DEPARTMENT/DIVISION: Public Works / Development Engineering

DATE: August 21, 2012

REQUEST: Consider a resolution implementing an optional pilot program that places the responsibility for final engineering review of development projects with developers and their consultant team.

CHECK ONE: Consent Chief Administrative Officer XX Hearing

PUBLIC WORKS GOALS:
- Provide safe and efficient transportation systems within Clark County
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a desirable quality of life
- Improve environmental stewardship and protection of natural resources
- Increase partnerships and foster an engaged, informed community
- Make Public Works a great place to work

BACKGROUND: The Board of County Commissioners (BOCC) initiated this proposal. The BOCC would like an optional pilot program to reduce developers' project timelines and costs (both county permits and consultant charges). Eliminating the requirement for county review of construction plans accomplishes both of these goals. The professional engineer stamp on construction plans places the liability for problems on the professional engineer.

COMMUNITY OUTREACH: During 2011, the BOCC held two public work sessions on the topic. The Development and Engineering Advisory Board (DEAB) also addressed the proposal at numerous meetings during 2011 and 2012. A majority of DEAB members do not support the proposed pilot program; DEAB's August 2, 2012, motion is attached.

Notice of the public hearing was advertised by the Board's office and also emailed to a distribution list of interested development engineering stakeholders.

BUDGET AND POLICY IMPLICATIONS: If the pilot program is implemented, developers electing to waive the county's review of construction plans will not pay final engineering review fees. The Development Engineering program's development fee revenue will decrease. During the term of the pilot program, staff that perform these construction plan reviews will be reassigned to Public Works capital projects. A detailed budget analysis of the program will be completed after the pilot program has been in place.

The primary policy implication for this pilot program is the potential risk that poor quality public transportation and stormwater facilities will be constructed. It also may be difficult to require developers to correct errors after construction is complete.

If the Board later decides to make this a permanent program after evaluating the performance of the pilot process, the Title 40 Unified Development Code will need revisions.

FISCAL IMPACTS: □ Yes (See Attached Fiscal Impacts Form) □ No
**ACTION REQUESTED:** Consider adopting the attached resolution following the public hearing. The draft resolution recommends an effective start date for the pilot program of September 3, 2012.

**DISTRIBUTION:** Please forward a copy of the adopted resolution to Sue Stepan, Public Works Development Engineering.

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Sue Stepan, P.E.
Development Engineering Program Manager

Peter Capell, P.E.
Public Works Director/County Engineer

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APPROVED: **Aug. 21, 2012**

CLARK COUNTY, WASHINGTON
BOARD OF COMMISSIONERS
RESOLUTION NO. 2012-08-08

A resolution implementing an optional pilot program that places the responsibility for final engineering review of development projects with developers and their consultant team.

WHEREAS, the Board of County Commissioners finds that Clark County and its citizens are experiencing severe economic hardship due to the local and national economy; and

WHEREAS, the Board of County Commissioners recognizes the substantial amount of administrative effort that has been invested by the public and private sector in obtaining land use approvals for development; and

WHEREAS, the economy continues to suffer, and reducing administrative time and costs would provide relief to developers; and

WHEREAS, an optional pilot program that places the responsibility for final engineering review of development projects with developers and their consultant teams is justified to avoid hardship to developers; and

WHEREAS, an optional program would provide an alternative to the final engineering review in Clark County Title 40 Unified Development Code; and

WHEREAS, under the optional program, county staff are available to provide technical assistance at hourly rates allowed in Title 6 Application and Service Fees; and

WHEREAS, the Board discussed a conceptual Developer Certification process at work sessions on April 6 and September 14, 2011, and directed county staff to prepare an optional pilot program for Board consideration; and

WHEREAS, following a duly advertised public hearing the Board finds that adoption of this resolution will further the public welfare; now, therefore,
BE IT ORDERED, RESOLVED, AND DECREED BY THE BOARD OF
COUNCIL OF CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

Section 1. Optional Developer Certification Pilot Program. An optional, pilot
Developer Certification Process provides an alternative to county final engineering
review of developer-constructed projects. The process moves the engineering
responsibility for these functions to the property owner and his/her team of developers,
design consultants, and contractors.

1. Overview of Pilot Program
   a. Optional participation. Developers may choose to waive final engineering
      reviews (ENG permit type) under the terms of this pilot program, or
      choose to undergo the current county review process.
   b. Timeline:
      i. The pilot program will be evaluated approximately one year after
         the effective date.
      ii. Depending on the pilot program's success, the pilot may be
         continued, a permanent program implemented, or the Developer
         Certification process ended.
      iii. Projects that start construction under the terms of the pilot program
         will continue with the process, even if the program later changes or
         is stopped.
c. Projects eligible for the pilot program generally include those with construction plans prepared by professional engineers, including "Final Engineering Review" for short plats, subdivisions, and site plans.

d. There is no limit to the number of projects that could participate in the pilot program.

e. The following projects are not eligible for the pilot program and will receive traditional county review:

i. Projects not subject to both a preliminary and final land use approval process, such as grading (GRD) and special drainage projects.

ii. Projects using the Fastlane or expedited 60-Day Review process, because these have a mandatory concurrent preliminary and final engineering review.

iii. Special permits, such as floodplain reviews (FLP), critical aquifer recharge area reviews (CARA), geological hazard reviews (GEO), and road modifications (EVR).

iv. Traffic signals and signing/striping plans (other aspects of the project, however, may be eligible to participate in the Developer Certification pilot process).

v. Drainage reviews for single family residences.

2. Developer Steps to Participate in the Pilot Program

a. All property owners are eligible to participate in the pilot program. The county will not screen applicants and will not keep an eligibility list.
b. "Statement of Developer Intent". When a property owner/developer chooses to use the Developer Certification process and the preliminary land use process has not started, the property owner/developer must declare his/her intent to participate in the program prior to the preliminary land use application "fully complete" determination.

c. "Developer Preconstruction Certification". Prior to the preconstruction conference, the property owner/developer, design consultants, and contractor will be required to sign a county standard form that states: (1) the design and development satisfy the land use decision, county code, and county standards, including NPDES stormwater permit standards, and (2) that the contractor acknowledges the construction documents were not reviewed by the county, except for documents that the county must review as an NPDES permittee.

d. "Developer Post-Construction Certification". Prior to construction provisional acceptance (prior to final platting and granting of occupancy), all parties, including the property owner/developer, design consultants, and contractor will be required to sign a county standard form that states the constructed project satisfies the land use decision, county code, and county standards including NPDES stormwater permit standards.

i. The property owner, who certifies that the overall project meets all conditions, codes, and standards including NPDES stormwater permit standards.
ii. All engineering design consultants (such as civil and geotechnical engineers), certifying with a professional stamp that the design meets all conditions, codes, and standards including NPDES stormwater permit standards.

iii. The contractor, who certifies that the project was constructed per the property owner's final construction documents including NPDES stormwater permit standards.

3. Design Consultant Insurance. The Architect/Engineer(s) must provide evidence of the following insurance requirements prior to scheduling the preconstruction conference and verified again with the "Developer Post-Construction Certification":

a. An original ACORD Form with the Commercial General Liability (CGL) Insurer (or BOP), Broker of Record, Insurance Limits(s), Renewal Dates, Deductible (less than or equal to $25,000 unless authorized otherwise by County Risk Management), and $1,000,000 of Annually Renewing Occurrence Based Coverage. A "Claims Made Policy" is NOT acceptable for the CGL.

b. Errors and Omissions (E and O) Coverage. These are usually Claims Made Polices and tail coverage equaling the applicable statute of limitations is required. The Deductible will be less than or equal to $25,000 unless authorized otherwise by County Risk Management, and $1,000,000 of Annually Renewing E and O Coverage.

c. In the case where these underlying insurance policies are expended due to
excessive defense and/or indemnity claims, before renewal, the
Architect/Engineer warrants and guarantees the coverage limit(s), to include
indemnity and defense costs up to the listed limit, from its own resources
regardless of coverage status due to cancellation, reservation of rights, or
other no-coverage-enforce reasons. Coverage shall not contain any
endorsement(s) excluding nor limiting Product/Completed Operations,
Contractual Liability or Cross Liability or Workers’ Compensation.

d. All policies shall be endorsed to state that coverage will not be suspended,
voided, canceled or reduced without a 30 day written notice by mail to
Clark County. It is the Architect/Engineer’s responsibility to provide
evidence of continuing coverage during the overlap periods of the policy
and the certification.

e. Should the Architect/Engineer provide an Umbrella or Excess Coverage
for any of the associated coverage(s), they shall be written in a “Follow
Form” manner and Clark County Washington shall be listed and endorsed
as an Additional Insured for the CGL.

4. Hourly Billing

a. After completion of the land use decision and prior to the preconstruction
conference, Development Engineering staff are available to provide
technical assistance on an hourly basis to the property owner or his/her
designee when requested.
b. Hourly billing will also apply if the standard fee is exceeded for the new reduced-level plan reviews required for stormwater that occur during "preliminary review".

c. Deposits. If the developer requests county engineering staff assistance prior to construction, a $200 deposit is required.

d. Hourly billing rates by job classification are published annually by Public Works Development Engineering.

e. The county will prepare a final invoice prior to the preconstruction conference. The preconstruction conference will not be held until county receipt of any outstanding balances. Refunds will be granted for costs less than the deposited amount.

5. Engineering Reviews

a. This proposal may change the current preliminary engineering review (land use) process performed with Community Development. For new developments, the applicant will be required to submit construction drawings to enable county staff to determine compliance with NPDES permit requirements.

b. Preliminarily approved projects. Projects previously granted preliminary approval may participate in the Developer Certification process following Post-Decision Review to update stormwater plans in compliance with current NPDES stormwater permit requirements and related judicial orders.
c. Certain issues are currently addressed during final engineering review will need resolution prior to the preconstruction conference under this optional process. These include:

i. Floodplain reviews (FLP), critical aquifer recharge area reviews (CARA), and geological hazard reviews (GEO).

ii. Details for road modifications (EVR) that sometimes occur during final engineering review.

iii. Completion of third party agreements that document property disputes, easements, access issues, etc.

iv. Survey discrepancies, such as property lines and location of historical centerlines.

6. Construction Inspection

a. County inspection will occur similar to the current practice and level of service.

b. Project inspection fees will be based on the standard Title 6 Development Inspection Fee Schedule; hourly billing will not apply.

c. Preconstruction conference is required.

7. Maintenance Bond

a. The property owner or his/her designee will provide the county with a two-year maintenance bond for all constructed public infrastructure, to guarantee that the accepted work is maintained properly.

b. The maintenance bond amount will be the same as the current practice, ten (10) percent of the public facilities valuation.
c. The bond period starts at provisional acceptance.

Section 2. Effective Date. This resolution shall be effective on September 3, 2012, and shall expire upon adoption of a new resolution following consideration of this matter by the Clark County Board of County Commissioners or on December 31, 2014, whichever is earlier.

Section 3. Instructions to Clerk. The Clerk to the Board shall:

1. Record a copy of this resolution with the Clark County Auditor.
2. Transmit a copy of this resolution to the state within ten days of its adoption pursuant to RCW 36.70A.106.
3. This resolution is temporary in nature and is not to be codified.

ADOPTED this 21st day of August, 2012.

Attest:

Rebecca Finito
Clerk to the Board

Copy received only:

ANTHONY F. GOLIK
Prosecuting Attorney

Christopher Horne
Deputy Prosecuting Attorney