

Kelso City Council Agenda

Regular Meeting, 6:00 pm
March 15, 2016
City Hall, Council Chambers
203 South Pacific
Kelso, WA 98626



**Special accommodations for the handicapped and hearing impaired are available
by special arrangement through the City Clerk's Office at 360-423-0900**

Roll Call to Council Members:

Invocation:

Pastor Russ Jorgenson from Kelso Christian Church

1. Approve Minutes:

1.1. March 1, 2016 – Regular Meeting

2. Presentation:

- 2.1. Legislative Update – Gordon Thomas Honeywell
- 2.2. South Kelso Revitalization Update – AmeriCorps Volunteers
- 2.3. Public Works Annual Report

3. Consent Items:

3.1. Auditing of Accounts

4. Citizen Business:

5. Council Business:

- 5.1. Discussion - West Kelso Subarea Plan adoption
- 5.2. Kelso City Charter Citizen Review Committee

6. Action/Motion Items:

- 6.1. Ordinance, 1st Reading
 - 6.1.1. Amending KMC 8.20 Fireworks

Kelso City Council Agenda

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6.2. Ordinance, 1st Reading

6.2.1. Shopping Cart Regulations

6.3. Ordinance, 2nd Reading

6.3.1. Amending KMC 2.32 relating to the Authority to Appoint Limited Commission Police Officers

6.4. Resolution

6.4.1. Initiating Process to Vacate Portions of Talley Way Right of Way

6.5. Resolution

6.5.1. Proposed Revisions to Resolution regarding Exploratory Drilling at Goat Mountain

Other Items:

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

Pastor Brian Cummings, New Song Worship Center, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor Futcher. Councilmembers in attendance were Kim Lefebvre, Larry Alexander, Rick Roberson, David Futcher, Nancy Malone, Jim Hill, and Todd McDaniel.

Minutes: Upon motion by Councilmember Malone, seconded by Councilmember McDaniel, 'Approve the Minutes of the 2/16/16 Regular Meeting,' motion carried, all voting yes

CONSENT AGENDA: None

CITIZEN BUSINESS:

Francisco Javier Uribe, 2404 Allen Street, #F323, introduced himself as a new pastor in the area and spoke about community involvement opportunities for the Spanish community.

David Pipkin, 1317 North 1st Avenue, proposed that the old library be a homeless shelter for veterans and asked to have the conditional use permit fee waived. Councilmember Hill took Mr. Pipkin's contact information.

Gloria Nichols, 125 Cedar Falls Drive, spoke about the proposed mining exploratory drilling in the Gifford Pinchot National Forest.

COUNCIL BUSINESS:

Cowlitz County Public Facilities Fund Grant – 2016 Southwest Washington Regional Airport Projects: Upon motion by Councilmember Roberson, seconded by Councilmember Lefebvre, 'Approve the agreement.' Motion passed, all voting yes.

Proposed Mineral Exploratory Drilling in the Gifford Pinchot National Forest

Discussion: Charlotte Persons provided a power point presentation that showed the designated area on Goat Mountain for the proposed drilling and spoke about its potential environmental impact. She asked that the Council consider passing a resolution in opposition of exploratory drilling or mining in that area. Lengthy discussion followed. Ms. Persons distributed an informational packet of past lawsuits from similar drillings. Discussion followed. Upon motion by Councilmember Roberson, seconded by Councilmember Malone, 'Authorize Staff to bring forward a resolution regarding exploratory efforts at Goat Mountain,' motion passed, all voting yes.

Abandoned Shopping Cart Regulations Ordinance Discussion: City Manager Steve Taylor commented that the Council asked Staff to bring back the proposed ordinance when a full Council attended. City Attorney Janean Parker provided a shopping

cart ordinance options matrix. Upon motion by Councilmember Roberson, seconded by Councilmember McDaniel, 'Direct Staff to bring back the original ordinance that was discussed at the 2/16/16 Regular Meeting.' Lengthy discussion followed. Citizens that spoke from the audience were Anthony Currena and Francisco Javier Uribe. Councilmembers Lefebvre, Roberson, Futcher, Hill, and McDaniel voted yes. Councilmembers Alexander and Malone voted no. Motion passed, 5 to 2.

City Charter Workshop: City Attorney Parker opened the discussion providing three options to amend or repeal the charter. She provided an overview highlighting comparisons of certain city charter provisions to the State's Optional Municipal Code. Lengthy discussion followed. Upon motion by Councilmember McDaniel, seconded by Councilmember Lefebvre, 'Direct Staff to initiate a process to engage citizen discussion for potential charter amendments.' Discussion followed. Motion passed, all voting yes.

2016 Budget Goals and Actions Work Plan Discussion: City Manager Taylor provided an overview of an updated Budget Goals and Actions Work Plan. Upon motion by Councilmember McDaniel, seconded by Councilmember Hill, 'Adopt the Budget Goals and Actions Work plan as presented for 2016,' motion passed, all voting yes.

MOTION ITEMS:

Ordinance No. (1st Reading) – Amending KMC 2.32 relating to the Authority to Appoint Limited Commission Police Officers: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Pass on 1st reading, 'AN ORDINANCE OF THE CITY OF KELSO AMENDING THE KELSO MUNICIPAL CODE CHAPTER 2.32 POLICE DEPARTMENT RELATING TO THE AUTHORITY TO APPOINT LIMITED COMMISSION POLICE OFFICERS,' motion passed, all voting yes.

Ordinance No. 16-3867 – Interfund Loan to Arterial Street Fund: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Lefebvre, 'Adopt Ordinance No. 16-3867, 'AN ORDINANCE OF THE CITY OF KELSO AUTHORIZING THE TRANSFER OF FUNDS FROM THE DEBT SERVICE FUND TO THE ARTERIAL STREET FUND AND PROVIDING FOR THE REPAYMENT OF SUCH LOAN,' motion passed, all voting yes.

MANAGER'S REPORT:

Steve Taylor: 1) Provided an update of the recent legislative efforts made by the lobbyists. 2) Commented on the Association of Washington Cities article regarding the Senate supplemental budgets.

COUNCIL REPORTS:

Todd McDaniel: No report.

Jim Hill: Reported on the County Commissioner's meeting that he attended last week.

Nancy Malone: Spoke about the Citizens' Police Academy.

Rick Roberson: Reported on the Cowlitz Wahkiakum Council of Governments Board meeting he recently attended.

Larry Alexander: No report.

Kim Lefebvre: Reported on the Lower Columbia Action Program Board meeting that she recently attended in Councilmember Malone's place.

David Futcher: Spoke about the Airport Board meeting that is scheduled March 2nd.

EXECUTIVE SESSION:

At 7:47 p.m., Mayor Futcher announced that the Council would convene into executive session to discuss an evaluation of an employee. The executive session is expected to last approximately 15 minutes and no action will be taken. The city attorney was present.

At 8:02 p.m., City Manager Taylor announced that executive session would be extended an additional 10 minutes.

The Council reconvened into regular session at 8:12 p.m.

There being no further business, Mayor Futcher adjourned the meeting at 8:12 p.m.

MAYOR

CITY CLERK

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: Discussion – W. Kelso
Subarea Plan Adoption

Agenda Item: _____

Dept. of Origin: Community Development

For Agenda of: March 15, 2016

PRESENTED BY:
Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

Agenda Item Attachments:

Draft West Kelso Subarea Plan Link:

http://www.kelso.gov/sites/default/files/docs/west_kelso_subarea_plan_draft_2016_0202_web.pdf

SUMMARY STATEMENT:

As part of the City's 2015 Comprehensive Plan update the neighborhood of West Kelso was designated as a special study area to examine the impacts of recent public improvements and future development potential. In July 2015 BERK consulting was hired to complete the West Kelso Subarea plan and serve as a road map to generate the desired future development of the neighborhood.

On January 19, 2016 the project manager gave a presentation to the City Council and Planning Commission on the proposed draft plan. On February 9, 2016 the Planning Commission recommended that the City Council adopt the West Kelso Subarea Plan.

Much of what is contained in this plan mirrors work that is being done outside of West Kelso. Recommended updates to the Zoning Map, Future Land Use Map, and development regulations are contained in the Plan and also currently under way city-wide. In order to reduce redundancy and promote transparency, implementation of the plan will occur in phases with separate opportunities for public comment and Council feedback.

If Council approves this phased implementation approach a resolution will be prepared for the April 5 meeting adopting the tenets and vision created by the plan. As work on the City's development regulations, Zoning Map, and Future Land Use map is completed they will be presented for Council approval and will include desired provisions from the West Kelso Subarea Plan.

RECOMMENDED ACTION:

Provide direction to staff to bring the Plan forward for final consideration on April 5th and allow opportunity for final public comment before adoption.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: Kelso City Charter Citizen
Review Committee

Agenda Item: _____

Dept. of Origin: _____ City Manager _____

For Agenda of: _____ March 15, 2016 _____

Originator: _____ Steve Taylor _____

City Attorney: Janean Parker

City Manager: Steve Taylor

PRESENTED BY:

Steve Taylor
Janean Parker

Agenda Item Attachments:

Composition and Work Plan of Proposed Citizen Review Committee

SUMMARY STATEMENT:

The Kelso City Council is considering options to amend, repeal, or keep the status quo with the city charter. Staff presented information regarding the options to Council and discussed the same during the March 1st meeting.

The Council has directed the formation of a citizen review committee, with meetings open to the public, to recommend potential amendments to or repeal of the charter to the Council for further consideration and placement of a measure on the November 2016 ballot.

RECOMMENDED ACTION:

Direct staff to proceed with the formation of the City Charter Review Committee and schedule of proposed activities.

Kelso City Charter Citizen Review Committee

PURPOSE:

The Kelso City Council is considering options to amend, repeal, or keep the status quo with the city charter. The Council has directed the formation of a citizen review committee, with meetings open to the public, to recommend potential amendments to or repeal of the charter to the Council for further consideration and placement of a measure on the November 2016 ballot.

MEMBERSHIP:

- Five (5) voting residents of Kelso
- One (1) Kelso Councilmember
- Staff support (City Attorney, City Clerk, City Manager)

TIMELINE:

- March 18 – advertise/issue notice for committee volunteers
- April 5 – appoint committee members
- April – June – hold at least three meetings of the committee (*receive public comment*)
 - 1st meeting
 - introduction of charter
 - comparison of provisions to RCW 35A and Kelso Municipal Code
 - process to amend or repeal
 - 2nd meeting
 - discuss charter options (amend, repeal, status quo)
 - develop amendments (if applicable)
 - 3rd meeting
 - consider amendments (if applicable)
 - prepare recommendation to Council
- June – staff prepare/refine amendments and resolution
- July 12th – committee report to Council with recommendations
- July 26th – council considers resolution for ballot measure (if applicable)
- August 2nd – deadline for submitting ballot measure resolution to County Auditor
- November 8th – General Election

AGENDA SUMMARY SHEET
Business of the City of Kelso
City of Kelso, Washington

SUBJECT TITLE:

AN ORDINANCE OF THE CITY OF
KELSO AMENDING KELSO
MUNICIPAL CODE CHAPTER 8.20
FIREWORKS TO REVISE
PERMITTING AND APPROVAL
PROCEDURES AND REFLECT
CHANGES IN STATE LAW

Agenda Item: _____

Dept. of Origin: _____

For Agenda of: March 15, 2016

Cost of Item: _____

City Manager: Stephen Taylor

PRESENTED BY: Janean Parker

AGENDA ITEM ATTACHMENTS:

Proposed Ordinance

SUMMARY STATEMENT:

The proposed ordinance provides many updates to bring the code into compliance with current state law. These include incorporating the state fireworks laws by reference such that if the state law is more restrictive it shall apply and if city code is more restrictive, then it shall apply. The amendments also replace the definitions with those in state law, and amending the sale and discharge dates to reflect the dates set forth in state law.

In addition, the ordinance provides for permitting decisions to be made by the City Manager and provides some clarification of the standards for these permitting decisions. Finally, the ordinance amends the appeal and penalty provisions.

FINANCIAL SUMMARY:

OPTIONS:

Do nothing.

Pass the ordinance as proposed

Direct staff to make further amendments to the ordinance.

RECOMMENDED ACTION:

Move to approve the ordinance on first reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 8.20 FIREWORKS TO REVISE PERMITTING AND APPROVAL PROCEDURES AND REFLECT CHANGES IN STATE LAW

WHEREAS, the City adopted Chapter 8.20 Fireworks in 1986 and changes to state law governing the regulation of fireworks have since occurred that have not been reflected in the municipal code; and

WHEREAS, the City Council finds that it is in the public interest and will promote efficient and timely decisions regarding permits to authorize the City Manager to approve or deny such permits and set the criteria therefore;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That Kelso Municipal Code Chapter 8.20 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2016.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

Exhibit A.

8.20 FIREWORKS

8.20.005. Statutory Provisions—adoption by reference.

RCW Chapter 70.77, as currently enacted or as hereafter amended from time to time is adopted by reference as and for the ordinances of the city regulating the sale, possession and use of common and special fireworks as if set forth in full in this section, except further limited by the provisions of this Chapter.

8.20.010 Definitions.

A. Unless the context in which they are used otherwise requires, the following definitions shall contained within the Revised Code of Washington (RCW) Chapter 70.77 sections 126 through 236 are hereby adopted by reference as currently enacted or as hereafter amended from time to time and shall be given the same force and effect as if set forth herein in full. govern the construction of the terms found in this chapter:

B. The term “common fireworks, shall, in addition to the definition set forth in RCW 70.77.136, include the types of fireworks set forth in WAC 212-17-035.

C. The term “special fireworks,” shall, in addition to the definition set forth in RCW 70.77.131, include the types of fireworks set forth in WAC 212-17-040.

D. The term “city”, “local public agency” and “local government” as used in Chapter 70.77 RCW that are adopted by reference in this Chapter shall mean the City of Kelso.

~~E.~~ The term, “Fire chief” or “local fire official” shall ~~means the chief administrative officer of Fire Protection District No. 2 and/or his designee who shall be the local fire official for purposes of RCW Chapter 70.77.~~

~~A. “Agricultural and wildlife fireworks” means and includes fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States Department of the Interior.~~

~~B. "Common fireworks" means any fireworks designed primarily to produce visible or audible effects by combustion.~~

~~I. "Common fireworks" includes:~~

~~a. Ground and hand-held sparkling devices, including items commonly known as dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;~~

~~b. Smoke devices;~~

~~c. Fireworks commonly known as helicopters, aerals, spinners, roman candles, mines and shells;~~

~~d. Class C explosives classified on January 1, 1984, as common fireworks by the United States Department of Transportation.~~

~~2. "Common fireworks" does not include fireworks commonly known as firecrackers, salutes, chasers, skyrockets and missile type rockets.~~

~~C. "Fire chief" means the chief administrative officer of Fire Protection District No. 2 and/or his designee who shall be the local fire official for purposes of RCW Chapter 70.77.~~

~~D. "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service or preventing, suppressing or extinguishing fire; or which may obstruct, delay or hinder, or may become the cause of any obstruction, delay or the hindrance to the prevention of or extinguishment of fire.~~

~~E. "Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and classified as common or special fireworks.~~

~~F. "License" means a nontransferable formal authorization which the State Fire Marshal is permitted to issue under RCW Chapter 70.77 to engage in the acts specifically designated therein.~~

~~G. "Manufacturer" means and includes any person who manufactures, makes, constructs, fabricates or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks.~~

~~H. "Permit" means the official permission granted by the city for the purpose of doing any act which is regulated by this chapter.~~

~~I. "Person" means and includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit.~~

~~J. "Public display of fireworks" means an entertainment feature where the public is admitted or permitted to view the display or discharge of special fireworks.~~

~~K. "Pyrotechnic operator" means and includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging public displays of fireworks.~~

~~L. "Retailer" means and includes any person who, at a fixed location or place of business, sells, transfers or gives common fireworks to a consumer or user.~~

~~M. "Special fireworks" means and includes any fireworks designed primarily for exhibition display by producing visible or audible effects. The term includes fireworks commonly known as skyrockets, missile-type rockets, firecrackers, salutes and chasers and fireworks not classified as common fireworks.~~

~~N. "Wholesaler" means and includes any person who sells fireworks to a retailer or any other person for resale and any person who sells special fireworks to public display permittees.~~

8.20.020 Unlawful acts without obtaining a permit.

No person shall do any of the following acts in the city without having first obtained and having in full force and effect a valid permit issued by the city to do so:

A. Manufacture, import, possess or sell any fireworks, including agricultural and wildlife fireworks, at wholesale or retail for any use; provided, however, no permit is required for the possession or use of common fireworks lawfully purchased at retail;

B. Discharge special fireworks at any place;

C. Make a public display of fireworks; or

D. Transport fireworks, except as a public carrier delivering to a permittee.

8.20.030 Permit—Application—Form.

A. Any person desiring to do any act set forth in Section [8.20.020](#) of this chapter shall first make written application for a permit to the fire chief. The application for a permit shall be signed by the applicant. If the application is made by a partnership, it shall be signed by each partner of the partnership, and if the

application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation.

B. The application shall be in such form as the fire chief shall require and shall include, at a minimum, the following information:

1. The true name, address and telephone number of the applicant;
2. A statement by the applicant that he or she is over the age of eighteen years of age;
3. A statement as to whether the applicant possesses a license issued by the State Fire Marshal to do the act for which the permit is sought, and the current status of such license;
4. The proposed location at which the applicant intends to perform the act for which the permit is sought; and
5. Such other information as the fire chief may require in order to make any investigation or report required by this chapter.

8.20.040 Permit—Fee.

All applications for permits pursuant to this chapter shall be accompanied by a nonrefundable permit fee in an amount set by resolution of the city council for each fireworks stand and a refundable deposit also in an amount set by resolution of the city council shall be submitted at the time application is made to insure proper cleanup of the site following the close of business. The city council finds that this charge is necessary to cover the legitimate administrative costs for permit processing and inspection.

8.20.050 Permit—Certificate of insurance coverage.

All applications for permits pursuant to this chapter shall be accompanied by a certificate of insurance coverage evidencing the carrying of a comprehensive general liability insurance policy, issued by a company authorized to do business in Washington, and shall provide a minimum coverage of one million dollars for bodily injury liability for each person per occurrence and two million dollars annual aggregate. Such general liability policy shall name the city as an additional insured party, must be in full force and effect for the duration of the permit, and shall include a provision prohibiting cancellation of said policy without thirty days' written notice to the city. The policy and certificate shall be in a form approved by the city attorney.

8.20.060 Permit—Investigation and report.

It shall be the duty of the fire chief to make an investigation and prepare a report of his findings and conclusions for or against the issuance of the permit, together with his reasons therefor. In the case of an

application for a permit for a public display of fireworks, the fire chief shall, in addition to any other investigation, make an investigation as to whether such display as proposed will be of such a character and will be so located that it may be hazardous to property or dangerous to any person.

8.20.070 Permit—Approval or denial—~~Council authority.~~

The ~~city council~~City Manager shall have the power to grant or deny any application for a permit, or to subject the same to such reasonable conditions, if any, as ~~the City Manager~~it shall prescribe.

The decision of the City Manager shall be final. An applicant may appeal the decision of the City Manager to the county superior court by filing such appeal within ten days of the date of the final decision. This shall be the exclusive remedy of any permittee under this chapter.

8.20.080 License required prior to issuance of permit.

No permit shall be issued unless the person applying therefor shall first have obtained and have in full force and effect a valid license issued by the State Fire Marshal, pursuant to RCW Chapter 70.77, to do the particular act or acts for which the permit is sought.

8.20.090 Public display permit—Application.

Applications for public display of fireworks shall be made in writing at least ten days in advance of the proposed display.

8.20.100 Public display permit—Limitations—Nontransferable.

If a permit for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. No such permit granted shall be transferable.

8.20.110 Public display—Supervision required.

Every public display of fireworks shall be handled or supervised by a pyrotechnic operator approved by the fire chief.

8.20.120 Fireworks stands—Limitations on number.

A maximum of one permit per five thousand population, or portion thereof shall be available for issue each year. ~~In the event more than the authorized number of permits are requested, p~~Permits ~~shall~~may be granted or denied based upon the ~~council~~City Manager's assessment of the applicants experience and demonstrated record together with such other factors as are determined to be in the best interest of and benefit the community. All applications to operate fireworks stands shall be made no later than ~~the~~the May 2nd of the calendar year in question.

8.20.130 Common fireworks sales—Permit required.

No person shall sell common fireworks to a consumer or user thereof other than at a fixed place of business of a retailer for which a license and permit have been issued.

8.20.140 Common fireworks sales—Selling restrictions.

All sales of common fireworks shall be from temporary stands, which shall not be erected prior to the eighteenth day of June of any year and which shall be removed or torn down not later than the sixteenth day of July of the same year.

8.20.150 Common fireworks sales—General requirements.

The fireworks stands of all those persons engaging in the sale of common fireworks pursuant to a permit issued under this chapter shall conform to the following minimum standards and conditions:

- A. Fireworks stands shall comply with all provisions of the building code and shall be constructed in such a manner so as not to endanger the safety of attendants and patrons;
- B. No fireworks stand shall be located within fifty feet of any other building or structure;
- C. Each fireworks stand must have at least two exits which shall be unobstructed at all times;
- D. Each fireworks stand shall have in a readily accessible place, at least two fire extinguishers approved by the fire chief;
- E. All weeds, grass and combustible material shall be cleared from the location of the fireworks stand and the surrounding area a distance of not less than twenty feet, measured from the exterior walls on each side of the fireworks stand;
- F. No smoking shall be permitted in or near a fireworks stand, and the same shall be posted with proper "No Smoking" signs;
- G. Each fireworks stand shall have an adult in attendance at all times that the stand is stocked. Stock from the stand shall not be removed or stored in any other building during the sales period without the express written approval of the fire chief;
- H. No fireworks stand shall be located within a radius of 500 feet from any other stand;
- I. Each fireworks stand shall have provision for sufficient off-street parking, in the opinion of the fire chief, to avoid impeding continuous flow of traffic at entrances and exits from the premises;
- J. Each fireworks stand shall post prominently a list of fireworks that may be sold to the public.

8.20.160 Common fireworks sales—Time restrictions.

A. No common fireworks shall be sold or discharged within the city except from 12:00 noon on the twenty-eighth of June to 9:00 pm on the fifth ~~12:00 noon on the sixth~~ day of July of each year. No common fireworks may be sold or discharged between the hours of 11:00 p.m. and 9:00 a.m.

8.20.170 Permit authorizes activities of salesmen, employees.

The authorization to engage in the particular act or acts as conferred by a permit to a person shall extend to salesmen and other employees of such person.

8.20.180 Approved storage facilities—Required.

It is unlawful for any person to store unsold stocks of fireworks remaining unsold after the lawful period of sale as provided in his permit except in such places of storage as the fire chief shall approve. Unsold stocks of fireworks remaining after the authorized retail sales period from 12:00 noon on June 28th to ~~12:00 noon on July 6th~~ 9:00 pm on July 5th shall be returned on or before July 31st of the same year to the approved storage facilities of a licensed fireworks wholesaler, to a magazine or storage place approved by the fire chief or to a place approved by the State Fire Marshal. Upon receiving a written application at least ten days prior to the date of proposed storage, the fire chief shall investigate whether the character and location of the storage would constitute a hazard to any property or be dangerous to any person. Based upon the investigation, the fire chief may grant or deny any application for storage or to subject the same to such reasonable conditions, if any, as he shall prescribe.

8.20.190 Special fireworks—Sales or transfers.

No person shall sell or transfer any special fireworks to any person who is not a fireworks permittee as provided in this chapter.

8.20.200 Manufacture or sale of fireworks for out-of-state shipment.

This chapter does not prohibit any manufacturer, wholesaler, dealer or jobber, having a license issued by the State Fire Marshal and a permit secured under the provisions of this chapter from manufacturing or selling any kind of fireworks for direct shipment out of the state.

8.20.210 Fire nuisances prohibited.

No person shall allow any rubbish to accumulate in any premises where any fireworks are sold or stored or permit a fire nuisance to exist on such premises.

8.20.220 Unlawful possession prohibited.

The possession of any class or kind of fireworks in violation of the provisions of this chapter is prohibited.

8.20.230 Reckless discharge or use prohibited.

It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another.

8.20.240 Use of fireworks in public parks and on public land prohibited.

A. It is unlawful for any person to discharge or possess any fireworks upon public land or in any public park owned by the city.

B. Nothing in this chapter shall be deemed to limit the authority of the ~~council~~City to allow event display of special fireworks under a permit issued in accordance with the provisions of this chapter.

8.20.250 Exceptions—Signal purposes, forest protection.

This chapter does not prohibit the use of flares or fuses in connection with the operation of motor vehicles, railroads or other transportation agencies for signal purposes or illumination or for use in forest protection activities.

8.20.260 Exceptions—Special effects for entertainment media.

This chapter does not prohibit the assembling, compounding, use and display of special effects of whatever nature by any person engaged in the production of motion pictures, radio or television productions, theatricals or operas when such use and display is a necessary part of the production and such person possesses a valid permit issued by the city to purchase, possess, transport or use such fireworks.

8.20.270 Permit revocation or suspension—Authority.

The ~~fire chief~~City Manager may at any time suspend or revoke any permit issued under the provisions of this chapter, if the permittee has:

A. Violated any of the provisions of this chapter by the person holding such permit or any of his servants, agents or employees;

B. Made any false statement or misrepresentation of fact in connection with obtaining the permit; or

C. Failed to obtain or has had any license required by the state to engage in any act prohibited by RCW Chapter [70.77](#) or this chapter to be done without a license, suspended or revoked; or

D. Has had any insurance coverage required by this chapter cancelled, revoked or lapsed.

8.20.280 Permit revocation or suspension—Determination and notification.

When the City Manager or fire chief determines that there is cause for revoking or suspending any permit issued pursuant to this chapter, the ~~fire chief~~City Manager shall notify the person holding such permit.

The notice shall specify the grounds for the suspension or revocation of the permit. The suspension or revocation shall become effective immediately upon receipt of the notice by the permittee.

8.20.290 Permit revocation or suspension—Appeal procedure.

The decision of the ~~fire chief~~City Manager with respect to the revocation or suspension of any permit issued under this chapter shall be final. Any permittee whose permit is suspended or revoked may appeal the decision of the ~~fire chief~~City Manager to the county superior court by filing such appeal within ten days of the date of the final decision ~~of the fire chief~~. This shall be the exclusive remedy of any permittee under this chapter.

8.20.300 Violation—Penalty.

A. Except as provided in section B, Any person violating any of the provisions of this chapter shall, upon a finding that such violation was committed, be guilty of a misdemeanor and be punished by a monetary penalty in a sum not exceeding ~~five hundred~~one thousand dollars or imprisonment not to exceed ~~90~~180 days or by both such fine and imprisonment.

B. For those violations constituting a gross misdemeanor under RCW 70.77, any person violating those provisions shall, upon a finding that such a violation was committed, be guilty of a gross misdemeanor, punishable as set forth by RCW 9.92.020.

8.20.310 Violation deemed a separate, continuing offense.

A person commits a separate offense for each day during which he commits, continues or permits a violation of any provision of this chapter.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO RELATING TO SHOPPING CART THEFT AND REGULATION AMENDING 9.04.010 AND ADDING A NEW CHAPTER 9.64 SHOPPING CART CONTROL TO THE KELSO MUNICIPAL CODE

Agenda Item: _____

Dept. of Origin: _____ City Manager _____

For Agenda of: _____ March 15, 2016 _____

Originator: _____ Steve Taylor _____

PRESENTED BY:
Steve Taylor

City Attorney: Janean Parker

City Manager: Steve Taylor

Agenda Item Attachments:

Proposed Shopping Cart Regulations Ordinance

SUMMARY STATEMENT:

At the February 16th regular meeting, the City Council voted 3-3 to reject the proposed ordinance regarding stolen and abandoned shopping carts. Councilmembers Rick Roberson and Todd McDaniel requested in writing to bring the ordinance back for consideration. City Attorney Parker and the City Manager presented additional information and options in response to specific concerns voiced by councilmembers at the March 1st meeting.

The proposed ordinance adopts RCW 9A.56.270 which makes it a Class 3 civil infraction to remove carts from establishments meeting the criteria noted above in addition to creating a process for the retrieval, impoundment, and disposition of shopping carts and establishing a fee aimed at cost recovery.

Following previous discussions with Council in November 2015 regarding this issue, letters were sent out to local retailers known to use shopping carts informing them of the proposed change.

The proposed ordinance has an effective date on **May 1, 2016**, in order to give local retail establishments notice of the new requirements and offer them an opportunity prepare their establishments properly. Staff has been working with the neighboring City of Longview to address the roving nature of shopping carts.

RECOMMENDED ACTION:

Move to approve on second reading an ordinance amending Chapter 9.04 State Criminal Statutes Adopted and adding Chapter 9.64 Shopping Cart Control to the Kelso Municipal Code.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO RELATING TO SHOPPING CART THEFT AND REGULATION AMENDING 9A.56.270 AND ADDING A NEW CHAPTER 9.62 SHOPPING CART CONTROL TO THE KELSO MUNICIPAL CODE

WHEREAS, shopping carts lost, stolen or abandoned on public and private property can obstruct access to sidewalks and streets, interfere with pedestrian and vehicular traffic, and impede emergency services creating a potential public safety hazard and harming public health and safety; and

WHEREAS, left unattended, lost, stolen, or abandoned shopping carts cause deteriorated community appearance and can create conditions of blight in the community; and

WHEREAS, the City has determined that abandoned shopping carts is becoming a more common problem within the City constituting a public nuisance; and

WHEREAS, the City wishes to deter the removal of shopping carts from businesses provide for the retrieval of lost, stolen, or abandoned shopping carts, and to prevent the accumulation of removed carts on public and private properties within the City;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. Kelso Municipal Code Chapter 9.04 Amended. That Kelso Municipal Code Section 9.04.010 is hereby amended to add the following state statute to the list of statutes adopted by reference:

RCW 9A.56.270 Shopping Cart Theft.

SECTION 2. Kelso Municipal Code Title 9 Amended. That Kelso Municipal Code

Title 9 is hereby amended to add a new Chapter 9.64 as follows:

Chapter 9.64 – Shopping Cart Control.

9.64.010 Purpose.

The purpose of this Chapter is to prevent the unlawful removal of shopping carts from the premises of businesses and to provide for the prompt retrieval of lost, stolen, or abandoned shopping carts to promote public health, safety, and welfare.

9.64.020. Removal of shopping cart violation and penalties.

A. It is a Class 3 civil infraction as defined in RCW 7.80.120 for a person without written permission of the owner or person entitled to possession to abandon or to be in possession of a shopping cart that is the property of another more than 100 feet away from the parking area of the retail establishment or shopping cart containment area of the owner of the shopping cart.

B. This section shall apply only if: (1) the shopping cart has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both, (2) the retail establishment posts notification to the public of the procedure to be used for authorized removal of the cart from the premises and notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized abandonment of the cart, is unlawful, and lists a telephone number or address for returning carts;.

9.64.030 Shopping cart identification signs and notice required.

A. Every shopping cart made available for use by customers shall have the following: (a) a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; (b) notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; (c) notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is unlawful; and (d) lists a telephone number or address for returning carts removed from the premises or parking area to the owner or retailer.

B. Every retail establishment providing shopping carts shall post in a conspicuous location on the retail establishment property a notification to the public that unauthorized removal of

shopping carts from the premises of the business and the unauthorized possession of a shopping cart is unlawful. The posted notification shall also contain the procedure to be utilized for authorized removal of the cart from the business premises and list a telephone number or address for returning carts removed from the premises.

C. Every retail establishment providing shopping carts shall keep on file with the City Police Department a current telephone number and physical address at which the retail establishment may be contacted for the purpose of reporting the location of abandoned, lost, or stolen shopping carts.

9.64.040 Retrieval and impoundment procedures.

A. Impoundment with Notice. The City may impound a shopping cart which has affixed to it identification information as required by KMC 9.64.020(B), if the following conditions have been satisfied:

1. Location Outside of Premises. The shopping cart is located outside the premises or parking area of a retail establishment and is left unattended or discarded on public property owned by or under the control of the city, or on any right-of-way within the city, or on private property where the owner has consented to removal; and
2. Notice of the cart's discovery and location is given to the shopping cart's owner, retailer, or agent unless such notice has been voluntarily waived by the shopping cart's owner, retailer, or agent; and
3. Failure to Retrieve Cart. The shopping cart is not retrieved within forty eight (48) hours from the date notice is given. The forty-eight hours shall be calculated using only days Monday through Friday and will not include weekend days Saturday and Sunday.

B. Impoundment without Notice. A shopping cart may be impounded without notice if one of the following conditions is satisfied:

1. Hazardous Location. If a shopping cart will impede emergency services, or the normal flow of vehicular or pedestrian traffic, city enforcement personnel are authorized to immediately retrieve the shopping cart from public or private property and impound it. If the cart has identification information affixed, the owner will be notified and given

forty-eight hours to retrieve the cart before a collection fee is assessed using the time calculation listed in subsection (A)(3) of this section; or

2. Lack of Identification. If a shopping cart is unattended or discarded and located outside the premises or parking area of a retail establishment and does not have the required identification information affixed thereto as required by KMC 9.64.020(B), the city may immediately retrieve the shopping cart from public property owned by or under control of the city, any right-of-way within the city, or private property with the consent of the owner; or

3. Evidence of a Crime. Any lost or stolen shopping cart may be impounded as evidence in a criminal investigation.

9.64.050 Fees and disposition of carts.

A. Impounded Carts. When a shopping cart is impounded in accordance with this chapter, the city may charge a cart collection fee to the owner of a shopping cart. The fine shall be in the amount of twenty-five dollars per cart and each cart collected shall constitute a separate violation. Any owner having installed a locking device on its carts which has been disabled by one other than the owner or his agent shall be exempt from the fine.

B. Disposition of Carts. The city may sell or otherwise dispose of any cart not reclaimed within seven days from the date of notification to the owner or the owner's agent of the cart's discovery and location.

SECTION 3. Severability. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 4. Effective Date. This Ordinance shall be in full force and effect May 1, 2016 after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2016.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

AGENDA SUMMARY SHEET
Business of the City of Kelso
City of Kelso, Washington

SUBJECT TITLE:

AN ORDINANCE OF THE CITY OF KELSO
AMENDING THE KELSO MUNICIPAL CODE
CHAPTER 2.32 POLICE DEPARTMENT
RELATING TO THE AUTHORITY TO APPOINT
LIMITED COMMISSION POLICE OFFICERS

Agenda Item: _____

Dept. of Origin: Police

For Agenda of: March 15, 2016

Cost of Item: None

City Manager: Stephen Taylor

PRESENTED BY: Janean Parker

AGENDA ITEM ATTACHMENTS:

Proposed ordinance

SUMMARY STATEMENT:

In an effort to provide additional tools for the efficient and effective code enforcement and nuisance abatement program, staff is recommending that the Council amend the municipal code to specifically authorize the appointment of limited commission police officers. The City Manager or Chief would then be authorized grant specific employees these limited commissions. These appointed employees would be authorized to investigate and issue civil infractions and the authority would be limited to only those non-criminal laws in the City's municipal code.

FINANCIAL SUMMARY:

No Impact.

OPTIONS:

- Approve the ordinance as presented;
- Do not approve the ordinance;
- Direct staff to amend the ordinance as may be needed.

RECOMMENDED ACTION:

Move to approve on second reading the ordinance amending KMC 2.32 relating to the authority to appoint limited commission police officers

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF KELSO AMENDING THE
KELSO MUNICIPAL CODE CHAPTER 2.32 POLICE DEPARTMENT
RELATING TO THE AUTHORITY TO APPOINT LIMITED COMMISSION
POLICE OFFICERS**

WHEREAS, the City Council has made code enforcement and nuisance abatement a priority in the City in an attempt to minimize blight and improve the public health, safety, and welfare of citizens; and

WHEREAS, the City has amended its municipal code to provide for the issuance of civil violations and civil infractions as tools for the enforcement of certain municipal code provisions; and

WHEREAS, the additional time investigating and enforcing these non-criminal violations is more efficiently provided by the City's nuisance abatement department with limited commission officers to allow the City's police department to devote their time to more serious offenses; and

WHEREAS, the City is authorized to appoint such limited commission police officers by RCW 35A.11.020;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That Kelso Municipal Code Chapter 2.32 is hereby amended to add a new section 2.32.050 as follows:

2.32.050. Limited Commission Officers. The City Manager or his or her designee may appoint city employees outside the police department as limited commission law enforcement officers with the limited commission to enforce some or all of the non-criminal laws as may be specified in the Kelso Municipal Code. These limited commissions may include the authority to investigate and issue citations for civil infractions. The limited commission may be revoked at any

time by the City Manager or his or her designee. The authority conferred upon the limited commission law enforcement officers shall not vest any such officer with any police civil service or police pension rights.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2016.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED:_____

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

A RESOLUTION OF THE CITY OF KELSO, WASHINGTON, INITIATING THE PROCESS TO VACATE PORTIONS OF TALLEY WAY RIGHT OF WAY, AND SETTING A DATE FOR A PUBLIC HEARING.

Agenda Item: _____

Dept. of Origin: Community Dev\Engineering

For Agenda of: March 15, 2016

Cost of Item: _____

City Manager: Steve Taylor

PRESENTED BY:

Michael Kardas, PE
Community Development Director/City Engineer

AGENDA ITEM ATTACHMENTS:

Proposed resolution
Exhibit of proposed vacation

SUMMARY STATEMENT:

Southwest Washington Regional Airport (SWRA) has need to allow for construction a fence to provide site security. To effectively complete this construction a portion of Talley Way Right of Way will be required. This portion is no longer required for street purposes. As a result, staff proposes vacating this portion of Talley Way Right of Way to the SWRA. The City would, as a part of the vacation process hold back an easement (as allowed by state law) for the public utilities and services that may remain in the vacated area.

Under state law at RCW 35.79, the process for vacation is by a petition of the abutting property owners (or a resolution of the legislative authority.) to initiate the process. Then a public hearing must be held on the vacation and the City may adopt an ordinance vacating the street or any part thereof. The adoption of this resolution setting the public hearing date is the first step in this process.

FINANCIAL SUMMARY:

There is no financial impact. The City is vacationing the right of way to another City owned parcel.

RECOMMENDED ACTION:

Move to pass the Resolution and initiate the vacation process. A hearing would be set to consider the value of vacating the property. Then, by separate action, the City can consider the ordinance to vacate.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF KELSO, WASHINGTON,
INITIATING THE PROCESS TO VACATE PORTIONS OF
TALLEY WAY RIGHT OF WAY, AND SETTING A DATE FOR A
PUBLIC HEARING.**

WHEREAS, the Southwest Washington Regional Airport has need to construct a fence to provide site security; and

WHEREAS, a portion of Talley Way Right of Way will be needed to effectively complete construction of which is no longer required by the City for street purposes; and

WHEREAS, pursuant to RCW 35.79, the City Council may initiate by Resolution a vacation procedure to vacate the right-of-way; and

WHEREAS, after adopting the resolution initiating the street vacation process, the City Clerk shall fix a time when the petition will be heard;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO DO

HEREBY RESOLVE:

Section 1. The City hereby initiates the street vacation procedures set forth in RCW

35.79 and KMC 12.16 to vacate a portion of Talley Way Right of Way legally described

as follows.

A portion of the City of Kelso's Talley Way Road right-of-way, located in the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) of Section 2, Township 7 North, Range 2 West, Willamette Meridian, Cowlitz County, Washington, described as follows:

BEGINNING at a ½-inch iron pipe marking the intersection of the Westerly right-of-way line of the Talley Way with the Easterly boundary of the Kelso/Longview Regional Airport as shown on that certain survey recorded in Volume 24 of Surveys, page 39, records of the Cowlitz County, also being the most Southerly corner of that certain tract of land recorded in Volume 754 of Deeds, page 707, records of the Cowlitz County; thence South 34°32'22" East along said Easterly boundary of said Kelso/Longview Regional Airport a distance of 258.75 feet, which bears North 34°32'22" West, 70.80 feet from a point measured 30.00 feet perpendicular to the center of line of said Talley Way at Point of Tangent (P.T.) station 7 & 10, and the cusp of a curve to the North; thence Northerly along said curve to the right, with a radial bearing in N 58°49'35"E, through a central angle of 21°11'39", having a 602.96 foot radius, an arc distance of 223.04 feet to a point having a radial bearing of N 80°01'14" E; thence North 76°56'24" West a

distance of 68.43 feet to said Westerly right-of-way of said Talley Way; thence South 13°03'36" West along said right-of-way line a distance of 10.00 feet to the POINT OF BEGINNING.

Containing 5,748 square feet, more or less.

Section 2. The City Clerk is directed to set a public hearing on April 5, 2016 on this petition for vacation of a portion Talley Way Right of Way as set forth in Section 1.

Furthermore, the City Clerk shall publish an official notice of the public hearing date and shall post a notice of the public hearing on this petition to vacate in three of the most public places of the City as required by RCW 35.79.020.

Section 3. The Community Development Department shall post prominent notices of the public hearing and the date of the hearing in close proximity to the portion of the right-of-way subject to the petition which shall be readily observable by the general public in the vicinity. The Community Development Department shall also provide written notice to abutting property owners of the subject right-of-way as required in RCW 35.79.020.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2016.

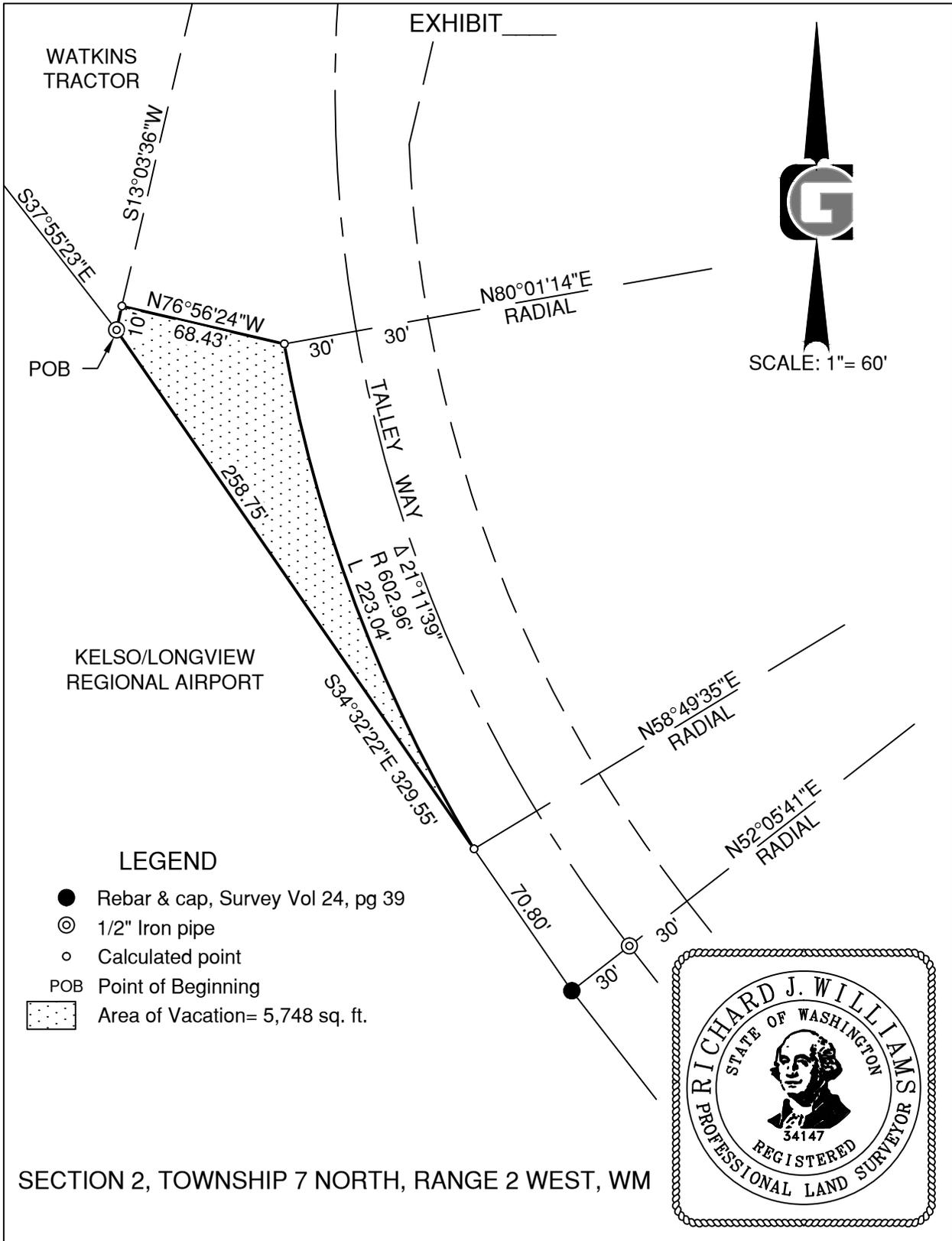
MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



Legal Description

A portion of the City of Kelso's Talley Way Road right-of-way, located in the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) of Section 2, Township 7 North, Range 2 West, Willamette Meridian, Cowlitz County, Washington, described as follows:

BEGINNING at a ½-inch iron pipe marking the intersection of the Westerly right-of-way line of the Talley Way with the Easterly boundary of the Kelso/Longview Regional Airport as shown on that certain survey recorded in Volume 24 of Surveys, page 39, records of the Cowlitz County, also being the most Southerly corner of that certain tract of land recorded in Volume 754 of Deeds, page 707, records of the Cowlitz County; thence South 34°32'22" East along said Easterly boundary of said Kelso/Longview Regional Airport a distance of 258.75 feet, which bears North 34°32'22" West, 70.80 feet from a point measured 30.00 feet perpendicular to the center of line of said Talley Way at Point of Tangent (P.T.) station 7 & 10, and the cusp of a curve to the North;
thence Northerly along said curve to the right, with a radial bearing in N 58°49'35"E, through a central angle of 21°11'39", having a 602.96 foot radius, an arc distance of 223.04 feet to a point having a radial bearing of N 80°01'14" E;
thence North 76°56'24" West a distance of 68.43 feet to said Westerly right-of-way of said Talley Way;
thence South 13°03'36" West along said right-of-way line a distance of 10.00 feet to the POINT OF BEGINNING.

Containing 5,748 square feet, more or less.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

**Resolution that revises Resolution No. 06-923
regarding mining at Goat Mountain**

Agenda Item: _____

Dept. of Origin: _____ City Manager

For Agenda of: _____ March 15, 2016

Cost of Item: _____ N/A

PRESENTED BY:

Steve Taylor

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Proposed Resolution

Redline/Strikeout of Resolution No. 06-923

Copy of original Resolution No. 06-923

Ascot Resources Letter

Draft Proposed Goat Mountain Hard Rock Mineral Prospecting Permit Applications FONSI

SUMMARY STATEMENT:

In August 2006, the City Council of Kelso passed Resolution No. 06-923, which opposed a lease agreement with the U.S. Bureau of Land Management for Idaho General Mines, Inc. (IGMI) to mine a 900-acre area on Goat Mountain, Skamania County. This area is in the Green River valley and on the lower southern slopes of Goat Mountain. The proposed drilling area is less than ½-mile from the northern border of Mount St. Helens National Monument. The mining parcels are located on lands purchased in part with funding under the Weeks Act for conservation and in part with Land and Water Conservation Fund monies for the primary purposes of recreation and conservation. The City Council passed the resolution in 2006 for two primary reasons. The first was the threat of acid mine drainage leaching sulfuric acid and other toxic substances into the Green River, which is upstream of the Cowlitz River. Then, as now, the City of Kelso obtained its municipal water supply from a Branney well on the Cowlitz River. The second reason was the loss of recreational opportunities for residents—hiking, camping, fishing, hunting, birding, and backcountry horse riding—due to mining activities and development.

The BLM denied IGMI's lease application in 2008 in large part due to 33,000 public comments, over 90% in opposition. IGMI sold its mineral rights to Ascot Resources, a Canadian company. The Forest Service initially approved Ascot's exploratory drilling plan in the same 900-acre area without an Environmental Assessment (EA), but drilling was stopped in 2011 due to a lawsuit by Gifford Pinchot Task Force. Ascot's subsequent application for drilling permits, with an EA, was also approved by the BLM and halted by another lawsuit. In July 2014, a federal district judge sided with the Task Force on the majority of its legal claims, including that the BLM and Forest Service failed to recognize that use of the lands proposed for the exploration project cannot interfere with the public recreational purposes for which the lands were acquired under the Land and Water Conservation Fund Act. Ascot worked with the agencies to develop a modified environmental assessment, but

the current project is essentially identical to the 2012 proposal. In January 2016, the BLM and Forest Service released the modified environmental assessment for public comments, which are due by March 19, 2016.

Since the issues are the same as in 2006, the attached revised Resolution is different in only three respects.

1. It opposes any mining exploration and development in the project area so this matter will not have to be raised before City Council if in the future the mineral rights are sold to another company.
2. It adds information on the recent designation of the Green River as a wild steelhead trout gene bank.
3. It carefully describes the area at issue, so the resolution opposes exploratory drilling and mining development in only one area.

Options:

1. Take no action.
2. Vote “no” on adopting revised Resolution as it is written in the attachment.
3. Vote “yes” on adopting revised Resolution as it is written in the attachment.

FINANCIAL SUMMARY:

This resolution has no impact on the City budget.

RECOMMENDED ACTION:

Staff has no recommendation on this resolution.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
KELSO DECLARING ITS OPPOSITION TO PROPOSED MINING
EXPLORATION AND DEVELOPMENT AT GOAT MOUNTAIN/MT.
MARGARET NORTH OF MOUNT ST. HELENS.**

WHEREAS, mining exploration and development have been repeatedly proposed on 900 acres in the Mineral Survey parcels 708, 774, 779, 1329, and 1330 below Goat Mountain and on the Green River and adjacent to the northern boundaries of the Mount St. Helens National Volcanic Monument; and

WHEREAS, the sulfide ore present below Goat Mountain is highly correlated with the release of acid rock drainage; and

WHEREAS, a Washington Department of Ecology report from 2002 found that streams on the south slope of Goat Mountain demonstrated chemical signs of existing acid rock drainage; and

WHEREAS, the U.S. Forest Service's 2003 Lower Cispus Watershed Analysis states that there are also subtle hints of acid rock drainage north of Goat Mountain in Red Spring Creek of the Quartz Creek watershed; and

WHEREAS, acid rock drainage is a chemical process that occurs when ore containing sulfide is exposed to air and water and which releases highly toxic substances such as cadmium, lead, mercury, and manganese into surrounding ground and surface water; and

WHEREAS, acid rock drainage once begun can last hundreds and even thousands of years and is very difficult to manage; and

WHEREAS, the proposed mine at Goat Mountain has the potential to generate a

very large amount of acid rock drainage; and

WHEREAS, the Green River was designated by the State of Washington as a wild steelhead gene bank in 2014 and mining exploration and development could harm fish populations; and

WHEREAS, the City of Kelso withdraws its drinking water supply from the Cowlitz River downstream from the proposed mine site; and

WHEREAS, the residents of the City of Kelso fish, hunt, hike, and generally recreate in the area of the proposed mine and therefore risk exposure to toxic releases from the mine; now, therefore,

THE CITY COUNCIL OF THE CITY OF KELSO DOES HEREBY RESOLVE

that the City of Kelso opposes any mining exploration and development in Mineral Survey parcels 708, 774, 779, 1329, and 1330 below Goat Mountain in Skamania County..

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____ 2016.

MAYOR

ATTEST/AUTHENTICATION

CITY CLERK

APPROVED AS TO FORM

CITY ATTORNEY

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO DECLARING ITS OPPOSITION TO PROPOSED MINING EXPLORATION AND DEVELOPMENT AT GOAT MOUNTAIN/MT. MARGARET NORTH OF MOUNT ST. HELENS.~~THE PROPOSED 3,000 ACRE MINE AT GOAT MOUNTAIN.~~

WHEREAS, mining exploration and development have been repeatedly proposed on 900 acres in the Mineral Survey parcels 708, 774, 779, 1329, and 1330 below Goat Mountain and on the Green River and adjacent to the northern boundaries of the Mount St. Helens National Volcanic Monument; and

~~WHEREAS, Idaho General Mines, Inc. (IGMI) has applied for a lease from the BLM and U.S. Forest Service to 900 acres of land below Goat Mountain in the Gifford Pinchot National Forest and adjacent to the boundaries of the internationally renown Mount St. Helens Volcanic Monument; and~~

~~WHEREAS, IGMI likely intends to combine this lease area with existing mineral claims it holds to the north of Goat Mountain in the Quartz Creek watershed; and~~

~~WHEREAS, IGMI wants the lease so that they can pursue the development of a 3,000 acre copper, gold, silver and molybdenum mine at the site; and~~

WHEREAS, the sulfide ore present below Goat Mountain is highly correlated with the release of acid rock drainage; and

WHEREAS, a Washington Department of Ecology report from 2002 found that streams on the south slope of Goat Mountain demonstrated chemical signs of existing acid rock drainage; and

WHEREAS, the U.S. Forest Service's 2003 Lower Cispus Watershed Analysis

states that there are also subtle hints of acid rock drainage north of Goat Mountain in Red Spring Creek of the Quartz Creek watershed; and

WHEREAS, acid rock drainage is a chemical process that occurs when ore containing sulfide is exposed to air and water and which releases highly toxic substances such as cadmium, lead, mercury, and manganese into surrounding ground and surface water; and

WHEREAS, acid rock drainage once begun can last hundreds and even thousands of years and is very difficult to manage; and

WHEREAS, the proposed mine at Goat Mountain has the potential to generate a very large amount of acid rock drainage; and

WHEREAS, the Green River was designated by the State of Washington as a wild steelhead gene bank in 2014 and mining exploration and development could harm fish populations; and

WHEREAS, the City of Kelso withdraws ~~hits-its~~ drinking water supply from the Cowlitz River downstream from the proposed mine site; and

WHEREAS, the residents of the City of Kelso fish, hunt, hike, and generally recreate in the area of the proposed mine and therefore risk exposure to toxic releases from the mine; now, therefore,

THE CITY COUNCIL OF THE CITY OF KELSO DOES HEREBY RESOLVE

that the City of Kelso opposes any mining exploration and development in Mineral Survey parcels 708, 774, 779, 1329, and 1330 below Goat Mountain in Skamania County.~~the proposed IGMI mine development at Goat Mountain.~~

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of

_____ 20062016.

MAYOR

ATTEST/AUTHENTICATION

CITY CLERK

APPROVED AS TO FORM

CITY ATTORNEY

RESOLUTION NO. 06-923

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO DECLARING ITS OPPOSITION TO THE PROPOSED 3,000 ACRE MINE AT GOAT MOUNTAIN.

WHEREAS, Idaho General Mines, Inc. (IGMI) has applied for a lease from the BLM and U.S. Forest Service to 900 acres of land below Goat Mountain in the Gifford Pinchot National Forest and adjacent to the boundaries of the internationally renown Mount St. Helens Volcanic Monument; and

WHEREAS, IGMI likely intends to combine this lease area with existing mineral claims it holds to the north of Goat Mountain in the Quartz Creek watershed; and

WHEREAS, IGMI wants the lease so that they can pursue the development of a 3,000 acre copper, gold, silver, and molybdenum mine at the site; and

WHEREAS the sulfide ore present below Goat Mountain is highly correlated with the release of acid rock drainage; and

WHEREAS, a Washington Department of Ecology report from 2002 found that streams on the south slope of Goat Mountain demonstrated chemical signs of existing acid rock drainage; and

WHEREAS, the U.S. Forest Service's 2003 Lower Cispus Watershed Analysis states that there are also subtle hints of acid rock drainage north of Goat Mountain in Red Spring Creek of the Quartz Creek watershed; and

WHEREAS, acid rock drainage is a chemical process that occurs when ore containing sulfide is exposed to air and water and which releases highly toxic substances

such as cadmium, lead, mercury, and manganese into surrounding ground and surface water; and

WHEREAS, acid rock drainage once begun can last hundreds and even thousands of years and is very difficult to manage; and

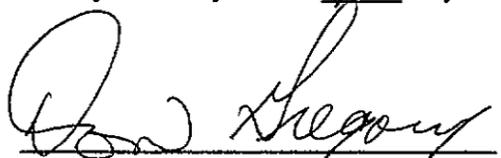
WHEREAS, the proposed mine at Goat Mountain has the potential to generate a very large amount of acid rock drainage; and

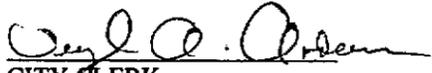
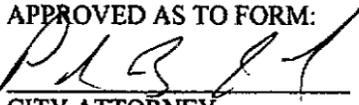
WHEREAS, the City of Kelso withdraws hits drinking water supply from the Cowlitz River downstream from the proposed mine site; and

WHEREAS, the residents of the City of Kelso fish, hunt, hike, and generally recreate in the area of the proposed mine and therefore risk exposure to toxic releases from the mine; now, therefore,

THE CITY COUNCIL OF THE CITY OF KELSO DOES HEREBY RESOLVE that the City of Kelso opposes the proposed IGMI mine development at Goat Mountain.

ADOPTED by the City Council and **SIGNED** by the Mayor this 15 day of August, 2006


MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK
APPROVED AS TO FORM:

CITY ATTORNEY



March 9, 2016

Kelso City Council Members
203 S. Pacific
Kelso, WA 98626

Dear Kelso City Council Members,

I'm writing to respectfully request you reject any resolution opposing Ascot USA's prospecting permit.

We welcome your participation and understand your concern for your community. However, a resolution opposing our project is premature and unnecessary.

We understand that more than a decade ago the council passed a resolution opposing a much different proposal by a different company, and we don't question your rationale for taking that position. But our current project is quite different and does not have the same potential impact.

We are not asking to mine. We are only asking to conduct the necessary prospecting of the area to see if there is an economically valuable deposit of minerals located in the long-defined Mount St. Helens mining district.

Sixty-three holes - the width of coke cans. That is it, nothing more.

These sixty-three holes are used to gather core samples that can be reviewed by our geologists to determine the quality, quantity, and location of minerals - including copper, silver and molybdenum.

While this is an important project for us, it is very minor by most measures.

Our location is north of the Green River and just outside of the U.S. Forest Service Mount St. Helens National Volcanic Monument. Most of the lands are in the blast zone from the 1980 eruption of Mount St. Helens and were subsequently salvaged, logged, and reforested in the 1980s.

The area in which we intend to prospect was patented at the time of the Mount St. Helens National Volcanic Monument designation and Congress intentionally left it out of the volcanic area.

Our project was designed for minimal impact. We are using previous drill pads and existing roads, meaning virtually no forest is disturbed. Likewise, our activity is far from the river and will have no impact on water.

More than two years ago both the US Forest Service and Bureau of Land Management (the lead agency) determined our project would have no significant impact as part of our Environmental Assessment (see attached prior draft FONSI).

The agencies were in the process of granting us permits when it was delayed by an out of state advocacy group that sued the federal agencies.

The agencies defended their decision in court, and our project in federal court, again showing that this project really will have no environmental impact.

The federal court said our initial Environmental Assessment was valid but that agencies had to look at even more potential impacts as part of the review.

Over the last 14 months the agency did just that and recently released an updated Environmental Assessment.

Again, this is not about mining. This is simply a prospecting permit to see what is there, and the agencies have found time and again that our project has no environmental impact.

Unfortunately, an out of state advocacy group that depends on controversy to raise money is framing this as a choice between mining or not mining. Again, that is not the case. The area's mineral resources should be determined first.

It's long been believed that the area holds valuable metals. Over a century ago traces of precious metals were found. Soon after the Mount St. Helens mining district was recognized. For decades the area was mined and explored with antiquated methods to no great avail.

In the 1970s the Duval Corporation restarted exploration with more modern and effective techniques.

Sadly much of Duval's research was lost, leaving the exploration job unfinished. Subsequently Idaho Mines, later to become General Moly, purchased the mineral rights.

Without completing a full assessment of the deposit General Moly sought permits that would allow mining.

The agencies, seeing that this request was premature and due to the opposition of many including the Kelso City Council, denied their request.

Ascot USA, a subsidiary of the Canadian exploration company Ascot Resources, purchased the mineral rights in 2010 and began conducting test drilling, without incident.

As we moved to expand the study, the agencies asked that we request a prospecting permit, a process we are still engaged in several years later.

If substantial resources were discovered, a detailed mine plan and full Environmental Impact Statement would be required under the National Environmental Protection Act (NEPA). This would specifically answer questions on water and environmental protections and mitigations.

But it is far too early to ask, let alone answer any of those questions.

Our prospecting project will create some local jobs, not a huge amount, but in the long-suffering rural communities around the project even a few jobs are important. Likewise, local purchasing and spending will create additional tax revenue and indirect employment.

Ultimately, if there were to be a mine it would provide substantial jobs and economic activity, but again that is a premature discussion.

I can't tell you our prospecting project will provide Kelso with jobs or tax benefits, it won't.

But taking action against our project will have negative implications.

Standing against a small, low-impact project at the behest of outside activist groups will have a chilling effect on business investment because of the perception of an unwelcoming local business climate.

Too many businesses turn away from communities where there is uncertainty, and the rules of the game seem to change midstream. Surely we would have thought twice before making the substantial investment we have if we knew what a long and arduous process this would be, especially for an activity that in many places would not even require a permit.

Furthermore, rural communities decimated by the loss of the timber industry should not be robbed of exploring the chance for jobs and economic opportunity.

Our simple project has been presented to you as more than it is. We will have no impact, and all we ask is to be afforded the opportunity to complete our work and see once and for all if we have a world class mineral resource in Southwest Washington or not.

Sincerely,



John Toffan
President and CEO

***Draft* PROPOSED GOAT MOUNTAIN
HARDROCK MINERAL PROSPECTING
PERMIT APPLICATIONS**

FINDING OF NO SIGNIFICANT IMPACT

INTRODUCTION

In accordance with authority at 43 Code of Federal Regulations (CFR), Part 3505, the BLM has the responsibility for management of the federal mineral estate and the responsibility to implement regulations for minerals available and subject to prospecting and exploration. Ascot USA, Inc. (Ascot), a Canadian-based corporation incorporated in the State of Washington, has submitted two Hardrock Prospecting Permit Applications for Goat Mountain to the Bureau of Land Management, for associated exploratory drilling (Proposed Action/ Alternative 3), on US Forest Service (USFS) land within the Gifford Pinchot National Forest (GPNF). The Permit Application Areas are within portions of Sections 7, 8, 9, 16, 17, 18, and 19 of Township 10 North, Range 6 East, Willamette Meridian, Skamania County, Washington. The Project Area is located on and adjacent to the south facing slope of Goat Mountain, approximately 12 miles northeast of Mount St. Helens.

PROPOSED ACTION

The purpose of this action is for the USFS and BLM to respond to two applications for Hardrock Prospecting Permits submitted by Ascot to carry out mineral prospecting within MS- 708, 774, 779, 1329, and 1330. The BLM, in cooperation and with the consent of the USFS-GPNF, must either deny the permits, issue the permits as proposed in the applications and the associated Exploration Plan, or issue the permits with additional stipulations. If consent is given, the USFS would also specify stipulations for use and protection of National Forest System lands.

In order to process the Prospecting Permit Applications, the BLM and the USFS jointly prepared an Environmental Assessment (EA) consistent with the December 2011, Memorandum of Agreement (MOA) in which Ascot, the USFS, and the BLM defined procedures and responsibilities for completing the EA. Three alternatives were analyzed in the EA: Alternative 1, the No Action Alternative; Alternative 2, the Proposed Action; and, Alternative 3, the Alternative Based on Scoping Comments.

Both Agencies will base their respective decisions on the information, issues and effects analysis presented in the inter-agency EA. As the surface management agency, the USFS will use the analysis to decide whether or not to consent to BLM issuing a prospecting permit containing 898 acres of acquired National Forest System lands for exploration of hardrock minerals including

copper, molybdenum, silver, gold, and associated minerals and to determine that the exploration activity would not interfere with the primary purposes for which the lands were acquired. The proposed activity must also be consistent with the Gifford Pinchot National Forest Land and Resource Management Plan, as amended.

Based on the context and intensity of the impacts analyzed in the EA, I have determined that Alternative 3, the Alternative Based on Scoping Comments is not a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. I considered the following criteria, suggested by CEQ (40 CFR 1508.27(b)), for evaluating the intensity or severity of the impact of the Proposed Goat Mountain Hardrock Mineral Prospecting Permit Applications.

The action with the mitigations and limitations described in Alternative 3 will:

1. Not result in significant beneficial or adverse effects.

The proposed exploration will provide additional information regarding the existence, grade and extent of sub-surface hardrock minerals within the area of exploration. The environmental effects of the associated disturbance on soils, hydrology, vegetation, species and species habitats are anticipated to be minimal or undetectable. Effects will be temporary and all areas of surface disturbance will be rehabilitated. The additional timing limitations under Alternative 3 will avoid impacts to northern spotted owl habitat and recreationist utilizing the Green River Horse Camp during the period of peak use.

2. Not result in significant impacts on public health or safety.

Public access to drill sites in the northern portion of the Project Area would be limited during active drilling through the use of a temporary locking gate. Drill pads on active FS roads would be housed in a drill shack. Signs would be placed instructing the public to stay away from the drill shack and area beyond the gate. The proposed project design features provide reasonable protection of public health and safety while maintaining existing access to public lands.

3. Have no significant, adverse effects on unique characteristics of the geographic area.

The EA identified unique resources in proximity of the area of exploration. These include the Mount St. Helens National Volcanic Monument, segment of the Green River determined eligible under the Wild and Scenic Rivers Act, and an Inventoried Roadless Area. These areas are unaffected by the proposed prospecting activities.

4. Not have highly controversial environmental effects.

“Highly controversial” in the context of 40 CFR 1508.27(b)(4), refers to substantial disagreement within the scientific community about the environmental effects of the proposed action. It does not refer to expressions of opposition or support, or to

differences of opinion concerning how public lands should be managed. Public scoping identified a wide range of opinions and substantial public interest in the project. However, it did not identify substantial disagreement about the nature and extent of potential impacts.

5. **Not have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.**

The survey and analytical methodologies utilized by the agencies to describe the affected environment and environmental effects follow established practices. The EA did not identify any environmental effects or environmental risks that could not be described using available tools and methodologies.

6. **Not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.**

Extraction of the drill core geologic samples for analysis and study would provide information needed to make sound decisions regarding possible future exploration and/or the economic value and viability of the mineral resources within the project area. This information could be utilized to support future applications for mineral leasing in the project area. Any future development would be subject to environmental analysis and public comment under the National Environmental Policy Act (NEPA). No leasing applications are pending within the project area at this time.

7. **Not result in significant cumulative environmental effects.**

No other applications for new resource use proposals or authorizations are pending within the geographic area of the proposed permit.

8. **Have no significant effects on scientific, cultural, or historical resources, including those listed in or eligible for listing in the National Register of Historic Places.**

The areas of disturbance proposed in the permit applications are limited to previously disturbed locations. Cultural resource surveys have not identified any cultural or historic resources that would be impacted by the proposed prospecting activities.

9. **Have no significant adverse effects on species listed or proposed to be listed as Federally Endangered or Threatened Species, or their designated critical habitat.**

The Northern spotted owl was the only federally listed or proposed to be listed as Federally Endangered or Threatened Species suspected to be present in the vicinity of the action. Impacts to northern spotted owls are addressed in the project-specific Biological Assessment (URS 2012, EA Appendix E) and summarized here. There is potentially suitable habitat in the mature timber stand around or adjacent to drill Pads 10, 11, 12, 13, 22, 23, 24, and 25. The exploration activities would occur at the edge of the suitable

habitat along existing decommissioned roads to be temporarily reactivated. It is estimated that approximately 68 trees would be removed along the edge of suitable habitat. However, no trees greater than a 12-inch dbh would be removed; therefore, the suitability of the habitat would be unchanged. While there have been no surveys to indicate whether spotted owls occur nearby, it may be assumed that the habitat is occupied. Equipment noise, lights, and activity may affect, but are not likely to adversely affect northern spotted owls. The young second-growth habitat lower in elevation in the Project Area is not suitable habitat for northern spotted owls. To avoid potential noise-related disturbance to northern spotted owls, which may utilize the mature forest in the northern portion of the Project Area, limits on operations between February 28 and July 1 are proposed. No loud noise producing activities, such as road reactivation or drilling activities would occur in or adjacent to the late successional forest stands in the northern upper elevations of the Project Area between February 28 and July 1. No designated Critical Habitat is within the action area.

10. Not Violate a Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment.

The action is in conformance with multiple management objectives and decisions of the Gifford Pinchot National Forest Plan. Specific decisions include those from:

- *The 1994 Northwest Forest Plan as Amended.* In 1994 the Gifford Pinchot Forest Plan was amended with the completion of a comprehensive and long-term policy for the management of USFS and BLM lands within the range of the northern spotted owl.
- *The 1994 Northwest Forest Plan and Aquatic Conservation Strategy (ACS) Objectives*, requires that proposed projects on Federal lands must be consistent with the ACS Objectives.
- *The 1994 Northwest Forest Plan Standards and Guidelines for riparian reserves.*
- *Gifford Pinchot National Forest, Land and Resource Management Plan, 1999.* Management Area categories in the larger permitted area include: unroaded recreation, visual emphasis (Visual Quality Objectives), and (nominated) Wild and Scenic Rivers (Green River).
- *Gifford Pinchot National Forest Land and Resource Management Plan Management Indicator Species List.*
- *Gifford Pinchot National Forest Survey and Manage Species List.*
- *USFS Sensitive Species (USFS 2011).*
- *USFS Special Status Plant Species data in the Project Area.*
- *USFS Region 6 Regional Forester Special Status Species List, December 1, 2011.* Includes Region 6 Regional Forester Sensitive Species List.

Also,

- *Magnuson-Stevens Act Provision: Essential Fish Habitat (EFH): Final Rule (50 CFR Part 600; 67 FR 2376).*

FINDING OF NO SIGNIFICANT IMPACT

I have determined the Goat Mountain Hardrock Mineral Prospecting Permits do not constitute major Federal actions having a significant effect on the human environment; and that an environmental impact statement is not necessary and will not be prepared. This conclusion is based on my consideration of the Council on Environmental Quality's criteria for significance (40 CFR § 1508.27(b)), with regard to impacts described in the EA, my understanding of the project, review of project analysis, and review of public comments. The analysis of effects documented in the EA has been completed within the context of multiple spatial and temporal scales and within the context of the Gifford Pinchot National Forest Plan, as amended and the specific plans and program guidance listed above.

Signature: _____

Title: _____

Date: _____