

Jefferson County  
Board of Commissioners  
Agenda Request

**To:** Board of Commissioners  
Philip Morley, County Administrator

**From:** Frank Gifford, Public Works Director *FG*

**Agenda Date:** May 23, 2011

**Subject:** Public Hearing - Mats Mats Beach Homeowner's Association,  
Water & Effluent Line Franchise

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**Statement of Issue:**

The Mats Mats Beach Homeowner's Association has applied to Jefferson County for a non-exclusive franchise for water and effluent lines within County Road rights-of-way located in Section 33, Township 29 North, Range 1 East. These lines will convey water and effluent from a parcel with a well and large off site drainfield area to 3 individual parcels to be developed for 3 separate single family residences. The Jefferson County Environmental Health Department has received an application for this septic system.

A public hearing before the Board of County Commissioners is scheduled for 10:00 am on Monday, May 23, 2011. Public Works has complied with the public hearing notice requirements of RCW 36.55.

Attached for the Board's review and consideration in the public hearing is the Resolution granting the Mats Mats Beach Homeowner's Association a Franchise to locate the water and effluent lines in the following County Road rights-of-way: Mats Mats Beach Road, Bayview Drive, and S. Bayview Drive.

A Franchise for a Water System was granted to the Mats Mats Beach Homeowner's Association (Resolution 02-04) on January 12, 2004. This Franchise will rescind and replace Resolution 02-04.

**Analysis/Strategic Goals/Pro's & Con's:**

**Significant franchise terms and conditions:**

- The express terms and conditions of the Franchise constitute a binding contract between Jefferson County and the Mats Mats Beach Homeowner's Association.

- A 20 year franchise term is set. This Franchise establishes the requirements for Mats Mats Beach Homeowner's Association to install and operate the facility within County Road rights-of-way.
- The Franchise requires the Applicant to comply with all requirements of the Jefferson County Code and obtain a permit prior to any construction activity.
- A construction bond or surety shall be posted which ensures proper installation of the utility.
- Other insurance is required against claims for injuries or damages against the County for the term of the Franchise.
- The Franchise shall terminate upon the elimination of this right-of-way from County jurisdiction or termination or annexation of the same.
- The County does not waive any rights, powers or privileges to these rights-of-way by granting this Franchise.
- The County shall be held harmless from any damage to the utility in any maintenance or construction work by the County
- Attachment A - Map depicting the area the Franchise will cover.

**Fiscal Impact/Cost Benefit Analysis:**

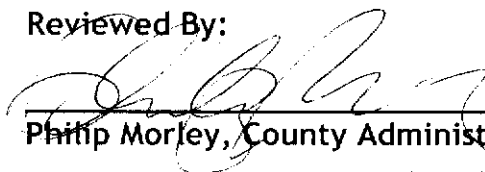
All costs related to the advertising costs for the hearing notice and the installation, maintenance and repair of the utilities under this Franchise shall be the responsibility of the Applicant.


**Recommendation:**

The Department requests that the Board conduct a public hearing on the Franchise Resolution at 10:00 AM on May 23, 2011 and direct the Chair of the Board to sign the Franchise Resolution approving the Mats Mats Bay Homeowner's Association request as presented.

**Department Contact: Monte Reinders, 385-9160**

**Reviewed By:**

  
Philip Morley, County Administrator

  
Date

When Recorded return to Jefferson County Public Works  
Section 33, Township 29 North, Range 1 East  
921332034, 970800327, 970800328, 970800329, 970800330, 970800331, 970800402, 970800315, 970800324, 970800316 &  
970800326

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STATE OF WASHINGTON  
COUNTY OF JEFFERSON

In the matter of	x	RESOLUTION NO. _____
Granting a Non-Exclusive Franchise	x	
On County Road Rights of Way to	x	
Operate a Water System & Effluent Line	x	

WHEREAS, an Application for non-exclusive Franchise has been submitted by Mats Mats Beach Homeowner's Association, a true copy of which is attached hereto, for the purposes set out in the said application, and

WHEREAS, a non-exclusive Franchise for a Water System, Resolution No. 02-04, was granted to the Mats Mats Beach Homeowner's Association by the Board of County Commissioners January 12, 2004, and

WHEREAS, it has been determined that Resolution No. 02-04 shall be rescinded and that a new Franchise should be granted to incorporate the request to install an effluent line as part of a community septic system, and

WHEREAS, hearing on the said application was held before the Board of County Commissioners of Jefferson County, Washington, on May 23, 2011, at the hour of 10:00 a.m., pursuant to the provisions of RCW 36.55, after notice given as required by law, and

WHEREAS, it appears to be in the public interest to grant said non-exclusive Franchise based on the following findings of fact and conclusions:

- 1) The proposal is not in conflict with the Jefferson County Comprehensive Plan;
- 2) The proposal is reflected in the application filed by Michael J. Monnahan, representative for the Mats Mats Beach Homeowner's Association on January 3, 2011, which is made in accordance with Jefferson County Code Section 13.56;
- 3) Installation and maintenance of a properly functioning water system for drinking and fire protection purposes is in the interest of the public health and safety;
- 4) Installation and maintenance of a properly functioning community septic system for the disposal of effluent is in the interest of the public health and safety.
- 5) This Resolution memorializes the good and valuable consideration bargained for and exchanged by Grantor and Grantee.

NOW THEREFORE IT IS HEREBY RESOLVED that the non-exclusive Franchise granted under Resolution 02-04 to Operate a Water System be rescinded and;

BE IT FURTHER RESOLVED that the Applicant named above (Grantee) is hereby granted a non-exclusive Franchise for a period of twenty (20) years from the date of this Resolution, to construct, operate, maintain and repair a water system and pressure effluent line for a community septic system, and all necessary appurtenances in, along, under and across the right-of-ways, authorized under Title 56 RCW, including those common under Title 56 and 57 per 56.20.015, consisting of installation and service connections upon, under, over, across and along the rights of way of the County roads of Jefferson County, Washington, more particularly described as follows:

That portion of Mats Mats Beach Road, County Road #558009, beginning at the westerly boundary of Section 33, Township 29 North, Range 1 East, thence easterly to, and including, the intersection of Bayview Dr.; thence southerly along S. Bayview Drive, County Road #558909. S. Bayview Dr. is located within the plat of Mats Mats Beach recorded in Book 3, Page 21, Section 33, Township 29 North, Range 1 East, records of Jefferson County, Washington. Mats Mats Beach Rd. is located along the north boundary of the Plat of Mats Mats Beach.

This non-exclusive Franchise is granted upon the following express terms and conditions:

- (1) The said GRANTEE, its successors and assigns, shall have the right to enter only upon the above-described rights of way for the purpose of constructing its facilities and for operating, maintaining, repairing and using those facilities.
- (2) The terms and conditions of Jefferson County Code 13.56 prescribing terms and conditions for franchise agreements granted by Jefferson County, are incorporated herein by reference and made a part of this Resolution. The GRANTEE, for itself, its successors and/or assigns, expressly agrees that it will strictly comply with the requirements of said code and any

amendments thereto. The GRANTEE understands and acknowledges that the code requires it to obtain a permit from the County Engineer before doing work under this non-exclusive Franchise and performing other actions relating to the franchised matter. Conditions associated with such permits will define the requirements for installation such as cover (a minimum of 30 vertical inches below the finished surface or the bottom of the ditch), encasements or other such methods as defined in the Jefferson County.

- (3) A surety or bond shall be posted by the applicant, equal to 150 percent of the construction costs, which will provide for construction of the pressure effluent line and repair of the county road system as it relates to installation of the effluent line under Jefferson County Code 13.56.020 for a period not to exceed 12 months from completion of construction.
- (4) The Grantee shall procure, and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted by this Franchise to the Grantee, its agents, representatives or employees. The Grantee shall provide a certificate of insurance to the County for its inspection prior to performance of any permitted work within the County right of way, and such insurance shall include:
  - A. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury including death, and property damage.

The insurance policies obtained by the Grantee shall name the County, its elected and appointed officers, officials, employees, agents, and volunteers as additional insureds with regard to activities performed by or on behalf of the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the County, its elected and appointed officers, officials, employees, agents, or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Grantee's insurance shall be primary insurance as respects the County, its elected and appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the County, its elected and appointed officials, officers, employees, agents or volunteers shall be excess of the Grantee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, written receipt requested, has been given to the County. Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the County, its elected and appointed officials, officers, employees, agents or volunteers. If Grantee's insurance policy is suspended, voided, cancelled, or otherwise becomes ineffective or reduced or limited, the Grantee shall immediately obtain replacement insurance so as to be in conformance with these franchise requirements.

The complete policy with all endorsements shall be provided to the County at any time upon request. Any deductibles or self-insured retentions must be declared to and approved by the County. Payment of deductible or self-insured retention shall be the sole responsibility of the Grantee. Proof of all insurance shall be in a form acceptable to the County. The Grantee's insurance provider shall be authorized to do business in Washington. All insurance documentation shall be submitted to and reviewed by the County prior to final execution of the Franchise.

Failure to provide a certificate of insurance to the County or to maintain insurance as required herein shall constitute failure of consideration and this Franchise shall be void and null provided that the County shall have first given written notice to Grantee of its failure to provide certificate of insurance, and Grantee shall not, within ten (10) working days of the receipt of such notice, have corrected the deficiency.

- (5) The GRANTEE shall submit a facility plan to the Jefferson County Department of Community Development prior to beginning any work for review of all new proposed facilities exclusive of all service connections and appurtenances. Construction permits will be granted upon the determination that the facility plan complies with the County comprehensive plan and Jefferson County Code.
- (6) The GRANTEE shall commence construction work under this non-exclusive Franchise only after the effective date hereof, and after first securing necessary approvals and permits from the Jefferson County Department of Community Development, Jefferson County Environmental Health and the Jefferson County Department of Public Works. Grantee shall pay the established application fees for any and all County permits.
- (7) The following identified persons shall be the designated contact persons for administration of this franchise:

For Grantee: Michael J Monnahan  
1607 Dexter Ave N #1A  
Seattle, WA 98109  
206-283-8780

For Grantor: County Engineer  
Jefferson County Public Works  
623 Sheridan St  
Port Townsend, WA 98368  
360-385-9160

The full acceptance of this non-exclusive Franchise and all its terms and conditions within thirty (30) days from this date, by the GRANTEE, in writing, is to be filed with the Clerk of the Board of County Commissioners of Jefferson County and shall be a condition precedent to its taking effect, and unless the non-exclusive Franchise is accepted within such time, this grant shall be null and void.

- (8) If at any time during the term of this Franchise any County road, rights-of-way, County property or portions thereof designated in such franchise shall be eliminated from the

jurisdiction of the County by reason of the incorporation or annexation to a city, then all the rights, privileges and franchises so granted shall terminate.

- (9) If at any time during the term of the Franchise, the County vacates any County road rights-of-way, County property or portions thereof subject to the rights granted by this Franchise and said vacation shall be for the purpose of acquiring the fee of other property interest in said County roads, rights-of-way, County property or portions thereof for the use of the County in either its propriety or governmental capacity, then the Board may at its option and by giving ninety (90) days written notice to the Grantee, and after granting an alternative route (where such grant is reasonably possible in the sole consideration of the County Engineer), terminate this Franchise with reference to such County road, rights-of-way or other County property so vacated, and the County shall not be liable for any damages or loss to the Grantee by reason of such termination. Further, the County shall make its best efforts to assist the Grantee in obtaining a permanent easement for any existing water lines or septic lines.
- (10) The County in granting this Franchise, does not waive any rights which it has now or may hereafter acquire with respect to County roads, rights-of-way, County property or portions thereof and the Franchise shall not be construed to deprive the County of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the County roads, rights-of-way, County property or portions thereof or other County property covered by this Franchise, This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, the Grantee acknowledges this Franchise itself shall have no value.
- (11) In consideration for the granting of this Franchise, the Grantee, for itself and its assigns, shall contract and agree to save the County harmless from any liability of whatsoever nature including alleged liability to third parties for personal injury or money damages arising out of any damage and/or destruction done or suffered to be done to the Grantee's water lines or community septic lines, necessary appurtenances and any other facilities of whatsoever nature placed in, along, under or across County roads, rights-of-way, County property or portions thereof. This paragraph shall be construed to mean that the Grantee accepts this Franchise and any rights conferred there under for the use and occupation of any portion of the roads, rights-of-way, County property or portions thereof, "as is", at its own risk, and agrees to assume responsibility for any damage occasioned to the Grantee or third parties by the County in the maintenance and/or construction work performed by the County upon any of its roads, rights-of-way, property or portions thereof which would not have occurred but for the presence of the Grantee's water lines or septic lines, necessary appurtenances and any other facilities of the Grantee except to the extent any such damage or loss is directly caused by the negligence of the County.
- (12) All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns of independent contractors of the Grantee, and all rights and privileges, as well as all obligations and liabilities of the Grantee shall inure to

its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Grantee is mentioned.

- (13) This Franchise is subject to, and the Grantee shall comply with all applicable federal, state or the county laws, regulations and policies (including, but not limited to, all applicable elements of the County's Comprehensive Plan & Jefferson County Code and Environmental Health Codes) and as they may be amended affecting performance under this Franchise. Further, notwithstanding any other terms of this Franchise appearing to the contrary, the Grantee shall be subject to the police power of the County to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in this Franchise.
- (14) No privileges or rights granted hereunder shall exempt the Grantee from any future uniform rent, license, tax, charge, fees, or import which may hereafter be required by the County, for revenue or as reimbursement for use and occupancy of public ways, roads, streets, rights-of-way, or other County property, and failure to timely remit any sums properly due thereby, shall be cause for forfeiture of rights hereunder.
- (15) If any portion of this franchise is deemed invalid the remainder will remain in effect.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

JEFFERSON COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
John Austin, Chairman

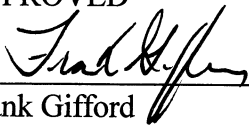
\_\_\_\_\_  
David Sullivan, Member

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Phil Johnson, Member

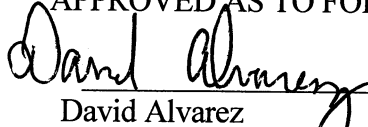
SEAL:  
ATTEST:

\_\_\_\_\_  
Lorna L. Delaney  
Clerk of the Board

APPROVED

  
\_\_\_\_\_  
Frank Gifford  
Public Works Director

APPROVED AS TO FORM:

 4/11/11  
\_\_\_\_\_  
David Alvarez  
Civil Deputy Prosecutor



ACCEPTANCE OF FRANCHISE TERMS AND CONDITIONS

I hereby accept the terms and conditions specified under Jefferson County Code 13.56, for a Non-Exclusive Franchise granted to Mats Mats Beach Homeowner's Association, for construction, operation, maintenance and repair of a water system and community septic system along and across the County roads rights of way described in Resolution No. \_\_\_\_\_, approved by the Board of Jefferson County Commissioners on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Grantee

\_\_\_\_\_  
Title  
Mats Mats Beach Homeowner's Association

.....  
STATE OF WASHINGTON )

COUNTY OF JEFFERSON )

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument as his free and voluntary act and deed.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public in and for  
The State of Washington  
residing at \_\_\_\_\_.

MY COMMISSION EXPIRES \_\_\_\_\_.

Vicinity Map  
for Proposed Mats Mats Beach Homeowners Association Franchise

