BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LEWIS COUNTY, WASHINGTON

IN THE MATTER OF:
An Ordinance adopting a new Chapter 18.20 of the County Code and establishing an impact fee program for transportation facilities and schools

ORDINANCE NO. 1259

WHEREAS, the State of Washington enacted the Growth Management Act and amended Chapter 82.02 RCW to authorize the collection of impact fees from new development under certain conditions; and

WHEREAS, the Growth Management Act requires that the county establish impact fees that are consistent with the requirements of RCW 82.02.050 before the County may approve a fully contained community; and

WHEREAS, the County's Hearing Examiner recommended approval of the proposed Birchfield Fully Contained Community, contingent upon the occurrence of certain conditions that include the establishment of an impact fee program to help pay for roads and schools that will be needed to serve the Birchfield Fully Contained Community; and

WHEREAS, Lewis County is amending the Capital Facilities Element of its Comprehensive Plan to comply with the requirements of Chapter 82.02 RCW for the imposition of impact fees within the area of the Birchfield Fully Contained Community;

NOW THEREFORE,

BE IT ORDAINED by the Board of Lewis County Commissioners that:

1. A new Chapter18.20, Impact Fees, of the Lewis County Code is hereby enacted to provide as follows:

18.20 Impact Fees

18.20.010 Findings and authority.

1. The Lewis County Board of Commissioners finds and determines that new growth and development within the Birchfield Fully Contained Community will create additional demand and need for new public facilities, including roads and schools, and the Board finds that new growth and development within this area should pay a proportionate share of the cost of these new roads and schools. Therefore, pursuant to Chapter 82.02 RCW, the Board adopts this Chapter 18.20 of the Lewis County Code to

assess impact fees on new development for road and school facilities within the area of the Birchfield Fully Contained Community. This chapter is intended to be, and should be interpreted to be, consistent with RCW 82.02.050-100.

2. The provisions of this chapter do not preclude the County from requiring new development within the area of the Birchfield Fully Contained Community to mitigate impacts on roads and schools that are not mitigated by these impact fees, pursuant to other authority including the State Environmental Policy Act (Chapter 43.21 RCW) and the State Subdivision Act (Chapter 58.17 RCW), Concurrency (WAC 365-196-840), and Lewis County Code 12.60 (Road Standards).

18.20.020 Definitions.

The following words and terms shall have the following meanings for the purposes of this chapter, unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

"Applicable development" means any subdivision or short subdivision of land; or the construction, reconstruction, or change in use of any building or building space, where County approval is required, and such action is reasonably expected to result in an increase in traffic or additional demand and need for school facilities. The term shall not include temporary uses or structures, or replacement of a mobile home within an approved mobile home park.

"Building permit" means the permit required for new construction and additions pursuant to Chapter 15.05 of the Lewis County Code.

"County Capital Facilities Plan" means the capital facilities plan element of the Lewis County Comprehensive Plan as amended, including the capital facilities plans of the Onalaska and Chehalis School Districts once those School District plans have been adopted, on or after the effective date of this chapter, by both the School District Board and the Board of County Commissioners and incorporated into the County Capital Facilities Plan.

"Development approval" means any written authorization from the County, including but not limited to issuance of a building permit that authorizes the commencement of applicable development or residential development activity.

"Encumbered" means to reserve, set aside, or otherwise earmark impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for road or school facilities.

"Impact fee" means the fee or fees levied pursuant to this chapter as a condition of issuance of a building permit or other final development approval in order to help pay for road or school facilities that are needed to serve new growth and development.

"Low-income housing" means housing with a monthly housing expense that is no greater than thirty percent of eighty percent of the median family income adjusted for family size for Lewis County, as reported by the United States Department of Housing and Urban Development; provided that if the state amends the definition of low-income housing in RCW 82.02.060, this definition shall be deemed simultaneously amended to correspond to the new state definition.

"Multi-family dwelling units" include attached dwelling units with more than two units, such as apartments, triplexes, and manufactured or mobile homes in a manufactured or mobile home park.

"Project improvements" mean site improvements and facilities that are planned and designated to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are

not system improvements. No road facility or school facility included in the County's Capital Facilities Plan shall be considered a project improvement.

"Residential development activity" means applicable development of residential buildings or structures, unless that construction, expansion or conversion will not create additional demand and need for school facilities.

"Growth-Related Transportation Projects" are improvements to County-owned-or-operated roads and intersections, including pedestrian and bicycle facilities, that are identified in the Capital Facilities and Utilities Element of the Comprehensive Plan and needed to serve new growth and development. Such Projects shall include facilities in existence at the time of adoption or amendment of this chapter, to the extent that such existing facilities include the capacity to serve traffic generated by new growth and development. These Projects are identified in Table 1 to the Transportation Impact Fee Program Report.

"Transportation Impact Fee Program Report" is the document approved and identified by date in section 18.20.100 that explains and applies the methodology used to calculate transportation impact fees. This document shall be prepared and updated as directed by the County Engineer.

"School" includes any primary or secondary public school or school facility operated by a school district whose boundaries include areas in unincorporated Lewis County.

"School District" means either the Onalaska or Chehalis School District.

"School facilities" are schools and their ancillary facilities built by School Districts to wholly or partly serve new growth and development that occurs in unincorporated Lewis County, including school facilities in existence at the time of adoption of this chapter to the extent that such existing facilities include the capacity to serve students who will use the facilities as a result of new residential development activity.

"Single family dwelling units" include detached single family homes, condominiums, duplexes and mobile homes or manufactured homes on individual lots.

"School district system improvements" mean school facilities that are included in the School District capital facilities plans adopted by the Board and that are designed to provide service to the school district, in contrast to project improvements.

"System improvements" are road facilities that are included in the County Capital Facilities Plan and are designed to provide service to the community at large, in contrast to project improvements.

"Transportation Service Area" or "TSA" means the geographic area(s) depicted in Figure 2 to the Transportation Impact Fee Program Report, in which a defined set of road facilities provides service and benefit to growth and development within that area.

18.20.030 Assessment of impact fees.

(1) No building permit or other final development approval shall be issued for applicable development unless impact fees are calculated and paid pursuant to this Chapter.

(2) For subdivisions and short subdivisions, the amount of the impact fees shall be determined at the time of final plat or short plat approval and paid on a per lot basis at the time of building permit issuance. For developments that receive binding site plan approval, including mobile home parks, the amount of the impact fee shall be determined at the time of site plan approval and paid at the time of issuance of the first building or other construction permit for each lot. No impact fee is required for the replacement of existing mobile homes in an existing mobile home park.

(3) For projects that are not subdivisions or short subdivisions, or are not subject to binding site plan approval, the amount of the impact fee shall be determined at the

time of application for the first project permit for which the project is sufficiently defined to permit calculation of the fee. The impact fee shall be paid at the time of, and as a condition of, building permit issuance or, if no building permit is required, at the time of issuance of the final development approval.

(4) Notwithstanding the prior two subsections, if after the effective date of this chapter, the County grants final approval to a subdivision, short subdivision, or binding site plan for residential development activity, and then before issuance of a building permit for a lot created by such approval, incorporates into the County Capital Facilities Plan the capital facilities plan of the School District that serves that lot, the amount of the school impact fee shall be both determined and paid at the time of building permit issuance.

(5) The developer may request from the County Engineer a reduction or elimination of the impact fee based on unusual circumstances in specific cases, in order to ensure that the impact fee is fairly imposed, or the developer may request an adjustment of the fee based upon studies and data that demonstrate that the proposed development in fact will create less need for new school or transportation facilities than is projected in the formulas in sections 18.20.070 and 18.20.100.

(6) If more than three years lapse between the date the amount of the impact fee is determined and payment, the amount of the fee shall be adjusted to reflect the fee in effect after the lapse of three years. If a project changes in a manner that affects the amount of the impact fee, the fee shall be adjusted to reflect the changes to the project and the fee in effect at the time the adjustment is made.

(7) Each School District shall pay the County an administrative fee to cover the County's costs in collecting and disbursing impact fees, in an amount to be determined in the interlocal agreement required by section 18.20.050(2).

18.20.040 Exemptions.

(1) **School impact fees.** The following development shall be exempt from the requirement to pay school impact fees:

(a) Low-income housing shall receive an exemption of 80 percent of the school impact fee set forth in section 18.20.080 if the School District approves such exemption. Such exemption shall be conditioned on the developer recording a covenant with the County Assessor in a form approved by the County Engineer that prohibits use of the property for any purpose other than low-income housing as defined in this chapter. The covenant shall state the price restrictions and household income limits for the housing, and shall state that if the property is converted to a use other than low-income housing, the property owner must pay, at the time of conversion, the impact fees in effect at that time for the new use.

(b) Age-restricted housing. For purposes of this chapter, "age-restricted housing" means housing which by restrictive covenant, in a form that is approved by the School District, is used exclusively for persons 62 years of age or older.

(2) **Transportation impact fees.** The following development shall be exempt from the requirement to pay transportation impact fees:

(a) Low-income housing shall receive an exemption of 80 percent of the transportation impact fee set forth in section 18.20.160. Such exemption shall be conditioned on the developer recording a covenant with the County Assessor in a form approved by the County Engineer that prohibits use of the property for any purpose other than low-income housing as defined in this chapter. The covenant shall state the price restrictions and household income limits for the housing, and shall state that if the property is converted to a use other than low-income housing, the property owner must pay, at the time of conversion, the impact fees in effect at that time for the new use.

(b) Public schools.
(c) Public transit facilities.

18.20.050 Eligibility for school impact fees.

(1) Any School District whose boundaries include all or a portion of the Birchfield Fully Contained Community shall be eligible to receive school impact fees once the Board, on or after the effective date of this chapter, adopts the District's capital facilities plan and incorporates it into the County Capital Facilities Plan as part of the County's annual process to amend its comprehensive plan~~;~~. No school district shall be eligible to receive, nor shall the County collect, school impact fees from any project constructed wholly outside of the Birchfield Fully Contained Community. Whenever a school district updates its capital facilities plan, it must submit the updated plan to Lewis County Community Development no later than September 1st in order for the plan to be included in that year's County amendment process.

(2) School impact fees shall not be disbursed by the County to a School District until that District enters into an interlocal agreement with the County providing for fund administration, report of expenditures, allocation of risk, and other appropriate matters.

18.20.060 School District Capital facilities plan requirements.

A School District's capital facilities plan shall contain the following elements:

(1) The District's standard of service describing the way in which it determines capacity for its facilities;

(2) The District's capacity over the next six years based upon an inventory of the district's facilities and the district's standard of service;

(3) A forecast of future needs for school facilities based upon the District's enrollment projections;

(4) A six-year financing plan component, updated as necessary to maintain at least a six-year forecast period, for financing needed school facilities within projected funding levels; and

(5) Application of the formula set out in Section 18.20.070 based upon information contained in the capital facilities plan. Separate fees shall be calculated for single-family and multifamily dwelling units, based upon the student generation rates determined by the district for each type of dwelling unit.

18.20.070 School impact fee component.

School impact fees shall be calculated using the following formula: SIF = [CS (SF) – (TC) – (SM)] × A – FC.

(1) "SIF" means the school impact fee.

(2) "CS" means the cost of each type of facility improvement listed in the District's capital facilities plan attributable to new growth divided by the cost of the improvement. Type of facility improvement means elementary school, middle school and high school.

(3) "SF" means student factor. The student factor is the number of students typically generated from one residential unit for each type of school facility.

(4) "SM" means state match. State match is that amount the District anticipates will be received from the state towards school construction costs. The state match component of the formula is that amount representing the per student amount of state matching funds. This is calculated for each type of facility as: student factor times Boechk index (average annual construction cost of a school facility per square foot) times square foot standard per student established by the Office of the Superintendent of Public Instruction (OSPI) times state match percentage (that percentage of the total

cost of a school facility funded by state funds). The projected state match for each school district shall be calculated each time the impact fee is revised.

(5) "TC" means tax credit. This is calculated as:

$$TC = \frac{((1 + i)^{10} - 1)}{i(1+i)^{10}} \times (AAV) \times (PTL)$$

"i" is the average annual interest rate as stated in the Bond Buyer Twenty Bond General Obligation Bond Index.

"AAV" is the average assessed value for the dwelling unit within the District.

"PTL" is the District's capital property tax levy rate.

The tax credit shall be calculated each time the impact fee is revised.

(6) "FC" means facilities credit. This is the value of any improvement listed in the District's capital facilities plan that is provided by the developer.

(7) "A" means an adjustment for the portion of the anticipated increase in the public share resulting from exempt residential development that is prorated to system improvements. This adjustment for school impacts is determined to be 85 percent.

(8) Once a School District calculates school impact fee pursuant to this formula, the Board of County Commissioners shall determine the final fee, which shall not be more than the calculated fee, and shall set forth that fee in section 18.20.080 of this chapter. The school impact fees shall be updated when the Board of Commissioners adopts an updated School District Capital Facilities Plan.

(9) The school impact fees shall be collected and remitted to the District in accordance with an interlocal agreement that the District shall enter into with the County.

18.20.080 School District Impact Fees.

School District impact fees shall be paid according to the following schedule: (Reserved)

18.20.090 Transportation Impact Fee Formula.

The transportation impact fee shall be calculated using the following formula: Service Area Transportation Impact Fee = BC x BTR x PBTA x TLA. This fee shall be assessed per unit of development as set forth in Appendix A to the Transportation Impact Fee Program Report.

1. "**BC**" is the **B**ase **C**ost in dollars for each new PM peak hour trip generated within a TSA. The Base Cost is calculated by (1) estimating the cost of Growth Related Transportation Project(s); (2) estimating, by means of the County's travel demand model, the portion of the cost of these Growth Related Transportation Projects that is attributable to growth within the TSA; (3) identifying the total number of growth-related PM peak hour trips that will either begin or end within the TSA; and (4) dividing the portion of the cost of the Growth Related Transportation Project(s) that is attributed to growth by the number of these growth-related PM peak hour trips that begin or end within the TSA.

2. "**BTR**" is the **B**ase **T**rip **R**ate. This is the rate of PM peak hour trips generated per unit of development by various residential, institutional, commercial, office, and industrial uses as set forth in the *Trip Generation Manual* published by the Institute of Transportation Engineers, 9th Edition, 2012, or by such subsequent edition as is current at the time the Transportation Impact Fee Program Report is updated at the direction of the County Engineer.

3. "**PBTA**" is the **P**ass-**B**y **T**rip **A**djustment. This factor is applied to each land use category based on the percentage of expected pass-by trips. This factor shall be established in the Transportation Impact Fee Program Report for each land use category.

4. "**TLA**" is the **T**rip **L**ength **A**djustment. This factor is applied based on the relative length of trips generated by each land use category compared to an average trip length. This factor shall be established in the Transportation Impact Fee Program Report for each land use category.

18.20.100 Transportation Impact Fee.

1. The Transportation Impact Fee Formula shall be applied as set forth in the Transportation Impact Fee Program Report dated October 2013, which is hereby approved for this purpose, and the resulting transportation impact fees shall be imposed per unit of development as set forth in Appendix A to this Report.

18.20.110. Updates.

1. The Transportation Impact Fee Program Report shall be updated at the direction of the County Engineer. The County Engineer shall annually determine whether the Base Cost should be updated to reflect inflation in the cost of Growth-Related Transportation Projects, using the Washington State Department of Transportation Construction Cost Index or other method approved by the County Engineer. The County Engineer also shall direct periodical updates to the components of the Transportation Impact Fee Formula to reflect new data about trip rates, new information about pass-by trip rates and relative trip length, or changes in the number or design and cost of Growth-Related Transportation Projects.

2. An updated Report shall be used to assess transportation impact fees in accordance with section 18.20.030 when the updated Report is approved and identified by date in section 18.20.100.

18.20.120 Credits.

(1)The developer shall be entitled to a credit for dedicating land for, or constructing system improvements to, road and school facilities identified in the County Capital Facilities Plan, provided that the County makes the dedication or construction of those facilities a condition of approval for the development proposal.

(2) For credit against school impact fees, the developer shall direct the request for a credit or credits to the School District as well as the County. The District shall determine the consistency of the land, improvements, and/or construction with the District's adopted capital facilities plan as it has been incorporated into the County Capital Facilities Plan and shall forward its determination to the County. The developer is entitled to the credit if the School District and County determine that the land, improvements and/or facilities are consistent with the County Capital Facilities Plan, and if the County requires the dedication or construction of those school facilities as a condition of its development approval.

(3) The credit shall be calculated by multiplying the proportion of the total system improvement the developer is providing by the improvement's estimated cost in the County's Capital Facilities Plan, as adjusted to reflect any extraordinary and unanticipated costs of construction beyond the developer's control.

(4) For school facilities, the developer may pay for an independent appraisal, by an appraiser of the School District's choosing, of the fair market value of land to be dedicated, and the credit shall be based upon this appraised value.

(5) Where impact fees are owing before developer-undertaken system improvements are completed, the impact fee may be secured by a bond or other guarantee satisfactory to the County that insures the fee will be paid if the developer-undertaken improvements are not completed by the date of occupancy approval of the

project for which the fees are paid, or by such other date as is agreed to by the County and the developer, and, for school impact fees, by the School District.

(6) If the amount of the credit is more than the amount of the impact fee due and owing by the developer, neither the County nor the School District shall be liable for the difference.

18.20.130 Appeals.

(1) An impact fee determination made by the County Engineer pursuant to 18.20.030(5) is appealable to the County hearing examiner within fourteen days of the County Engineer's decision. If the fourteenth day falls on a County holiday or weekend, the appeal is due the next day that is not a County holiday or weekend.

(2) To invoke hearing examiner jurisdiction, the appellant must timely file the appeal; pay the applicable appeal fee; identify with specificity the portion(s) of the determination he or she is prejudiced by; and explain the basis for the requested relief.

(3) The impact fee is presumed valid, and the burden of proof is on the appellant to demonstrate (a) that the decision to impose the fee or the amount of the fee is clearly erroneous or (b) that the fee should be modified in light of unusual circumstances based on principles of fairness.

18.20.140 Use of fees.

Impact fees shall be expended by the County and by School Districts only in conformance with the County Capital Facilities Plan and the requirements of RCW 82.02.050 - .090. Impact fees shall be expended or encumbered for a permissible use within ten (10) years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ten (10) years. Such extraordinary or compelling reasons shall be identified in written findings by the Board for transportation impact fees and by the School District Board for school impact fees.

18.20.150 Impact Fee Funds.

(1) The County hereby establishes a special purpose, non-lapse impact fee fund for transportation impact fees. The County auditor shall establish separate accounts within such fund and maintain records for each such account whereby impact fees collected can be segregated by type of facility and by Transportation Service Area.

(2) The County hereby establishes a separate special purpose, non-lapse impact fee fund for school impact fees. The County auditor shall establish separate accounts within such fund for each School District in which to hold the fees collected for that District until they are disbursed pursuant to interlocal agreement.

(3) All interest shall be retained in each account and expended or disbursed for the purposes for which the impact fees were imposed.

(4) By April of each year, the County auditor shall provide a report of the previous calendar year on each impact fee account showing the source and amount of moneys collected, and for transportation impact fees, road facilities that were financed in whole or in part by impact fees.

18.20.160 Refunds.

(1) The current owner of property for which an impact fee has been paid may receive a refund of such fee if the County or a School District fails to expend or encumber the impact fees for a permissible use within ten (10) years of when the fees were paid or such later period of time established pursuant to Section 18.20.120. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first-in, first-out basis.

(2) The County, for transportation impact fees, and the School District, for school impact fees, shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of claimants. The request for refund must be submitted in writing to the County or, for school impact fees, to the School District with a copy to the County, within one (1) year of the date the right to claim the refund arises or the date notice is given, whichever is later. Any impact fees, for which no application for refund has been made within this one (1) year period, shall be retained by the County or the School District and expended in conformance with this chapter.

(3) The County and the School District shall refund fees for which a timely request is made consistent with this chapter. Refunds of impact fees under this section shall include interest earned on the impact fees.

(4) A developer also may request and receive a refund, including interest earned, when the building permit or other development approval for which the impact fee has been paid has lapsed for non-commencement of construction.

18.20.170 If any portion of this ordinance is found invalid by a court of competent jurisdiction, the remainder of the provisions shall remain in full force and effect.

18.20.180 This ordinance shall become effective five days after its passage and publication as required by law.

PASSED IN REGULAR SESSION this _____ day of _____, 2014, after a public hearing was held on _____, 2014, pursuant to Notice published on the _____ day of _____, 2014 in *The Chronicle*.

APPROVED AS TO FORM:
COMMISSIONERS

_____
Jonathan L. Meyer, Prosecuting Attorney

BOARD OF COUNTY
LEWIS COUNTY, WASHINGTON

_____
F. Lee Grose, Chair

_____
Edna J. Fund, Vice Chair

ATTEST:

_____
Karri Muir, CMC, Clerk of the Board

_____
P.W. Schulte, Commissioner

DRAFT