

AppendixD Essential Public Facilities Interlocal

After Recording Return to:

Office of the Clerk
Snohomish County Council
W/S 609
3000 Rockefeller
Everett, WA 98201

Agencies: Snohomish County and Undersigned Cities
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Document Title:

INTERLOCAL AGREEMENT TO IMPLEMENT COMMON SITING PROCESS FOR ESSENTIAL PUBLIC FACILITIES

THIS AGREEMENT is entered into by and between Snohomish County, a political subdivision of the State of Washington, and the undersigned cities and towns, each of which is a Washington municipal corporation.

WHEREAS, the Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes local governments to enter into agreements for joint or cooperative action; and

WHEREAS, RCW 36.70A.200(1) requires counties and cities planning under the Growth Management Act (hereinafter "GMA") to include a process for identifying and siting essential public facilities in county and city comprehensive plans, and RCW 36.70A.200(2) states that no local comprehensive plan or development regulation may preclude the siting of essential public facilities; and

WHEREAS, WAC 365-195-340(2) contains recommendations concerning the process for siting essential public facilities, which recommendations suggest a cooperative inter-jurisdictional approach consistent with applicable countywide planning policies adopted under RCW 36.70A.210; and

WHEREAS, the county-wide planning policies adopted by Snohomish County under RCW 36.70A.210, Ordinance No. 93-004 as amended, provide for establishment of a common siting process for essential public facilities through the inter-jurisdictional planning process known as Snohomish County Tomorrow (hereinafter "SCT"); and

WHEREAS, SCT has developed a common siting process for essential public facilities for adoption by the County and cities, which process has been incorporated into the comprehensive plans of the County and several of the undersigned cities; and

WHEREAS, Snohomish County and the undersigned cities desire by this agreement to facilitate county and city implementation of the common siting process for essential public facilities as contemplated by the GMA and developed by SCT;

NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, Snohomish County and the undersigned cities and towns (hereinafter collectively referred to as "Snohomish County governments") agree as follows:

Section 1. Common Siting Process. SCT has developed a process for siting essential public facilities (hereinafter referred to as "SCT Siting Process"), which is attached hereto as Exhibit 1 and incorporated herein by reference.

Section 2. Requirements of GMA. The SCT Siting Process was developed by Snohomish County governments acting through SCT under mandate of the GMA. The GMA and applicable countywide planning policies require that Snohomish County governments incorporate the SCT Siting Process into their comprehensive plans and implement that process through adoption or amendment of their development regulations.

Section 3. Implementing Legislation. Each Snohomish County government will prepare and present for adoption by its legislative authority proposed legislation that, if adopted, would incorporate the SCT Siting Process into its comprehensive plan and implement the SCT Siting Process through development regulations. This action will be taken by each jurisdiction no later than the first available cycle of the annual process for amending its comprehensive plan pursuant to RCW 36.70A.130(2) (generally referred to as "docketing"). Presentation to the legislative authority will be made at a public meeting or hearing, after such notice as may be required by law for adoption.

Section 4. Common Elements. The implementing legislation prepared and considered for adoption under Section 3 must contain the following common elements:

(a) an effective date no later than September 1, 2002.

(b) provision for application of the SCT Siting Process at the option of the permit applicant (as the "project sponsor") or host jurisdiction, as described in the SCT Siting Process;

(c) provision for determination of eligibility for review under the common siting process by the Snohomish County governments acting through SCT or the governing board of the host community, as described in the SCT Siting Process;

(d) provision for optional site search consultation by the Snohomish County governments acting through SCT's Planning Advisory Committee or Infrastructure Coordinating Committee, as described in the SCT Siting Process;

(e) provision for application during permit review of the site evaluation criteria set out in the SCT Siting Process;

(f) provision for documenting that the site evaluation criteria set out in the SCT Siting Process have been applied, where required;

(g) provision for implementation of the GMA requirement at RCW 36.7DA.200(2) that no local comprehensive plan or development regulation may preclude the siting of essential public facilities;

(h) modification of permit review procedures to accommodate advisory review by a three member advisory review board prior to any administrative or other appeal authorized by local ordinance or, if no appeal is authorized by local ordinance, prior to entry of a final decision subject to appeal under the Land Use Petition Act, as described in the SCT Siting Process;

(i) provision for a three member advisory review board appointed by the Snohomish County governments acting through SCT, as described in the SCT Siting Process;

(j) provision for an alternative arbitration process, subject to administrative appeal or legal remedies that may otherwise be available to sponsors, host communities, or third parties, as described in the SCT Siting Process; and

(k) designation of the SCT Siting Process as a possible basis for the exercise of authority pursuant to the State Environmental Policy Act (SEPA), as amended.

Section 5. Clearinghouse. Snohomish County, through its SCT Coordinator, will serve as a clearinghouse for information relating to city and county efforts to prepare and consider legislation to implement the SCT Siting Process. Each Snohomish County government will provide the SCT Coordinator with semi-annual reports on the status of such efforts as well as with copies of proposed legislation. Snohomish County governments will, upon written request; provide one another with reasonable opportunities to review and comment upon proposed legislation before the adoption process described in Section 3.

Section 6. Enforcement. This agreement may be enforced by the parties in accordance with law, except that breach of this agreement shall not result in an award of monetary damages. This agreement does not create a joint venture and confers no rights on third parties. Obligations of Snohomish County after December 31, 2000, are contingent upon appropriation of necessary funds in accordance with RCW 36.32.130 and Snohomish County Charter § 6.110.

Section 7. Term. This agreement shall take effect as between the parties upon execution by Snohomish County and at least 50% of the cities and towns located within Snohomish County together representing at least 50% of the total county population, based on the most current State Office of Financial Management (OFM) estimates, and filing with the Snohomish County Auditor pursuant to RCW 39.34.040. This agreement may be joined by additional Snohomish County governments after it takes effect. This agreement shall terminate upon the discharge of all obligations contained herein by all parties or on September 1, 2003, whichever occurs first, unless extended by written agreement of all parties.

Section 8. No Separate Entity/Ownership of Property. Except insofar as the Snohomish County governments may act through SCT as specifically described in paragraph 4, no separate legal or administrative entity is necessary to carry out this agreement. If determined by a court to be necessary for purposes of the Interlocal Cooperation Act or GMA, an administrator or joint board will be established by mutual agreement. Any real or personal property used by any party in connection with this agreement will be acquired, held and disposed of by that party in its discretion, and the other parties will have no joint or other interest therein.

Section 9. Relationship to Existing Laws and Statutes. This agreement is not intended to modify or supersede state law. In meeting their commitments under this agreement, the parties shall comply with the requirements of the Open Public Meetings Act, the GMA, State Environmental Policy Act, and all other applicable federal or state laws. By executing this agreement, the parties do not abrogate the decision-making responsibility vested in them by law, nor limit the application of specific requirements or authority of federal or state law.

Section 10. Environmental Policies. This agreement is intended to constitute an agreement with an affected agency or jurisdiction within the meaning of SCC 23.36.030(4) with respect to environmental policies contained in the SCT Siting Process that are designated under Section 4(k).

Section 11. Counterparts. This agreement may be executed in counterparts each of which shall have the force and effect of an original document. The original will be maintained by Snohomish County, which shall make the filing required by RCW 39.34.040.

EXECUTED by the parties hereto, through their duly authorized representatives, as set out below:

The Interlocal Agreement to Implement Common Siting Process for Essential Public Facilities is executed by:

SNOHOMISH COUNTY

County Executive

Date Signed: _____

ATTEST:

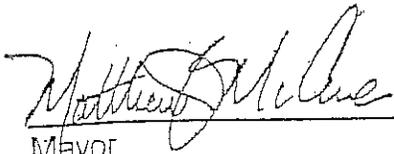
Council Clerk

APPROVED AS TO FORM ONLY:

Deputy Prosecuting Attorney

The "Interlocal Agreement to Implement Common Siting Process for Essential Public Facilities" is executed by:

CITY OF STANWOOD



Mayor

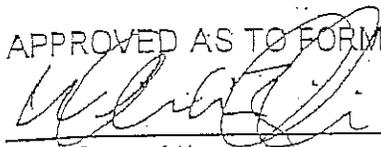
Date Signed: 6-27-01

ATTEST:

By: 

Title: City Treas.

APPROVED AS TO FORM ONLY:



City/Town Attorney

EXHIBIT 1

PROCESS FOR SITING ESSENTIAL PUBLIC FACILITIES OF A COUNTYWIDE OR STATEWIDE NATURE IN SNOHOMISH COUNTY

APPROVED BY SCT STEERING COMMITTEE - OCTOBER 1995

PURPOSE

In accordance with the requirements of the Washington Growth Management Act, and following an extensive policy review process by the Snohomish County Tomorrow Steering Committee, the Snohomish County Council has adopted a series of county-wide planning policies to guide the preparation of city and county comprehensive plans. Included therein are policies addressing the siting of "public capital facilities of a countywide or statewide nature" (identified as Policies CF-1 through CF-5), as specifically required by the GMA. These policies commit the GMA planning jurisdictions of Snohomish County to develop a common siting process for these facilities.

The GMA further requires local governments to develop a process for identifying and siting "essential public facilities" and to incorporate that process into their local comprehensive plans. As indicated and defined by WAC 365-195-340 essential public facilities can be difficult to site, and their location in a community may be locally unpopular. Local and state governments are charged by GMA with the task of ensuring that such facilities, as needed to support orderly growth and delivery of public services, are sited in a timely and efficient manner.

The process described here is intended to address the siting of essential public facilities not already sited by a local comprehensive plan and for which discretionary land use action is required. The siting process set forth below is also intended to meet GMA requirements, as well as the intent of the countywide planning policies. A final objective is to enhance public participation during the early stages of facility siting to reduce the time spent analyzing unacceptable sites and thereby produce earlier siting decisions that are also consistent with community goals.

DEFINITION OF ESSENTIAL PUBLIC FACILITY

Exhibit 1

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https://www.whidbey.com/cgi-bin/mmstdol.cgi?show:3h%3c4071ad46b22bd4119c6c0008c74906e56a4ec6%40oasrv30%3emimepart:%2d%2d%2d%2d_%3d_nextpart_000_01c03a28%2e1dbb7060p4=true

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Any facility owned or operated by a unit of local or state government, by a public utility or transportation company, or by any other entity providing a public service as its primary mission may qualify as an "essential public facility" (or, EPF). In general, an essential public facility will be characterized by the following:

- 1) it is a necessary component of a system or network which provides a public service or good; and
- 2) it may be difficult to site because of potential significant opposition.

Essential public facilities of a county-wide nature are those which serve a population base extending beyond the host community - which may include several local jurisdictions within Snohomish County or a significant share of the total County population. Such facilities may include, but are not limited to, the following examples: airports, state education facilities, state or regional transportation facilities, state or local correctional facilities, solid waste-handling facilities, in-patient facilities including substance abuse facilities, mental health facilities, and group homes.¹ Other facilities meeting the basic definition above and whose sponsor desires to utilize this siting process may be qualified as essential public facilities by completing the designation procedure described below.

Essential public facilities of a regional or statewide nature may include, but are not limited to, those facilities listed above which serve a multi-county population base; and other large public facilities appearing on the OFM list to be maintained under RCW 36.70A.

ESSENTIAL PUBLIC FACILITIES ELIGIBLE FOR COMMON SITE REVIEW

Essential public facilities of a county-wide or statewide nature which are not already sited in a local comprehensive plan are eligible for review under the common siting process described below. Candidate facility proposals may be submitted for review under this Common Siting Process by either the project sponsor or by a local jurisdiction wishing to site the project (the "host community").

A facility may be designated an essential public facility eligible for review under this process under the following conditions:

- 1) the Snohomish County Tomorrow Steering Committee or the governing board of the host community makes a determination that the proposed facility meets the definition of an essential public facility; or, the facility appears on the State, County, or the host community's list of essential public facilities;

AND

¹ The application of this definition for group homes and similar facilities, as well as of the siting process for these facilities, will be within the legal parameters of fair housing laws.

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- 2) either the sponsoring agency or the host community determines that the facility will be difficult to site.

COMMON SITE REVIEW PROCESS

Either the sponsor of an essential public facility within Snohomish County which is eligible for review under the Common Site Review Process, or the proposed host community, may elect to follow the process described herein. Alternatively, sponsors of such facilities having a preferred site location already identified may choose to seek siting approval under the local process provided by the host community (the jurisdiction having land use authority over that site), if that approach is acceptable to the host community.

The Common Site Review Process will involve the steps described below.

1. Determination of Eligibility. The project sponsor must receive a determination of eligibility from either the host community or the Snohomish County Tomorrow Steering Committee that the proposed facility constitutes an essential public facility as defined above. This initial step will also include a determination, as a threshold matter, of whether the facility in question presents siting difficulties. If the facility does not present siting difficulties, it should be relegated to the normal siting process, as recommended in WAC 365-195-340 (2)(a)(iii).
2. Site Search Consultation. As an optional service to project sponsors, the Planning Advisory Committee (PAC) and/or the Infrastructure Coordinating Committee (ICC) will, upon request, provide a forum for project sponsors prior to the initiation of the formal siting review process. Sponsors will have the opportunity to present proposed projects involving essential public facilities for the purpose of seeking information on potential sites within Snohomish County and about potential concerns related to siting. Sponsors may also propose possible incentives for host communities.

Through the PAC/ICC, local jurisdictions may be requested to provide information to sponsors regarding potential sites within their communities. The sponsor of an eligible project electing to utilize this siting process may initiate this communication by contacting Snohomish County Tomorrow and requesting aid in the siting of its proposed facility.

3. Local Land Use Review. Following site consultation with the PAC and/or the ICC (when that step is taken by the sponsor), the sponsor may then apply for site approval with the local land use or permit authority, as required under local law. The local jurisdiction shall conduct its review as required by this common siting process, as well its own codes and ordinances. This shall include the conduct of public hearings required for any land use action which may be needed by the proposal, including comprehensive plan amendment, rezoning, conditional use permit, or similar approval.

The local authority shall evaluate the proposal against the common siting criteria described herein, as well as against any local criteria generally applicable to the type of action required,

Exhibit 1

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in making its land use decision on the project proposal. Where no local land use action is required the sponsor may proceed directly to the permit application stage.

4. Advisory Review Process. The local land use authority's decision, as it relates to matters encompassed by the site evaluation criteria described below, is subject to an advisory review process as provided herein. This process, if utilized, would occur prior to any appeal processes already provided by local ordinance.

Within 21 days following the decision by the local land use authority required to approve the proposal, an advisory review process may be utilized by the sponsor involving a 3-member advisory review board appointed by the Snohomish County Tomorrow Executive Board. Qualifications for board members, as well as procedures for board creation and conduct of board business shall be governed by written guidelines to be established by Snohomish County Tomorrow, provided that no official or employee of Snohomish County or any local jurisdiction within Snohomish County shall be a board member.

The advisory review board shall not have the authority to overturn a local decision. The board, on a review of the record, shall only find that the local decision does or does not accurately reflect the evidence provided by the sponsor, or that adequate consideration was or was not given to the evaluation criteria, and may recommend to the local agency that it reconsider its decision.

A recommended alternative for host communities and sponsors would be to use arbitration as the final recourse for resolution of differences. In cases where this option is agreed to in advance, a pre-selected arbitrator would serve as the appeal agent for these parties.

Nothing herein shall be construed to limit the administrative appeal or legal remedies otherwise available to sponsors, host communities or third parties.

5. Permit Application. Upon receipt of the required land use approvals by the local land use authority, the sponsor may then apply for the required permits to construct the proposed facility. When a permit is denied for reasons relating to this siting process, the permitting authority will submit in writing the reasons for permit denial to the sponsor.

SITE EVALUATION CRITERIA

The following criteria will be utilized by all county and city review authorities in evaluating siting proposals made by sponsoring agencies seeking to site an essential public facility (EPF) in Snohomish County. The sponsor shall provide the information needed for the reviewing body to evaluate a site(s) and make a recommendation or decision on a specific proposal. These criteria encompass an evaluation of regional need and local site suitability for the proposed and designated essential public facility. Findings concerning the proposal's conformance with each criterion shall be included in the documentation of the local authority's decision.

1. Documentation of Need. Project sponsors must demonstrate the need for their proposed EPFs. Included in the analysis of need should be the projected service population, an

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inventory of existing and planned comparable facilities and projected demand for this type of essential public facility.

2. Consistency with Sponsor's Plans. The proposed project should be consistent with the sponsor's own long-range plans for facilities and operations.
3. Consistency with Other Plans. The proposal must demonstrate the relationship of the project to local, regional and state plans. The proposal should be consistent with the comprehensive plan and other adopted plans of the prospective host community. In evaluating this consistency, consideration shall be given to urban growth area designations and critical area designations, population and employment holding capacities and targets, and the land use, capital facilities and utilities elements of these adopted plans.
4. Relationship of Service Area to Population. The facility's service area population should include a significant share of the host community's population, and the proposed site should be able to reasonably serve its over-all service area population. [Note: linear transmission facilities are exempt from this criterion]
5. Minimum Site Requirements. Sponsors shall submit documentation showing the minimum siting requirements for the proposed facility. Site requirements may be determined by the following factors: minimum size of the facility, access, support facilities, topography, geology, and mitigation needs. The sponsor shall also identify future expansion needs of the facility.
6. Alternative Site Selection. In general, the project sponsor should search for and investigate alternative sites before submitting a proposal for siting review. Additionally, the proposal should indicate whether any alternative sites have been identified that meet the minimum site requirements of the facility. The sponsor's site selection methodology will also be reviewed. Where a proposal involves expansion of an existing facility, the documentation should indicate why relocation of the facility to another site would be infeasible.
7. Concentration of Essential Public Facilities. In considering a proposal, the local review agency will examine the overall concentration of essential public facilities within Snohomish County to avoid placing an undue burden on any one community.
8. Public Participation. Sponsors should encourage local public participation, particularly by any affected parties outside of the host community's corporate limits, in the development of the proposal, including mitigation measures. Sponsors should conduct local outreach efforts with early notification to prospective neighbors to inform them about the project and to engage local residents in site planning and mitigation design prior to the initiation of formal hearings. The sponsor's efforts in this regard should be evaluated.
9. Consistency with Local Land Use Regulations. The proposed facility must conform to local land use and zoning regulations that are consistent with the County-wide Planning Policies. Compliance with other applicable local regulations shall also be required.

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10. Compatibility with Surrounding Land Uses. The sponsor's documentation should demonstrate that the site, as developed for the proposed project, will be compatible with surrounding land uses.
11. Proposed Impact Mitigation. The proposal must include adequate and appropriate mitigation measures for the impacted area(s) and community(ies). Mitigation measures may include, but are not limited to, natural features that will be preserved or created to serve as buffers, other site design elements used in the development plan, and/or operational or other programmatic measures contained in the proposal. The proposed measures should be adequate to substantially reduce or compensate for anticipated adverse impacts on the local environment.

AMENDMENTS

This siting process may be amended, upon recommendation by the Snohomish County Tomorrow Steering Committee, through established procedures for amending the comprehensive plan in accordance with local code and the State Growth Management Act.