:

1. Call to order
2. Roll call
3. Minutes of previous meeting(s)
4. Public forum: Limited at the pleasure of the chair; extension at the pleasure of SWAC members in attendance.
5. Old business
6. New business
7. Next meeting agenda

AMENDMENT

These by-laws may be amended at any regular meeting of the SWAC by a two thirds majority of the members (or their alternates) present, except, in no case shall an amendment be approved with less than five members or alternates voting "aye."

ADOPTED this 20th day of April, 2017.