## TITLE OF DOCUMENT:

Introduction new Labor Negotiator and strategy collective bargaining

## ATTACHMENTS:

None

## SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Introduction to new Labor Negotiator and strategy planning discussion and positions to be taken regarding collective bargaining.

(per RCW 42.30.140(4)(a))

## COMMITTEE ACTION:

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
</table>

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
## WHATCOM COUNTY COUNCIL AGENDA BILL

### CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
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<tbody>
<tr>
<td>Wain Harrison</td>
<td>W.H.</td>
<td>9-6-16</td>
<td>9/27/16 Introduction</td>
</tr>
<tr>
<td>Division Head: Wain Harrison</td>
<td>W.H.</td>
<td>9-6-16</td>
<td>10/11/16 Planning &amp; Dev</td>
</tr>
<tr>
<td>Dept. Head: J.E. &quot;Sam&quot; Ryan</td>
<td>SR.</td>
<td>9-6-16</td>
<td>11/9/2016 Planning &amp; Dev</td>
</tr>
<tr>
<td>Prosecutor: Royce Buckingham</td>
<td></td>
<td></td>
<td>11/22/2016 Planning and Dev</td>
</tr>
<tr>
<td>Purchasing/Budget: Brad Bennett</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive: Jack Louws</td>
<td></td>
<td></td>
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</tbody>
</table>

### TITLE OF DOCUMENT:

Ordinance to adopt the 2015 editions of the International Codes, and the 2015 Uniform Plumbing Code, consistent with State law and including WA State and Whatcom County Amendments to the Codes.

### ATTACHMENTS:

Cover sheet, Ordinance and signature page

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

An ordinance to update and revise WCC Chapter 15.04 and adopt the 2015 editions of the International Codes published by the International Code Council, the Uniform Plumbing Code, consistent with Washington State law, also including the Washington State and Whatcom County Amendments to the 2015 International Codes. In accordance with Washington State law, the adopted codes are to be effective July 1, 2016.

This ordinance adopts the 2015 editions of the IBC, IRC, IFC, IMC, IFGC, UPC, referenced standards, all Washington State Amendments to the adopted codes and all Whatcom County Amendments to the adopted codes for administration, appendices and enforcement, as set forth in WCC Chapter 15.04.

### COMMITTEE ACTION:

- 10/11/2016: Discussed, approved a staff-suggested change, and forwarded to Public Hearing at a later date
- 11/9/2016: Withdrawn from the agenda
- 11/22/2016: Discussed and held in committee until the first meeting in January

### COUNCIL ACTION:

- 9/27/2016: Introduced 7-0
- 10/11/2016: Withdrawn from the Agenda. This item will be scheduled for a public hearing at a later date.

### Related County Contract #:

### Related File Numbers:

### Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
To: Whatcom County Council
From: Wain Harrison, Manager Building Services/Deputy Fire Marshal
Through: J.E. "Sam" Ryan, Director/Fire Marshal
Subject: Ordinance to revise and update Whatcom County Code, Title 15

Date: October 12, 2016

Following the review of discussion of the proposed ordinance to revise and update Whatcom County Code (WCC) Title 15 with the Council P&D Committee, the Committee and Council members asked for some modifications and additional research and information.

Deletions are indicated by strikethrough and proposed modification language is underlined and highlighted in light gray:

Sections 15.04.020, 030; and 15.04.040, Subsection E, 104.9 Alternate materials and methods:

Where the alternative material, design or method of construction is not approved, the Building Official at his/her discretion may respond in writing, stating the reasons why the alternative was not approved, when a determination request is submitted to the Building Official in writing.

Or

Where the alternative material, design or method of construction is not approved, the Building Official Fire Marshal at his/her discretion may respond in writing, stating the reasons why the alternative was not approved, when a determination request is submitted to the Fire Marshal in writing.

Section 15.04.040, Subsection O (a) (5):

The language “in all cases” has been removed. “...unless otherwise approved by the Fire Marshal where topographic or other significant obstacles exist.” has been added to the end of the subsection.
Section 15.04.040, Subsection M (7):

Council has requested more information and additional discussion prior to approving the recommendation of an increase in the minimum fire flow standard from 500 gpm to 1000 gpm (for a duration of one hour) in consideration of factory, manufacturing, and storage/warehouse occupancies. This is the equivalent of 60,000 gallons of water storage.

I would remind the Council that for previous multiple decades the minimum required fire flow for these type of occupancies has been 1500 gpm (90,000 gals.). When the Fire Marshal's Office endeavored to update and codify WCC in the 2012 ordinance we proposed the reduction to 500 gpm.

In partial explanation of this current proposed increase from 500 gpm to 1000 gpm, I cited the example of the recent manufacturing/warehouse fire north of Ferndale that took over 500,000 gallons of water to suppress the fire. This was in a facility of noncombustible construction equipped throughout with automatic sprinklers which functioned properly.

I would also point out that WCC exempts buildings of this type of occupancy from fire flow requirements up to 2500 sf. Without this exemption a building of this size, according to Table B105.1, would require a minimum of 750 gpm (45,000 gals.).

Councilmember Brown expressed a concern regarding the potential cost increase to businesses for upsizing a fire flow system, including pump and tank, from 500 gpm to 1000 gpm. A comparison cost estimate was prepared and submitted by Freeland and Associates showing the cost of an on-site system with an above ground concrete storage tank, listed/tested fire pump, pump house, piping and wiring:

A. 500 gpm delivery system, one hour duration (30,000 gal.) = $193,812.10
B. 1000 gpm delivery system, one hour duration (60,000 gal.) = $230,987.50

System B represents an approximate 17% increase over the cost of System A. See the complete Engineer's Estimate attached. However, System B would still represent an approximate 17% cost decrease over the previous system minimum of 1500 gpm prior to the 2012 update ordinance.

Information and response to issues raised by Roger Axelson regarding fire flow and IFC Appendix B:

Mr. Axelson brought up several issues related to fire flow. He asked what other jurisdictions required regarding this. Eight western Washington counties were surveyed: Skagit, Snohomish, King, Pierce, Kitsap, Thurston, Clark and Skamania. All except King County have adopted IFC Appendix B and included some degree of modifications similar to Whatcom County. King Co. chose to write its own fire code version with modifications and exemptions. See attached excerpts from the respective county code sections. It appears clear Whatcom County is in line with the standard of protection adopted by a substantial number of other Western
Washington counties. Note that adoption of IFC Appendix B requires all fire flow water to be measured at a minimum of 20 psi.

Mr. Axelson wants the Fire Marshal to allow the installation of unpressurized draft water storage systems thus eliminating the cost of the listed fire pump. He cited NFPA Standard 1901, stating the hard pipe for a draft connection is required. However, the current edition of that standard only requires pumper apparatus to carry the hard pipe as an option (NFPA Standard 1901, Chapter 5, Pumper Fire Apparatus, Section 5.8.2.1). The majority of Whatcom County fire districts (FD) choose not to exercise this option in consideration of the following partial list of factors:

- Draft systems are typically private systems and are historically poorly maintained. Inventory and other storage items are often found obstructing hydrant access on industrial sites (pallets, barrels, machine parts, etc.). Brush, limbs and overgrowth often impede access.
- Assuming access is not impeded the apparatus must be exactly positioned regardless of topography.
- The hard pipe connections must be carefully made and extremely tight to eliminate incomplete suction.
- Connection to a pressurized system typically takes about 90 seconds to be operational. A hard pipe draft connection can typically take 8 – 12 minutes, sometimes more. Any firefighter will tell you this is a significant world of difference in time (5 to 8 times longer). NFPA Standard 1142, Chapter 4 Calculating Minimum Water Supplies, still requires significant water supplies on larger scale and/or hazardous projects and it requires that fire districts meet a minimum standard of time to deliver water that is not achievable when attempting a hard pipe draft connection. In addition, NFPA 1142, per the scope of the document, is not applicable to large rack storage facilities and other hazardous occupancies.
- Private draft storage systems can only be tested for ongoing maintenance and operation by connection to a fire district pumper truck and are supposed to be tested annually. The FD and/or the Fire Marshal's Office do not have the time or resources to track and make these tests for private companies or individuals under any circumstance. Therefore, the systems are typically not tested and not maintained. The FD has no idea whether the system will function until they have taken the time to make the connection. If it is not functional the FD has wasted valuable equipment, personnel and time. It is conceivable the FD could charge concurrency mitigation fees through SEPA for resources and insurance to provide draft system tracking and annual testing of private systems which would have to be factored into the overall cost of a draft system.
- A typical fully equipped pumper currently costs +/- $600,000.00 or more. A poorly maintained system may allow gravel, vegetation, fish, frogs and other debris to flow through the system, potentially damaging the pumper equipment. The FD's are generally unwilling to take this risk with such valuable equipment.
Note the example of an unpressurized, on-site tank storage system proposed for a company that uses flammable liquids in its manufacturing process and stores large quantities of flammable liquids on the site. The tank would have had a static head pressure of approximately 8 psi (when full) which would diminish as the tank volume decreased. The district chief promised to withdraw the written “will serve” status required by GMA and appeal if the County approved this system. Furthermore, this project and this type of occupancy are not eligible to have NFPA 1142 fire flow reductions applied because of the hazard level (NFPA 1142, Section 1.3).

Mr. Axelson also cited NFPA Standard 1142 Water Supplies for Suburban and Rural Fire Fighting, which allows for different types of fire water storage and delivery systems, including draft systems. In Chapter 4, Calculating Minimum Water Supplies, Section 4.1.3, states that the AHJ may require increases to compensate for particular conditions, including but not limited to:

1. Limited fire department resources.
2. Extended fire department response time or distance.
3. Potential for delayed discovery of the fire.
4. Limited access. (Many, many private access roads are substandard and/or under maintained.
5. Unusual terrain.

All of the above conditions exist in numerous locations of every county fire district.

Finally, please keep in mind that, while Mr. Axelson has quoted a few limited sections of NFPA 1142, it actually encompasses 59 pages of complicated standards and cross references 14 additional NFPA standards. When all applicable aspects of the standard are applied to typical manufacturing/warehouse occupancies significant amounts of fire water are still required. Additionally, the draft systems design standards are complicated and highly engineered.
## Engineer's Estimate
### Residential Fire Flow
#### 500 gpm vs. 1000 gpm

**Whatcom County**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>ITEM DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT COST</th>
<th>TOTAL COST 500 gpm</th>
<th>TOTAL COST 1000 gpm</th>
</tr>
</thead>
<tbody>
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<td>1</td>
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<td>$52,000.00</td>
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<td>3</td>
<td>Tank Base Preparation, 22 x 9'</td>
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<td>$6,000.00</td>
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<tr>
<td>4</td>
<td>Piping</td>
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<tr>
<td>1</td>
<td>Fire Pump System, 500 gpm</td>
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<td>$30,000.00</td>
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<td>2</td>
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**Pump House**

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<th>QUANTITY</th>
<th>UNIT COST</th>
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<th>TOTAL COST 1000 gpm</th>
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<td><strong>Piping</strong></td>
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<th>TOTAL COST 1000 gpm</th>
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<tr>
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<td>Pump House</td>
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**Engineering & Permitting**

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<th>TOTAL COST 1000 gpm</th>
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**Subtotal** | $212,590.00 |
**Subtotal** | $18,427.50 |
**Total** | $230,917.50 |
FIRE FLOW FOR OTHER COUNTIES

1. Skagit County


- Section 103.3 Buildings That May Not Require Fire Flow.

- When, in the opinion of the Fire Marshal, a proposed building meets the criteria stated in “Skagit County Fire Marshal Procedures Concerning Fire Flow and Placement of Fire Hydrants,” a permit may be issued without meeting the requirements for fire flow for the following:

  - (i) Single family residences and accessory buildings, such as garages and carports.

  - (ii) Agricultural buildings as defined in SCC 14.04.020 in agricultural resource lands as identified on currently adopted zoning maps.

  - (iii) Other buildings that comply with all of the following:

    - (1) Are less than 4000 sq. ft. in area;

    - (2) Are not an ‘H’ or R occupancy group;

    - (3) Have 40-foot clear yards on all sides; and

    - (4) Are in a rural area where fire flow is not practical.

2. Snohomish County

3. 30.53A.514 Fire protection water supply - replaced.

4. Section 507.1 of the IFC is deleted in its entirety and replaced as follows:

5. (1) The minimum water supply requirements contained in this section shall apply to land use and construction permit actions subject to this title, or to any
other existing or future code provision in which compliance with the fire code is specifically required. Water mains and fire hydrants shall meet the required minimum standards for water mains and fire hydrants. These requirements shall apply to land use and construction permit actions subject to this title, or to any other existing or future code provision in which compliance with the fire code is specifically required.

6. (2) In administering these requirements, the fire marshal or the fire marshal's designee shall have the authority to impose conditions on permits issued under this title where necessary to mitigate fire hazards.

7. (3) A water supply shall consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow. Required water supply for fire protection shall include:

8. (a) An approved water supply capable of supplying the required water flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdictions.

9. (b) All land upon which buildings or portions of buildings are or may be constructed, erected, enlarged, altered, repaired, moved into the jurisdiction, or improved, shall be served by a water supply designed to meet the required fire flow for fire protection as set out in appendix B of the IFC, except that fire flow requirements for rural areas outside of an Urban Growth Area shall be reduced by 25 percent. Fire flow requirements for structures with a supervised fire alarm system connected to an Underwriters Laboratory, Inc. approved fire alarm center may be reduced by an additional 25 percent.

10. (c) Prior to final approval of any subdivision or short subdivision, written verification by the water purveyor of actual fire flow, calculated in accordance with appendix B of the IFC, shall be provided to the fire marshal for review and approval.

11. (d) Prior to combustible construction of a single-family detached unit (SFDU) project the developer shall provide a final certificate of water availability indicating that all hydrants have been installed, charged and are operational. The hydrants shall provide a minimum 1,000 gpm for a 1-hour duration at 20 psi.
12. Exemptions: Except as provided in IFC section 508.1, the following permits and approvals are exempt from the water supply and fire hydrant requirements of this chapter:

13. (1) Subdivisions and short subdivisions in which all lots have a lot area of 43,560 square feet (one acre) or more in size;

14. (2) Building permits for structures classified by the building code as Group U occupancies (agricultural buildings, private garages; carports and sheds) that are restricted to private residential use only, provided that riding arenas or other agricultural type structures used or accessed by the public shall not be exempt;

15. (3) A building permit for a single family detached dwelling, duplex, or mobile home to be placed on a lot with a lot area of 43,560 square feet (one acre) or more in size; and

16. (4) Mobile home permits for mobile homes in established mobile home parks.

3. King County

17.04.470 Fire protection water supplies - Fire hydrant systems. Section 507.5 of the International Fire Code is not adopted and the following is substituted

Fire hydrant systems (IFC 507.5). Fire hydrant systems shall be in accordance with the procedures specified in King County water-main and fire hydrant provisions, K.C.C. chapter 17.08. (Ord. 17837 § 76, 2014: Ord. 14915 § 59, 2004: Ord. 14111 § 203, 2001. Formerly K.C.C. 17.04.010227).

17.08.020 Application.
A. Subdivisions and short subdivisions are required to be provided with water mains and fire hydrants, consistent with county standards and department of social and health services principles of water system design as a condition of final plat or short plat approval unless exempt pursuant to Section 17.08.030.
B. All structures or additions thereto erected pursuant to a building permit and/or mobile home permit shall be served by operational water mains and fire hydrants consistent with county standards prior to
1. the commencement or installation of combustible construction or
2. prior to construction of a second floor if the building is noncombustible, whichever occurs first, unless exempt pursuant to Section 17.08.030.
C. Mobile home parks and recreational vehicle parks shall be required to provide water mains and fire hydrants consistent with county standards as a condition of final site plan approval.
D. Permits or approvals for uses not involving a structure shall be served by water mains and fire hydrants consistent with county standards.
E. All new water mains and all additions and extensions to existing water mains shall meet the requirements of this chapter, provided that water mains which serve only uses exempt pursuant to Section 17.08.030 are also exempt from the requirements of this chapter.
F. All water purveyor comprehensive plans approved pursuant to K.C.C. Chapter 13.24 shall be consistent with the provisions of this chapter.
G. All water mains and fire hydrants shall be served by a water district or water purveyor in accordance with a current water comprehensive plan approved pursuant to K.C.C. Chapter 13.24, or by other adequate means providing service levels consistent with the provisions of this Chapter

17.08.030 Exemptions.
A. The following permits and approvals are exempt from the water flow and fire hydrant requirements of this chapter. These exemptions do not exempt any development from compliance with the requirements of state law.
   1. Subdivisions and short subdivisions located outside an Urban Growth Area designated by the King County Comprehensive Plan and that do not contain a lot less than thirty-five thousand square feet in size.
   2. Building permits for single family, duplex detached dwellings and mobile home permits for mobile homes not in mobile home parks, located outside an Urban Growth Area designated by the King County Comprehensive Plan, only if the lot is at least thirty-five thousand square feet in size.
   3. Building permits for structures classified as Group U occupancies under the International Building Code that conform to the definition of agricultural buildings in Appendix C of the International Building Code only if the structures are located outside an Urban Growth Area designated by the King County Comprehensive Plan.
   4. Building permits for structures that:
      a. do not exceed two-thousand-five hundred square feet in floor area (excluding garage);
      b. are served by a Group B water system; and
      c. are located outside an Urban Growth Area.
   5. Building permits for structures that exceed the two-thousand-five hundred square feet limit provided for in subsection A.4.a. of this section, but comply with
subsection A.4.b. and c. of this section, shall be exempt from this chapter if the fire marshal determines that the project will not create a substantial fire hazard.

B. The fire marshal shall have the authority to impose conditions including, but not limited to, increased setbacks, use of fire retardant materials or sprinkler system requirements on permits exempt under subsection A. of this section where necessary to mitigate identified fire hazards.

C. Building permits and mobile home permits and subdivisions and short subdivisions exempt under subsection A. of this section shall as a condition of approval, record a covenant running with the land which acknowledges the absence of fire hydrants and by which owners of the property and their successors are deemed to have agreed to participate in and not oppose or protest annexation to a public water district or the formation of a utility local improvement district for installation of water mains and fire hydrants consistent with applicable county standards. However, this condition shall not apply to any subdivision or short subdivision, or to any building permits and mobile home permits exempt under subsection A. of this section when the lot is five acres or larger, or the proposed subdivision, short subdivision or structure is located outside an Urban Growth Area designated by the King County comprehensive plan. (Ord. 14915 § 117, 2004; Ord. 12321 § 1, 1996: Ord. 11625 § 2, 1994: Ord. 6541, 1983: Ord. 5828 § 4, 1982).

4. Pierce County

B. Fire Flow Requirements for Buildings. Prior to the issuance of a building permit for any building, portion of a building, alteration to a building, or substantial alteration thereto, fire flow shall be provided in the amount required by this Section. Fire flow shall be automatically available and supplied at a residual pressure of not less than 20 psi.

5. Kitsap County


Appendix B, Fire Flow Requirements for Buildings;

H. IFC Appendix B, Table B105.1 is amended as follows:
### Table B105.1
**MINIMUM REQUIRED FIRE FLOW AND FLOW DURATION FOR BUILDINGS\(^a\)**

<table>
<thead>
<tr>
<th>FIRE AREA (square feet)</th>
<th>FIRE FLOW (gallons per minute) (\times 0.9523) for (\frac{n^2}{\text{ft}^2})</th>
<th>FLOW DURATION (hours)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type I A and I B (^b)</td>
<td>Type II A and II A (^b)</td>
<td>Type IV and V B (^b)</td>
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<tr>
<td>0-6,000</td>
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<tr>
<td>5,001-10,000</td>
<td>5,001-10,000</td>
<td>5,001-10,000</td>
</tr>
</tbody>
</table>

\(^a\) The remainder of Table B105.1 is as printed in the IFC.

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6. **Thurston County**

- **14.32.220 - Appendix B amended—Fire flow requirements for buildings.**

International Fire Code Appendix B sections B102.1, B103.1, B103.2, B103.3, B104.2, B105.1, B105.2 and Table B105.1 are amended; and sections B105.2.1, B105.2.2, Figure B105.1 and Table B105.2 are added to read as follows:

---

7. **Clark County**

- **15.12.9000 Appendices adopted.**

Appendices B, E, F, and G of the IFC are adopted, with the following amendments:

**SECTION B101**

**GENERAL**

B101. Scope. Fire flow requirements shall be determined by the Fire Marshal. The procedure for determining fire flow requirements for buildings or portions of buildings hereafter constructed shall be in accordance with this appendix.
EXCEPTION: 1. A reduction in fire flow of up to seventy-five percent (75%) as approved by the Fire Marshal, is allowed when the building is provided with an approved automatic sprinkler system. The resulting fire flow shall not be less than 1,000 gallons per minute (3,785 L/min).

**TABLE B105.1**
**MINIMUM REQUIRED FIRE FLOW AND FLOW DURATION FOR BUILDINGS**

<table>
<thead>
<tr>
<th>FIRE FLOW CALCULATION AREA (square feet)</th>
<th>Type IA and IIB&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Type IIA and IIB&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Type IV and V-A&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Type IIB and IIIB&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Type V-B&lt;sup&gt;a&lt;/sup&gt;</th>
<th>FIRE FLOW (gallons per minute)&lt;sup&gt;b&lt;/sup&gt;</th>
<th>FLOW DURATION (hours)</th>
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<tbody>
<tr>
<td>0 – 16,000</td>
<td>0 – 8,000</td>
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</table>

(remainder of the table is as stated in International Fire Code)

For SI: 1 square foot = 0.0929 m², 1 gallon per minute = 3.785 L/min, 1 pound per square inch = 6.895 kPa.

a. Types of Construction are based on the International Building Code.

b. Measured at 20 psi.


8. Skamania County


including those standards of the National Fire Protection Association specifically referenced in the International Fire Code: provided, that, notwithstanding any wording in this code, participants in religious ceremonies shall not be precluded
from carrying hand-held candies, also including Appendixes B and C as amended by Skamania County;
ORDINANCE NO. __________
An Ordinance adopting the Current State Building Code and Repealing the Existing Title 15 of the Whatcom County Code

Whereas, the Whatcom County Council held a public hearing on _______, 2016 to review staff findings and recommendations, and to consider any public testimony and written correspondence regarding Whatcom County Code Title 15, Buildings and Construction; and

Whereas, chapter 19.27 RCW requires Whatcom County to administer and enforce the State Building Code in the unincorporated areas within its boundaries; and

Whereas, the purpose of these codes is to promote the health, safety and welfare of the occupants or users of buildings and structures and the general public by the provision of building codes in Whatcom County; and

Whereas, RCW 19.27.040 allows local jurisdictions to adopt appropriate amendments to the State Building Code; and

Whereas, modifications and/or amendments to the State Building Code as it applies to Whatcom County are desirable for various reasons; and

Whereas, the State Building Code Council requires adoption of the 2015 edition of these International Codes; the 2015 edition of the Uniform Plumbing Code; the 2015 edition of the State of Washington Energy Codes; and the 2015 editions of the State of Washington Amendments and other referenced codes, with further Whatcom County amendments, by July 1, 2015;

NOW, THEREFORE, BE IT HEREBY ORDAINED that:

Section 1. Title 15 of the Whatcom County Code is repealed in its entirety:

Section 2. A new Title 15 is hereby adopted as shown in Exhibit A to this Ordinance.
Section 3. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

Adopted this _______________ day of ______________, 2016.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk
Barry Buchanan, Chairperson

APPROVED as to form:

( ) Approved  ( ) Denied

Jack Louws, Executive

Date: __________________________

Civil Deputy Prosecutor
EXHIBIT A
Chapter 15.04
BUILDING CODES

Sections:
15.04.010 Adoption of referenced codes.
15.04.015 Department of Building Safety.
15.04.020 Amendments to the International Building Code.
15.04.030 Amendments to the International Residential Code.
15.04.040 Amendments to the International Fire Code.
15.04.050 Permit expirations and violations of the above referenced codes.

15.04.010 Adoption of referenced codes.

Whatcom County hereby adopts the following codes, as amended by the Washington State Building Code Council pursuant to RCW 19.27 and 70.92 or successor, for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures, including permits and penalties.

A. The 2012 2015 International Building Code (IBC), including the 2012 2015 International Existing Building Code (IEBC); Appendix B, except as amended per Ordinance #2007-024, Board of Appeals; and including Appendices C, E and J, as published by the International Code Council, hereinafter referred to as the IBC, as modified by Chapter 51-50 WAC or successor, and as amended in Whatcom County Code (WCC) Sections 15.04.015, 15.04.020 and 15.04.050 is hereby adopted by reference.

B. The 2012 2015 International Residential Code (IRC), including Appendix E, G, and K, as published by the International Code Council, hereinafter referred to as the IRC, and as modified by Chapter 51-51 WAC or successor and as amended in WCC 15.04.030 and in 15.04.050, is hereby adopted by reference with the following additions, deletions and exceptions: Provided that Chapters 11 and 25-42 of this code are not adopted.

C. The 2012 2015 International Fire Code (IFC), including Appendices Appendix A, except as amended per Ordinance #2007-024, Board of Appeals; Appendices B, C, and D and the latest most current supplements, as published by the International Code Council, hereinafter referred to as the IFC, as modified by Chapter 51-54A WAC or successor, and as amended in WCC 15.04.040 and 15.04.050.

D. The 2012 2015 International Mechanical Code (IMC), including Appendix A, as published by the International Code Council, hereinafter referred to as the IMC, as modified by Chapter 51-52 WAC and as amended by WCC 15.04.050 or successor.
E. The 2015 International Fuel Gas Code (IFGC), as published by the International Code Council, hereinafter referred to as the IFGC, as modified by Chapter 51-52 WAC and as amended by WCC 15.04.050 or successor.


G. Except as provided in RCW 19.27.170, the 2015 Uniform Plumbing Code (UPC), the 2012 Uniform Plumbing Code Standards (IAPMO/ANSI UPC 1-2012) and/or all current referenced standards, and including Appendix A, B, C and I, as published by the International Association of Plumbing and Mechanical Officials, hereinafter referred to as the UPC, as modified by WAC 51-56 and as amended by WCC 15.04.050 or successor.


K. Design data for Whatcom County shall be per Section 15.04.030, Subsection DE, item #1.

15.04.015 Department of Building Safety

Section 103 is amended as follows:

103.1 Creation of enforcement agency. The Department of Building Safety is hereby created and the official in charge thereof shall be known as the Building Official. The Department of Building Safety is hereby referred to as the Building Services Division of the Whatcom County Planning and Development Services Department (WCPDS).

103.2 Appointment. The Department Director is the Building Official. The Director may appoint an alternate designee at his/her discretion.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the Building Official shall have the authority to appoint a deputy building official, the related technical
officers, inspectors, plans examiners and other employees. Such employees shall have powers as delegated by the Building Official.

15.04.020 Amendments to the International Building Code.

A. The IBC is amended as follows:

1. Section 104.1 General, is amended with the following additional language:

The Building Official defers to WCC Title 17, Flood Damage Prevention, and per associated requirements of the Endangered Species Act (ESA), to be administered by Public Works, River and Flood Division, for all matters related to flood review of building permits.

2. Section 104.11 Alternate materials, design and methods of construction, the last sentence is amended as follows:

Where the alternative material, design or method of construction is not approved, the Building Official at his/her discretion may respond in writing, stating the reasons why the alternative was not approved, when a determination request is submitted to the Building Official in writing.

3. Section 105.1 Required, is amended to include the following:

a. Commercial project proposals require pre-screening for a waiver (from pre-application meeting) or a pre-application meeting prior to permit application submittal. Pre-screening may be waived at the discretion of the Building Official for minor projects such as simple signs, single unit small equipment foundations, and projects of similar minor scale and impact. Information and document submittals for the purposes of waiver or pre-application are not intended to meet the standard for a complete permit application and do not constitute project vesting. However, information, requirements and conditions received by the applicant(s) and/or their agents or consultants for a given project proposal, as part of the waiver or pre-application process, will be considered vested, regardless of change of adopted codes or regulations, if a complete permit application is received within 30 consecutive days from the date of waiver or pre-application meeting. Such information, requirements and conditions are not intended or represented as a complete or comprehensive list of project requirements. Significant changes in the scope of a project proposal may require additional screening for another waiver or pre-application meeting.

b. Whatcom County (the County) may require that a covenant or agreement be recorded against the deed(s) applicable to the location and/or operation of a given project to inform future property owners of the current restrictions or approved land uses. The County may draft the covenant or agreement upon whatever terms the County in its discretion deems proper.
c. A coordinated master site plan (MSP), demonstrating consistency in the layout of the project proposal with all applicable regulatory requirements, is required to be submitted by the applicant and/or project design professional in substantial charge prior to permit issuance. In general, a coordinated MSP will be required for projects exceeding a construction value of $200,000.00, but may be required for any project the Building Official deems necessary. County staff will review the site plan(s) in the application file for regulatory conflicts and discrepancies prior to plan check. County staff will notify the applicant and/or design professional of identified conflicts or discrepancies to be reconciled. The master site plan may be one page which incorporates all applicable regulatory review overlays when practical. It may also include multiple overlay pages for readability purposes provided they have been verified by County staff for regulatory consistency. Once the coordinated MSP has been reviewed and approved, application review processing will continue.

d. A state licensed contractor may obtain a permit, as required by the mechanical and plumbing codes, through mail-in applications for work not exceeding $10,000 valuation and not requiring plans and specifications and not in conflict with state or local zoning and environmental policies and with the prior approval of the building official.

e. The applicant shall fill out in full the forms furnished for that purpose, and attach thereto the full amount of moneys that are required for fees as required in the respective codes. The application shall contain all information necessary to the lawful enforcement of the provisions of the respective codes. The applicant shall file all forms with fees.

f. No person, firm, partnership, corporation or other entity shall perform work as provided herein until such time as they receive verification of approval of their application by the county building official and have been given written notice of a valid permit.

g. Any violation of this chapter shall be cause for the building official to revoke the mail-in applications privilege of the violator. Upon written notice of revocation, all provisions of the mechanical and plumbing codes superseded by this chapter shall resume in full force and effect as to the person or industrial plant whose application has been revoked.

4. Section 105.2, Work exempt from permit, is amended to read as follows:

a. One-story detached, non-occupied accessory structures without basements, used as tool and storage sheds, playhouses and similar uses, provided that 1.) The floor area does not exceed 120 square feet. [11 sq. m]
   2.) Accessory structures maintain a minimum separation of 10 [ten] feet [3048 mm] between exterior walls, and a minimum separation of 8 [eight] feet [2438 mm] between eaves of adjacent buildings on the same property and 3.) provided that accessory structures meet all applicable setback requirements.
b. Fences not over 7 feet (2134 mm) high.

c. Oil derricks.

d. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting surcharge or impounding Class I, II, or IIIA liquids.

e. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18,925 L). And the ratio of height to diameter or width does not exceed 2 to 1.

f. Sidewalks, walking surfaces, and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below and are not part of an accessible route.

g. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.

h. Temporary motion picture, television and theater stage sets and scenery.

i. Prefabricated swimming pools installed entirely above-ground, accessory to a Group R-3.

j. Shade cloth or soft cover structures constructed for nursery or agricultural purposes and not including service systems.

k. Swings and other playground equipment.

l. Window awnings in Group R-3 and U occupancies, supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.

m. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

n. Bridges, box culverts and similar passageway structures built over depressions or obstacles, herein after referred to as bridges, are structures and therefore not exempt per IBC Section 105.2, except as interpreted and quantified in Building Services Division Code Interpretation #2002-05. Bridges shall be designed and constructed per the current adopted Whatcom County Development Standards (WCDS), Chapter 5, Road Standards, Section 513, Bridges and Associated Retaining Walls; and per applicable portions of IFC Section 503. Bridges constructed as a requirement or condition of subdivision or short subdivision approval, per Whatcom County Land Division Regulations, Title 21, and which receive final approval from the Public Works Technical Administrator, shall be deemed by the Building Official to have met the permit requirements per IBC Section 105. The Technical Administrator is designated as the County Engineer, per WCDS, Chapter 5, Road Standards, Section 502.
5. Section 105.3, Application for Permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefore in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in Section 107.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant’s authorized agent.

7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued septic system permit shall be specific to the project application.

9. Provide additional data and information in the designated sequence, as required by the Building Official.

6. Section 105.5, Expiration, is amended to include the following:

Land Disturbance permits issued for grading activity shall expire if work authorized is not commenced within 180 days of issuance unless a phased plan has been approved by the Technical Administrator. The Technical Administrator is authorized to grant one extension of 180 days if the request is submitted prior to expiration of the permit. The extension shall be requested in writing and justifiable cause(s) demonstrated. If the project is located within a water resource special management area and subject to seasonal clearing activity limitations the extension shall begin at the commencement of the construction season, pursuant to WCC 20.80.735.
Grading permits also expire and become invalid when the total approved volume has been placed into or excavated from the approved area.

7. Section 107.2 Construction documents, is amended to include the following:

Construction documents may be submitted in Standard English or Metric measurement. However, the Building Official may require, at his/her discretion, that any Metric construction documents be converted by the applicant to Standard English measurement which then may be submitted independently or in tandem with Metric documents.

8. Section 109.6, Refunds, is amended to include the following policy:

The refund policy applies to the current editions and amends the respective Sections of the IBC, Section 109; IRC, Section R108.5; IFC, Section 113.5; IMC, Section 106.5.3; IFGC, Section 106.6.3; and UPC, Section 103.4.5, as adopted per WCC 15.04.010.

The Building Official may authorize refunding any fee hereunder which was erroneously paid or collected at 100%.

The Building Official may authorize refunding of not more than 80% of the fee paid for a building permit when no work has been done under a building permit issued in accordance with the current editions listed in this policy.

The Building Official may authorize refunding of not more than 80% of the plan review fee paid when an application for a building permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done.

The Building Official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

9. Section 113, Board of Appeals, is amended as follows:

Appeals related to grading activity, per Appendix J and as amended per Section 15.04.020, Subsection B, which include, are associated with in any way, or promulgated within any regulated critical areas, per WCC Chapter 16, are according to the provisions of WCC Sections 16.16.280 and 16.16.285 and shall be the decision of the Whatcom County Hearings Examiner.

B. Appendix J Grading, is amended as follows:

1. IBC Section 104.1 General, is amended per WCC 15.04.020, Subsection B, including an additional paragraph to read as follows:
The Director of the Planning and Development Services Department or the Director's designee also referred to herein as the Technical Administrator, is hereby authorized and directed to enforce the provisions of IBC Appendix J, Grading, including as amended in WCC Chapter 15, Section 15.04.020. The Technical Administrator shall have the authority to render interpretations of the amended Appendix and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of amended Appendix J. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in amended Appendix J.

2. The following definitions are added to Section J102.1 Definitions:

a. EARTH MATERIAL: Any rock, natural soil or any combination thereof.

b. CRITICAL AREAS: The following areas as regulated under WCC 16.16 shall be regarded as critical areas along with associated buffers identified under WCC 16.16:

i. Geologically hazardous areas.

ii. Frequently flooded areas.

iii. Critical aquifer recharge areas.

iv. Wetlands.

v. Fish and wildlife habitat conservation areas.

c. ORDINARY HIGH WATER MARK: The mark on all lakes, rivers, streams and tidal water that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation.

3. The following shall be added to Section J103.1:

Upon receipt of a fill and grade permit application on properties within 500 feet of a site known to contain archaeological resources that are outside of the Shoreline Management Program Jurisdiction (WCC Title 23) and/or the Point Roberts Special District (WCC 20.72), the County shall notify the applicant that the projects location is within an archaeologically sensitive area and Federal, State and Tribal Laws and Regulations pertaining to cultural resources may apply.

Grading permit expiration is per IBC Section 105.5 as amended.

4. The numbered exemption list of Section J103.2 Exemptions, is amended as follows:
1. Grading in an isolated, self-contained area, provided there is no danger to the public, and that such grading will not adversely affect adjoining properties or critical areas and further provided that the activity occurs outside of the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title 23) and fill does not exceed 250 cubic yards and is associated with a residence authorized by a valid building permit.

2. Excavation for construction of a structure permitted under this code provided that said construction has been duly reviewed for compliance with the Whatcom County Shoreline Management Program (WCC Title 23) and the Whatcom County Critical Areas Ordinance (WCC 16.16).

3. Cemetery graves

4. Refuse disposal sites controlled by and appropriately permitted in accordance with other regulations.

5. Excavations for wells or trenches for utilities provided the activity occurs outside of the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title 23) and there are no adverse impacts to critical areas.

6. Mining, quarrying, excavating, processing or stockpiling rock, sand, gravel, aggregate or clay controlled by other regulations, provided the activity occurs outside of the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title 23) and such operations do not affect the lateral support of, or significantly increase stresses in soil on adjoining properties, or adversely impact critical areas.

7. Exploratory excavations performed under the direction of a registered design professional provided that said excavations have been duly reviewed for compliance with the Whatcom County Shoreline Management Program (WCC Title 23) or critical areas ordinance.

8. A fill less than 1 foot in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope) or less than 3 feet in depth, not intended to support structures, that does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course or otherwise impact critical areas provided the activity occurs outside of the jurisdiction of the Whatcom County Shoreline Management Program.

9. Exemptions listed per WCC 20.80.733.

5. The following site plan requirements are added to J104.2 Site plan requirements:
a. In addition to the provisions of Section 107, a grading plan shall show the existing grade and finished grade in contour intervals of sufficient clarity to indicate the nature and extent of the work and show in detail that it complies with the requirements of this code.

b. The plans shall show the existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this code.

c. The plans shall show erosion control types and locations, natural features (slopes, streams, wetlands, ponds, etc.), forested or treed areas, ditches, culverts, wet areas, flow directions, critical area boundaries, the Ordinary High Water Mark (OHWM) of any water body regulated by the Whatcom County Shoreline Management Program and any other information deemed necessary by the Building Official.

6. J104.3 Geotechnical report, is amended as follows:

When required by the Technical Administrator, a geotechnical report prepared by a registered design professional shall be provided. The report shall contain at least the following:

1. The nature and distribution of existing soils;

2. Conclusions and recommendations for grading procedures;

3. Soils design criteria for any structures or embankments required to accomplish the proposed grading;

4. Where necessary, slope stability studies, and recommendations and conclusions regarding site geology; and

5. Unless approved by the Technical Administrator, a building permit shall not be issued on approved fills without an engineered soils report and proof of supervised, monitored placement by the registered design professional.

6. Additional information may be required at the discretion of the Technical Administrator.

7. The Technical Administrator may require a geotechnical report be prepared by a registered design professional to determine the quantity of unpermitted fill brought to a site without a valid permit, as required by this chapter.
Exception: A geotechnical report is not required where the Technical Administrator determines that the nature of the work applied for is such that a report is not necessary.

7. Add the following as Section J104.5 Surface mining report:

Grading permit plans associated with surface mining shall be consistent with a surface mining reclamation plan as required and approved by the Washington Department of Natural Resources.

(Ord. 2004-064 § 2).

15.04.030 Amendments to the International Residential Code.

A. Section R104.11, the last sentence is amended as follows:

Where the alternative material, design or method of construction is not approved, the Building Official at his/her discretion may respond in writing, stating the reasons why the alternative was not approved, when a determination request is submitted to the Building Official in writing.

AB. Section R105.1 Required, is amended as follows:

Whatcom County (the County) may require that a covenant or agreement be recorded against the deed(s) applicable to the location and/or operation of a given project to inform future property owners of the current restrictions or approved land uses. The County may draft the covenant or agreement upon whatever terms the County in its discretion deems proper.

BC. Section R105.2 Work exempt from permit, is amended to read as follows:

1. One-story detached, non-occupied, accessory structures without basements, used as tool and storage sheds, playhouses and similar uses, provided that 1.) the floor area does not exceed 200 sq. ft. [18.58 sq. m] and 2.) provided that accessory structures meet all applicable setback requirements.

2. Fences not over 7 feet (2134 mm) high.

3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.

4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18,927 L). And the ratio of height to diameter or width does not exceed 2 to 1.
5. Sidewalks, walking surfaces, and driveways not more than 30 inches above grade and not over any basement or story below.

6. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.

7. Above ground pre-fabricated pools.

8. Swings and other playground equipment.

9. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.

10. Uncovered decks not exceeding 200 square feet (18.58 sq. m) in area, that are no more than 30 inches (762 mm) above grade at any point, and do not serve the exit door required by Section R311.4.

CD. R105.3 Application for permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefore in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in Section 107.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant's authorized agent.

7. Include signature by the applicant or the applicant's authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that
requires sewage disposal. The approval to connect or issued system permit shall be specific to the project application.

9. Provide additional data and information in the designated sequence, as required by the Building Official.

DE. Table R301.2 (1) Design Data for Whatcom County is amended as follows:

1. Ground Snow Load Table, January 1997:

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<th>Approx. Average Elevation</th>
<th>Revised Ground Snow Load</th>
<th>Revised Roof Snow Load</th>
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</table>

Footnotes:

1. Any proposal can challenge the above design load with engineer or architect stamped and signed calculations and criteria.

Buildings where the roof snow load exceeds 30 psf may require architect or engineer review.
Recommendations are valid for the recognized central area of each regional designation. Building Services reserves the right to adjust the roof snow load based on building location and/or criteria per the 2012 IBC and/or the most current edition of the Snow Load Analysis for Washington.

2. Wind Speed (mph): IRC – $V_{ult} = 85$ 110 mph [Figure R301.2(4)B]. $V_{ult}$ = IBC Risk Category I - 100 mph [Figure 1609.3(3)]; IBC Risk Category II – 110 mph [Figure 1609.3(1)]; IBC Risk Category III and IV – 115 mph [Figure 1609.3(2)].

3. Seismic Design: Zone D0/D1; Design Category D (See IBC Section 1613 and/or ASCE 7)

4. Subject to Damage from Weathering: Moderate

5. Frost Line Depth: 18" (west of longitude 122° 54′ 30″, approximately at mile post 35 of State Route 542, Mt. Baker Highway)

6. Termite: None

7. Decay: Moderate

8. Winter Design Temp: 19 °F

9. Ice Shield Underlayment Req.: No

10. Air Freezing Index: 260

11. Mean Annual Temperature: 48° F

EF. IRC Appendix E, Manufactured Homes, is entirely replaced with the following:

This chapter is enacted as an exercise of the police power of the county for the benefit of the public at large. It is not intended to create a special relationship with any individual, or individuals, nor to identify and protect any particular class of persons.

The purpose of this chapter is to provide minimum standards to safeguard life or limb, health or property, and public welfare, by regulating and controlling the installation of manufactured homes on building sites within the county.

It is not the intent of this chapter to impose liability upon the county for failure to perform any discretionary act. Rather, it is the intent of this chapter to place the obligation of complying with its requirements upon the installer. Nothing
contained in this chapter shall be construed to relieve from or to lessen the responsibility or liability of any person for injury or damage to persons or property caused by or resulting from any defect of any nature in any manufactured home installation work performed by said person or in any manufactured home installation equipment owned, controlled, operated or used by him; nor shall Whatcom County, or any officer, agent, or employee thereof, incur or be held as assuming any liability by reason or in consequence of any permission, certificate of inspection, inspection or approval authorized herein, or issued or given as herein provided, or by reasons or consequence of any things done or acts performed pursuant to the provisions of this chapter.

1) SCOPE

This chapter sets forth rules and regulations to regulate and control the installation of manufactured homes on building sites, establishes an administrative procedure for the issuance of permits, and provides for the inspection of manufactured home installations.

2) DEFINITIONS

a. ADMINISTRATIVE AUTHORITY is the Department of Planning & Development Services, the Building Services Division, and the Whatcom County Building Official.

b. BUILDING OFFICIAL is the Director of the Planning & Development Services Department or his/her designee. See Section 15.04.015.

c. BUILDING SITE is any site proposed for the location of a manufactured home including sites within mobile home parks.

d. HUD is the Federal Department of Housing and Urban Development.

e. INSTALLER shall either be the owner or a State licensed mobile home installer.

f. MANUFACTURED HOME means a structure designed and built to comply with the Washington State Department of Labor and Industry's rules and regulations for Manufactured Homes and Commercial Coaches. It is also defined and cross-referenced per the current adopted edition of the IRC, SECTION R202, DEFINITIONS, MANUFACTURED HOME.

g. MOBILE HOME is a transportable, factory-built dwelling unit constructed prior to June 15, 1976 (prior to enactment of National Manufactured Housing Construction & Safety Standards [NMHCSS] Act of 1974).

h. PERMANENT FOUNDATION means concrete blocks on a concrete footing or slab, or other approved engineered foundation systems.

3) GENERAL INSTALLATION REQUIREMENTS
a. Manufactured homes installed on building sites shall be installed in accordance with the provisions of this chapter and all applicable local, state, and federal codes, ordinances, and statutes.

b. Manufactured homes shall be installed in compliance with the manufacturer's installation recommendations or according to NCSBCS/ANSI A225.1-1994; permanent foundation requirements. The manufacturer or dealer shall send two copies of its approved installation recommendations to the purchaser of the manufactured home. Two copies shall be submitted with the building permit application.

c. No person, firm, partnership, corporation, or other entity may install a manufactured home unless he/she owns the manufactured home, or is a licensed manufactured home installer.

d. All manufactured home installations shall comply with the requirements of the IRC Section R403.1.7.3, Foundation Elevation, and with the following: On graded sites, the top of any exterior foundation shall extend above the elevation of the street gutter at point of discharge or the inlet of an approved drainage device a minimum of 12 inches plus 2 percent. The Building Official may approve alternate elevations, provided it can be demonstrated that required drainage to the point of discharge and away from the structure is provided at all locations on the site. The following provisions shall be made to prevent standing water under and around a building or structure prior to the final inspection. The finished grade and elevation under the building shall be above- the ground drainage flow of the land around the building to prevent surface or sub-surface water from draining to the space under the building, provided that other approved alternates such as drain tile, exterior grading to a point lower than the interior drainage of the building or an approved sump pump may be used, and provided further that the alternate method to be used shall be shown on the building plans. An approved sump pump system shall in no case be connected to the sanitary sewer system. In all instances where a drainage or sump pump system is installed under the structure there shall be provided, in the foundation wall, an access crawl hole which shall be no more than 20 feet from the main drain cleanout. To facilitate the drainage of water, the building site shall have at least a 2% gradient towards approved drainage facilities from building pads. However, this may be waived by the building official provided that the permittee can demonstrate that due to the nature of the site this would be impractical and that an approved alternate will be used. If water appears under the building within a period of 12 months after the final inspection of the building or structure, the builder shall be responsible for providing the drainage of the same, and provided further that the builder has not complied with the requirements of Section 1804.7 herein, concerning drainage. Thereafter, the owner of the building shall be responsible for providing drainage of the same, except where owner and builder agree otherwise.
e. In those areas that are recognized as floodplains by the Washington State Department of Ecology or the Department of Homeland Security, or hazardous because of the probability of earthquakes, ground slides, avalanches, or high winds, the building official may set requirements that are necessary to lessen the hazards. Manufactured homes installed on sites that are sloping or have poor drainage shall be installed in accordance with installation recommendations, provided by a professional engineer or architect licensed in the state of Washington.

f. Manufactured homes in a floodplain must be installed per the applicable provisions of Whatcom County Code, Title 17, Flood Damage Prevention, and per associated requirements of the Endangered Species Act (ESA).

g. Used mobile homes older than 1976, require a fire/life safety inspection by the State Dept. of Labor & Industries prior to building permit submittal.

4) PERMITS REQUIRED

No person, firm, or corporation shall install or cause to be installed any manufactured home on a building site without having first obtained a building permit and a manufactured home dealer shall not deliver a manufactured home to a building site until that dealer has verified that the installer has obtained the necessary building permits.

5) APPLICATION REQUIREMENTS

In addition to the building permit application and issuance regulations, the following shall apply to manufactured home installations: separate application shall be required for each manufactured home installation. The application shall be made upon forms provided by the administrative authority and shall be accompanied by the permit fee established herein.

a. A separate application shall be required for each manufactured home installation. The application shall be made upon forms provided by the administrative authority and shall be accompanied by the permit fee established herein.

b. Each application shall be accompanied by a plot plan drawn to scale with detail sufficient to show that the installation will meet siting requirements of all applicable state and local regulations.

c. Applications for manufactured homes to be installed on building sites or sites within a mobile home park shall be accompanied by two sets of foundation plans for a permanent foundation.

6) INSPECTION

Approved installation specifications shall be available at the site at the time of inspection of the installation. In the event that no approved installation
specifications are available or the approved specifications as provided above do not cover all the installation requirements of this chapter, then the total installation of the portions thereof not covered by the approved specifications shall comply with the appropriate provisions of this code.

a. On building sites other than those in mobile home parks, the installer of the manufactured/mobile home shall request a footing inspection after the placement of the footing forms and rebar and prior to pouring or placing the footings, a tie-down inspection and a final inspection after all aspects of the installation have been completed. For mobile home park installations, the installer shall request a final inspection after all aspects of the installation have been completed. All requests for inspection shall be made one working day before such inspection is desired.

b. The manufactured/mobile home may be occupied once the installation has passed final inspection for compliance with the requirements of this chapter and any conditions placed upon the issued permit.

c. If the installation does not comply with the installation requirements of this chapter and the conditions of the installation permit, the local enforcement agency shall provide the installer with a list of corrections that the installer must make. The list of corrections shall state a date by which the corrections must be completed. If the items that require correction do not endanger the health or safety of the occupants, or substantially affect the habitability of the manufactured/mobile home, the local enforcement agency may permit the owner of the home to occupy it.

7) BUILDING SITE PREPARATION

A manufactured home may not be installed on a building site unless the ground at the site has adequate compaction and load-bearing ability to meet the support requirements of (3)(d) or, if the building site is in a mobile home park, the park owner must insure that the ground on which the mobile home is to be installed has been improved as necessary to provide a proper base for the mobile home and that the area beneath the mobile home has adequate drainage.

8) FOUNDATION SYSTEM FOOTINGS

a. Footings shall be constructed of solid concrete per the manufacturer's installation specifications or an approved alternate method.

b. Four-inch slab with thickened footings, extending 18 inches below existing grade, 16 inches diameter concrete posts, spaced according to the applicable requirements of NCSBCS/ANSI A225.1-1994, with a four-inch concrete slab and Z hook for positive connection between post and slab, if in a flood plain.

c. Footings shall be:
i. Evenly bedded and level;

ii. Placed on firm, undisturbed or compacted soil that is free of organic material;

iii. Centered in a line under the main frame longitudinal members on both sides of the manufactured home;

iv. Spaced not more than eight feet apart and no more than two feet from the ends of the main frame. The building official may require a closer spacing, depending on the load bearing capacity of the soil or the specifications in the manufactured home installation manual.

d. A manufactured home with more than one section must have center line blocking at end walls and at other points of connection of the sections of the manufactured home that have ridge beam bearing support. Blocking is also required at both ends of a door opening that is six feet or more wide in an exterior wall.

e. If a manufactured home requires footings on its exterior perimeter, as specified by the installation recommendations or required by the building official, the footings shall be installed below the frost line.

f. Footings shall be constructed so that 75 percent of the area under the manufactured home has at least 18 inches clearance between the bottom of the main chassis members and the ground level. The area beneath the furnace cross-overs and fireplaces must always have at least 18 inches clearance. At no point under the manufactured home may clearance be less than 12 inches.

9) FOUNDATION SYSTEM PIERS

a. An installer must build and position piers and load-bearing supports or devices to distribute the required load evenly. An installer must use manufactured piers or load-bearing supports or devices that are listed or approved for the intended use.

b. A pier may be made of a single stack of 8-inch by 16-inch blocks if the blocks are not stacked more than three blocks high. A pier made of a single stack of blocks shall be installed at a right angle to the main frame longitudinal members and shall be capped with no more than 2-inch by 8-inch by 16-inch wood blocks or one 4-inch by 8-inch by 16-inch concrete block.

c. A pier may be made of a double stack of 8-inch by 8-inch by 10-inch blocks if the blocks are not stacked more than five blocks high. Each row of blocks in such a pier shall be stacked at right angles to the abutting rows of blocks. The pier shall be capped by with 2-inch by 8-inch by 16-inch concrete blocks. The pier shall be installed so that the joint between the cap block is at right angle to the main frame longitudinal members.
d. A pier may be made with more than five courses of blocks and not to exceed 9 (72 inches) courses of block if the stacked blocks are filled with 2,000 psi concrete or mortar, and no more than 20% of the piers exceed five courses (40”). All other systems shall be designed by a licensed Washington state engineer or architect.

e. All blocks shall be set with cores placed vertically.

10) FOUNDATION SYSTEM PLATES AND SHIMS

An installer may fill a gap between the top of a pier and the main frame with a wood plate that is not more than two inches thick and two opposing wedge-shaped shims that are not more than two inches thick. Wood plates and shims must be of hemlock/fir, Douglas fir, or spruce/pine/fir. A shim shall be at least four inches wide and six inches long. The installer shall fit the shim properly and drive it tight between the wood plate or pier and the main frame to ensure that the manufactured home is level and properly supported at all load-bearing points. A block that abuts a wedge-shaped shim shall be solid.

11) FOUNDATION

A manufactured home shall have an approved skirting around its entire perimeter. The wood of the skirting shall be at least six inches from the ground unless it is pressure-treated wood. Metal fasteners shall be hot dipped galvanized, stainless steel, or other corrosive-resistant material. Ferrous metal members in contact with the earth, other than those that are galvanized or stainless steel, shall be coated with asphaltic emulsion. A manufactured home that is installed shall have ventilation openings with a net area of one square foot per 150 square feet of crawl space; except manufactured homes installed in the flood plain shall have ventilation openings with a net area of 1 square inch per 1 per square foot of crawlspace installed within 1 foot of finished grade. The openings shall be designed to provide cross ventilation on at least two approximately opposite sides of the manufactured home. The installer shall locate openings as close to the corner of the manufactured home as practical and shall cover the opening with a corrosive-resistant wire mesh. Dryer vents and hot water tank pressure release valves shall exhaust on the exterior of the perimeter skirting. The skirting for each section of the manufactured home shall have an opening of at least 18 inches by 24 inches with a cover of metal or pressure-treated wood to allow access to the crawl space. In all cases the foundation shall be installed before a final sign off can be made.

12) ANCHORING SYSTEM

The building official shall require a single section or multiple section manufactured home to have an anchoring system. Such an anchoring system shall be installed per the manufactured installation specifications or according to the design of a professional Washington State licensed engineer or
architect. Components of the anchoring system shall have a resistance to weather deterioration that is at least equal to that of a zinc coating that is not less than 0.3 inches per square foot of coated surface. Cut edges of zinc-coated strapping do not need to be coated.

a. An installer shall install, preload, and adjust a ground anchor in accordance with the anchor manufacturer’s instructions. The installer must supply a copy of the instructions to the building official. Ground anchors shall be marked with the manufacturer’s identification and model number in a location that is visible to the inspector after the anchor is installed. The manufacturer of a ground anchor must provide instructions with each anchor that specifies the kinds of soils for which the anchor is suitable. Analysis from a WA State licensed engineer may be required.

b. If concrete slabs or continuous footings are used to transfer the anchoring loads to the ground, the following requirements apply:

i. Engineered tie-down systems shall be per approved details from the Washington State Department of Labor and Industries.

ii A concrete slab may be used in place of a ground anchor if it provides holding strength equal to the required ground anchors.

iii. Analysis from a WA state licensed engineer may be required.

c. Ties shall be of approved strapping, or other approved materials. Ties shall be fastened to the ground anchors and drawn tight with turnbuckles, yoke fasteners, or other approved tension devices. Tension devices shall end in clevis, forged, or welded eyes. Tension devices shall be designed to prevent self-disconnection if the ties become slack. Ties shall connect the ground anchors to the main frame longitudinal members. Ties must not connect to steel outrigger beams that fasten to the main frame unless the manufacturer’s installation instructions specifically approve the connection. Diagonal ties must lie at least 45 degrees from the vertical.

d. The installer shall space the ties as evenly as practical and shall locate a tie within eight feet of each end of the manufactured home. The installer shall install vertical ties at each detached corner of a clerestory roof and added-on sections of expandable manufactured homes., the installer shall install the following number of ties for each I-beam or other main frame longitudinal member: according to the manufacturer’s specifications or per NCSBCS/ANSI A225.1-1994, as indicated in the following chart:

<table>
<thead>
<tr>
<th>Length of home in feet (excluding hitch)</th>
<th>Number of vertical ties per detached corner of add-ons</th>
<th>Number of diagonal ties</th>
</tr>
</thead>
<tbody>
<tr>
<td>32 – 54</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>55 – 73</td>
<td>1</td>
<td>6</td>
</tr>
</tbody>
</table>
13) ASSEMBLY

The water pipe connection to the manufactured home shall have a main shutoff valve in compliance with the 2012 Uniform Plumbing Code, Section 606. Exterior water lines and ducting under the manufactured home shall be insulated. In all other respects, utility connections to the manufactured home, including water, sewer, electricity, and gas shall comply with the applicable county codes. Accessory structures attached to or located next to a home, such as awnings, carports, garages, porches, or steps shall be constructed in conformance with applicable county codes and structurally independent of the manufactured home unless pre-approved by manufacturer. (Ord. 2004-064 § 2)

15.04.040 Amendments to the International Fire Code.

A. Section 102.2 Administrative, operational and maintenance provision, is amended to read as follows:

To provide a reasonable degree of safety to persons occupying existing buildings, there shall be a fire code inspection, at times to be determined by the Whatcom County Fire Marshal, for all Group A, B, E, F, H, I, M, R, S and U occupancies. Only R-3 Occupancies containing the following shall be subject to fire code inspections: Adult family homes, family daycare homes, adult and child care facilities, as defined in the Washington State amendments.

B. Section 103.1 General, is amended to read as follows:

103.1 General. The Department of Fire Prevention, herein after referred to as the Fire Marshal's Office, is established within the jurisdiction under the direction of the Fire Code Official, herein after referred to as the Fire Marshal. The function of the department shall be the implementation, administration and enforcement of the provisions of this code. Recognizing the authority and responsibility vested in the Fire Marshal by the International Fire Code, the Fire Marshal is authorized to promulgate such rules, policies and/or procedures as he/she deems necessary for the efficient operation of fire prevention and investigations.

C. Section 103.2 Appointment, is amended to read as follows:

103.2 Appointment. The Fire Marshal is the Department Director except that a Fire Marshal and/or Deputy Fire Marshal may be appointed by the Department Director. The Fire Marshal/Deputy Fire Marshal shall be not less than a supervisor within the Building Services Division of the Whatcom County Planning & Development Services Department, as designated by the Director. The Fire Marshal for Whatcom County is authorized to enforce
the provisions of this ordinance and adopted referenced codes and amendments.

D. Section 104.1 General, is amended with the following additional paragraphs:

The provisions of RCW 18.160.070 and the Levels of Licensing required by the State Fire Marshal's Office will be enforced by the Whatcom County Fire Marshal's Office as specified, including but not limited to work performed by contractors and/or documentation verifying compliance with current licensing requirements. Issuance of permits may be withheld due to lack of compliance with these provisions.

It is the interpretation and determination of the Whatcom County Fire Marshal that the "installation of underground work of any kind for any kind of structure" applies to the installation of fire protection systems connected to or integral to a fire protection sprinkler system. A Level U license from the State Fire Marshal's office shall be required. The Fire Marshal, at his/her discretion, may require a Level U license for any underground work determined at any stage of installation to be substantially and/or consistently substandard.

E. Section 104.9 Alternate materials and methods, the last sentence is amended as follows:

Where the alternative material, design or method of construction is not approved, the Building Official Fire Marshal at his/her discretion may respond in writing, stating the reasons why the alternative was not approved, when a determination request is submitted to the Fire Marshal in writing.

EF. Section 104.10 Fire investigation, is amended to read as follows:

The Whatcom County Sheriff's Office shall have the authority to investigate the cause, origin and circumstances of any fire, explosion or other hazardous conditions. Information that could be related to trade secrets or processes shall not be made part of the public record except as directed by a court of law.

FG. Section 104.10.1 Assistance from other agencies, is amended to read as follows with the following additional language:

a) The Whatcom County Fire Marshal shall have the authority to render necessary assistance in the investigation of fires. The Whatcom County Fire Marshal and designated, assigned staff members shall have the powers of a limited authority of a Washington peace officer as defined in Chapter 10.93 RCW. They shall be commissioned by the Whatcom County Sheriff as specially commissioned Washington peace officers, as
defined in Chapter 10.93 RCW, upon satisfaction of the training and
other requirements prescribed or approved by the Washington Criminal
Justice Training Commission, for the purpose of administering this code.

GH. Section 105.7.1 Automatic fire-extinguishing systems, is amended with
the addition of the following language:

Commercial cooking arrays require permanently affixed signage that states:
"Alteration of commercial cooking arrays is prohibited without prior
review and approval from the Whatcom County Fire Marshal." Sign
location to be determined by the Fire Marshal.

HI. Section 105.7.8 Flammable and combustible liquids, is amended as
follows:

1. (unchanged)

2. (unchanged)

3. To install, alter, remove, abandon, or otherwise dispose of a
flammable or combustible liquid. Abandoned underground fuel tanks
are required to be removed according to all applicable codes and
safety standards except under special circumstances, such as steep
or extreme topography, significant physical obstructions, or similar
circumstances, as approved per the discretion and judgment of the
Fire Marshal.

IJ. Section 108.1 Board of appeals, is amended to read as follows:

In order to hear and decide appeals of orders, decisions or determinations
made by the Fire Marshal relative to the application and interpretation of this
code, there shall be and is hereby created a board of appeals. Whatcom
County Ordinance No. 2007-024 shall be the Fire Code appeals board. The
Appeals Board shall be the same board for all codes appeals, except as
amended in WCC Chapter 15.04.

JK. Section 202 General Definitions, is amended to read as
follows:

a. Fire Chief. Whenever the term fire chief is referenced in this code it
shall mean Whatcom County Fire Marshal (Fire Code Official) or his/her
designee, as identified in IFC Section 103, except as stated in IFC
Section 104.11 and/or where the Fire Marshal has delegated a specific
responsibility to the Fire Chief of a given fire district by verbal, written,
and/or historic agreement.

b. Fire Code Official. Whenever the term fire code official is referenced
in this code it shall mean Whatcom County Fire Marshal or his/her
designee, as identified in IFC Section 103.2 and as amended per WCC 15.04.040.

K\textsuperscript{L}. Chapter 5 is amended to include adoption of all sections of the chapter not adopted by Washington State Amendments, Chapter \textsuperscript{51-54A}, as authorized per RCW 19.27.060, \#5

L\textsuperscript{M}. Appendix B, Fire Flow Requirements for Buildings is amended as follows:

1. Section B103.1 Decreases. The Fire Marshal is authorized to reduce the fire-flow requirements for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical. This may include consideration of alternative materials and methods where the Fire Marshal finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method, or work is at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire-resistance, durability, and safety.

2. Section B104.1 General, is amended as follows:

a. The fire-flow calculation area shall be the total floor area of all floor levels within the exterior walls, and under horizontal projections of the roof of a building (such as a connecting breezeway), otherwise including only areas that are fully enclosed on all sides and which have a full ceiling height. Full ceiling height means an average (50\% or more) ceiling height of 6 (six) feet – 8(eight) inches (203.3 cm), including under-floor areas that are accessed by a side-hinged man door, sliding door, overhead door, or similar standard height access. The calculation area is measured to the outside surface of exterior and/or enclosure walls.

b. In general, commercial and industrial structures will be measured according to the same methodology as residential/accessory buildings, except that structures will also be judged according to their use and corresponding hazard, according to the applicable codes in the IFC and IBC, and according to the judgment and discretion of the Fire Marshal. As such area may be calculated for roof only (open sided) structures, covered open/partially open portions of buildings, to the outside edge of eaves, and/or for uncovered portions of structures (decks, balconies, loading docks, etc.) on a case-by-case basis where, in the discretion of the Fire Marshal, it is warranted to preserve the health, safety, and welfare of the public, building occupants, and/or emergency responders.
3. Section B105.1 One- and two-family dwellings:

a. The minimum fire flow and flow duration requirements for one- and two-family dwellings having a fire-flow calculation area, including both existing and new proposed building area, that is measures in excess of 4000 square feet (371.6 m²) shall be 500 GPM @ 20 psi for 1 hour.

b. An NFPA 13D automatic sprinkler system throughout the measured fire area of a residence and/or residential accessory building qualifies as 100% reduction/mitigation in fire flow when the requirement threshold is exceeded.

c. An NFPA 13-D automatic sprinkler system is required throughout all dwellings with a measured fire area exceeding 8000 square feet. In addition, fire-flow for dwellings with a fire-flow calculation area larger than exceeding 8,000 square feet (743.2 m²), shall not be less than that specified in Table B105.1, as amended by Whatcom County, with the ability to apply fire-protection credits as described in Table B105.2; except that the flow duration may be a minimum of one hour.

d. Table B105.1(1) is not adopted.

4. Section B105.2, Buildings other than one- and two-family dwellings, is amended as follows:

DEFINITIONS:

- **Agricultural Building.** Livestock shelters or buildings, including shade structures and milking barns; poultry buildings or shelters; barns; storage of equipment and machinery used exclusively in agriculture; horticultural structures, including detached production greenhouses and crop protection shelters; sheds; grain silos; stables. (IBC Appendix C, Group U-Agricultural Buildings)

- **Agricultural processing building and/or facility.** Buildings/facilities where agricultural products are cooled, frozen, or dried and packaged in their otherwise unaltered, primary state for shipping to distribution sales outlets. Ag processing buildings/facilities may include conveyors, refrigeration equipment and rooms, other applicable processing or environmental mechanical equipment, offices, employee facilities, restrooms, product and product packaging
storage, loading docks, and similar applicable accessory appurtenances.

Although Ag processing buildings/facilities are determined by Whatcom County to be a Group U occupancy for purposes of determining fire flow requirements, they represent a more intensive use than agricultural buildings, based on the typical number of personnel (even if seasonal), type of equipment, and typical operations. Appropriate, applicable health, fire, and life/safety codes and regulations will be applied in the review process of these buildings/facilities.

Cooking, modifying, altering, combining, and/or other secondary food processing/manufacturing is not considered Ag processing. The primary use for this type of processing is determined to be a Group F occupancy per applicable provisions of the IBC and other adopted codes and regulations.

5. The minimum fire-flow and flow duration requirements for private garages, detached shops, and agricultural storage buildings (Group U occupancy) shall be 500 gpm @ 20 psi for 1 hour.

Exception: Fire-flow is not required if the structure meets one of the following criteria:

1. It does not exceed 2500 square feet (232.3 m²).

2. It is protected by an approved automatic fire sprinkler system

3. It has 60 foot setbacks to all property lines, and other structures on the same lot. Setback measurement may include the full width of an adjacent public way, no-build easement recorded with the Auditor to run concurrent with the deed, or similar instrument or provision acceptable to the Fire Marshal.

4. It has 100 foot setbacks to all property lines and other structures on the same lot for buildings which include hay storage, other combustible fibers, the potential for loose combustible fibers, and/or the potential for combustible dust (IFC Sections 2204 and 5204.1 3704.1; NFPA 61). Setback measurement may include the
full width of an adjacent public way, no-build easement recorded with the Auditor to run concurrent with the deed, or similar instrument or provision acceptable to the Fire Marshal.

6. The minimum fire-flow and flow duration requirements for agricultural processing buildings (Group-U) not exceeding 6000 square feet (557.4 m²) shall be 500 gpm @ 20 psi for 1 hour. If the building exceeds 6000 square feet (557.4 m²), Table B105.1, as amended by Whatcom County, shall apply except that, at the discretion of the Fire Marshal, where adequate and reliable water supply systems do not exist the duration may be reduced by up to 50%, but not to be reduced to below a duration of 1 hour.

Exception: Fire-flow is not required if the structure meets one of the following criteria:

1. It does not exceed 2500 square feet (232.3 m²), excluding areas open on three sides in measured fire area.

2. It has 60 foot setbacks to all property lines, and other structures on the same lot. Setback measurement may include the full width of an adjacent public way, no-build easement recorded with the Auditor to run concurrent with the deed, or similar instrument or provision acceptable to the Fire Marshal.

3. The building is provided with an NFPA 13 automatic sprinkler system throughout, including water storage to support the sprinkler system per the system design, plus an additional 500 gpm of fire flow at 20 psi for a duration of one hour, to be available at an approved hydrant or hydrants as determined by the Fire Marshal.

7. The minimum fire-flow and flow duration requirements for buildings other than one- and two-family dwellings and Group U buildings specified above, shall be as specified in Table B105.1, as amended by Whatcom County, with the ability to apply fire-protection credits as described in Table B105.32 but not to be reduced to below 600 1000 GPM @ 20 psi for duration of 1 hour for Group F and S occupancies, including accessory occupancies (per IBC 508.2); 1500 GPM @ 20 psi for a duration of 1 hours for occupancies and/or mixed occupancies including Group A; B, E, I, M, and R occupancies except where lower gpm is indicated per Table B105.1. Fire-flow reductions for Group H occupancies may only be considered at the discretion of the Fire Marshal.
Marshal. Increases in fire flow may be required based on the Fire Marshal's evaluation of operational hazard and/or occupancy group. Fire protection credits shall not allow the elimination of required systems as required in other parts of the Fire Code.

Exception: Fire flow is not required if the structure meets all of the following criteria:

1. It does not exceed 2500 square feet (232.3 m²)
2. It does not contain a hazardous operation, as determined by the Fire Marshal.
3. Not a Group A occupancy.

Tables B105.1, B105.2, B105.3

<table>
<thead>
<tr>
<th>Construction Type (a)</th>
<th>WHEN TOTAL FIRE AREA IN SQUARE FEET (b) IS EQUAL TO OR LESS THAN THESE VALUES</th>
<th>Required Fire Flow (GPM)</th>
<th>Duration (Hours)</th>
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</thead>
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<td>IV &amp; VA</td>
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<td>225,200</td>
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</table>
(a) Types of construction are based upon the current adopted edition of the IBC.
(b) Each portion of a building shall be considered as a separate fire area when separated by one or more fire walls built in accordance with the IBC.

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<thead>
<tr>
<th>GREATER</th>
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</table>

(a) Fire Protection Credits must equal at least 100% to receive fire flow credit.
(b) Credits used for or with substantial alterations shall be applied to the entire structure.
(c) Consists of an NFPA 13D sprinkler system with sprinkler coverage extended into the garage, attic, small bathrooms, closets, heated/unheated basements and bonus rooms.
(d) Constructed in accordance with the International Residential Code.

### TABLE B105.2

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<thead>
<tr>
<th>Fire Protection Credits for One- and Two-Family Dwellings (a)</th>
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<tr>
<td><strong>Options to Reduce Fire-Flow (b)</strong></td>
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<tr>
<td>NFPA 13D-Sprinkler System (c)</td>
</tr>
<tr>
<td>Monitored Fire Alarm System</td>
</tr>
<tr>
<td>1-Hour Fire-Resistive Const. (d)</td>
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### TABLE B105.32

<table>
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<tr>
<th>Fire Protection Credit for Commercial Rural Fire-Flow</th>
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<tbody>
<tr>
<td><strong>Options to Reduce Fire-Flow (a)</strong></td>
</tr>
<tr>
<td>NFPA Monitored Fire Alarm</td>
</tr>
<tr>
<td>NFPA 13 Automatic Sprinkler System</td>
</tr>
<tr>
<td>40' Minimum Setbacks (c)</td>
</tr>
</tbody>
</table>

(a) Credits used for or with substantial alterations shall be applied to the entire structure.
(b) Reductions will be simply rounded to the closest fire flow rate and applied for the duration prescribed by that flow rate. In cases of an equal distance between two rates, the rate will be rounded down.
(c) Setbacks apply to all property lines and buildings, on all sides of the structure. Setback measurement may include the full width of an adjacent public way, no-build easement.
recorded with the Auditor to run concurrent with the deed, or similar instrument or provision acceptable to the Fire Marshal.

MN. Appendix C, Fire Hydrant Locations and Distributions, is amended with the following added section:

a. Section C106 Subdivision Alternative, is added to the Appendix:

C106.1 Hydrant placement alternative, subdivisions and plats with no fire flow infrastructure require a minimum lot size of 1 (one) acre and a minimum 20 (twenty) foot setback from property lines to structures, in addition to applicable fire flow requirements per Appendix B as amended.

NO. Appendix D, Apparatus access roads, is amended as follows:

a. Section D103 Minimum Specifications, is amended with the following additional language:

1. Fire apparatus access roads serving up to 2 (two) residential lots, where building location is less than one hundred fifty feet (150') from approved access roads require a minimum width of 12 feet (3658 mm) and a minimum vertical clearance of 13 feet-6 inches (4115 mm).

2. Fire apparatus roads over one hundred fifty feet (150') long serving up to two residential lots:

a. Minimum width – twelve foot (12') driving surface with turnouts no farther than every six hundred feet (600') when required by the Fire Marshal. To create a turnout, the road shall be widened to twenty feet (20') in the direction of travel for a minimum distance of one hundred feet (100') to allow vehicles to pull over and allow emergency vehicles to proceed. Turnout shall be located approximately midpoint for driveways over six hundred feet (600') but less than twelve hundred feet (1200'). See Exhibit B.

b. Vertical clearance – minimum thirteen foot, six inch (13'-6") unobstructed vertical clearance for the required width of the road. See Exhibit A.

3. Surface – Per Whatcom County Development Standards (WCDS), Chapter 5, Road Standards. Minimum standard per Exhibit C, Driveway Section.
4. Turning radius – minimum thirty-five foot (35') radii. Residential private roads and driveways per Exhibit C and D.

5. Turnarounds – For all projects other than residential or residential accessory, turnarounds shall be a minimum twenty feet foot (20') wide drivable surface, and legs sixty feet (60') long deep or per WCDS, Chapter 5, Road Standards. Where options are limited by topography or at the discretion of the Fire Marshal for other considerations, turnarounds for residential or residential accessory structure access may be a minimum twenty foot (20') wide drivable surface and turnaround legs forty-five feet (45') long. In all cases, Turnarounds shall be located within 150 feet of a structure that requires access but no closer than 50 feet unless otherwise approved by the Fire Marshal where topographic or other significant obstacles exist. See Exhibit D.

6. Bridges - Bridges, box culverts or similar passageway structures built over depressions or obstacles shall be herein after referred to as bridges. When a bridge is required to be used as part of a driveway access road, it shall be designed and constructed per the current adopted edition of the WCDS, Chapter 5, Road Standards, Section 513, Bridges and Associated Retaining Walls and per applicable portions of IFC Section 503. Vehicle load limits shall be posted at both entrances to bridges when required by the Fire Marshal.

7. Grade per Exhibit A and WCDS, Chapter 5, Road Standards. Residential and residential accessory structures accessed by roads or driveways exceeding 12% grade require mitigation such as an automatic sprinkler system, per NFPA 13-D, throughout the applicable building(s); an approved fire flow system; equivalent mitigation approved at the discretion of the Fire Marshal in addition to standard access road requirements.

8. Installation of residential accessory buildings less than 2500 sf, small residential/accessory additions, and similar minor changes or alterations may be exempt or may not trigger road standard improvements on a case by case basis at the discretion of the Fire Marshal.

Ob. Section D103.5 Fire apparatus and access road gates, is amended as follows:

Gates installed across emergency apparatus access roads and driveways require a permit from the Fire Marshal's office.

Item #1 is amended as follows:

The minimum gate width shall be 20 feet (6096 mm) unless an alternate width is approved by the Fire Marshal. Where a single gate
is provided, the net openable gate width shall be not less than 20 feet (6096 mm). Where a fire apparatus road consists of a divided roadway (one separate lane in each direction) or the current required width of the apparatus access road is a minimum of 12 feet (3658 mm), the net openable gate width shall be not less than 12 feet (3658 mm) at each lane or road. The net openable width of the gate shall not be less than the applicable required drivable surface width of any access road or driveway.

Add to Item #10:

At the Fire Marshal’s determination, applications for gates proposed to be installed across private access easements, roads, and driveways, which are shared by multiple property owners/users, may be required to include written, notarized, confirmation from all property owners/users approving the gate installation.

Add as Item #11:

Gate installations where multiple properties are accessed shall include an approved universal public safety access system that will allow access by all emergency responders.

Add as Item #12:

Where deemed appropriate, the Fire Marshal may require language addressing maintenance responsibilities and/or incorporation of maintenance language and other relevant information regarding any gate to be recorded with the County Auditor separately or as part of the access easement(s) description.

Pc: Fire apparatus access roads – Access serving more than Two (2) residential units shall meet the following:

1. Standards per Exhibit A and current adopted Whatcom County Development Standards (WCDS), Chapter 5, Road Standards.

2. The Fire Marshal may make modifications in these standards if the road is not buildable because of topography, waterways, nonnegotiable grades, or similar conditions. These modifications are based on:

   a. The building being protected by a minimum NFPA 13D Automatic Sprinkler System.

   b. Additional fire protection features as required by the Fire Marshal.
3. When, in the opinion of the Fire Marshal, a residential addition or a new detached accessory buildings will not create a more significant fire load or hazardous situation, exceptions may be made for:

- **Minor** additions or small accessory buildings to existing dwellings not exceeding 1248 square feet of net measurable fire area where the total measurable fire area of the contiguous building (new and existing) does not exceed 4000 square feet.

- One, small, detached accessory building not exceeding 864 square feet in measurable fire area or where the aggregate measurable fire area of all detached accessory buildings on a site does not exceed 864 square feet.

Qd. Emergency vehicle access roads or driveways shall not be obstructed in any manner, including the parking of vehicles. Width and clearance requirements of these standards shall be maintained at all times.

Re. See Exhibits A, B, C, and D, for additional information, details, and illustrations amending Appendix D.
Exhibit A: Private Roads/Streets, Driveways and Fire Apparatus Access

This section applies to roads/streets that are privately owned, generally within an easement providing direct access to private land(s) for local traffic movement and connect to local public access, collectors or arterial roads/streets. Private roads/streets are maintained with private funds and where the county, municipality or WSDOT performs no maintenance.

Criteria for Authorization: Private roads/streets may be permitted when so provided in appropriate ordinances or at the discretion of the County Engineer when:

1. Covenants have been approved and recorded with the County which provide for maintenance of the private roads/streets and associated parking areas by the owners in the development, including placing of liens for non-payment of fees, and/or road maintenance agreement(s) on the face of the Long Plat, Short Plat, or Binding Site Plan.

2. Provision is made for the roads/streets to be open at all times for emergency and public service vehicle use.

3. The private road is not needed as a public road and will not obstruct public street circulation.

4. Intersection spacing between private roads shall be consistent with the spacing shown in Development Standards Section 505.M.

5. The roads are within a private community with a corporate identity or Homeowners Association, as identified by the State of Washington under RCW 64.38.

6. Fire Apparatus Access Roads (Private Roads/Streets and Driveways)
   a) County fire code requirements for “Fire Apparatus Access Roads” are contained in WCC 15.04.010 and as amended in WCC 15.04.040.

   b) Criteria. The following criteria, per Exhibit A Geometrics, apply to Fire Apparatus Access Roads serving residential and residential accessory use:
## Exhibit A Geometrics:

<table>
<thead>
<tr>
<th>Road Users(^{(1)})</th>
<th>Incremental Grade, %</th>
<th>Minimum Surface Treatment</th>
<th>Width, ft</th>
<th>Unobstructed Minimum Vertical Clearance, ft</th>
<th>Minimum Turning Radii, ft</th>
<th>See also Development Standards Drawings(^{(5)})</th>
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</thead>
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<tr>
<td></td>
<td>&lt; 12</td>
<td>CSTC(^{(1)})</td>
<td>12(^{(5)})</td>
<td>13.5</td>
<td>25(^{(6)}), 40(^{(6)})</td>
<td>505.E-1,</td>
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<tr>
<td>1-2</td>
<td>12 - 14</td>
<td>Paved(^{(2)})</td>
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<td></td>
<td></td>
<td>505.E-6</td>
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<tr>
<td></td>
<td>15 - 18</td>
<td>Heated grooved PCC(^{(3)})</td>
<td></td>
<td></td>
<td></td>
<td>505.E-6</td>
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<td>&lt; 12</td>
<td>CSTC(^{(1)})</td>
<td>16(^{(5)})</td>
<td>13.5</td>
<td>25(^{(6)}), 43(^{(6)})</td>
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<td>3-6</td>
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<tr>
<td></td>
<td>&lt; 12</td>
<td>Paved(^{(2)})</td>
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<td>7 or more</td>
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<td></td>
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<td>505.E-2</td>
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<tr>
<td></td>
<td>15 – 18(^{(8)})</td>
<td>Heated grooved PCC(^{(3)})</td>
<td></td>
<td></td>
<td></td>
<td>505.E-2</td>
</tr>
</tbody>
</table>

\(^{(1)}\) Crushed surfacing top course  
\(^{(2)}\) Either Portland cement concrete (PCC) or Hot mix asphalt (HMA)  
\(^{(3)}\) Portland cement concrete  
\(^{(4)}\) Hot mix asphalt  
\(^{(5)}\) See Development Standards Section 505 Road Type and Geometrics, Table 1 - Arterial Roads & Table 2 - Residential Roads  
\(^{(6)}\) See also Development Standards Section 505.1.3 - Horizontal Curves  
\(^{(7)}\) Road Users represents the number of dwelling units/single households. Per the Public Works Dept., a single household is the approximate equivalent of 10 average daily trips (ADT).  
\(^{(8)}\) Grades exceeding 18% may require special and/or multiple mitigation measures and will be approved at the discretion of the Fire Marshal.

- **Turnouts** - For driveways and roadways less than 20 feet wide, see Exhibit B (Development Standards Drawing 505.E-5).

- **Turnarounds** - Establish turnarounds for driveways and roadways greater than 150 feet in length per Exhibit D (Development Standards Drawing 505.E-6, 505.L-1, or 505.L-2 as applicable). Subject to other related codes and standards, i.e. Title 20.80.

- **Fire Hydrants** - Where a fire hydrant is located on a Fire Apparatus Access Road, the minimum roadway width shall be 26 ft. for a length of 40 ft. centered on the fire hydrant.

- **Bridges** - At the discretion of the Fire Marshal all bridges shall meet the requirements in Development Standards Section 513 *Bridges and...*
Associated Retaining Walls. See WCC Section 15.04.040, Section A, Item 11, Subsection b.

- Security Gates and Emergency Accesses - The County Fire Marshal requires a separate permit for any security gate or emergency access restricting device/system.

- Access Approach Surfacing Requirements - All fire apparatus access approaches shall have an approved paved/hard surfaced apron unless otherwise directed pursuant to this section and Development Standards Section 508 Roadside Features. See Exhibit C, Driveway Section.

- Additional or Alternative measures - The County Fire Marshal may consider or require additional or alternative fire protection measures on a case by case basis.

*Criteria for Construction*: Private roads/streets shall conform to the applicable sections of these Standards. Also see Development Standards Drawings 505.E-1 and 505.E-2.
NOTES:
1. Widening may be done on either side of the roadway or driveway.
2. Wicened area to have the same standard section detail as roadway or driveway.

<table>
<thead>
<tr>
<th>DRIVEWAY/ROADWAY LENGTH</th>
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<tbody>
<tr>
<td>0 - 600 feet</td>
<td>No turnout</td>
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<tr>
<td>601 - 1200 feet</td>
<td>One at mid-point</td>
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<tr>
<td>Over 1200 feet</td>
<td>Every 600 feet</td>
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</table>

5/10/2013

Exhibit B: Private Road or Driveway Turnout Detail
Whatcom County Fire Marshall

Not to Scale
FULL CIRCLE DRIVEWAY TURNAROUND

MINIMUM DRIVEWAY CURVE

DRIVEWAY SECTION

- 12" MINIMUM WIDTH
- 2" MIN. COMPACTED DEPTH OF CRUSHED SURFACING TOP COURSE
- 6" MIN. COMPACTED DEPTH OF AGGREGATE FOR GRAVEL BASE
- NATIVE COMPACTED SUBGRADE

EXHIBIT C
PRIVATE DRIVEWAY DETAILS
WHATCOM COUNTY FIRE MARSHALL
NOTES:
1. Turnarounds shall be within the County right of way and/or private easements.
2. Width of travelway is specified on Exhibit A, or the approved plans.
3. Turnaround construction shall be of approved subgrade, base, and top course.

NOTE: The length of the leg of a turnaround may be reduced from 60 feet to 45 feet for residential and residential accessory applications.
15.04.050 Permit expirations and violations of the above referenced codes.

A. Expiration.

1. Sections 105.5 of the IBC, R105.5 of the IRC, and 105.3.1 of the IFC are amended as follows:

Every permit issued under the provisions of this code, according to IBC Section 105.5 and IRC Section R105.5, shall expire and become null and void, if the work authorized by such permit is not commenced within 180 days from the date of issuance of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. The building official is authorized to grant, in writing, one or more extensions of time, for a period not more than 180 days each. The extension shall be requested in writing and justifiable causes demonstrated. In the event of permit expiration, before such work can recommence, a new permit shall be first obtained to do so, and the fee therefore shall be one-half the amount required for a new permit for such work, provided no changes have been made, or will be made in the original plans and specifications for such work; and provided further, that such suspension or abandonment has not exceeded one year. These permits are only transferable with the prior approval of the Building Official and any change in occupancy, operation, tenancy, or ownership shall require that a new permit be issued.

Every permit issued under the provisions of this code, according to IFC Section 105, shall expire and become null and void, if the work authorized by such permit is not commenced within 180 days from the date of issuance of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. The fire code official (designated as the fire marshal) is authorized to grant, in writing, one or more extensions of time for a period not more than 180 days each, except that expiration and extension shall not apply to open burning permits. The extension shall be requested in writing and justifiable causes demonstrated. In the event of permit expiration, before such work can recommence, a new permit shall be first obtained to do so, and the fee therefore shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. An operational permit under the IFC shall remain in effect until reissued, renewed, or revoked or for such a period of time as specified in the permit. These permits are not transferable and any change in occupancy, operation, tenancy, or ownership shall require that a new permit be issued.

B. Construction Without Permit.
1. The following paragraph shall be added to IBC Section 114.1, IRC Section R113.1, and IFC Section 109.1:

When construction and/or development has occurred on a site without a valid permit as required by this chapter, any and all permits or approvals issued by the county may be denied for that site until the issue has been resolved. In addition, prompt restoration of the site to its original condition will be required. The issuance or granting of a permit or approval of plans and specifications shall not be deemed or construed to be a permit for, or an approval of, any violation of any of the provisions of this code. No permit presuming to give authority to violate or cancel the provisions of this code shall be valid, except insofar as the work or use for which it authorizes is lawful. The issuance or granting of a permit or approval of plans shall not prevent the Director of Planning & Development Services, the Building Official, the Fire Code Official, or any administrator who has been granted authority by the Director from thereafter requiring the correction of errors in said plans and specifications or from preventing construction operations being carried on thereunder when in violation of this code or of any other ordinance or from revoking any certificate of approval when issued in error.

2. The following paragraph shall be added to IBC Section 114.1, IRC Section R113.1, and IFC Section 109.1:

When construction, development, modification, or any changes to a structure have taken place without a valid permit as required by this chapter, the County may, at its discretion and as it deems necessary for compliance, may require the structure to be restored to its original construction/condition. This may include, but is not limited to, complete or partial demolition of the structure or remodel; removal of framed walls or other structural components; electrical systems and/or components; cabinets, doors, countertops, fixtures, drywall; plumbing and/or plumbing fixtures; applicable appliances. Time lines required to restore the structure to its original condition shall be at the discretion of the County.

C. Stop Work Orders.

1. Sections 115 of the IBC, R114 of the IRC, and 111 of the IFC are amended as follows:

In the event any person, firm, partnership, corporation or other entity violates any provision of this ordinance or any code adopted by this ordinance, the County may issue a notice of violation, to be delivered to the owner, operator, or their agent, or to be conspicuously posted at the site. In a non-emergency situation, such notice may include notice of the intent to issue a stop work order no less than 10 calendar days following the receipt of the notice, and provide for an administrative pre-deprivation hearing within 10 calendar days of notice/order. In an emergency situation where
there is a significant threat to public safety or the environment, the County may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative post-deprivation hearing within 72 hours following receipt of the stop work order. Failure to comply with the stop work order shall be a gross misdemeanor punishable upon conviction by a minimum fine of $500.00 up to a maximum fine of $1000.00 or one year in jail, or both. Under no circumstance may the court defer or suspend any portion of the minimum $500.00 fine for any conviction under this section. Each day or part thereof of noncompliance with said order to stop work shall constitute a separate offense.

D. Violation Deemed Misdemeanor.

1. Sections 114 of the IBC, R113 of the IRC, and 109 of the IFC are amended as follows:

Any violation of the provisions of the International Building, Fire, Residential or other related codes as herein adopted is a misdemeanor. Any person, firm or corporation violating any of the provisions of this code or failing to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents, directives or conditions of the Building Official or the Fire Code Official or the Director of Planning and Development Services or of a permit or certification used under provisions of this code, shall be guilty of a misdemeanor, punishable by a fine of not more than $1000.00 dollars or by imprisonment not exceeding 90 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

a. EXCEPTION: The International Fire Code Section 307 Open Burning and Recreational Fires shall constitute Class 1 civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80 RCW. All violations shall be heard and determined in accordance with the system established in Chapter 7.80 RCW. After having been found to have committed two successive infractions for violations of the same provision of this title on the same property, any person, firm, or corporation who continues to violate this title in the same manner on the same property shall be guilty of a misdemeanor, punishable by a fine of not more than $1000.00 or by imprisonment not exceeding 90 days, or both such fines and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

E. Notice of Violations.

1. Section 109.3 of the IFC is amended as follows:
When the Fire Code Official, referred to as the Fire Marshal, finds a building, premises, vehicle, storage facility or outdoor area that is in violation of this code, the fire code official is authorized to prepare a written notice of violation describing the conditions deemed unsafe. When immediate compliance is not possible, a time shall be specified for re-inspection. In special situations citations could be issued to individuals violating this code.

F. Civil Penalty.

1. Any person, firm, partnership, corporation or other entity violating any of the provisions of this chapter, or of the codes adopted by reference by this chapter, shall be deemed guilty of a civil offense and each day during which such violation is continued or committed shall constitute a separate offense, and shall be fined not more than $1,000 for each offense. The penalty provided in the above section shall be imposed by a notice in writing and delivered by personal service to the owner, the owner’s agent, the operator and/or violator, and/or sent by certified mail, and/or be conspicuously posted at the site. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity in ordering the act(s) constituting the violation(s) to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time. The notice may simultaneously accompany a notice of penalty.

2. Within 30 days after the notice is received, the person incurring the penalty may apply in writing to the building official for remission or mitigation of such penalty. Upon receipt of the application, said department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper. The final decision of the building official, fire code official or the director of planning and development services on mitigation or revision shall be reviewed by the county council, if the person being penalized files a written appeal therewith of said decision, within 10 days of its issuance. The decision of the county council regarding the penalty imposed shall be final.

In addition to the civil penalties described above, the prosecuting attorney may in his discretion bring such injunctive, declaratory or other actions as deemed necessary to ensure that violations of this chapter are prevented or cease, and to otherwise enforce the provisions of this chapter. (Ord. 2004-064 § 2)
### CLEARANCES

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<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>1/3/2017</td>
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<table>
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<tr>
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<th>Dept. Head:</th>
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<th>Prosecutor:</th>
<th>Purchasing/Budget:</th>
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<table>
<thead>
<tr>
<th>Executive:</th>
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<tbody>
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### TITLE OF DOCUMENT:

2017 Reorganization of Whatcom County approved council

### ATTACHMENTS:

**SEPA review required?** ( ) Yes ( ) NO
**SEPA review completed?** ( ) Yes ( ) NO

<table>
<thead>
<tr>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes ( ) NO</th>
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<tbody>
<tr>
<td>Requested Date:</td>
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### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

2017 Reorganization of Whatcom County approved council

### COMMITTEE ACTION:

COUNCIL ACTION:

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
</table>

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
<table>
<thead>
<tr>
<th>County Council Committee Assignments</th>
<th>Rud Browne</th>
<th>Barry Buchanan</th>
<th>Todd Donovan</th>
<th>Ken Mann</th>
<th>Satpal Sidhu</th>
<th>Carl Weimer</th>
<th>Barbara Brenner</th>
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<tbody>
<tr>
<td>Council Chairperson</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Council Vice-Chairperson</td>
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<td>Executive Pro-Tempore</td>
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<tr>
<td>Board of Supervisors Chair of FCZD (Council Chairperson)</td>
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<tr>
<td><strong>Standing Committees:</strong></td>
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<tr>
<td>Finance &amp; Administrative Services - Chair of Finance Committee will automatically act as Council Representative to What-Comm Administrative Board</td>
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<td>✓</td>
<td>✓</td>
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<td>Planning &amp; Development</td>
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<td>✓</td>
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<td>Public Works, Health and Safety</td>
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<td></td>
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<tr>
<td>Natural Resources</td>
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<td>✓</td>
<td>✓</td>
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<td>Select 2 Natural Resource Committee members as Representatives to Lake Whatcom Policy Group:</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td><strong>Other Committee Assignments</strong></td>
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<td>Bellingham International Airport Advisory</td>
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<td>Bellingham/Whatcom Chamber of Commerce &amp; Industry</td>
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<tr>
<td>Birch Bay Shellfish Protection District Advisory Committee</td>
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<td>Council of Governments (COG) Appoint TWO members to serve on the Full Council</td>
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<td>Developmental Disabilities Board</td>
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<td>Drayton Harbor Shellfish Protection District</td>
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<td>EMS Oversight Board Representative</td>
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<td>Integrated Behavioral Health Advisory Board (replaces Mental Health &amp; Substance Abuse Advisory Committees)</td>
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<td>LEOFF Board</td>
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<td>Local Emergency Planning Committee (LEPC)</td>
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<td>Public Defense Advisory</td>
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<td>Public Health Advisory Board</td>
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<td>Solid Waste Advisory</td>
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<td>WSAC Alternate Board Member (County Executive is the active representative, Council member is the alternate)</td>
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<td>WSAC Legislative Steering Committee</td>
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<td>Whatcom Transportation Authority</td>
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</table>
**TITLE OF DOCUMENT:**
Contract between Whatcom County and Pacific Northwest Guardian Ad Litem LLC

**ATTACHMENTS:**
Contract for service between Whatcom County and Pacific Northwest Guardian Ad Litem LLC

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

The purpose of this contract is to provide professional Guardian Ad Litem Services for youth subject to dependency actions in Whatcom County Superior Court.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

---

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Superior Court

Division/Program: (i.e. Dept. Division and Program) Pacific Northwest Guardian Ad Litem LLC

Contract or Grant Administrator: David Reynolds, Director

Contractor's / Agency Name: Pacific Northwest Guardian Ad Litem LLC

Is this a New Contract? Yes ☐ No ☑

If not, is this an Amendment or Renewal to an Existing Contract? Yes ☑ No ☐

If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 201007012

Does contract require Council Approval? Yes ☑ No ☐

If No, include WCC: (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes ☑ No ☐

If yes, grantor agency contract number(s): CFDA#: 

Is this contract grant funded? Yes ☐ No ☑

If yes, Whatcom County grant contract number(s): 

Is this contract the result of a RFP or Bid process? Yes ☑ No ☐

If yes, RFP and Bid number(s): 13-78

Contract Cost Center: 

Is this agreement excluded from E-Verify? Yes ☑ No ☐

If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

☒ Professional services agreement for certified/licensed professional.
☐ Contract work is for less than $100,000.
☐ Contract work is for less than 120 days.
☐ Interlocal Agreement (between Governments).
☐ Contract for Commercial off the shelf items (COTS).
☐ Work related subcontract less than $25,000.
☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount: (sum of original contract amount and any prior amendments):

$ 40,000 per hour

This Amendment Amount:

$ 0

Total Amended Amount: $ 40,000 per hour

Council approval required for; all property leases, contracts or bid awards exceeding $40,000, and professional service contract amendments that have an increase greater than $10,000 or 10% of contract amount, whichever is greater, except when:

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies or equipment included approved in the budget.
4. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope: Provide up to 4,000 hours of professional Guardian Ad Litem services for youth subject to dependencies in Whatcom County Superior Court.

Term of Contract: 1-1-2017 Expiration Date: 12-31-2017

Contract Routing:

1. Prepared by: Stephanie Lewis Date: 11/16/2016
2. Attorney signoff: Date: 12-24/16
3. AS Finance reviewed: bbennett Date: 12/05/2016
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date: 12/14/16
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Last edited 10/31/16
MEMORANDUM

TO: Jack Louws, County Executive
FROM: David Reynolds, Director
RE: Professional Services Agreement Amendment with PNW GAL, LLC
DATE: November 15th, 2016

Enclosed are two (2) originals of the Professional Services Agreement Amendment between Whatcom County, Pacific Northwest Guardian Ad Litem LLC for your review and signature.

▪ Background and Purpose

The purpose of this contract is to provide professional Guardian Ad Litem Services for youth subject to dependency actions in Whatcom County Superior Court.

Funding Amount and Source

The amount of this contract is $40.00 per hour, and the contract shall not exceed 4,000 hours the 2017 calendar year.

▪ Differences from Previous Contract

This amendment extends the term of the contract for one year and amends Section 34.1 Proof of Insurance. All other terms and conditions of the previous contract remain in full force and effect.

Please contact me at extension 5495 if you have any questions or concerns regarding the terms of this agreement,

Encl.
THIS AMENDMENT is to the Contract between Whatcom County and PACIFIC NORTHWEST GUARDIAN AD LITEM, LLC, dated and designated “Whatcom County Contract No. 201007012”. In consideration of the mutual benefits to be derived, the parties agree to the following:

1. This Amendment extends the term of this Agreement through December 31, 2017.

2. This amendment provides for up to 4,000 hours during the calendar year.

3. Section 34.1 Proof of Insurance is amended to read as follows:

   The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:

   Property Damage -- $500,000.00 per occurrence
   General Liability & Property Damage for bodily injury-- $1,000,000.00 per occurrence

   A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

   In addition, the Contractor shall carry professional liability insurance for the duration of this agreement in the amount of $1,000,000.00 per occurrence. If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

Unless specifically amended by this agreement, all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect: January 1, 2017, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and ____________________________ have executed this Amendment on the date and year below written.

DATED this ________________ day of ____________________, 201__.

CONTRACTOR:

PACIFIC NORTHWEST GUARDIAN AD LITEM, LLC

Stacy Ziegler, President

STATE OF WASHINGTON } ss.
COUNTY OF WHATCOM }
On this 14 day of December, 2016, before me personally appeared Stacy Ziegler, to me known to be the President of the Pacific Northwest Guardian Ad Litem Services and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.


WHATCOM COUNTY:

Approved as to form:

Department Director Date

Prosecuting Attorney Date

Approved:

Accepted for Whatcom County:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this _____ day of __________, 2016, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at __________________. My commission expires ____________.

CONTRACTOR INFORMATION:

CONTRACTOR

PACIFIC NORTHWEST GUARDIAN AD LITEM, LLC.

222 Grand Avenue Suite E
Bellingham, WA 98226
CERTIFICATE OF LIABILITY INSURANCE

Date: 12/28/2016

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

Important: If the certificate holder is an additional insured, the policy(ies) must be endorsed. If subrogation is waived, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Producer:
LESA M BOXX (18252)
1610 GROVER STREET
SUITE B1
LYNDEN, WA 98264-0000

Contact Name: LESA M BOXX
Phone: 360-354-2975
Fax: 360-354-4755
Email: LESAM.BOXX@COUNTRYFINANCIAL.COM

Insured:
7352476
PACIFIC NW GUARDIAN AD LITEM
114 W MAGNOLIA
SUITE 412
BELLMINGHAM, WA 98225

Insurer(s) Affording Coverage:
COUNTRY Mutual Insurance Company
20990

Certificate Number:

coverages

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

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<th>LTR</th>
<th>Type of Insurance</th>
<th>Multip / Sub</th>
<th>Policy Number</th>
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Description of Operations / Locations / Vehicles (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Waivers:
The insuring company waives its rights of subrogation (Rights to Recover) against the certificate holder named below with respect to any payments made for liability coverage(s) under the policy(ies) shown in the General Liability Section of this certificate. The insurance afforded by this policy for the additional insured(s) is (continued)

Certificate Holder:

Whatcom County
It's Employees, Officers and/or Agents
322 N Commercial St
Bellmingham, WA 98225

Cancellation:

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Authorized Representative:

© 1988-2010 ACORD CORPORATION. All rights reserved.
### ADDITIONAL REMARKS SCHEDULE

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<tr>
<th>AGENCY</th>
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<tr>
<td>PACIFIC NW GUARDIAN AD LITEM</td>
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<th>EFFECTIVE DATE</th>
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**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** ACORD 25

**FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

(WAIVER CONTINUED)

PRIMARY INSURANCE AND ANY OTHER INSURANCE MAINTAINED BY OR AVAILABLE TO THE ADDITIONAL INSURED(S) IS NON-CONTRIBUTORY.

**ADDITIONAL INSURED(S):**

WHATCOM COUNTY ITS EMPLOYEES, OFFICIALS AND/OR AGENTS

322 N COMMERCIAL ST

BELLINGHAM, WA 98225
The document is an agenda bill from the Whatcom County Council. The title of the document is "Interagency Agreement between Whatcom County and North Sound Behavioral Health Organization." The purpose of the contract is to provide administrative services funding to support the County's behavioral health program and to support regional behavioral health activities.

The contract is attached with three documents:
1. Info Sheet
2. Executive Memo
3. 2 copies of contract

The SEPA review is marked as completed, and the requested date is 1/3/17. The council is considering whether to schedule a hearing. The contract is assigned to Finance/Council.

The related county contract number and file numbers are not specified.

Please note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt, Director
RE: North Sound Behavioral Health Organization (NSBHO) Administration Contract 2017
DATE: December 1, 2016

Enclosed are two (2) originals of a contract between Whatcom County and North Sound Behavioral Health Organization (NSBHO) for your review and signature.

- **Background and Purpose**
  This contract provides Whatcom County with funding to support the County’s behavioral health program administration and participation in regional behavioral health activities. It also includes funding to support housing for people living with mental illness.

- **Funding Amount and Source**
  This contract provides $498,867 for 2017 from NSBHO’s Medicaid and State mental health funds. Council approval is required per RCW 39.34.030(2).

Please contact Anne Deacon at extension 6054, if you have any questions or concerns regarding the terms of this contract.

Encl.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Health</th>
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<tbody>
<tr>
<td>Program/Project: (i.e. Dept. Division and Project)</td>
<td>Human Services</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Anne Deacon</td>
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<tr>
<td>Contractor’s / Agency Name:</td>
<td>North Sound Behavioral Health Organization</td>
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<tr>
<th>Is this a New Contract?</th>
<th>Yes [ ] No [ ]</th>
<th>If not, is this an Amendment or Renewal to an Existing Contract?</th>
<th>Yes [ ] No [ ]</th>
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<tr>
<td>If Amendment or Renewal, (per WCC 3.08.100 (a))</td>
<td>Original Contract #:</td>
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<th>Does contract require Council Approval?</th>
<th>Yes [ ] No [ ]</th>
<th>If No, include WCC:</th>
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<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
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<tr>
<th>Is this a grant agreement?</th>
<th>Yes [ ] No [ ]</th>
<th>If yes, grantor agency contract number(s):</th>
<th>CFDA#:</th>
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<tr>
<th>Is this contract grant funded?</th>
<th>Yes [ ] No [ ]</th>
<th>If yes, Whatcom County grant contract number(s):</th>
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<tr>
<th>Is this the result of a RFP or Bid process?</th>
<th>Yes [ ] No [ ]</th>
<th>Cost Center: 671200 / 122400</th>
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<tr>
<th>Is this agreement excluded from E-Verify?</th>
<th>No [ ] Yes [ ]</th>
<th>If no, include Attachment D Contractor Declaration form.</th>
</tr>
</thead>
</table>

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional.
- Contract work is for less than $100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Public Works - Local Agency/Federally Funded FHWA.
- Work related subcontract less than $25,000.
- Contracts that require Council Approval (incl. agenda bill & memo)
  - Professional Services Agreement above $20,000.
  - Bid is more than $50,000.
  - Professional Service Contract Amendments that have an increase greater than $20,000 and other contracts with a cumulative increase greater than $50,000.

**Summary of Scope:**
The purpose of this contract is to provide Whatcom County with funding to support the County’s mental health program administration and participation in regional mental health activities. It also includes funding to support housing for the mentally ill.

| Term of Contract: | 01/01/2017 | Expiration Date: | 12/31/2017 |

**Contract Routing:**

1. Prepared by: _____ Date: 12/01/16
2. Attorney signoff: Date: 12/16
3. AS Finance reviewed: Date: 12/16
4. IT reviewed (if IT related): Date: 12/16
5. Contractor signed: Date: 12/16
6. Submitted to Exec.: Date: 12/16
7. Council approved (if necessary): Date: 12/16
8. Executive signed: Date: 12/16
9. Original to Council: Date: 12/16

Last edited 10/01/15
NORTH SOUND
BEHAVIORAL HEALTH ORGANIZATION

INTERAGENCY AGREEMENT

WITH

WHATCOM COUNTY

CONTRACT #NORTH SOUND BHO-WHATCOM-ADMIN-17

JANUARY 1, 2017 TO DECEMBER 31, 2017
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<td>21. Order of Precedence</td>
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<td>36</td>
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<td>32. Contract Administration</td>
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ATTACHMENTS

Attachment I – North Sound BHO 7.01 Policy, Provider P&P Grid and Quality Management Plan – links
Attachment II – Business Associate Agreement
Attachment III – Budget
Attachment IV – Ombuds Services
Attachment V – Deliverables
INTERAGENCY AGREEMENT

THIS INTERAGENCY AGREEMENT (the “Agreement”), pursuant to RCW Chapter 71.24 and all relevant and associated statutes, as amended, is made and entered into by and between the NORTH SOUND REGIONAL SUPPORT NETWORK, dba THE NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION, LLC (North Sound BHO), 301 Valley Mall Way, Suite 110, Mt. Vernon, WA 98273, and WHATCOM COUNTY (Contractor), 509 Girard Street 37, Bellingham, WA 98225.

This Agreement incorporates the Agreement’s Attachments to the Agreement and other documents incorporated by reference.

The effective date of this Agreement is January 1, 2017, through December 31, 2017.

A. DEFINITIONS

As used anywhere within this Agreement or Attachments, the following terms have the indicated meanings:

7.01 Plan is North Sound BHO’s Board approved plan, which outlines North Sound BHO’s commitment to planning and service delivery for American Indian governments and communities (Attachment 1).

Access to Care Standards (ACS) means the Division of Behavioral Health and Recovery (DBHR) Minimum Eligibility Requirements for Medicaid Adults & Medicaid Older Adults Guidelines reflect the most restrictive eligibility criteria that can be applied. North Sound BHO may expand coverage based on availability of local resources.

Accountability means responsibility of Contractor for achieving defined outcomes, goals, and contract obligations.

Act is the Social Security Act.

Administrative costs means costs for the general operation of the public behavioral health system. These activities cannot be identified with a specific direct or direct services support function.

Advance Directive means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State), relating to the provision of health care (including behavioral health care) when the individual is incapacitated.

Aging and Long-Term Support Administration (ALTSA) means the Department of Social and Health Services (DSHS) governing public health care, behavioral health care and substance abuse services, and its employees and authorized agents.

Agreement means this Agreement, including all documents attached or incorporated by reference.
**Allied Systems** means State or local services which provide individuals with assistance to reduce the impact of disabilities, functional impairments, or skill deficits, and which promote stable community living.

**Annual revenue** means all revenue received by Contractor pursuant to the contract for January of any year through December of the next year.

**Arbitration** means the process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision.

**Assessment** means a process, which provides sufficient information to determine medical necessity for behavioral health services covered under this Agreement.

**Behavioral Health Agency (BHA)** means BHAs that are subcontracted by Prepaid Inpatient Health Plan (PIHP) and licensed to provide behavioral health/chemical dependency services.

**Behavioral Health Organization (BHO)** means a county authority or group of county authorities or other entity recognized by the Secretary that contracts for behavioral health services, substance use disorder (SUD) treatment services within a defined Regional Service Area, doing business as (dba) North Sound BHO.

**Behavioral Health Professional (BHP)** means as defined in RCW 71.34.020(13) for children and RCW 71.05.020(12) for adults (WAC 388-865-0150).

**BHO Advisory Board** means the behavioral health advisory board appointed by each BHO, which reviews and provides comments on plans and policies related to service delivery and outcomes. The BHO must promote active engagement with persons with behavioral disorders, their families, and service providers by soliciting and using their input to improve its services, and appoints a BHO Advisory Board to fulfill this purpose.

**Benefit Period** means the period of service authorization, typically a one (1) year period. The individual may be open (actively receiving services) or closed during this period of time.

**Centennial Accord** means an agreement dated August 4, 1989, between federally recognized Indian Tribes in Washington and the State of Washington. The Accord provides a framework for government-to-government relationship and implementation procedures to ensure execution of that relationship.

**Chemical Dependency Professional (CDP)** means an individual licensed through the Washington State Department of Health (DOH). A CDP is the individual with primary responsibility for implementing an individualized plan for SUD treatment services.

**Chemical Dependency Professional Trainee (CDPT)** means an individual working toward the education and experience requirements for certification as a CDP, and who has been credentialed as a CDPT.
**Child** means a person under the age of 18 years. For persons eligible for the Medicaid program, child means a person who is under the age of 21 years.

**Code of Federal Regulations (CFR)** means all references in the Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation.

**Complaint** means a verbal or written statement by an individual or enrollee that expresses dissatisfaction with some aspect of services covered under this Agreement, the Primary Care Provider, or Contractor.

**Coordinated Quality Improvement Program (CQIP)** Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service Contractors, health maintenance organizations, health carriers approved pursuant to RCW Chapter 48.43, and any other person or entity providing health care coverage under RCW Chapter 48.42 that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain CQIP for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

**Corrective Action/Compliance Review** means when findings from a North Sound BHO/DBHR review or other monitoring efforts or audits show there are apparent violations of this Agreement, Contractor shall implement corrective action within specified timeframes determined by North Sound BHO/DBHR/Department’s other auditors.

**Corrective Action Plan (CAP)** means a written plan specifying what Contractor is required to do to be in compliance. This includes required improvements and a timeline for such action(s) to be accomplished.

**Crisis** means crisis may be self-defined or a situation where an individual is acutely mentally ill, or experiencing serious disruption in cognitive, volitional, psychosocial/neurophysiological functioning.

**Crisis Intervention** means intervention activities of duration of less than 24 hours (with a 24-hour period) to stabilize a individual in a psychiatric emergency (Health Care Procedural Coding System [HCPCS] procedure codes).

**Crisis Services** means face-to-face evaluation and treatment of behavioral health emergencies and crises to non-enrolled, as well as, enrolled individuals experiencing a crisis as defined by the WAC. Crisis services shall be available on a 24-hour basis with the goal of stabilizing the individual in crisis and providing immediate or short-term treatment and support in the least restrictive environment available. Crisis services may be provided prior to an intake evaluation/assessment.

**Crisis Stabilization Services** means services provided to individuals who are experiencing a behavioral health emergency or crisis. This service is provided through telephone/face-to-face in-vivo services.

**Cross-System Team meetings and consultations** means participation and involvement with systems beyond the behavioral health system, who are also providing behavioral health services (i.e., Division of Child and Family Services (DCFS), Developmental Disabilities Administration (DDA), Juvenile Rehabilitation Administration (JRA), Department of Corrections (DOC), schools, etc.), to ensure communication, and integrated, coordinated treatment planning and provision.
Cultural Competency is a set of congruent behaviors, attitudes and policies that come together in a system or agency and enable that system or agency to work effectively in cross-cultural situations. A culturally competent system of care acknowledges and incorporates at all levels the importance of language and culture, cultural differences, expansion of cultural knowledge, and adaptation of services to meet culturally unique needs (WAC 388-865-0150).

The ability to serve individuals with mental illness of all ages, all ethnic groups (including American Indians) and who identify as a sexual minority, in a manner which is responsive to their age and unique cultural background.

Delegation Plan means a document or an identified set of documents that show the Contractor’s compliance with the Subcontracts Section of this Agreement.

Disaster Outreach is persons contacted in their place of residence or in non-traditional settings for the purpose of:

1. Assessing their behavioral health, or social functioning following a disaster; or
2. Increasing their utilization of human services and resources.
3. There are two basic approaches to outreach:
   a. Mobile (ongoing to person to person); and
   b. Community settings (e.g., temporary shelters, disaster assistance sites, disaster information forums).

Regardless of the approach, the outreach process has five (5) important components:

1. Locating persons in need of disaster relief services;
2. Assessing their needs;
3. Engaging or linking persons to an appropriate level of support or disaster relief services; and
4. Providing follow-up behavioral health services when clinically indicated.

Disaster outreach can be performed by trained volunteers, peers/persons hired under a Federal Crisis Counseling Grant. These persons should be trained in disaster outreach, which is different than traditional behavioral health crisis intervention.

Emergent Care means services provided for a person, that if not provided, would likely result in the need for crisis intervention or hospital evaluation due to concerns of potential danger to self, others, or grave disability according to RCW 71.05.

Exempt American Indians means Medicaid eligible and non-eligible American Indians as defined by 25 USC 1603 that have received an exemption, which permits Medicaid, reimbursed services to be delivered by Indian health service programs or tribal clinics.

Fair Hearing means a Grievance hearing before the Washington State Office of Administrative Hearings.
Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him or some other person. It includes any act that constitutes fraud under applicable Federal or State law (Medicaid Managed Care Fraud and Abuse Guidelines).

Geographic Area means North Sound BHO Service Area consisting of the following geographic areas:

1. Island County
2. San Juan County
3. Skagit County
4. Snohomish County
5. Whatcom County

Gravely Disabled as defined in RCW 71.34.020(8) for children, and 71.05.020(1) in the case of adults.

Grievance means an expression of dissatisfaction about any matter other than the action as “action” is defined above. The term is also used to refer to the overall process that includes grievance and appeals handled at the PIHP level and access to the State Fair Hearing process. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, and aspects of interpersonal relationships such as rudeness, or failure to respect the enrollee’s rights.

Health Insurance Portability and Accountability (HIPAA) Act of 1996

Indirect Costs are costs incurred for activities other than those that qualify as direct costs. Indirect costs include, but are not limited to: activities, staff, tools, depreciation and equipment, transportation, education or training related to financial, facilities, or data management, quality management, resource management (except for direct costs incurred pursuant to RCW 71.24.025) and RSN/PIHP or subcontractor administration. Indirect costs do not include capital items or unexpended reserves.

Individual means a person with lived experience who is now or has in the past received behavioral health services.

Local Funds Eligible for Match are sources of revenue that are eligible to be used as Federal match are broad based taxes at the County or other local taxing authority level that are spent and have been certified by the local authority as public funds for behavioral health services allowable under this Agreement. Funds used for Federal match under this Agreement may not be used as match for any other Federal program. It can be State or local funds that have not been previously matched with Federal funds at any point. Local funds do not include donations. Although State funds (non-Medicaid) can be used for local match, these funds are intended to be used for non-Medicaid services and non-Medicaid individuals and can only be used as match once these obligations are met.

Management Information System (MIS) means a computer system designed to provide management personnel with up-to-date information on an organization’s performance.
Mental Health Care Provider (MHCP) means the individual with primary responsibility for implementing an
individualized plan for mental health rehabilitation services. Minimum qualifications are B.A. level
education in a related field or A.A. level education with two (2) years’ experience in the mental health or
related fields.

North Sound Behavioral Health Organization (North Sound BHO) dba North Sound Mental Health
Administration (NSMHA)

Office of Management and Budget (OMB) Circular A-133 audits of States, Local Governments and Non-
Profit Organizations.

Ombuds means an individual performing an Ombuds service as defined at WAC 388-865-0250 as existing
or hereafter amended.

Public Funds are State, Federal, or local government funds gained by a taxing authority.

Regional Support Network (RSN) means a county authority or group of county authorities recognized and
certified by the Secretary of DSHS which enter into joint operating agreements to contract with the
Secretary pursuant to RCW 71.24 to operate a single managed system of services for persons with mental
illness living in the Service Area covered by the county or group of counties. The RSN shall assume all
duties assigned to county authorities by RCW 71.24, 71.34, and 71.05.

Revised Code of Washington (RCW) is all references in the Agreement to RCW chapters or sections shall
include any successor, amended, or replacement statute.

Substance Use Disorder (SUD) means a problematic pattern of alcohol/drug use leading to clinically
significant impairment or distress as categorized in the DSM 5.

Subcontract is any written agreement between Contractor and subcontractor or between Contractor,
subcontractor, and another subcontractor to provide services or activities otherwise performed under this
Agreement.

Subcontractor is an individual or entity performing all or part of the services under this Agreement under a
separate contract with Contractor or its subcontractors.

Title 42 is the CFR Public Health Service.

Title XIX is grants with states for Medical Assistance Program.

Title XXI is State Children’s Health Insurance Program.

Transition Age Youth is anyone age 17-21.
Underserved are persons who are minorities, children, elderly, disabled, and low-income (see WAC 388-865-0150).

Washington Administrative Code (WAC) is all references in the Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation.

Waiver is the document by which DSHS/DBHR requests sections of the Social Security Act be waived in order to operate a capitated managed care system to provide services to enrolled recipients. Section 1915(b) of the Act, authorizes the Secretary to waive the requirements of sections 1902 of the Act to the extent he/she finds proposed improvements or specified practices in the provision of services under Medicaid to be cost-effective, efficient, and consistent with the objectives of the Medicaid program.

Youth is anyone age 13-17.
B. DELEGATED FUNCTIONS

Contractor shall furnish the necessary personnel and services and do all things necessary for the performance of the delegated functions set forth herein as presently written or as may be later amended.

1. REGIONAL ADVISORY BOARD (PIHP, BHSC)

Contractor shall appoint individuals with lived experience/advocate representatives to the North Sound BHO Regional Advisory Board in accordance with the Interlocal Agreement forming North Sound BHO, the Prepaid Inpatient Health Plan (PIHP) and State Behavioral Health Contracts (BHSC) and in accordance with WAC 388-865-0222, or any successor.

Contractor shall appoint individuals with Behavioral Health lived experience (mental health, substance use disorder, and/or co-occurring disorders) through their own experiences and/or their experiences as family members. Contractor shall appoint individuals whose experiences reflect the breadth of experience of individuals affected by Behavioral Health Disorders.

Contractor shall appoint representatives that reflect the demographic character of the county which shall include, but not be limited to, representatives of individuals, families, and law enforcement. Composition and length of terms of board members may differ between counties. Regional membership shall be comprised of at least 51% individuals with lived experience or family members as defined in WAC 388-865-0222.

2. GOVERNING BOARD (PIHP; BHSC)

Member Counties shall establish a Governing Body responsible for oversight of the Regional Support Network in compliance with the Interlocal Agreement and the State PIHP and BHSC Agreements. The Governing Body can be an existing executive or legislative body within a county government. Each member of the Governing Body must be free from conflicts of interest and from any appearance of conflicts of interest between personal, professional and fiduciary interests. Members of the Governing Body must act within the best interests of North Sound BHO, individuals and/or families with lived experiences. Contractor shall participate with North Sound BHO in the development and creation of an LLC and any appropriate policies.

3. QUALITY MANAGEMENT SUPPORT (PIHP; BHSC)

Contractor shall invite enrolled and non-enrolled individuals and their families that are representative of the community being served, including all age groups, to participate in planning activities and in the implementation and evaluation of the public behavioral health system. Contractor must be able to demonstrate how this requirement is implemented.

Member Counties shall encourage local efforts to provide services that are integrated and coordinated with other formal/informal service delivery systems.
a. Contractor’s County Coordinator shall assist North Sound BHO in conducting quality management programs and activities, in accordance with Attachment I. Activities include regularly participating in North Sound BHO’s Quality Management Oversight Committee and other quality management processes as appropriate, which are designed to allow North Sound BHO to:

i. Assess the degree to which Behavioral Health Services and planning is driven by and incorporates individual and family voice.

ii. Assess the degree to which behavioral health services are age, culturally, and linguistically competent.

iii. Assess the degree to which behavioral health services are provided in the least restrictive environment.

iv. Assess the degree to which uninterrupted linkages occur that move the individual toward recovery and resiliency.

v. Assess the continuity in service linkages and integration with other formal/informal systems and settings.

vi. Assess the strengths and barriers of resource management mechanism, access standards, and the utilization management activities.

b. Quality management activities specified in this Quality Management Support section shall be subject to requirements of North Sound BHO, including requirements to maintain confidentiality of information in accordance with federal and state privacy laws and requirements applicable to North Sound BHO for maintaining protection of confidentiality under its coordinated quality improvement program.

4. ALLIED SYSTEM COORDINATION (PIHP)
Contractor shall coordinate with North Sound BHO in the following area to ensure individuals in the community are receiving continuity of care.

Contractor shall develop in collaboration with North Sound BHO a new or update an existing allied system coordination plan with the Criminal Justice (courts, jails, law enforcement, public defender, Department of Corrections [DOC]) and Chemical Dependency and Substance Abuse (CD/SA) service providers in their respective county at least every three (3) years, or as requested by North Sound BHO, DSHS or as necessary. The allied system coordination plan must contain all of the following elements:

a. Contractor shall work with North Sound BHO to identify the need for local resources, including initiatives to address those needs. This will include a process to evaluate progress in cross-system coordination and integration of services.

b. Contractor shall work with North Sound BHO on a process for facilitation of community integration from out of home placements, Children’s Long-term inpatient facilities, Juvenile Rehabilitation facilities, foster care, nursing homes, and acute inpatient settings for individuals of all ages.
5. COMMUNITY COORDINATION (BHSC)
Contractor shall coordinate and participate with North Sound BHO in all disaster preparedness activities and respond to emergency/disaster events (e.g., natural disasters, acts of terrorism) when requested by North Sound BHO. Contractor shall work with North Sound BHO in the event of a disaster to ensure the following activities are implemented:

a. Collaborate in the development of the regional transition services plan.
b. Collaborate in the regional expansion of medication assisted treatment.
c. Coordinate with North Sound BHO on community integration for parenting women.
d. Participate in local emergency/disaster planning activities when county Emergency Operation Centers and local public health jurisdictions request collaboration;
e. Locating persons in need of disaster relief services;
f. Engaging or linking persons to an appropriate level of support or disaster relief services;
g. Conduct post-disaster outreach to determine the need for disaster related crisis counseling and assess the availability of local resources in meeting those needs;
h. Partner in disaster preparedness and response activities with DBHR and other DSHS entities, the State Emergency Management Division, Federal Emergency Management Administration (FEMA), the American Red Cross and other volunteer organizations;
i. Participation when requested in local and regional disaster planning and preparedness activities;
j. Coordination of disaster outreach activities following an event.

6. HOUSING AND RECOVERY THROUGH PEER SUPPORTS (HARPS) HOUSING SUBSIDIES (BHSC EXHIBIT J)
Contractor shall provide time-limited financial assistance to individuals and families who are homeless and in need of short-term assistance to acquire and/or sustain housing. This funding is part of a DBHR grant received by North Sound BHO for housing support services and financial housing assistance. For the purposes of this Agreement, the funding is to be used exclusively for financial assistance to individuals and families who are homeless. No administrative costs may be paid out of the HARPS housing assistance allocation.

a. The priority population for the housing assistance is as follows:

i. Individuals with Behavioral Health Disorders (mental health, SUD and/or COD) who meet Access to Care Standards (ACS), or
ii. Individuals who experience behavioral health issues and who meet ACS, or

iii. Individuals who experience substance abuse issues and who do not meet ACS.

b. Who are released from:

i. Psychiatric Inpatient settings, or

ii. SUD Treatment Inpatient settings.

c. Who are homeless/at risk of homelessness:

Broad definition of homeless (couch surfing included).

d. Allowable expenses for the subsidies:

i. Monthly rent and utilities and any combination of first and last months’ rent for up to three (3) months. Rent may only be paid one (1) month at a time, although rental arrears, pro-rated rent and last month’s may be included with the first month’s payment.

ii. Rental and/or utility arrears for up to three (3) months. Rental and/or utility arrears may be paid if the payment enables the household to remain in the housing unit for which the arrears are being paid or allows the household to move to another unit.

iii. Security deposits and utility deposits for a household moving into a new unit.

iv. HARPS rental assistance may be used for move-in costs including, but not limited to, deposits and first month’s rent associated with housing, including project- or tenant-based housing.

v. Application fees, background and credit check fees for rental housing.

vi. Lot rent for RV or manufactured home.

vii. Costs of parking spaces when connected to a unit.

viii. Landlord incentives (provided there are written policies and/or procedures explaining what constitutes landlord incentives, how they are determined and who has approval and review responsibilities).

ix. Reasonable storage costs.

x. Reasonable moving costs, such as, truck rental and hiring a moving company.

xi. Hotel/Motel expenses for up to 30 days if unsheltered households are actively engaged in housing search and no other shelter option is available.

xii. Temporary absences, if a household must be temporarily away from his or her unit, but is expected to return (e.g., participant violates conditions of their DOC supervision and is placed in confinement for 30 days or re-hospitalized), Contractor may pay for the household’s rent for up to 60 days.
The funding is flexible depending on the specific individual/family situation, with the ultimate goal of procuring placement in permanent housing. The funding may be used in a lump sum or over a period of time in increments.

The funding is not to be used for Residential Treatment Facilities, Adult Family Homes, or housing that is contingent on treatment compliance.

Contractor shall accept referrals for housing subsidy from the HARPS team for individuals and families residing in their respective county.

Contractor shall report monthly on housing subsidies on the HARPS Housing Subsidy template found at the following link: http://nsmha.org/Contracts/Deliverable_Templates/Default.htm

7. CRIMINAL JUSTICE TREATMENT ACCOUNT (CJTA)
Contractor will continue to establish working relationships with the local CJTA Panel to ensure an active and collaborative working relationship in developing the plan and CJTA requirements as provided by the BHO.

Contractor shall act as liaison on behalf of the BHO with county drug courts, funding sources, and providers.

Contractor shall host meetings and workgroups as needed to develop an agreed upon local CJTA plan within the state allocation of the designated County CJTA committee members.

Contractor shall provide the County CJTA biennial plan to the BHO as scheduled.

Contractor shall promote and sustain successful working relationships between designated Drug Court and CJTA community SUD providers and the County Drug Court personnel to meet the state goals of CJTA, as well as, defined local goals RCW 70.96A.350.

The plan must:

a. Describe in detail how SUD treatment and support services will be delivered within the region.

b. Address the CJTA Account Match Requirement by providing a local participation match of all DSHS-provided criminal justice awards.

c. Include details on special projects such as best practices/treatment strategies, significant underserved population(s), or regional endeavors, including the following:

   i. Describe the project and how it will be consistent with your strategic plan.

   ii. Describe how the project will enhance treatment services for offenders.

   iii. Indicate the number of offenders who were served using innovative funds.

   iv. Detail the original goals and objectives of the project.
C. CONTRACTOR RESPONSIBILITIES

Contractor shall furnish the necessary personnel and services and do all things necessary for the performance of the work set forth herein as presently written or as may be later amended.

1. APPOINTMENT OF COUNTY COORDINATOR

Contractor Program Manager will act as or appoint a County Coordinator and the County Coordinator or designee will participate in North Sound BHO County Coordinator meetings, provide regular reports to North Sound BHO Advisory Board on county specific activities, and facilitate delivery of the services required under this section. In addition to those outlined in this section, responsibilities of County Coordinators include regularly participating in ad hoc committees, advising North Sound BHO of county-specific areas of concern or need and participation in disaster response preparedness activities.

Participate in strategic planning and other ad hoc planning initiatives for resource management and the ongoing evaluation of services provision with recommendations based on results. Provide county data to the BHO for regional and state behavioral health planning/reporting upon request.

2. RESOURCE MANAGEMENT SUPPORT

Contractor’s County Coordinator shall assist North Sound BHO in conducting resource management. Activities include regular participation in strategic planning and other ad hoc planning initiatives, and the ongoing evaluation of service provision in the county and the provision of recommendations to North Sound BHO based on the results. Coordinate locally funded services with the BHO’s publicly-funded core treatment service delivery system to assure coordination of care for County residents where appropriate to meet the behavioral health needs of the residents.

3. LOCAL OVERSIGHT COMMITTEE

Contractor and North Sound BHO shall convene this committee a minimum of twice per year with the function and purpose as outlined below:

a. This membership will be broad and include all identified stakeholder groups.

b. Will be Co-Chaired by North Sound BHO and the County Coordinator or their designee.

c. Meeting will be facilitated by the County Coordinator or their designee.

d. Will be scheduled by the County Coordinator, but coordinated with North Sound BHO.

e. Will be called on an as needed basis, but at least twice per year.

f. Will cover the following areas:

   i. Public Behavioral health System complaints or concerns,

   ii. Identifying gaps in the local public behavioral health system, such as; but not limited to outpatient, emergency, inpatient behavioral health services.
iii. Designing county specific protocols, which coordinate services with other community resources, county services and alternative systems of care, and

iv. Provide a venue for community input and cross system networking.

4. COORDINATED QUALITY IMPROVEMENT PROGRAM (CQIP) COMMITTEE
Contractor and North Sound BHO shall convene this committee on an as needed basis with the function and purpose as outlined below:

This is a protected CQIP meeting intended solely for the purpose of assuring Continuous Quality Improvement and Quality Assurance by North Sound BHO, its providers and component Counties. The CQIP program is strictly confidential to the fullest extend allowed by RCW 43.70.510 and WAC 246.50.

a. Membership is limited to North Sound BHO and the county,

b. Other participants will be limited to those community stakeholders that are/or have been involved with the specific case being reviewed,

c. Will be Co-Chaired by North Sound North Sound BHO and the County Coordinator or their designee.

d. Meeting will be facilitated by North Sound BHO.

e. Will be scheduled by North Sound BHO as requested by the County Coordinator and North Sound BHO, but coordinated with North Sound BHO.

f. Will cover the following areas:

   i. Advise North Sound BHO, County Coordinator, Outpatient and Integrated Crisis Response System (ICRS) management on issues, review of critical incidents, exceptional circumstances and integrated crisis response, or outpatient needs that require correcting.
   
   ii. Address contract non-compliance and available remedies including, but not limited to, fiscal penalties.

5. DELIVERABLES
Contractor shall ensure deliverables are submitted in accordance with Attachment V.

6. BUSINESS ASSOCIATE AGREEMENT
Contractor shall abide by the provisions of North Sound BHO/Whatcom County Business Associates Agreement (Attachment II).
D. FINANCIAL TERMS AND CONDITIONS

1. GENERAL FISCAL ASSURANCES
Contractor shall comply with all applicable laws and standards, including Generally Accepted Accounting Principles and maintain, at a minimum, a financial management system that is a viable, single, integrated system with sufficient sophistication and capability to effectively and efficiently process, track and manage all fiscal matters and transactions. The parties’ respective fiscal obligations and rights set forth in Article D shall continue after termination of this agreement until such time as the financial matters between the parties resulting from this agreement are completed.

2. FINANCIAL ACCOUNTING REQUIREMENTS
Contractor shall:

a. Establish and maintain operating reserves at prudent levels sufficient to ensure that Contractor has the ability to pay for all expenses incurred during this Agreement period, including those whose disposition occurs after the Agreement has been terminated, and to cover the risk of financial loss resulting in the event that the cost of providing services pursuant to this Agreement exceeds the revenues derived therefrom;

b. Ensure all funds, including interest earned, provided pursuant to this Agreement are used to support the public behavioral health system within the Service Area.

c. Contractor shall produce annual audited financial statements within 180 days of fiscal year end and make such reports available to North Sound BHO upon request.

3. FINANCIAL REPORTING
Contractor shall provide the following reports to North Sound BHO:

a. Within 15 days from the effective date of this Agreement, a program-specific budget that demonstrates to North Sound BHO’s reasonable satisfaction, compliance with direct service and indirect cost requirements.

b. Report Contractor's revenue and expenditure information to North Sound BHO on a quarterly basis. Reports must comply with the provisions in the BARS Supplemental Instructions for Behavioral Health Services promulgated by the Washington State Auditor’s Office. Reports are due within 35 days of the biennial quarter end (December, and June of each year). A final report is due February 5, 2018 (applies to all contracts).

4. RULES COMPLIANCE
Contractor shall ensure:

a. Funds provided to Contractor are used to provide specific administrative services on behalf of North Sound BHO and not used for direct services, with the exception of funds provided for housing supports.
b. Submit the amount spent throughout the Service Area on specific items at the request of North Sound BHO, Centers for Medicare and Medicaid Services (CMS), the legislature, or DSHS in the timeframe specified.

c. Account for public behavioral health expenditures under this Agreement in accordance with federal circular A-133 and A-87, and state requirements in accordance with the BARS Manual, and BARS Supplemental Instructions.

d. Ensure State or Federal funds are not used to replace local funds from any source, which were being used to finance behavioral health services in the constituent county/counties in the calendar year prior to January 1, 1990. Contractor shall not use State or Federal funds to replace local funds used to administer the Involuntary Treatment Program in the constituent county/counties in the calendar year prior to January 1, 1974.

5. FINANCIAL PROVISIONS – REIMBURSEMENT REQUIREMENTS

The consideration to be paid by North Sound BHO for the work to be provided by Contractor pursuant to this Agreement shall consist of the available amount from primary funding sources as described in Attachment III of this Agreement, for a maximum consideration of $498,867.00.

a. The consideration by North Sound BHO to Contractor pursuant to this Agreement shall be paid monthly within 10 working days of North Sound BHO’s receipt of payment by DSHS/DBHR.

b. Payment Methodology: North Sound BHO shall pay to Contractor all allowable and allocable costs incurred as evidenced by proper invoice of Contractor as submitted on a monthly basis to the extent that those costs do not exceed each funding source maximum as set forth in Attachment III.

c. Maximum consideration for this contract shall not exceed $498,867.00
E. OVERSIGHT, REMEDIES AND TERMINATION

1. OVERSIGHT AUTHORITY

North Sound BHO, DSHS, Office of the State Auditor, the Department of Health and Human Services (DHHS), CMS, the Comptroller General, or any of their duly-authorized representatives (e.g., External Quality Review Organizations), have the authority to conduct announced and unannounced: a) surveys; b) audits; c) reviews of compliance with licensing and certification requirements and compliance with this Agreement; d) audits regarding the quality, appropriateness, and timeliness of behavioral health services of Contractor and subcontractors; and e) audits and inspections of financial records of Contractor and subcontractors. Contractor shall notify North Sound BHO when an entity other than North Sound BHO performs any audit described above related to any activity contained in this Agreement.

In addition, North Sound BHO will conduct reviews in accordance with its oversight of resource, utilization and quality management, as well as to ensure that Contractor have the clinical, administrative and fiscal structures to enable them to perform in accordance with the terms of the contract. Such reviews may include, but are not limited to encounter data validation, utilization reviews, clinical record reviews, and reviews of administrative structures, fiscal management and contract compliance. Reviews may include desk reviews, requiring Contractor to submit requested information. North Sound BHO will also review activities delegated under this contract to Contractor.

Contractor shall cooperate with and allow access to North Sound BHO Ombuds in order to conduct surveys and review activities in accordance with the terms of this contract, in accordance with Attachment IV. Contractor shall cooperate with Skagit County Community Action Agency in resolving any disputes that arise in the provision of Ombuds services.

Findings as a result of North Sound BHO conducted reviews may result in remedial action as outlined below. Federal and State agencies may impose remedial action or financial penalties either directly upon Contractor or through North Sound BHO. Contractor shall comply with the terms of such remedial action and be responsible for the payment of financial penalties.

2. REMEDIAL ACTION

North Sound BHO may require Contractor to plan and execute corrective action. Corrective action plans (CAP) developed by Contractor must be submitted for approval to North Sound BHO within 30 calendar days of notification. CAPs must be provided in a format acceptable to North Sound BHO. North Sound BHO may extend or reduce the time allowed for corrective action depending upon the nature of the situation as determined by North Sound BHO.
a. CAPs must include:
   i. A brief description of the finding.
   ii. Specific actions to be taken, a timetable, a description of the monitoring to
       be performed, the steps taken and responsible individuals that will reflect
       the resolution of the situation.

b. CAPs may:

   Require modification of any policies or procedures by Contractor relating to the
   fulfillment of its obligations pursuant to this Agreement.

c. CAPs are subject to approval by North Sound BHO, which may:

   i. Accept the plan as submitted.
   ii. Accept the plan with specified modifications.
   iii. Request a modified plan; or,
   iv. Reject the plan.

d. Contractor agrees that North Sound BHO may initiate remedial action with or
   without a CAP as outlined in subsection below if North Sound BHO determines any
   of the following situations exist:

   i. A problem exists that negatively impacts enrollees.
   ii. Contractor has failed to perform any of the behavioral health services
       required in this Agreement, including delegated functions, which includes
       the failure to maintain the required capacity as specified by North Sound
       BHO to ensure that enrollees receive medically necessary services.
   iii. Contractor has failed to develop, produce/deliver to North Sound BHO any
       of the statements, reports, data, data corrections, accountings,
       claims/documentation described herein, in compliance with all the
       provisions of this Agreement.
   iv. Contractor has failed to perform any administrative function required
       under this Agreement, including delegated functions. For the purposes of
       this section, “administrative function” is defined as any obligation other
       than the actual provision of behavioral health services.
   v. Contractor has failed to implement corrective action required by the state
       and within North Sound BHO prescribed time frames.

e. North Sound BHO may impose any of the following remedial actions in response to
   findings of situations as outlined above:

   i. Withhold one percent of the next monthly payment and each monthly
      payment thereafter until the corrective action has achieved resolution.
      North Sound BHO, at its sole discretion, may return a portion or all of any
      payments withheld once satisfactory resolution has been achieved;
3. ADDITIONAL FINANCIAL PENALTIES – DBHR IMPOSED SANCTIONS

Financial penalties imposed by DBHR or other regulatory agency due to the action or inaction of Contractor may be paid by North Sound BHO on behalf of Contractor and the amount will be withheld from North Sound BHO's payments to Contractor.

4. TERMINATION DUE TO CHANGE IN FUNDING

In the event funding from State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to its normal completion, North Sound BHO may terminate this Agreement, subject to re-negotiations.

5. TERMINATION DUE TO CHANGE IN 1915(B) BEHAVIORAL HEALTH SERVICES WAIVER

In the event that changes to the terms of the 1915(b) (Medicaid) Behavioral health Services Waiver render this Agreement invalid in any way after the effective date of this Agreement and prior to its normal completion, North Sound BHO may terminate this Agreement, subject to re-negotiation, if applicable, under those new special terms and conditions.

6. TERMINATION FOR CONVENIENCE

Except, as otherwise provided in this Agreement, a party may terminate this Agreement upon 90 days written notification by certified mail to the other party. The effective date of termination shall be the 90 days after receipt of written notification to the other party or the last day of the calendar month in which the 90 days occurs, whichever is later.

7. TERMINATION FOR DEFAULT

North Sound BHO's Program Manager and his/her designee may terminate this Agreement for default, in whole or in part, by written notice to Contractor if North Sound BHO or DSHS has a reasonable basis to believe that Contractor has:

   a. Failed to meet or maintain any requirement for contracting with DSHS;
   b. Failed to perform under any provision of this Agreement;
   c. Violated any law, regulation, rule, or ordinance applicable to the services provided under this Agreement; and/or
   d. Otherwise breached any provision or condition of this Agreement.
Before North Sound BHO’s Program Manager may terminate this Agreement for default, in whole or in part, North Sound BHO shall provide Contractor with written notice of Contractor’s noncompliance with this Agreement which notice shall provide Contractor a reasonable time period to correct its/their noncompliance. If Contractor does not correct the noncompliance within the period of time specified in the written notice of noncompliance, the Program Administrator may then terminate this Agreement. The Program Administrator may terminate this Agreement for default without such written notice and without opportunity for correction, if North Sound BHO has a reasonable basis to believe that a client’s health or safety is in jeopardy, and/or:

a. Contractor has violated any law, regulation, rule or ordinance applicable to services provided under this agreement, or

b. Continuance of this Agreement with Contractor poses a material risk of injury or harm to any person.

Contractor may terminate this Agreement in whole or in part, by written notice to North Sound BHO, if Contractor has a reasonable basis to believe that North Sound BHO has:

a. Failed to meet or maintain any requirement for contracting with Contractor.

b. Failed to perform under any provision of this Agreement.

c. Violated any law, regulation, rule, or ordinance applicable to work performed under this Agreement; and/or

d. Otherwise breached any provision or condition of this Agreement.

8. TERMINATION PROCEDURE

The following provisions shall survive and be binding on the parties in the event this Agreement is terminated:

a. Contractor and any applicable subcontractors shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services. Each party shall be responsible only for its performance in accordance with the terms of this Agreement rendered prior to the effective date of termination. Contractor and any applicable subcontractors shall assist in the orderly transfer/transition of the individuals and families served under this Agreement. Contractor and any applicable subcontractors shall promptly supply all information necessary for the reimbursement of any outstanding Medicaid claims.

b. Contractor and any applicable subcontractors shall immediately deliver to North Sound BHO Program Manager or to his/her successor, all DSHS and North Sound BHO assets (property) in Contractor and any applicable subcontractor’s possession and any property produced under this Agreement. Contractor and any applicable subcontractors grant North Sound BHO and DSHS the right to enter upon Contractor and any applicable subcontractor’s premises for the sole purpose of recovering any North Sound BHO or DSHS property that Contractor and any applicable subcontractor fails to return within 10 working days of termination of this Agreement. Upon failure to return North Sound BHO/DSHS property within 10 working days of the termination of this Agreement, Contractor and any applicable
subcontractors shall be charged with all reasonable costs of recovery, including transportation and attorney’s fees. Contractor and any applicable subcontractors shall protect and preserve any property of North Sound BHO/DSHS that is in the possession of Contractor and any applicable subcontractors pending return to North Sound BHO/DSHS.

c. North Sound BHO shall be liable for and shall pay for only those services authorized and provided through the date of termination. North Sound BHO may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to or usable by North Sound BHO. Should the contract be terminated by either party, North Sound BHO will require the spend-down of all remaining reserves and fund balances within the termination period. Funds will be deducted from the final months’ payments until reserves and fund balances are spent.
F. GENERAL TERMS AND CONDITIONS FOR CONTRACTOR

1. BACKGROUND
North Sound BHO is an entity formed by inter-local agreement between Island, San Juan, Skagit, Snohomish and Whatcom Counties, each a county authority recognized by the Secretary of Department of Social and Health Services (Secretary). These counties entered into an inter-local agreement to allow North Sound BHO to contract with the Secretary pursuant to RCW 71.24.025(13), to operate a single managed system of services for persons with mental illness living in the service area covered by Island, San Juan, Skagit, Snohomish and Whatcom Counties (Service Area). North Sound BHO is party to an interagency agreement with the Secretary, pursuant to which North Sound BHO has agreed to provide integrated community support, crisis response, and inpatient management services to people needing such services in its service area. North Sound BHO, through this Agreement, is subcontracting with Contractor for the provision of specific behavioral health services as required by the agreement with the Secretary. Contractor, by signing this Agreement, attests that it is willing and able to provide such services in the Service Area.

2. MUTUAL COMMITMENTS
The parties to this Agreement are mutually committed to the development of an efficient, cost effective, integrated, person-driven, age specific recovery and resilience model approach to the delivery of quality community behavioral health services. To that end, the parties are mutually committed to maximizing the availability of resources to provide needed behavioral health services in the Service Area, maximizing the portion of those resources used for the provision of direct services and minimizing duplication of effort.

3. ASSIGNMENT
Except as otherwise provided within this Agreement, this Agreement may not be assigned, delegated, or transferred by Contractor without the express written consent of North Sound BHO, and any attempt to transfer or assign this Agreement without such consent shall be void. The terms “assigned”, “delegated”, or “transferred” shall include change of business structure to a limited liability company, of any Contractor Member or Affiliate Agency.

4. AUTHORITY
Concurrent with the execution of this Agreement, Contractor shall furnish North Sound BHO with a copy of the explicit written authorization of its governing body to enter into this Agreement and accept the financial risk and responsibility to carry out all terms of this Agreement including the ability to pay for all expenses incurred during the contract period. Likewise, concurrent with the execution of this Agreement, North Sound BHO shall furnish Contractor with a written copy of the motion, resolution, or ordinance passed by North Sound BHO Board of Directors (North Sound BHO Board) authorizing North Sound BHO to execute this Agreement.
5. **COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND OPERATIONAL POLICIES**

Contractor and its subcontractors shall comply with all applicable federal and state statutes, regulations, and operational policies, as applicable to this Agreement, whether or not a specific citation is identified in various sections of this Agreement, and all amendments thereto that are in effect when the Agreement is signed, or that come into effect during the term of the Agreement, which may include but are not limited to, the following ("Federal/State Law"):

a. Title XIX and Title XXI of the Social Security Act and Title 42 of the CFR.

b. All applicable Office of the Insurance Commissioner (OIC) statutes and regulations.

c. All local, State, and Federal professional and facility licensing and certification requirements/standards that apply to services performed under the terms of this Agreement.

d. All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 US 1857(h)), Section 508 of the Clean Water Act (33 US 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities. Any violations shall be reported to DSHS, DHHS, and the EPA.

e. Any applicable mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan, issued in compliance with the federal Energy Policy and Conservation Act.

f. Those specified for laboratory services in the Clinical Laboratory Improvement Amendments (CLIA).

g. Those specified in RCW Title 18 for professional licensing.

h. Reporting of abuse as required by RCW 26.44.030.

i. Industrial insurance coverage as required by RCW Title 51.

j. RCW 38.52, 70.02, 71.05, 71.24, and 71.34.

k. WAC 388-865.

l. 42 CFR 438, including 42 CFR 438.58 (conflict of interest) and 42 CFR 438.106 (physician incentive plans).

m. The State of Washington Medicaid State Plan and 1915(b) Medicaid Behavioral health Waiver, or their successors, which documents are incorporated by reference.

n. DBHR Quality Strategy.


p. Any applicable federal and state laws that pertain to Medicaid enrollee or individual rights. Contractor shall ensure its staff takes those rights into account when furnishing services.

q. 42 USC 1320a-7 and 1320a-7b (Section 1128 and 1128 (b) of the Social Security Act), which prohibits making payments directly or indirectly to physicians or other providers as an inducement to reduce or limit behavioral health services provided to individuals and/or families.
r. Any policies and procedures developed by Medical Assistance Administration for compliance with WAC 388-519-0110, which governs the spend-down of client assets.
s. Contractor and any subcontractors must comply with 42-USC 1396u-2 and must not knowingly have a director, officer, partner, or person with a beneficial ownership of more than 5% of Contractor, BHA or subcontractor’s equity, or an employee, Contractor, or consultant who is significant or material to the provision of services under this Agreement, who has been, or is affiliated with someone who has been, debarred, suspended, or otherwise excluded by any federal agency.
t. Federal and State non-discrimination laws and regulations.
u. HIPAA, 45 CFR parts 160-164.
v. DBHR-CIS Data Dictionary and its successors.
w. Federal funds must not be used for any lobbying activities.

If Contractor is in violation of a federal law or regulation, and Federal Financial Participation is recouped from North Sound BHO, Contractor shall reimburse the federal amount to North Sound BHO within 20 days of such recoupment.

Upon notification from DSHS, North Sound BHO shall notify Contractor in writing of changes/modifications in CMS policies and DSHS/DBHR contract requirement changes, if applicable to this Agreement.

6. COMPLIANCE WITH NORTH SOUND BHO OPERATIONAL POLICIES

Contractor shall comply with all North Sound BHO operational policies that pertain to the delivery of services under this Agreement that are in effect when the Agreement is signed or that come into effect during the term of the Agreement.

Along with all North Sound BHO stakeholders, Contractor will be included in the process for developing relevant operational policies and procedures. North Sound BHO’s Provider Policy & Procedure Grid and successors contain a list of North Sound BHO’s policies and their applicability to Contractor in accordance with Attachment I. The Grid and North Sound BHO’s policies and procedures are posted on North Sound BHO’s website. North Sound BHO shall notify Contractor of new and revised policies through its numbered memoranda. Training shall be provided on policies that impact providers.

North Sound BHO will make best efforts to maintain currency of policies with applicable federal or state law, regulation or policy. In the event of a conflict, federal or state laws, regulations or policies supersede North Sound BHO policies and procedures.

7. CONFIDENTIALITY OF CLIENT INFORMATION

Pursuant to 42 CFR 431.301 and 431.302, information concerning applicants and recipients may be disclosed for purposes directly concerning the administration of this Agreement. Purposes include, but are not limited to:
a. Establishing eligibility.

b. Determining the amount of medical assistance.

c. Providing services for recipients.

d. Conducting or assisting in investigation, prosecution, or civil or criminal proceeding related to the administration of the plan.

e. Assuring compliance with Federal and State laws, regulations, with terms and requirements of this Agreement.

f. Improving quality.

Contractor shall protect all information, records and data collected from unauthorized disclosure in accordance with 42 CFR 431.300 through 431.307, RCW's 70.02, 71.05, and 71.34, HIPAA, and for service recipients receiving alcohol and drug abuse services, in accordance with 42 CFR Part 2. Contractor shall have a process in place to ensure all components of its BHA and system understand and comply with confidentiality requirements for publicly funded behavioral health services.

Contractor shall ensure access to the information is restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of North Sound BHO and DSHS.

The parties acknowledge that coordination, planning, screening, and referral require the sharing of information among the various treatment providers. Disclosure of information to verify eligibility, determine the amount of assistance, and to provide medically necessary behavioral health services are all “purposes directly connected with the administration of the Agreement”, and are all appropriate justifications for sharing information.

Contractor shall ensure all staff and subcontractors providing services under this Agreement receive annual training on confidentiality policies and procedures. In addition, Contractor shall ensure all staff and subcontractors providing services under this Agreement sign an annual Oath of Confidentiality statement. Signed copies of the Oath of Confidentiality shall be kept in Contractor’s personnel files.

8. CONTRACT PERFORMANCE/ENFORCEMENT

North Sound BHO shall be vested with the rights of a third party beneficiary, including the "cut through" right to enforce performance should Contractor be unwilling or unable to enforce action on the part of its subcontractor(s). In the event that Contractor dissolves or otherwise discontinues operations, North Sound BHO may, at its sole option, assume the right to enforce the terms and conditions of this Agreement directly with Contractor’s subcontractors; provided, that North Sound BHO shall keep Contractor reasonably informed concerning such enforcement. Contractor shall include this clause in its contracts with its subcontractors. In the event of the dissolution of Contractor, North Sound BHO’s rights in indemnification shall survive.
9. COOPERATION
The parties to this Agreement shall cooperate in good faith to effectuate the terms and conditions of this Agreement.

10. DEBARMENT CERTIFICATION
Contractor, by signature to this Agreement, certifies Contractor and any Owners are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred) and is not listed in the Excluded Parties List System in the System for Award Management (SAM) website. Contractor shall immediately notify North Sound BHO if, during the term of this Contract, Contractor becomes debarred.

11. DECLARATION THAT CLIENTS UNDER THE MEDICAID AND OTHER BEHAVIORAL HEALTH PROGRAMS ARE NOT THIRD-PARTY BENEFICIARIES UNDER THIS CONTRACT
Although North Sound BHO, Contractor, and subcontractors mutually recognize that services under this Agreement may be provided by Contractor and subcontractors to clients under the Medicaid program, RCW 71.05 and 71.34, and the Community Behavioral health Services Act, RCW 71.24, it is not the intention of either North Sound BHO, or Contractor, that such individuals, or any other persons, occupy the position of intended third-party beneficiaries of the obligations assumed by either party to this Agreement. Such third parties shall have no right to enforce this Agreement.

12. EXECUTION, AMENDMENT AND WAIVER
This Agreement shall be binding on all parties only upon signature by authorized representatives of each party. This Agreement, or any provision, may be amended during the contract period, if circumstances warrant, by a written amendment executed by all parties. Only North Sound BHO Program Manager or North Sound BHO Program Manager's designee has authority to waive any provision of this Agreement on behalf of North Sound BHO.

13. HEADINGS AND CAPTIONS
The headings and captions used in this Agreement are for reference and convenience only, and in no way define, limit, or decide the scope or intent of any provisions or sections of this Agreement.

14. INDEMNIFICATION
Contractor shall be responsible for and shall indemnify and hold North Sound BHO harmless (including all costs and attorney fees) from all claims for personal injury, property damage and/or disclosure of confidential information, including claims against North Sound BHO for the negligent hiring, retention and/or supervision of the Contractor and/or from the imposition of governmental fines or penalties resulting from the acts or omissions of Contractor and its subcontractors related to the performance of this contract. North Sound BHO shall be responsible and shall indemnify and hold Contractor harmless (including all costs and attorney fees) from all claims for personal injury,
property damage and disclosure of confidential information and from the imposition of governmental fines or penalties resulting from the acts or omissions of North Sound BHO. Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees, to the fullest extent required by law, and further agree to save, indemnify, defend, and hold the other party harmless from any such liability. For the purposes of these indemnifications, the Parties specifically and expressly waive any immunity granted under the Washington Industrial Insurance Act, RCW Title 51. This waiver has been mutually negotiated and agreed to by the Parties. The provision of this section shall survive the expiration or termination of the Agreement.

15. INDEPENDENT CONTRACTOR FOR NORTH SOUND BHO

The parties intend that an independent Contractor relationship be created by this contract. Contractor acknowledges that neither Contractor nor its employees or subcontractors are officers, employees, or agents of North Sound BHO. Contractor shall not hold Contractor or any of Contractor’s employees and subcontractors out as, nor claim status as, officers, employees, or agents of North Sound BHO. Contractor shall not claim for Contractor or Contractor’s employees or subcontractors any rights, privileges, or benefits which would accrue to an employee of North Sound BHO. Contractor shall indemnify and hold North Sound BHO harmless from all obligations to pay or withhold Federal or State taxes or contributions on behalf of Contractor or Contractor’s employees and subcontractors unless specified in this Agreement.

16. INSURANCE

North Sound BHO certifies it is a member of Washington Governmental Entity Pool for all exposure to tort liability, general liability, property damage liability and vehicle liability, if applicable, as provided by RCW 43.19.

Contractor shall maintain Commercial General Liability Insurance (CGL). If Contractor is not a member of a risk pool, Contractor shall carry CGL to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits:
- Each Occurrence - $1,000,000;
- General Aggregate - $2,000,000.

Any risk pool shall provide coverage with the same minimum limits. Any policy (non-risk pool and risk pool) shall include liability arising out of premises, operations, independent contractors, personal injury, advertising injury, and liability assumed under an insured contract. Contractor shall provide evidence of such insurance to North Sound BHO within 15 days of execution of this Agreement and 15 days post renewal date thereafter. All non-risk pool policies shall name North Sound BHO as a covered entity under said policy(s).

17. INTEGRATION

This Agreement, including Attachments contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
18. **MAINTENANCE OF RECORDS**

During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, or if any audit, claim, litigation, or other legal action involving the records set forth below is started before expiration of the six year period, the records shall be maintained until completion and resolution of all issues arising therefrom or until the end of the six year period, whichever is later. Contractor shall maintain records sufficient to:

a. Maintain the content of all Medical Records in a manner consistent with utilization control requirements of 42 CFR 456, 434.34 (a), 456.111 and 456.211.

b. Document performance of all acts required by law, regulation, or this Agreement.

c. Substantiate Contractor statement of its organizations' structures, tax status, capabilities, and performance.

d. Demonstrate accounting procedures, practices, and records, which sufficiently and properly document Contractor invoices to North Sound BHO and all expenditures made by Contractor to perform as required by this Agreement.

e. Contractor and its subcontractors shall cooperate in all reviews, including but not limited to, surveys, and research conducted by North Sound BHO, DSHS or other Washington State Departments.

f. Evaluations shall be done by inspection or other means to measure quality, appropriateness, and timeliness of services performed under this Agreement, and to determine whether Contractor and its subcontractors are providing service to individuals in accordance with the requirements set forth in this Agreement and applicable state and federal regulations as existing or hereafter amended.

19. **NO WAIVER OF RIGHTS**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach and shall not be construed to be a modification of the terms and conditions of this Agreement.

20. **ONGOING SERVICES**

Contractor and its subcontractors shall ensure in the event of labor disputes or job actions, including work slowdowns, so called “sick outs”, or other activities, within its service BHA network, uninterrupted services shall be available as required by the terms of this Agreement.
21. ORDER OF PRECEDENCE
In the event of an inconsistency in the terms of this Agreement, or any inconsistency between the terms of this Agreement and any applicable statute, rule or contract, unless otherwise provided herein, the conflict shall be resolved by giving precedence in the following order, to:

a. The applicable Medicaid 1915(b) Waiver, Provisions of Title XIX of the Social Security Act and Federal regulations concerning the operations of Prepaid Inpatient Health Plans.

b. State statutes and regulations concerning the operation of the community behavioral health programs.

c. Federal and State Law.

d. North Sound BHO-DSHS agreement, or its successors, that covers the provision of the behavioral health services covered under this Agreement, which shall include any document or material incorporated by reference. North Sound BHO shall promptly notify Contractor of any amendment to North Sound BHO-DSHS agreement which affects any term or condition herein.

e. This Agreement.

22. OVERPAYMENTS
In the event Contractor fails to comply with any of the terms and conditions of this Agreement and that failure results in an overpayment, North Sound BHO may recover the amount due DSHS, CMS or other federal or state agency, subject to dispute resolution as set forth in the contract. In the case of overpayment, Contractor shall cooperate in the recoupment process and return to North Sound BHO the amount due upon demand.

23. OWNERSHIP OF MATERIALS
Materials created by Contractor and its subcontractors and paid for by North Sound BHO as a part of this Agreement shall be owned by North Sound BHO and shall be, "works for hire" as defined by the U.S. Copyright Act of 1976. This material includes but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes/training materials. Material which Contractor and its subcontractors use to perform this Agreement, which is not created for or paid for by North Sound BHO, is owned by Contractor or relevant subcontractors; however, North Sound BHO and DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS.

24. PERFORMANCE
Contractor shall furnish the necessary personnel, materials/behavioral health services and otherwise do all things for, or incidental to, the performance of the work set forth here and as attached. Unless specifically stated, Contractor is responsible for performing or ensuring all fiscal and program responsibilities required in this contract. No subcontract will terminate the legal responsibility of Contractor to perform the terms of this Agreement.
25. **RESOLUTION OF DISPUTES**

The parties wish to provide for prompt, efficient, final, and binding resolution of disputes and controversies that may arise under this Agreement and therefore establish this dispute resolution procedure. All claims, disputes, and other matters in question between the parties arising out of, or relating to, this Agreement shall be resolved exclusively by the following dispute resolution procedure unless the parties mutually agree in writing otherwise:

a. The parties shall use their best efforts to resolve issues prior to giving written Notice of Dispute.

b. Within 10 working days of receipt of the written Notice of Dispute, the parties (or a designated representative) shall together or, if both parties agree, with a mediator meet, confer, and attempt to resolve the claim.

c. The terms of the resolution of all claims concluded in meetings shall be memorialized in writing and signed by each party.

**Arbitration:** If the claim is not resolved within 30 days, the parties shall proceed to arbitration as follows:

a. Demand for arbitration shall be made in writing to the other party. The parties shall select one person as arbitrator.

b. If there is a delay of more than 10 days in the naming of the arbitrator, either party can ask the presiding judge of Skagit County to name the arbitrator.

c. The prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorney fees. The arbitrators shall determine which party, if any, is the prevailing party.

d. The parties agree that the arbitrators' decision shall be binding, final and appealable to Skagit County Superior Court only as provided in RCW Chapter 7.04A.

e. Unless the parties agree in writing otherwise, the unresolved claims in each notice of dispute shall be considered at an arbitration session which shall occur in Skagit County no later than 30 days after the close of the meeting described in paragraph (b) at the top of this page.

f. The Provisions of this section shall, with respect to any controversy or claim, survive the termination or expiration of this Agreement.

g. Nothing contained in this Agreement shall be deemed to give the arbitrator the power to change any of the terms and conditions of this Agreement in any way.

h. The prevailing party in any action to compel arbitration or to enforce an arbitration award shall be awarded its costs, including attorney fees. Venue for any such action is exclusively Skagit County Superior Court.

i. This Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance. Washington statutes of limitation apply to arbitration proceedings under this agreement.
26. **SEVERABILITY AND CONFORMITY**

The provisions of this Agreement are severable. If any provision of this Agreement, including any provision of any document incorporated by reference, is held invalid by any court, that invalidity shall not affect the other provisions of this Agreement and the invalid provision shall be considered modified to conform to existing law.

27. **SINGLE AUDIT ACT**

If Contractor or its subcontractor is a sub recipient of Federal awards as defined by OMB Circular A-133, Contractor and its subcontractors shall maintain records that identify all Federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance titles and numbers, award names and numbers, award years, if awards are for research and development, as well as names of the Federal agencies. Contractor and its subcontractors shall make Contractor and its subcontractors' records available for review or audit by officials of the Federal awarding agency, the General Accounting Office, and DSHS. Contractor and its subcontractors shall incorporate OMB Circular A-133 audit requirements into all contracts between Contractor and its subcontractors who are subrecipients. Contractor and its subcontractors shall comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation.

If Contractor/its subcontractors are a subrecipient and expend $750,000 or more in Federal awards from any/all sources in any fiscal year, Contractor and applicable subcontractors shall procure and pay for a single or program-specific audit for that fiscal year. Upon completion of each audit, Contractor and applicable subcontractors shall submit to North Sound BHO Program Manager the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide, if applicable, and a copy of any management letters issued by the auditor.

For purposes of “subrecipient” status under the rules of OMB Circular A-133 205(i) Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part of the rule unless a State requires the fund to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

28. **SUBCONTRACTS**

Contractor may subcontract services to be provided under this Agreement subject to the following requirements.

a. Contractor shall be responsible for the acts and omissions of any subcontractor.

b. Contractor must ensure the subcontractor neither employs any person nor contracts with any person or BHA excluded from participation in federal health care programs under either 42 USC 1320a-7 (§§1128 or 1128A Social Security Act) or debarred or suspended per this Agreement’s General Terms and Conditions.

c. Contractor shall require subcontractors to comply with all applicable federal and state laws, regulations, and operational policies as specified in this Agreement.

d. Contractor shall require subcontractors to comply with all applicable North Sound BHO operational policies as specified in this Agreement.
e. Contractor shall ensure a process is in place to demonstrate that all third-party resources are identified and pursued.

f. Contractor shall oversee, be accountable for, and monitor all functions and responsibilities delegated to a subcontractor for conformance with any applicable statement of work in this Agreement on an ongoing basis including written reviews.

g. Contractor will monitor performance of the subcontractors on an annual basis and notify North Sound BHO of any identified deficiencies or areas for improvement requiring corrective action by Contractor.

h. Contractor shall ensure all subcontracts are in writing and subcontracts specify all duties, reports, and responsibilities delegated under this Agreement. Those written subcontracts shall:

i. Require subcontractors to hold all necessary licenses, certifications/permits as required by law for the performance of the services to be performed under this Agreement.

ii. Include clear means to revoke delegation, impose corrective action, or take other remedial actions if the subcontractor fails to comply with the terms of the subcontract.

iii. Require that the subcontractor correct any areas of deficiencies in the subcontractor’s performance that are identified by Contractor, North Sound BHO/DBHR.

iv. Require best efforts to provide written or oral notification within 15 working days of termination of a Mental Health Care Provider (MHCP) to individuals currently open for services who had received a service from the affected MHCP in the previous 60 days. Notification must be verifiable in the client medical record at the subcontractor.

29. SURVIVABILITY

The terms and conditions contained in this Agreement that by their sense and context are intended to survive the expiration of this Agreement shall so survive. Surviving terms include, but are not limited to: Financial Terms and Conditions, Single Audit Act, Order of Precedence, Contract Performance and Enforcement, Confidentiality of Client Information, Resolution of Disputes, Indemnification, Oversight Authority, Maintenance of Records, Ownership of Materials, Contract Administration, Warranties and Survivability.

30. TREATMENT OF CLIENT PROPERTY

Unless otherwise provided in this Agreement, Contractor shall ensure any adult individual receiving services from Contractor under this Agreement has unrestricted access to the individual’s personal property. Contractor shall not interfere with any adult individual’s ownership, possession, or use of the individual’s property unless clinically indicated. Contractor shall provide individuals under age 18 with reasonable access to their personal property that is appropriate to the individual’s age, development, and needs. Upon termination of this Agreement, Contractor shall immediately release to the individual/the individual’s guardian or custodian all of the individual’s personal property.
31. **WARRANTIES**
The parties' obligations are warranted and represented by each to be individually binding, for the benefit of the other party. Contractor warrants and represents that it is able to perform its obligations set forth in this Agreement and that such obligations are binding upon Contractor and other subcontractors for the benefit of North Sound BHO.

32. **RATIFICATION**
This contract will go into effect and shall be fully enforceable when signed by authorized representatives of all parties involved. This contract is subject to ratification after it becomes effective. This contract will be submitted for ratification at the next scheduled meeting of the North Sound BHO County Authorities Executive Committee (“the Committee”). If not ratified by the Committee the North Sound BHO will terminate the contract either immediately or, at the discretion of North Sound BHO, within a reasonable amount of time.

33. **CONTRACT ADMINISTRATION**
The Program Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Program Manager for North Sound BHO is:

Joe Valentine, Executive Director  
North Sound Behavioral Health Organization  
301 Valley Mall Way, Suite 110  
Mount Vernon, WA 98273

The Program Manager for Contractor is:

Anne Deacon, LICSW  
Human Services Manager  
509 Girard Street  
Bellingham, WA 98225

Changes in Program Managers or addresses shall be provided to the other party in writing within 10 working days.
THIS AGREEMENT, consisting of 38 Pages, plus Attachments, is executed by the persons signing below who warrant that they have the authority to execute this Agreement.

NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION, LLC

Joe Valentine
Executive Director

Approved as to Form for North Sound BHO

Basic Form approved by Brad Furlong 10/1/01

WHATCOM COUNTY

Regina Delahunt
Director

Date

Name & Title Date
DEPARTMENT APPROVAL

Anne Deacon, Human Services Division Manager

12/1/16

Date

WHATCOM COUNTY

JACK LOUWS
County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM )

On this _____ day of ________________, 2016, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

My Commission expires: ___________________

APPROVED AS TO FORM

Royce Buckingham, Deputy Prosecuting Attorney

Date
The North Sound BHO 7.01 Policy is available on the North Sound BHO Website at http://northsoundbho.org/policies/Sections/6000/6001.00.pdf

The North Sound BHO Policy and Procedure Grid is available on the North Sound BHO Website at http://northsoundbho.org/policies/

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made effective the 1\textsuperscript{st} day of January, 2017, by and between NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION, LLC or “North Sound BHO,” hereinafter referred to as “Covered Entity,” and WHATCOM COUNTY, hereinafter referred to as “Business Associate” (individually, a “Party” and collectively, the “Parties”).

RECITALS:

A. WHEREAS, the Parties wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA Privacy and Security Rules”) (45 CFR Parts 160 and 164); and

B. WHEREAS, the Health Information Technology for Economic and Clinical Health (“HITECH”) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the “HIPAA Privacy and Security Rules” include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

C. WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the “Agreements”) whereby Business Associate will provide certain services to Covered Entity and, pursuant to such Agreements, Business Associate may be considered a “Business Associate” of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

D. WHEREAS, Business Associate may have access to Protected Health Information (hereinafter “PHI”) or Electronic Protected Health Information (as defined below) in fulfilling its responsibilities under the Agreements; and

E. WHEREAS, Covered Entity wishes to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a Business Associate to Covered Entity.

THEREFORE, in consideration of the Parties’ continuing obligations under the Agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.
The term "Breach" means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. The term "Breach" does not include: (1) any unintentional acquisition, access, or use of PHI by any employee or individual acting under the authority of a covered entity or business associate if (a) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate, and (b) such information is not further impermissibly acquired, accessed, used, or disclosed by any person; (2) any inadvertent disclosure by an individual who is otherwise authorized to access PHI at a facility operated by a covered entity or business associate to another similarly situated individual at the same facility, where the information disclosed is not further impermissibly acquired, accessed, used, or disclosed by any person; or (3) an impermissible disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

The term "HIPAA Privacy and Security Rules" refers to 45 CFR Parts 160 and 164 as currently in effect or hereafter amended.

The term "Protected Health Information" or "PHI" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.

The term "Electronic Protected Health Information" means PHI which is transmitted by or maintained in Electronic Media (as now or hereafter defined in the HIPAA Privacy and Security Rules).

The term "Secretary" means the Secretary of the Department of Health and Human Services.

The term "Unsecured Protected Health Information" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published in the Federal Register at 74 Fed. Reg. 19006 on April 27, 2009 and in annual guidance published thereafter.

II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

A. Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreements, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.
B. Business Associate may use PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

C. Business Associate may disclose PHI in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:

1. The disclosures are required by law; or
2. Business Associate obtains reasonable assurances from the third parties to whom the PHI is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

D. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only PHI that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request, in which event Business Associate may access, use, or request only the minimum necessary amount of PHI to accomplish the intended purpose of the access, use, or request. The Parties shall collaborate in determining what quantum of information constitutes the “minimum necessary” amount for Business Associate to accomplish its intended purposes.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

A. Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

B. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.

C. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Specifically, Business Associate will:

1. Implement the administrative, physical, and technical safeguards set forth in Sections 164.308, 164.310, and 164.312 of the HIPAA Privacy and Security Rules that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that it creates, receives, maintains, or transmits on behalf
of Covered Entity, and, in accordance with Section 164.316 of the HIPAA Privacy and Security Rules, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in Sections 164.308, 164.310, and 164.312; and

2. Report to Covered Entity any use or disclosure of PHI not provided for by this Agreement, including any Security Incident, of which Business Associate becomes aware, regardless of whether the Security Incident rises to the level of a Breach. For purposes of this Agreement, “Security Incident” means the successful unauthorized access, use, disclosure, modification, or destruction of PHI or interference with system operations in an information system, of which Business Associate has knowledge or should, with the exercise of reasonable diligence, have knowledge, excluding (i) “pings” on an information system firewall; (ii) port scans; (iii) attempts to log on to an information system or enter a database with an invalid password or user name; (iv) denial-of-service attacks that do not result in a server being taken offline; or (v) “malware” (e.g., a worm or a virus) that does not result in unauthorized access, use, disclosure, modification or destruction of PHI. The report shall be made as soon as practical, and in any event within 10 days of Business Associate’s discovery of the Security Incident. A Security Incident shall be treated as discovered by Business Associate as of the first day on which such Security Incident is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

D. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

E. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules and of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding the provisions of Section 164.522 (a)(1)(ii), Business Associate agrees to comply with an individual’s request to restrict disclosure of PHI to a health plan for purposes of carrying out payment or health care operations if the PHI pertains solely to a health care item or service for which Covered Entity has been paid by in full by the individual or the individual’s representative. The restriction can only apply to disclosures beginning the next business day after the request for restriction is received.

F. At the request of Covered Entity, and in a reasonable time and manner, Business Associate agrees to make available PHI required for Covered Entity to respond to an individual’s request for access to his or her PHI in accordance with Section 164.524 of the HIPAA Privacy and Security Rules. If Business Associate maintains PHI electronically, it agrees to make such PHI available electronically to the applicable individual or to a person or entity specifically designated by such individual, upon such individual’s request.
G. At the request of Covered Entity, and in a reasonable time and manner, Business Associate agrees to make available PHI required for amendment by Covered Entity in accordance with the requirements of Section 164.526 of the HIPAA Privacy and Security Rules.

H. Business Associate agrees to document any disclosures of, and make PHI available, for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy and Security Rules.

I. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary for the purpose of determining Covered Entity's compliance with the HIPAA Privacy and Security Rules, in a time and manner designated by the Secretary.

J. Business Associate agrees that, while present at any Covered Entity facility and/or when accessing Covered Entity's computer network(s), it and all of its employees, agents, representatives and subcontractors will at all times comply with any network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Privacy and Security Rules.

K. Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any PHI of an individual without the written authorization of the individual or the individual’s representative, except where the purpose of the exchange is:

1. For public health activities as described in Section 164.512(b) of the HIPAA Privacy and Security Rules;
2. For research as described in Sections 164.501 and 164.512(i) of the HIPAA Privacy and Security Rules, and the price charged reflects the costs of preparation and transmittal of the data for such purpose;
3. For treatment of the individual, subject to any further regulation promulgated by the Secretary to prevent inappropriate access, use, or disclosure of PHI;
4. For the sale, transfer, merger, or consolidation of all or part of Business Associate and due diligence related to that activity;
5. For an activity that Business Associate undertakes on behalf of and at the specific request of Covered Entity;
6. To provide an individual with a copy of the individual’s PHI pursuant to Section 164.524 of the HIPAA Privacy and Security Rules; or
7. Other exchanges that the Secretary determines in regulations to be similarly necessary and appropriate as those described in this Section III.K.

L. Business Associate agrees that it will not directly or indirectly receive remuneration for any written communication that encourages an individual to purchase or use a product or service without first obtaining the written authorization of the individual or the individual’s representative, unless:
1. Such payment is for a communication regarding a drug or biologic currently prescribed for the individual and is reasonable in amount (as defined by the Secretary); or
2. The communication is made on behalf of Covered Entity and is consistent with the terms of this Agreement.

M. Business Associate agrees that if it uses or discloses patients' PHI for marketing purposes, it will obtain Covered Entity's written approval and such patients' authorization before making any such use or disclosure.

IV. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

A. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

B. Following the discovery of a Breach of Unsecured Protected Health Information, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than 10 calendar days after discovery of the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

C. Notwithstanding the provisions of Section IV.B., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

   1. If the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or
   2. If the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than 30 days from the date of the oral statement unless the official submits a written statement during that time.

   Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

D. The Breach notification provided shall include, to the extent possible:

   1. The identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;
   2. A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
3. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
4. Any steps individuals should take to protect themselves from potential harm resulting from the Breach;
5. A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches and when such steps were taken; and
6. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

E. Business Associate shall provide the information specified in Section IV.D. above, to Covered Entity at the time of the Breach notification, if possible, or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in Section IV.D., and shall provide such information to Covered Entity even if the information becomes available after the 10-day period provided for initial Breach notification.

V. OBLIGATIONS OF COVERED ENTITY
A. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520 of the HIPAA Privacy and Security Rules.
B. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate’s permitted or required uses and disclosures.
C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate’s use and disclosure of such PHI. Business Associate shall have a reasonable period of time to act on such notice.

VI. TERM AND TERMINATION
A. Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section VI.C., when all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Agreements.
B. **Termination.** Upon either Party's knowledge of a material breach by the other Party of its obligations under this Agreement, the non-breaching Party shall, within 20 days of that determination, notify the breaching Party, and the breaching Party shall have 30 days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such time period, the non-breaching Party may terminate this Agreement and the Agreements. Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice of the breach is not required, and the non-breaching Party shall terminate the portion of the Agreements affected by the breach. Where neither cure nor termination is feasible, the non-breaching Party shall report the violation to the Secretary.

C. **Effect of Termination.**

1. Except as provided in paragraph (2) of this subsection C., upon termination of this Agreement, the Agreements or upon request of Covered Entity, whichever occurs first, Business Associate shall within 10 days return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor its subcontractors or agents shall retain copies of the PHI.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide within 10 days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is not infeasible; Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

**VII. MISCELLANEOUS**

A. **Indemnification.** Each Party shall indemnify and hold the other harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitations, attorneys' fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement, or any Breach, by that Party or its subcontractors or agents.

B. **No Rights in Third Parties.** Except as expressly stated herein, in the HIPAA Privacy and Security Rules, the Parties to this Agreement do not intend to create any rights in any third parties.
C. **Survival.** The obligations of Business Associate under Section VI.C. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Agreements, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein. Furthermore, the Parties' indemnification obligations pursuant to Section VII.A. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Agreements, and/or the business relationship of the Parties, and shall continue to bind the Parties, their agents, employees, contractors, successors, and assigns as set forth herein.

**Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Privacy and Security Rules. In addition, in the event that either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy and Security Rules or any other applicable legislation, then such Party shall notify the other Party of its belief in writing. For a period of up to 30 days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty (30)-day period, the Agreement fails to comply with the HIPAA Privacy and Security Rules or any other applicable legislation, then either Party has the right to terminate this Agreement and the underlying arrangement upon written notice to the other Party.

D. **Assignment.** Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

E. **Independent Contractor.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

F. **Governing Law.** To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the State of Washington.

G. **No Waiver.** No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

H. **Interpretation.** Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.

I. **Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
J. Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative’s position with the other Party.

K. Certain Provisions Not Effective in Certain Circumstances. The provisions of this Agreement relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive any Electronic PHI from or on behalf of Covered Entity.

L. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written. In the event of any inconsistency between this Agreement and any other agreement between the Parties concerning the use and disclosure of PHI and the Parties’ obligations with respect thereto, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

NORTH SOUND BHO

[Signature]
Joe Valentine
Executive Director

[Signature]
Regina Delahunt
Director

WHATCOM COUNTY

[Signature]
Date
12/5/16

[Signature]
Date
12/5/16
## SOURCES OF FUNDS

<table>
<thead>
<tr>
<th>Allocation of Administrative Services Funding Received through North Sound BHOs Medicaid Funds</th>
<th>January-16</th>
<th>February-16</th>
<th>March-16</th>
<th>April-16</th>
<th>May-16</th>
<th>June-16</th>
<th>July-16</th>
<th>August-16</th>
<th>September-16</th>
<th>October-16</th>
<th>November-16</th>
<th>December-16</th>
<th>Total</th>
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<tr>
<td>State HARPS funds</td>
<td>$38,216.00</td>
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<td>$38,216.00</td>
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<td>$38,216.00</td>
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<td>TOTAL SOURCES OF FUNDS</td>
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<td>$41,572.25</td>
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<td>$41,572.25</td>
<td>$41,572.25</td>
<td>$41,572.25</td>
<td>$498,729.50</td>
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## USES OF FUNDS

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<th>支付方法</th>
<th>January-16</th>
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<th>March-16</th>
<th>April-16</th>
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<th>July-16</th>
<th>August-16</th>
<th>September-16</th>
<th>October-16</th>
<th>November-16</th>
<th>December-16</th>
<th>Total</th>
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<tbody>
<tr>
<td>Administrative and Direct Services Support costs</td>
<td>$38,216.00</td>
<td>$38,216.00</td>
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<td>$38,216.00</td>
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<td>$38,216.00</td>
<td>$38,216.00</td>
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<tr>
<td>HARPS Housing Supports*</td>
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<td>$4,000.00</td>
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<td>$4,000.00</td>
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<td>$40,000.00</td>
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<td>TOTAL USES OF FUNDS</td>
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<td>$42,216.00</td>
<td>$42,216.00</td>
<td>$498,592.00</td>
</tr>
</tbody>
</table>

*NARPS funds 12 months at $6,712.50 a month for a total of $80,550, 7/1/16 to 6/30/17.

*HARPS funds for 7/1/17 to 6/30/18 will be added when the North Sound gets the HARPS Contract from the state.
NUORT SOUTH MENTAL HEALTH ADMINISTRATION

OMBUDS SERVICES

I. PURPOSE

Ombuds, when requested, investigate and advocate on behalf of consumers while working to resolve any complaint regarding mental health services for service recipients.

WHATCOM COUNTY shall ensure:

a. Ombuds have access to WHATCOM COUNTY and all subcontractors regarding:
   i. The quality of care provided to public mental health consumers;
   ii. The degree to which services are service recipient focused/directed;
   iii. WHATCOM COUNTY quality management activities;
   iv. The extent of development of alternatives to hospitalizations, cross-system coordination and range of treatment options; and

b. Ombuds shall have the authority to enter into a WHATCOM COUNTY facility for purposes of outreach, fact finding, assessing systemic customer service issues, and to resolve individual complaints or systemic issues related to the contracted services, provided that reasonable time, notice, and confidentiality requirements are met.

c. Ombuds shall have access to WHATCOM COUNTY personnel for purposes of outreach, fact-finding, assessing systemic consumer service issues, and to resolve individual complaints or systemic issues related to the contracted services, provided that reasonable time, notice, and confidentiality requirements are met.

d. Ensure Ombuds have the ability to perform their duties free of retaliation and demonstrate effective intervention on behalf of Ombuds should retaliation issues arise.

II. PROCEDURE

Ombuds submit semi-annual reports for broad distribution to at least the following stakeholders:

a. WHATCOM COUNTY Administrator/Governing Board/Advisory Board
b. Local consumer/family advocate groups
c. Service Area mental health advisory boards
d. Public mental health providers
e. DBHR

WHATCOM COUNTY and all subcontractors shall consider Ombuds findings and reports in good faith. WHATCOM COUNTY and subcontractors shall demonstrate how Ombuds reports, recommendations and findings are analyzed, and how decisions are made regarding follow-up activities and interventions, as well as, demonstrate how issues are addressed and incorporated into ongoing operations, including but not limited to, contracting activities and other management decisions.
**WHATCOM COUNTY**  
**CONTRACT #NORTH SOUND BHO-WHATCOM-ADMIN-17**  
**January 1, 2017 – December 31, 2017**

**CONTRACT DELIVERABLES**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>DUE DATES</th>
<th>Contract Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Concurrent with the execution of this Agreement, Whatcom County shall furnish North Sound BHO with a copy of the explicit written authorization of their governing bodies to enter into this Agreement and accept the financial risk and responsibility to carry out all terms of this Agreement including the ability to pay for all expenses incurred during the contract period.</td>
<td>1/15/17</td>
<td>F.4</td>
</tr>
<tr>
<td>2. Contractor shall provide North Sound BHO with a report on the following measures:</td>
<td>When requested</td>
<td>B.5</td>
</tr>
<tr>
<td>a. Contractor will work with North Sound BHO on regional facilities planning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. County will work with North Sound BHO Advisory Board to annually appoint new members to the Board;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Contractor will identify areas to coordinate locally funded services with publically funded services to enhance services in the County and avoid redundancy and provide them monthly at the county coordinators meeting.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Contractor shall provide annual updates on Delegated Functions to include Community and Allied System Coordination activities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. County will provide county-specific data for regional behavioral health planning upon request.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. If the Contractor is not a member of a risk pool, the Contractor shall carry CGL to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - $1,000,000; General Aggregate - $2,000,000.</td>
<td>1/15/17</td>
<td>F.16</td>
</tr>
<tr>
<td>All non-risk pool policies shall name North Sound BHO as a covered entity under said policy(s).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Contractor shall report revenue and expenditure information to North Sound BHO on a quarterly basis. Reports must comply with the provisions in the BARS Supplemental Instructions for Mental Health Services promulgated by the Washington State Auditor’s Office.</td>
<td>Within 35 days of the quarter end (March, June and September)</td>
<td>D.3.b</td>
</tr>
<tr>
<td>5. Contractor shall report monthly on housing subsidies on the HARPS Housing Assistance template found at the following link:</td>
<td>Due by the end of business on the 15th day following the end of the reporting period.</td>
<td>B.6</td>
</tr>
</tbody>
</table>

[http://northsoundbho.org/contracts/](http://northsoundbho.org/contracts/)
### WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<tbody>
<tr>
<td>Originator:</td>
<td>Health</td>
<td>12/8/16</td>
<td></td>
<td>1/10/17</td>
<td>Council as Health Board</td>
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<tr>
<td>Division Head:</td>
<td></td>
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<td></td>
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<tr>
<td>Dept. Head:</td>
<td>RD</td>
<td>12/9/16</td>
<td></td>
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<tr>
<td>Prosecutor:</td>
<td></td>
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<td>Purchasing/Budget:</td>
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</tr>
<tr>
<td>Executive:</td>
<td></td>
<td>1/3/17</td>
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<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**
Support of WA State Funding for Core Public Health Services

**ATTACHMENTS:**
- Discussion Form
- Resolution: Washington State Legislature Support of Funding for Core Public Health Services

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( X ) NO</td>
</tr>
</tbody>
</table>

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

The purpose of the proposed resolution is to support State funding for Core Public Health Services.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
AGENDA ITEM: Resolution Supporting Funding for Core Public Health Services

PRESENTER: Regina Delahunt

BOARD ACTION: ✗ Action Item  Discussion  FYI - Only

SIGNIFICANT POINTS

Providing public health services is a shared state and local responsibility. Some public health services are so critical that they must be provided to every resident of Washington State. Other public health needs may be unique to certain regions of our state, so each community determines and implements local priorities. The foundational public health services model ensures all residents can depend on a core set of services which only governmental public health can provide.

FOUNDATIONAL PUBLIC HEALTH IN WASHINGTON STATE
Ensuring all residents can depend on a core set of services which only governmental public health can provide.

PROGRAMS
A basic set of programs that are accessible in every community across the state.

CAPABILITIES
Capabilities & infrastructure to support foundational programming.

MEETING LOCAL NEEDS
In addition to these core programs and capabilities, there are other services implemented to meet community driven needs.

Our public health system has agreed on a set of core services that the state should financially support so that every community in Washington has equal access to public health protections. The legislature is being asked to support these core services, and to allow us to rebuild our system with added efficiency, by providing the following down payment:

$50 Million for Local Health Departments
Local health departments track, respond to, and prevent public health epidemics at the community level – this funding will fill critical gaps in disease prevention and response.

$6 Million for State Department of Health
Our State Department of Health also needs to improve its capacity for disease monitoring and investigations – and expand its laboratory capacity to meet increased demand.
$4 Million for Modernization
Local public health must respond quickly and efficiently to outbreaks. Over the last four years, state and local public health leaders have developed a plan to modernize the state’s public health system, ensuring core services are available everywhere and designating others that can be effectively and efficiently shared between health departments.

Rebuilding and refocusing our public health services means we can better monitor and coordinate emergency response -- keeping our communities safe, reducing costs for taxpayers, and protecting our local economy. Disease epidemics like Ebola and Zika are more complex and taking longer to investigate, and our population is expected to grow by another two million residents by 2025. Yet the new, complex threats and recession budget cuts have made it harder for the public health system to protect and serve Washington’s families and communities.

Local boards of health from around the state are being asked to pledge their support to the effort by adopting resolutions requesting the state legislature to provide this critical core funding during this legislative session.

BOARD ROLE / ACTION REQUESTED

• Approve Resolution As Drafted

ATTACHMENT

Resolution: Washington State Legislature Support of Funding for Core Public Health Services
WHEREAS, the public health system in Washington provides the foundation for the larger health care framework, working to prevent illness and disease while supporting the work of community partners; and

WHEREAS, tracking, responding to, and preventing costly food and water contamination and disease outbreaks is essential to protecting the public’s health; and

WHEREAS, state and local public health officials, together with local leaders, have identified an agreed-upon set of core public health services that should be available for every Washingtonian; and

WHEREAS, after a century of increasing life expectancies, today these gains are threatened by new and more complex diseases, continued tobacco use and preventable chronic diseases, putting today’s children at risk of becoming the first generation to have shorter life expectancies than their parents; and

WHEREAS, the public’s well-being is also threatened by public health’s inability to meet its basic responsibility to provide these core services due to changes in its funding structure, complex and new diseases, and growing populations; and

WHEREAS, the motor vehicle excise tax was repealed in 2000, leaving the public health system without an adequate and sustainable funding source; and

WHEREAS, Washington state’s population has grown by more than one million residents since 2000, and is expected to grow by another two million residents by 2025; and

WHEREAS, Washington state spends less on public health protection ($38.08 per person) than other states like Idaho ($54.35 per person) and Wyoming ($89.75 per person); and

WHEREAS, Whatcom County Health Department resources have been stretched over the last several years to appropriately respond to more than 30 disease outbreaks of norovirus, influenza, E.coli, measles, and varicella.

WHEREAS, Whatcom County ranks 2nd highest in the state for the demand for opiate addiction treatment, but lacks the resources needed to make short and long term system improvement to help stem the tide of the opiate epidemic in our community.

WHEREAS, over the last four years, state and local public health leaders have developed a plan to modernize the state’s public health system, ensuring core services are available everywhere and designating others that can be effectively and efficiently shared between health departments; and
WHEREAS, without securing ongoing, stable, and dedicated funding for core public health services, our communities are left unprepared for emergencies like the SR 530 Slide, and vulnerable to the spread of communicable diseases like Zika and whooping cough; and

WHEREAS, rebuilding and refocusing our public health services means we can better monitor and coordinate emergency responses – keeping our families and communities safe, reducing costs for taxpayers, and protecting our local economy.

NOW, THEREFORE, BE IT RESOLVED, the Whatcom County Board of Health calls on the Washington state legislature to recognize that public health is essential and provide the critical down-payment to support core services in all communities and allow public health to rebuild its statewide system with added efficiency.

APPROVED this 10th day of January, 2017.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Karen Frakes, Civil Deputy Prosecutor
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<tbody>
<tr>
<td>Cliff Strong</td>
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<td>12/27/2016</td>
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<td>Mark Personius</td>
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<td>Sam Ryan</td>
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<td>Jack Knows</td>
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RECEIVED

JAN 03 2016
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
2016 Critical Areas Ordinance Update — Article 1 — Purpose

ATTACHMENTS: (all current and past materials provided to the Council can be found at http://www.whatcomcounty.us/2417/County-Council-Review)
A. Staff memo to Council dated 12/20/2016

SEPA review required? (X) Yes ( ) NO
SEPA review completed? (X) Yes ( ) NO
Should Clerk schedule a hearing? ( ) Yes (X) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

This is another workshop (in a series of many) on the proposed ordinance to amend Whatcom County Critical Areas Ordinance (CAO) (WCC 16.16) pursuant to RCW 36.70A.130(1). The Growth Management Act (RCW 360.70A) defines critical areas as wetlands, frequently flooded areas, fish and wildlife habitat conservation areas (including streams), geologically hazardous areas, and critical aquifer recharge areas. The purpose of this periodic update is to ensure that the CAO meets the GMA requirements, including consistency with the Whatcom County Comprehensive Plan, best available science, and state agency guidance updates. Numerous amendments are being proposed, though most of them pertain to correcting grammar, updating references to other documents or laws, clarifying and updating administrative procedures, etc. The County is also required to integrate the CAO provisions with its Shoreline Master Program (SMP). Whatcom County has done so by adopting the CAO by reference within the SMP (WCC 23.10.060(A)). This reference is also proposed to be amended.

COMMITTEE ACTION:                          COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
Memorandum

TO:       The Honorable County Council
          Jack Louws, County Executive

FROM:     Cliff Strong, Senior Planner

THROUGH:  Mark Personius, Asst. Director

DATE:     December 20, 2016

SUBJECT:  2016 Critical Areas Ordinance Update
          County Council Review, Workshop 2, 10 January 2017

On January 10th the Council will continue its review of the 2016 Critical Areas Ordinance Update. Topics to be covered include:

- Anticipated Schedule
- A note about changes proposed post-Planning Commission recommendation
- Overview of Certain Proposed Amendments to:
  - Global Changes
  - Article 1 – Purpose
  - Article 2 – Administrative Provisions
  - Article 5 – Critical Aquifer Recharge Areas
  - Article 5.5 – Lummi Island
  - Article 9 – Definitions

Anticipated Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic(s)</th>
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<tbody>
<tr>
<td>9/20/16</td>
<td>Overview</td>
</tr>
<tr>
<td>10/25/16</td>
<td>Public Hearing</td>
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<tr>
<td>1/10</td>
<td>Article 1 – Purpose</td>
</tr>
<tr>
<td></td>
<td>Article 2 – Administrative Provisions</td>
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<td></td>
<td>Article 5 – Critical Aquifer Recharge Areas</td>
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<td>Article 5.5 – Lummi Island</td>
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<td>Article 9 – Definitions</td>
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<tr>
<td>1/24</td>
<td>Article 4 – Frequently Flooded Areas</td>
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<td>Article 7 – Habitat Conservation Areas</td>
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<td>2/7</td>
<td>Article 6 – Wetlands</td>
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<td>Article 8 – Conservation Program on Agriculture Lands</td>
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<tr>
<td>2/21</td>
<td>Article 3 – Geologically Hazardous Areas</td>
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<tr>
<td>3/7</td>
<td>Review of Any Outstanding Issues</td>
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<tr>
<td>3/21</td>
<td>Introduction of Ordinance</td>
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<tr>
<td>4/11</td>
<td>Public Hearing</td>
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<td></td>
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</table>
Changes Proposed Post-Planning Commission Recommendation

There have been a few issues brought to staff’s attention since the Planning Commission made their recommendation that we would like the Council to consider. Some are still being worked on so can’t all be listed now, but staff will point out these proposed amendments as we progress through the chapters.

Remember the Supporting Materials

Please remember that there is supporting documentation on the CAO Update webpage for your reference and consideration. These include:

- 2005 Best Available Science Report
- 2016 Best Available Science Supplemental Report
- Best Available Science studies
- Written comments provided prior to the Planning Commission action from the Citizens Advisory Committee, the Technical Advisory Committee, staff, and the public (public comments received since are found on the Council’s website)

All these are posted on the CAO Update website:
http://www.whatcomcounty.us/2417/County-Council-Review (or to navigate to it:

Proposed Amendments

Global Changes

Remember from the overview workshop that in general, many of the amendments pertain to:

- Correcting grammar
- Updating references to other documents or laws
- Clarifying procedures
- Moved a few subsections to sections they seemed to fit into better.
- Separated a few larger sections into distinct sections
- Many of the “mays” are proposed to be changed to “shall”

Article 1 – Purpose

- No proposed changes

Article 2 – Administrative Provisions

<table>
<thead>
<tr>
<th>WCC Section</th>
<th>Proposed Amendment</th>
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<tbody>
<tr>
<td>Throughout</td>
<td>Many of the “mays” are proposed to be changed to “shall,” as it is believed that, in instances where the language spoke to the Technical Administrator, less discretion should be afforded due to a perceived history of previous staff being too lenient.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
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<tr>
<td>16.16.230</td>
<td>Exempt activities. Moved tree felling activities from Exempt Activities to 16.16.235(B)(4) Activities allowed with notification, as a tree risk assessment is a submittal requirement to determine if a tree meets the definition of Hazard Tree.</td>
</tr>
<tr>
<td>16.16.230(G)</td>
<td>Exempt activities. Moved restoration activities to Exempt Activities (from Activities allowed with notification), as these types of activities are exempt per RCW 77.55.181(4)).</td>
</tr>
<tr>
<td>16.16.235(B)(8)</td>
<td>Activities allowed with notification. Deleted the use of pesticides in buffers as an &quot;Activity allowed with notification&quot; since insects are important to the food chain. Also clarified that herbicides only be allowed for eradicating invasive species, not native plants.</td>
</tr>
<tr>
<td>16.16.240(A)(2) &amp; (C)(2)</td>
<td>Technical administrator and hearing examiner authority. Proposed amendment would give the Technical Administrator decision-making authority over all Reasonable Use Permits for single-family residential uses, including those in geohazard area, so as to minimize cost to the typical homeowner.</td>
</tr>
<tr>
<td>16.16.250</td>
<td>Submittal requirements and critical areas review process. Amended section to reflect process developed under Kaizan review procedures and now used.</td>
</tr>
<tr>
<td>16.16.260</td>
<td>General mitigation requirements. Though mitigation sequencing has always been a requirement, and that alternatives and cumulative impacts be analyzed, the code wasn’t clear that these should be explicitly addressed. Amendments to this section make that more clear.</td>
</tr>
<tr>
<td>16.16.260(E)</td>
<td>General mitigation requirements. Added a paragraph explicitly stating that mitigation areas are to be permanently protected, though that if future development is proposed on the mitigation site, any restrictions can be removed as long as the final plan meets the requirements of this chapter for all cumulative impacts.</td>
</tr>
<tr>
<td>16.16.261, 262, and 263</td>
<td>Three different alternative mitigation strategies (Alternative or Innovative Mitigation Plans, Watershed-Based Management Plans, and Mitigation Banking) were contained in one section. These have been broken into three sections now, and a new section 263(D) (Use of Bank Credits) added based on DOE guidance.</td>
</tr>
<tr>
<td>16.16.264</td>
<td>In-Lieu Fees. Added a new section to allow an in-lieu fee program be set up. This language, which comes from DOE guidance documents, allows for such a program to be established.</td>
</tr>
<tr>
<td>16.16.265(B)</td>
<td>Critical areas protective measures. Added language that would allow the Technical Administrator to waive the notice on title requirement for certain, low risk geohazards.</td>
</tr>
<tr>
<td>16.16.265(E)</td>
<td>Critical areas protective measures. Added a requirement that applicants indemnify the County when a permit is granted for development or use within a geologic, flood, or other hazard area.</td>
</tr>
<tr>
<td>16.16.265(F)</td>
<td>Critical areas protective measures. Added a paragraph notifying applicants that temporary protection measures are required during construction.</td>
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<tr>
<td>WGC Section</td>
<td>Proposed Amendment</td>
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<tr>
<td>16.16.270 and 16.16.273</td>
<td>Reasonable use and Variances. In the existing code, the rules for reasonable use permits and variances are contained in the same section. However, these are very different mechanisms, and it was thought they each deserve their own section so were split. Most changes in these sections have to do with separating them out.</td>
</tr>
<tr>
<td>16.16.270(B)(2)(g &amp; h)</td>
<td>Reasonable use. Split g &amp; h into two sections. Amended (g) to state that any proposed activities won't cause damage to other properties, and (h) to state that the activities won't increase risk, as opposed to guarantee no threat, which is an impossibility (earthquakes and other geohazards may still happen; no one can guarantee they won't).</td>
</tr>
<tr>
<td>16.16.270(B)(2)(k)</td>
<td>Reasonable use. PDS Administrative Policy PL5-85-001A (CAO Reasonable Use/SMP Variance (has been incorporated into the code. This policy sets the Maximum Impact Area of 2,500 sf for CAO reasonable uses and Shoreline Management Program variances and has been in place since 4/17/08.</td>
</tr>
<tr>
<td>16.16.280</td>
<td>Appeals. Amended the language to require that any issues brought on appeal to the courts were raised and heard by the County's appeal body first. This is a standard legal practice for appeals these days.</td>
</tr>
<tr>
<td>16.16.285(l)</td>
<td>Penalties and enforcement. Added an &quot;After the Fact Permit Fee.” Charging “after the fact” fees is consistent with how PDS handles “atf” building permits. It should be cheaper to ask for permission than forgiveness.</td>
</tr>
<tr>
<td>16.16.290</td>
<td>Conservation program on agricultural lands. The CPAL provisions (290 and Appendix A) have been combined and moved to a new Article 8.</td>
</tr>
</tbody>
</table>

**Article 5 – Critical Aquifer Recharge Areas**
- No proposed changes other than a cross-reference

**Article 5.5 – Lummi Island**
- No proposed changes other than grammatical

**Article 9 – Definitions**
Adding definitions of:
- “Bankfull width”
- “Cumulative Impact”
- “Designated Species, Federal” “Designated Species, State”
- “Habitats of Local Importance” (from WAC 365-190-030)
- “Maximum Credible Event”
- “Practicable Alternative”
- “Species of Local Importance” (from WAC 365-190-030)
- “Stormwater Manual” (referred to throughout as a source for Best Management Practices)
- “Waters of the State” (from RCW 90.56.010(26))
Amending definitions of:

- "Critical Facilities" to keep maximum occupancy of uses under 500 and to exclude cell towers from the definition (needed if an emergency occurs)
- "Drainage Ditch" to try to clear up the public confusion between ditches and streams
- "Fish and wildlife habitat conservation areas" as the state definition has been amended (amended since the P/C recommendation)
- "Geologically Hazardous Areas" to make consistent with the GMA definition in RCW 36.70A.030(9)
- "High Intensity Land Use" to include Class IV Special forest practices (conversion of forest to development)
- "Hydric Soil" by changing the reference to that commonly used now
- "Moderate Intensity Land Use" to exclude nurseries and logging roads, both of which the TAC believe should be in the high intensity land use category
- "Planning Advisor," rather than "Qualified Planning Advisor" ("qualified" is not used in the text so it was hard to find in the definitions.)
- "Qualified Professional" to increase the years of professional experience needed for wetland biologist from 3 to 5 years, and to exclude those consultants who’ve had their certification revoked
- "Reestablishment," "Rehabilitation," and "Restoration" to make consistent with USACE definitions
ARTICLE 1. PURPOSE AND INTENT

16.16.100 Purpose and intent.
A. The purposes of this chapter are to carry out the goals of the Whatcom County comprehensive plan and the State of Washington Growth Management Act (Chapter 36.70A RCW) and its implementing rules by designating and classifying critical areas, and by protecting the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economically beneficial or productive use of land and property. Critical areas regulated under this chapter include geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife and/or habitat conservation areas. This chapter seeks to maintain harmonious relationships between human activity and the natural environment.
B. By regulating development and minimizing critical area alterations, this chapter seeks to:
1. Protect the public from harm due to landslides, earthquakes, erosion, volcanic events, flooding, and other natural hazards.
2. Minimize unnecessary maintenance of public facilities, and costs associated with property damage, emergency rescue relief operations, and environmental degradation.
3. Ensure there are no adverse impacts to the quality and quantity of water resources.
4. Alert appraisers, assessors, real estate agents, owners, potential buyers or lessees, and other members of the public to natural conditions that pose a hazard or otherwise limit development.
5. Protect wetlands, floodplains, critical aquifer recharge areas, and habitat conservation areas by applying the best available science to ensure no net loss of ecological functions and values.
6. Protect species listed as threatened or endangered and their habitats.
7. Protect unique, fragile, and/or valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, shellfish, and other fish and wildlife and their habitats.
8. Provide County officials with information to approve, condition, or deny project proposals.
9. Protect property rights, while allowing for economic development, including agriculture, and allowing for the development and maintenance of adequate and appropriate public services and essential public facilities.
10. Prevent adverse and cumulative environmental impacts to critical areas and mitigate unavoidable impacts.
11. Coordinate Whatcom County’s critical areas protection activities and programs with those of other jurisdictions.
12. Coordinate environmental reviews and permitting of proposals with other departments and agencies to avoid duplication and delay.
13. Allow for reasonable use of property in accordance with the provisions of WCC 16.16.270.
14. Establish critical areas protection standards and procedures that are consistent with state and federal regulations pertaining to critical areas.
C. The goals, policies, and purposes set forth in this chapter serve as a basis for exercise of the County’s substantive authority under the State Environmental Policy Act (SEPA) and the County’s SEPA rules.
D. The County’s enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.
E. Nothing in this chapter is intended to preclude or discourage beneficial actions that protect, restore, and/or maintain critical areas or minimize risks associated with critical areas.
F. Consistent with Whatcom County’s high standard of staff conduct, County staff observe all applicable federal and Washington laws regarding entry onto privately owned property.
PROPOSED FINDINGS OF FACT

(AS ADOPTED BY THE PLANNING COMMISSION)
WHEREAS, the adopted Whatcom County Comprehensive Plan supports the protection of environmentally critical areas through the adoption of development regulations; and

WHEREAS, the State Growth Management Act (GMA) includes adopted goals and requirements to guide the development and adoption of comprehensive plans and development regulations including requirements to designate and protect environmentally critical areas; and

WHEREAS, the County has considered those adopted goals, policies, and requirements in development of the proposed Whatcom County Code Amendments related to critical areas, and, has considered other state requirements, law, rules, guidelines, and agency comments; and

WHEREAS, the County researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating critical areas, undertook a Best Available Science (BAS) review and public process in accordance with the requirements of the GMA, developed Whatcom County Code amendment drafts, prepared environmental documents in accordance with the requirements of the State Environmental Policy Act (SEPA), and held meetings and hearings throughout the code development process; and

WHEREAS, the County has been provided feedback on draft work products and guidance from members of the public, County staff, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, the Washington State Department of Commerce, the Lummi Nation, the Nooksack Indian Tribe, other stakeholders and experts, the Whatcom Planning Commission, and elected and appointed officials during the development of the recommended code amendments; and

WHEREAS, in developing this ordinance, the County has followed the GMA's requirements, including to provide "early and continuous public involvement" through a variety of mechanisms described in the public record; and

WHEREAS, the County has followed the State guidelines for the BAS process required by RCW 36.70A.172 and WAC 365-195-900 through 925, employing a variety of mechanisms described in the public record; and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the State of Washington Department of Commerce and to other State agencies on February 2, 2016, for a 60-day review and comment period in accordance with State law; and

WHEREAS, an environmental review has been conducted in accordance with the requirements of State Environmental Policy Act (SEPA), and a SEPA threshold determination was issued, and published on March 17, 2016, in the Bellingham Herald; and

WHEREAS, the Planning Commission held a total of 7 public meetings to consider the proposed amendments, which included two public hearings, one on May 12 and one on June 9, 2016, with deliberations throughout these meetings; and

WHEREAS, the Planning Commission has provided a recommendation to the County Council related to the proposed amendments; and
WHEREAS, the County Council held X study sessions on the proposed amendments on X, 2016, and a public hearing on X, 2016 and continued public hearing on X, 2016; and

WHEREAS, the County Council has considered the recommendation of the County Planning Commission and the public comments received; and

WHEREAS, the County Council has reviewed and considered a variety of information sources including Best Available Science materials, informational documents in the public record, and public testimony submitted verbally and in writing to the Planning Commission and to the County Council; and

WHEREAS, the County Council desires the proposed amendments to be effective throughout the County including within shoreline jurisdiction, a subsequent Shoreline Master Program amendment should be prepared for submittal to the State Department of Ecology for approval; and

WHEREAS, based upon the foregoing process, the County Council has made the following

Findings of Facts and Conclusions:

**General Critical Areas Findings**

1. The Growth Management Act requires critical areas to be designated and protected and to include and be informed by BAS when developing critical areas regulations. [RCW 36.70A]

2. Critical areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas.

3. The Whatcom County has within its borders a variety of environmentally sensitive areas that require protection of important functions and values.

4. Unregulated development may result in cumulative impacts to those functions and values of critical areas that contribute to and are necessary for a healthy natural environment and perceived quality of life.

5. The unregulated development of residences, businesses, shopping areas and other structures, and the clearing of land for accommodation of livestock and for such development all have the potential of adversely and significantly impacting the functions and values of critical areas.

6. The unregulated development of resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life.

7. It is more costly to remedy the loss of critical area functions and values than to conserve and protect them from loss or degradation.

8. In determining what critical areas are to be afforded a particular degree of protection, Whatcom County has evaluated a wide range of the best science available with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

9. The sources of this best available science that were evaluated and included in this ordinance are contained in Exhibit B: Whatcom County Critical Areas Ordinance 2016 Update – Best Available Science Review: Addendum to the 2005 BAS Report.
10. Protection standards for one critical area often provide protection for one or more other critical areas.

11. Critical areas may also be protected by other actions by the County, such as stormwater management standards, clearing and grading regulations, critical area restoration, and public education; and from other regulations, such as the Forest Practices Act, the Shoreline Management Act, the State Environmental Policy Act, and others.

12. The U.S. Constitution prohibits the taking of private property without just compensation.

13. The proposed regulations for critical areas are sufficient and appropriate to protect the functions and values of those areas consistent with the Whatcom Comprehensive Plan and Growth Management Act.

14. The amendments hereafter set forth address requirements related to development in and near environmentally critical areas including environmentally critical areas buffers, performance standards, mitigation requirements, exemptions and exceptions.

15. The amendments serve to further implement the Comprehensive Plan, and provide protection for critical areas that is consistent with BAS and with providing options and development flexibility, and are in the public interest.

16. The critical areas regulations continue to allow for reasonable use of property to ensure that such regulations do not infringe on constitutional private property rights.

17. The public record demonstrates that the amendments were developed through a review of the BAS literature available to the County for review and consideration.

18. The County has followed the GMA's requirements for public involvement and for including and considering BAS in modification of the regulations for critical areas.

19. The public testimony provided to the County included both support for the proposed amendments and suggestions for modifications.

20. Based on the review of the testimony and public record, the amendments attached to this ordinance reflect the County's requirement to protect critical areas and to consider the planning goals of the GMA, while recognizing public and private interests.

**Wetlands**

21. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced.

22. The scientific literature supports in the inclusion of protective buffers from wetlands to provide sediment control and nutrient inputs to wetlands, and to protect important wetland functions.

24. The scientific literature supports the inclusion of protective buffers of relatively intact native vegetation from wetlands to adequately protect wetland functions and values.


Critical Aquifer Recharge Areas
26. WAC 365-190-080 defines wellhead protection areas, sole source aquifers, special protection areas, and other areas that are susceptible or vulnerable to ground water contamination as areas with a critical recharging effect on aquifers used for potable water (also referred to as critical aquifer recharge areas).

27. Potable water is an essential life-sustaining element.

28. Much of the County’s drinking water in rural areas comes from groundwater supplies.

29. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean up.

30. Preventing groundwater contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.


Frequently Flooded Areas
32. Flood hazard areas are subject to periodic inundation that results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

33. These flood losses are caused by development in areas prone to inundation that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

34. Floodplain and stream connectivity are major elements in maintaining healthy riparian habitat and off-channel habitats for the survival of fish species and conveyance of floodwaters. If river, floodplains, and other systems are not viewed holistically as biological, geomorphological units, this can lead to serious degradation of habitat and increase flood hazards, which in turn can contribute to listing of various fish species as threatened or endangered and result in extraordinary public expenditures for flood protection and relief.

35. Frequently flooded areas, including the 100-year floodplain and the floodway, are commonly mapped on flood insurance maps, often known as Flood Insurance Rate Maps, or FIRMs.
Geologically Hazardous Areas
36. Geologically hazardous areas are subject to periodic geological events that result in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

37. Geologic hazards may be exacerbated by development and human activity in sensitive areas, and impacts resulting from geologic hazards may be reduced by limiting development and human activity within or adjacent to the geologic hazard.

38. Some geologic hazards may be intensified during periods of consistent or heavy rainfall that results in ground saturation or surface water drainage flows.

Fish and Wildlife Habitat Conservation Areas
39. Fish and wildlife habitat conservation areas perform many important physical and biological functions that benefit Whatcom County and its residents, including but not limited to: maintaining species diversity and genetic diversity; providing opportunities for food, cover, nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas.

40. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations these functions cannot be adequately replicated or replaced.

41. The scientific literature supports the inclusion of protective buffers from streams to provide sediment control, nutrient inputs to downstream waters, large woody debris, and other functions important to riparian areas.

42. The Washington Department of Fish and Wildlife (WDFW) has prepared management recommendations for the preservation of priority habitat and species, which are based on the best available science, and include, in some instances, recommended protective buffer distances.

43. Kelp and eelgrass beds have been identified and mapped by the Washington State Department of Natural Resources (DNR) in some areas. Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260. Locations for both may be found by referring to Critical Spawning Habitat for Herring, Surf Smelt, Sand Lance and Rock Sole in Puget Sound, Washington: A Guide for Local Governments and Interested Citizens, 2002, and the Puget Sound Environmental Atlas, Volumes 1 and 2.

44. Salmonid and anadromous fish may be more impacted by development and human activity during some times than others. Such times are referred to as “fish windows,” which have been documented by WDFW.

45. DNR has classified watercourses according to two stream-typing systems based on channel width, fish use, and perennial or intermittent status.
46. WAC 365-190-080(5) grants [the jurisdiction] the flexibility to make decisions in the context of local circumstances, and specifically excuses local jurisdictions from being required to protect "all individuals of all species at all time."
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cliff Strong</td>
<td></td>
<td>12/27/2016</td>
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<td></td>
<td>COTW</td>
</tr>
</tbody>
</table>

Division Head: Mark Peterson
Dept. Head: Sam Ryan
Prosecutor: Royce Buckingham
Purchasing/Budget:           
Executive: Jack Louis

TITLE OF DOCUMENT:
2016 Critical Areas Ordinance Update - Article 2 - Administrative Provisions

ATTACHMENTS: (all current and past materials provided to the Council can be found at http://www.whatcomcounty.us/2417/County-Council-Review)
A. Staff memo to Council dated 12/20/2016

SEPA review required? ( X ) Yes ( ) NO
SEPA review completed? ( X ) Yes ( ) NO
Should Clerk schedule a hearing? ( ) Yes ( X ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
This is another workshop (in a series of many) on the proposed ordinance to amend Whatcom County Critical Areas Ordinance (CAO) (WCC 16.16) pursuant to RCW 36.70A.130(1). The Growth Management Act (RCW 360.70A) defines critical areas as wetlands, frequently flooded areas, fish and wildlife habitat conservation areas (including streams), geologically hazardous areas, and critical aquifer recharge areas. The purpose of this periodic update is to ensure that the CAO meets the GMA requirements, including consistency with the Whatcom County Comprehensive Plan, best available science, and state agency guidance updates. Numerous amendments are being proposed, though most of them pertain to correcting grammar, updating references to other documents or laws, clarifying and updating administrative procedures, etc. The County is also required to integrate the CAO provisions with its Shoreline Master Program (SMP). Whatcom County has done so by adopting the CAO by reference within the SMP (WCC 23.10.060(A)). This reference is also proposed to be amended.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
Memorandum

TO: The Honorable County Council
   Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner

THROUGH: Mark Personius, Asst. Director

DATE: December 20, 2016

SUBJECT: 2016 Critical Areas Ordinance Update
          County Council Review, Workshop 2, 10 January 2017

On January 10th the Council will continue its review of the 2016 Critical Areas Ordinance Update. Topics to be covered include:

- Anticipated Schedule
- A note about changes proposed post-Planning Commission recommendation
- Overview of Certain Proposed Amendments to:
  - Global Changes
  - Article 1 – Purpose
  - Article 2 – Administrative Provisions
  - Article 5 – Critical Aquifer Recharge Areas
  - Article 5.5 – Lummi Island
  - Article 9 – Definitions

Anticipated Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic(s)</th>
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<tbody>
<tr>
<td>9/20/16</td>
<td>Overview</td>
</tr>
<tr>
<td>10/25/16</td>
<td>Public Hearing</td>
</tr>
<tr>
<td>1/10</td>
<td>Article 1 – Purpose</td>
</tr>
<tr>
<td></td>
<td><strong>Article 2 – Administrative Provisions</strong></td>
</tr>
<tr>
<td></td>
<td>Article 5 – Critical Aquifer Recharge Areas</td>
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<td></td>
<td>Article 5.5 – Lummi Island</td>
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<td></td>
<td>Article 9 – Definitions</td>
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<tr>
<td>1/24</td>
<td>Article 4 – Frequently Flooded Areas</td>
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<td></td>
<td>Article 7 – Habitat Conservation Areas</td>
</tr>
<tr>
<td>2/7</td>
<td>Article 6 – Wetlands</td>
</tr>
<tr>
<td></td>
<td>Article 8 – Conservation Program on Agriculture Lands</td>
</tr>
<tr>
<td>2/21</td>
<td>Article 3 – Geologically Hazardous Areas</td>
</tr>
<tr>
<td>3/7</td>
<td>Review of Any Outstanding Issues</td>
</tr>
<tr>
<td>3/21</td>
<td>Introduction of Ordinance</td>
</tr>
<tr>
<td>4/11</td>
<td>Public Hearing</td>
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<tr>
<td></td>
<td>Adoption</td>
</tr>
</tbody>
</table>
Changes Proposed Post-Planning Commission Recommendation

There have been a few issues brought to staff’s attention since the Planning Commission made their recommendation that we would like the Council to consider. Some are still being worked on so can’t all be listed now, but staff will point out these proposed amendments as we progress through the chapters.

Remember the Supporting Materials

Please remember that there is supporting documentation on the CAO Update webpage for your reference and consideration. These include:

- 2005 Best Available Science Report
- 2016 Best Available Science Supplemental Report
- Best Available Science studies
- Written comments provided prior to the Planning Commission action from the Citizens Advisory Committee, the Technical Advisory Committee, staff, and the public (public comments received since are found on the Council’s website)

All these are posted on the CAO Update website:

Proposed Amendments

Global Changes
Remember from the overview workshop that in general, many of the amendments pertain to:

- Correcting grammar
- Updating references to other documents or laws
- Clarifying procedures
- Moved a few subsections to sections they seemed to fit into better.
- Separated a few larger sections into distinct sections
- Many of the “may” are proposed to be changed to “shall”

Article 1 – Purpose

- No proposed changes

Article 2 – Administrative Provisions

<table>
<thead>
<tr>
<th>WCC Section</th>
<th>Proposed Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Throughout</td>
<td>Many of the “may” are proposed to be changed to “shall,” as it is believed that, in instances where the language spoke to the Technical Administrator, less discretion should be afforded due to a perceived history of previous staff being too lenient.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
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</tr>
<tr>
<td>16.16.230</td>
<td>Exempt activities. Moved tree felling activities from Exempt Activities to 16.16.235(B)(4) Activities allowed with notification, as a tree risk assessment is a submittal requirement to determine if a tree meets the definition of Hazard Tree.</td>
</tr>
<tr>
<td>16.16.230(G)</td>
<td>Exempt activities. Moved restoration activities to Exempt Activities (from Activities allowed with notification), as these types of activities are exempt per RCW 77.55.181(4)).</td>
</tr>
<tr>
<td>16.16.235(B)(8)</td>
<td>Activities allowed with notification. Deleted the use of pesticides in buffers as an &quot;Activity allowed with notification&quot; since insects are important to the food chain. Also clarified that herbicides only be allowed for eradicating invasive species, not native plants.</td>
</tr>
<tr>
<td>16.16.240(A)(2) &amp; (C)(2)</td>
<td>Technical administrator and hearing examiner authority. Proposed amendment would give the Technical Administrator decision-making authority over all Reasonable Use Permits for single-family residential uses, including those in geohazard area, so as to minimize cost to the typical homeowner.</td>
</tr>
<tr>
<td>16.16.250</td>
<td>Submittal requirements and critical areas review process. Amended section to reflect process developed under Kaizen review procedures and now used.</td>
</tr>
<tr>
<td>16.16.260</td>
<td>General mitigation requirements. Though mitigation sequencing has always been a requirement, and that alternatives and cumulative impacts be analyzed, the code wasn't clear that these should be explicitly addressed. Amendments to this section make that more clear.</td>
</tr>
<tr>
<td>16.16.260(E)</td>
<td>General mitigation requirements. Added a paragraph explicitly stating that mitigation areas are to be permanently protected, though that if future development is proposed on the mitigation site, any restrictions can be removed as long as the final plan meets the requirements of this chapter for all cumulative impacts.</td>
</tr>
<tr>
<td>16.16.261, 262, and 263</td>
<td>Three different alternative mitigation strategies (Alternative or Innovative Mitigation Plans, Watershed-Based Management Plans, and Mitigation Banking) were contained in one section. These have been broken into three sections now, and a new section 263(D) (Use of Bank Credits) added based on DOE guidance.</td>
</tr>
<tr>
<td>16.16.264</td>
<td>In-Lieu Fees. Added a new section to allow an in-lieu fee program be set up. This language, which comes from DOE guidance documents, allows for such a program to be established.</td>
</tr>
<tr>
<td>16.16.265(B)</td>
<td>Critical areas protective measures. Added language that would allow the Technical Administrator to waive the notice on title requirement for certain, low risk geohazards.</td>
</tr>
<tr>
<td>16.16.265(E)</td>
<td>Critical areas protective measures. Added a requirement that applicants indemnify the County when a permit is granted for development or use within a geologic, flood, or other hazard area.</td>
</tr>
<tr>
<td>16.16.265(F)</td>
<td>Critical areas protective measures. Added a paragraph notifying applicants that temporary protection measures are required during construction.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
</tr>
<tr>
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</tr>
<tr>
<td>16.16.270 and 16.16.273</td>
<td>Reasonable use and Variances. In the existing code, the rules for reasonable use permits and variances are contained in the same section. However, these are very different mechanisms, and it was thought they each deserve their own section so were split. Most changes in these sections have to do with separating them out.</td>
</tr>
<tr>
<td>16.16.270(B)(2)(g &amp; h)</td>
<td>Reasonable use. Split g &amp; h into two sections. Amended (g) to state that any proposed activities won’t cause damage to other properties, and (h) to state that the activities won’t increase risk, as opposed to guarantee no threat, which is an impossibility (earthquakes and other geohazards may still happen; no one can guarantee they won’t).</td>
</tr>
<tr>
<td>16.16.270(B)(2)(k)</td>
<td>Reasonable use. PDS Administrative Policy PL5-85-001A (CAO Reasonable Use/SMP Variance (has been incorporated into the code. This policy sets the Maximum Impact Area of 2,500 sf for CAO reasonable uses and Shoreline Management Program variances and has been in place since 4/17/08.</td>
</tr>
<tr>
<td>16.16.280</td>
<td>Appeals. Amended the language to require that any issues brought on appeal to the courts were raised and heard by the County’s appeal body first. This is a standard legal practice for appeals these days.</td>
</tr>
<tr>
<td>16.16.285(I)</td>
<td>Penalties and enforcement. Added an “After the Fact Permit Fee.” Charging “after the fact” fees is consistent with how PDS handles “atf” building permits. It should be cheaper to ask for permission than forgiveness.</td>
</tr>
<tr>
<td>16.16.290</td>
<td>Conservation program on agricultural lands. The CPAL provisions (290 and Appendix A) have been combined and moved to a new Article 8.</td>
</tr>
</tbody>
</table>

**Article 5 – Critical Aquifer Recharge Areas**
- No proposed changes other than a cross-reference

**Article 5.5 – Lummi Island**
- No proposed changes other than grammatical

**Article 9 – Definitions**
Adding definitions of:
- “Bankfull width”
- “Cumulative Impact”
- “Designated Species, Federal” “Designated Species, State”
- “Habitats of Local Importance” (from WAC 365-190-030)
- “Maximum Credible Event”
- “Practicable Alternative”
- “Species of Local Importance” (from WAC 365-190-030)
- “Stormwater Manual” (referred to throughout as a source for Best Management Practices)
- “Waters of the State” (from RCW 90.56.010(26))
Amending definitions of:

- “Critical Facilities” to keep maximum occupancy of uses under 500 and to exclude cell towers from the definition (needed if another emergency occurs)
- “Drainage Ditch” to try to clear up the public confusion between ditches and streams
- “Fish and wildlife habitat conservation areas” as the state definition has been amended (amended since the P/C recommendation)
- “Geologically Hazardous Areas” to make consistent with the GMA definition in RCW 36.70A.030(9)
- “High Intensity Land Use” to include Class IV Special forest practices (conversion of forest to development)
- “Hydric Soil” by changing the reference to that commonly used now
- “Moderate Intensity Land Use” to exclude nurseries and logging roads, both of which the TAC believe should be in the high intensity land use category
- “Planning Advisor,” rather than “Qualified Planning Advisor” (“qualified” is not used in the text so it was hard to find in the definitions.)
- “Qualified Professional” to increase the years of professional experience needed for wetland biologist from 3 to 5 years, and to exclude those consultants who’ve had their certification revoked
- “Reestablishment,” “Rehabilitation,” and “Restoration” to make consistent with USACE definitions
ARTICLE 2. ADMINISTRATIVE PROVISIONS

16.16.200 Authority.
This chapter is adopted under the authority of Chapters 36.70 and 36.70A RCW and Article 11 of the
Washington State Constitution.

16.16.205 Authorizations required.
A. Prior to issuing a permit, the County shall determine if the proposed activity or use is permitted pur-
suant to this chapter. No land use development permit, construction permit, or land division ap-
proval required by County ordinance shall be granted until the County decision-maker has deter-
mined that the applicant has complied with the applicable provisions of this chapter including the
B. Authorizations required under this chapter overlay other permit and approval requirements of the
Whatcom County Code. Critical areas review pursuant to this chapter shall be conducted as part of
the underlying permit or approval. Any proposed critical area alteration that does not require other
County project permits or approvals, such as variances and reasonable use exceptions, must comply
with the substantive and procedural requirements of this chapter and the procedural requirements
of Chapter 2.33 WCC.
C. The requirements of this chapter shall apply concurrently with review conducted under the State
Environmental Policy Act (SEPA) (Chapter 43.21C RCW), as locally adopted (Chapter 15.08 WCC). Any
conditions required pursuant to this chapter shall be coordinated with the SEPA review and thresh-
old determination.
D. Areas characterized by a particular critical area may also be subject to other regulations established
by this chapter due to the overlap or multiple functions of some critical areas. When one critical ar-
ea adjoins or overlaps another, the more restrictive standards shall apply.

16.16.210 Applicability and severability.
This chapter shall be consistently applied to any alteration or development within geographical areas of
unincorporated Whatcom County that meet the definition and criteria for critical areas and critical area
buffers as set forth in this chapter. No development shall be constructed, located, extended, modified,
converted, or altered, or land subdivided without full compliance with this chapter. Should any section
or provision of this chapter be declared invalid, such decision shall not affect the validity of this chapter
as a whole.

16.16.215 Relationship to other jurisdictions.
A. Permit applicants are responsible for complying with all federal, state, tribal, and local regulations
that may pertain to a proposed development. Compliance with the provisions of this chapter does
not necessarily constitute compliance with other regulations and permit requirements; provided,
that the following shall apply,
B. In cases where other agencies have jurisdiction over critical areas and the technical administrator
determines that the permit conditions imposed by such agencies are no less protective and satisfy
the requirements of this chapter, those permit conditions may be substituted as the conditions of
approval for the requirements of this chapter. Such agencies may include, but are not limited to, the
Lummi Nation; the Nooksack Tribe; the United States Army Corps of Engineers; the United States
Environmental Protection Agency; the United States Fish and Wildlife Service; the National Marine
Fisheries Service or NOAA Fisheries; and the Washington State Departments of Ecology, Natural Re-
sources, and Fish and Wildlife.
C. The County shall make findings required by Chapter WCC 2.33 and WCC 16.16.250 when adopting conditions of another jurisdiction’s permit. Such requirements shall be a condition of critical area approval and enforceable by the County. In the event that there is a conflict between permit requirements and the standards of this chapter, the more restrictive standards shall apply.

D. The County shall notify the applicant in writing when adopting other agencies’ conditions pursuant to this section; provision applies [CES].

16.16.220 Identification and mapping of critical areas.

A. The County has identified critical areas and areas where the conditions under which critical areas typically occur and/or have the potential to occur. The approximate location and extent of critical areas within the County’s jurisdiction are shown on maps, which shall be available at the planning and development services department for public inspection.

B. Property owners, the technical administrator, and/or members of the public may use these maps as a general guide, but the maps do not provide a comprehensive accounting of areas subject to this chapter nor do they provide a definitive critical areas designation. Critical area locations and boundaries shown on the County’s maps are approximate and do not include buffers that may be associated with critical areas, and some critical areas may not be shown on the maps at all [CES].

C. Field investigation, analysis by a qualified professional, and/or consideration of other sources of credible scientific information may be required to confirm the presence or absence of a critical area and its boundaries and buffers. The County shall update the maps on a regular and consistent basis as new information becomes available.

A-D. Planning and Development Services has the authority and shall to update critical areas the maps and shall do so as new critical areas are identified and as new information becomes available [CES].

16.16.225 Regulated activities.

A. The following activities shall be subject to the provisions of this chapter when they occur within critical areas or their buffers:

1. Clearing, grading, dumping, excavating, discharging, or filling with any material. This includes creating impervious surfaces.

2. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, subject to the provisions for a nonconforming structure pursuant to WCC 16.16.275, WCC Chapter 20.83, and WCC 23.50.070.

3. Any other activity for which a County permit is required, excluding permits for interior remodeling.

B. Alteration of critical areas and/or buffers is prohibited except when:

1. Alteration is approved pursuant to the reasonable use or variance provisions of WCC 16.16.270 and 16.16.273, respectively, or

2. Alteration is necessary to accommodate an essential public facility or public utility where no feasible alternative location will accommodate the facility and the facility is located, designed, and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible; or

3. Alteration is necessary to accommodate an approved water-oriented use and any associated development/ activity and/or the development activities listed in WCC 23.90.130 (8)(7)(a) when permitted in accordance with the Whatcom County Shoreline Management Program (SMP); provided, that such development is operated, located, designed and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible; or

4. Alteration is part of an essential element of an activity allowed by this chapter and all feasible measures to avoid and minimize impacts have been employed. Such feasible measures shall in-
clude, but not be limited to, clustering where permitted by zoning and as appropriate to protect
critical areas. The purposes of clustering shall be to minimize adverse effects of development on
critical area functions and values, minimize land clearing, maintain soil stability, preserve native
vegetation, provide for wildlife corridors, maintain hydrology, and mitigate risk to life and prop-
erty; or
5. Alteration is associated with an exempt activity under WCC 16.16.230, or is allowed pursuant to
the notification provisions of WCC 16.16.235, or is allowed pursuant to the specific regulatory
standards for each designated critical area, as enumerated in the subsequent articles of this
chapter; or
6. Alteration is associated with an alternative mitigation plan or watershed-based management
plan approved pursuant to WCC 16.16.261(16) or 16.16.262, respectively; or,
6.7 Alteration is associated with a conservation farm plan pursuant to WCC 16.16 Article 8.

16.16.230 Exempt activities.
The following activities as specified are exempt from the provisions of this chapter:

A. Class I, II, III, and IV special (not Class IV general) stumping practices conducted in accordance with
the applicable standards of the Washington State Forest Practices Act rules, Chapter 222-16
WAC, except where either of the following applies:
B. the lands have been or are proposed to be converted to a use other than commercial forest prod-
uct production;
C. On lands which have been platted after January 1, 1960, as provided in RCW 76.09.050 and
76.09.240 (TAC).
B. Maintenance of existing, lawfully established vegetation, landscaping, and gardens within a
regulated critical area or its buffer, including, but not limited to, cutting, mowing lawns, weeding,
removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and
planting of noninvasive ornamental vegetation or indigenous native species to maintain the general
condition and extent of such areas; provided, that native growth protection areas, mitigation sites,
or other areas protected via conservation easements or similar restrictive covenants are not covered
by this exception.
D. Maintenance activities necessary to implement approved mitigation plans.
E. Low impact activities that do not cause adverse impacts, such as hiking, canoeing, viewing, na-
ture study, photography, hunting, fishing, education, or scientific research.
F. Activities undertaken to comply with a United States Environmental Protection Agency Superfund-
related Order, or a Washington Department of Ecology Order pursuant to the Model Toxics Control
Act, or a Department of Homeland Security Order that specifically preempts local regulations in the
findings of the Order.
F. Maintenance and/or repair of lawfully established single-family residences and appurtenant fea-
tures; provided, that the activity does not further alter, impact, or encroach upon critical areas or
buffers or further affect their functions. The maintenance activity shall not result in increased risk to
life or property. The landowner may cut hazard trees within critical areas and buffer.
G. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitiga-
tion; provided, that the project is approved by the U.S. Fish and Wildlife Service, the Washington
State Department of Ecology, Washington State Department Fish and Wildlife, or other appropriate
local, state, federal, or tribal jurisdiction (except and/or that meet the criteria of RCW 77.55.181(1) and
that are reviewed and approved according to the provisions of RCW 77.55.181(c)).
16.16.235 Activities allowed with notification.

A. The following activities as specified in subsection (B) are authorized within critical areas and buffers; provided, that:

1. The applicant provides a written notification to the technical administrator (see Appendix B of this chapter) on a form provided by the Department of Natural Resources.

2. The notification will provide a site plan (in a common scale), photos, and specific information describing the activity and the mitigation to be implemented, if required by the Technical Administrator to document that the activity will not result in increased risk to public health, safety, and welfare; that adverse impacts to critical areas are minimized; and that disturbed areas are restored as soon as possible following the activity.

3. Notification shall be submitted to the technical administrator at least 10 full business days prior to initiating work.

4. Unless otherwise specified, notification shall be valid for one year per activity; provided, that there is no change in the scope of the project including, but not limited to, the location and/or extent of the activity allowed under the notification process.

5. Upon receipt of the notification, the County may provide guidance on best management practices for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and use of chemical applications to be used in the execution of the following activities:

B. Activities allowed with notification:

A.1. Emergency construction or activity necessary for the immediate preservation of the public health, safety, and welfare as determined by the technical administrator; provided, that:

1.a. An emergency is an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time period too short to allow full compliance with this chapter.

2.b. Emergency construction does not include development of new permanent protective structures where none previously existed. Where the technical administrator determines that new protective structures are the appropriate means to address an emergency situation, the project proponent shall either obtain any permits that would have been required absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-27 WAC, or this chapter, or remove the structure upon abatement of the emergency situation.

3.c. Within the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title 23), all emergency construction shall be consistent with the policies and procedural requirements of WCC Title 23 and this chapter.

4.d. The applicant shall make a reasonable attempt to contact the technical administrator prior to activity; provided, that when prior notice is not feasible, notification of the action shall be submitted to the technical administrator as soon as the emergency is addressed and no later than 14 days following such action.

B.2. Maintenance, operation, and/or repair of existing infrastructure improvements, including dikes and drainage ditches, rights-of-way, trails, roads, fences, and utilities; provided, that the activity does not further alter, impact, or encroach upon critical areas or buffers or further affect their functions. The maintenance activity shall not result in increased risk to life or property. Maintenance shall be allowed pursuant to the provisions set forth in this chapter; provided, that:

1.a. The applicant shall submit to the technical administrator a written description of the maintenance activity with all of the following general information:

   a.1. Type, timing, frequency, and sequence of maintenance activity to be conducted;

   b.2. Type of equipment to be used (hand or mechanical);

   c.3. Manner in which the equipment will be used; and
d.4. Best management practices to be used.

d.4. The applicant’s written description shall be valid for up to five years provided, that there is
no significant change in the type or extent of maintenance activity.

3. Select vegetation removal or pruning of vegetation subject to the following:

a. Vegetation removal or pruning will be done in a manner that minimizes unnecessary dis-
turbance and prevents adverse effects on soil stability, fish or wildlife habitat, water quality,
or water quantity.

b. Provided, that except for lawn, pasture, ornamental vegetation, and similar introduced
vegetation, no vegetation shall be removed from a wetland, habitat conservation area,
coastal or riverine erosion hazard area, or landslide hazard area or their buffers unless oth-
erwise authorized by the Technical Administrator for safety reasons, except for lawn, pas-
ture, ornamental vegetation, and similar introduced vegetation, except that c

c. Cut vegetation shall be left within the critical area or buffer where practical unless re-
moval is warranted due to the presence of an established disease infestation or other haz-
ard, or because of access or maintenance needs if the area is a utility or access right-of-way.

4. The landowner may cutting of hazard trees within critical areas and buffers with an approved

5. Clearing, pruning, and revegetation of buffer areas, except in landslide hazard areas and buff-
ers and riverine and coastal erosion hazard areas and buffers, the clearing, pruning, and revege-
tation of buffer areas for view purposes, provided:

a. This allowed activity shall not be conducted more than once every 10 years for any individu-
ral residential property.

b. A window or view opening is limited to the minimum necessary for view purposes and shall
not exceed 15 percent of the buffer length, unless the applicant can demonstrate to the tech-
nical administrator’s satisfaction that a larger dimension is warranted because of slope or
other site considerations. Trees greater than 12 inches in diameter at breast height shall be
preserved, but may be shaped, windowed/thinned or pruned.

c. Clearing shall not take place where increased risks or adverse impacts, including cumulative
impacts, to critical area functions and values are likely to occur.

d. Low-growing native vegetation shall be retained and/or planted in the view corridor to pro-
vide habitat, stabilize the area, and achieve dense growth.

e. This provision does not apply to open space set aside in a subdivision or other approval to
which specific conditions are attached that prohibit clearing of vegetation without a written
approval or permit.

f. View areas established under this section shall be considered lawfully established and may

6. The installation of navigation aids and boundary markers in accordance with applicable state
and federal laws, or the

1.6. Installation of mooring buoys in accordance with the Department of Fish and Wildlife design
guidelines and the Whatcom County Shoreline Management Program (WCC Title 23).

B-7. Routine site investigation work in wetlands, landslide hazard areas, and riverine and coastal ero-

tion hazard areas. This includes geotechnical soil borings, groundwater monitoring wells, perco-
lation tests, sediment sampling, and similar or related activities necessary required for land use
application submittals or permit compliance. Land survey and shallow soil test pits dug in con-
junction with wetland delineation studies do not require notification.

6. Clearing, pruning, and revegetation of buffer areas, except landslide hazard areas and buffers and
riverine and coastal erosion hazard areas and buffers, for view purposes, provided:
1. This allowed activity shall not be conducted more than once every 10 years for any individual residential property.

2. A window or view opening is limited to the minimum necessary for view purposes and shall not exceed 15 percent of buffer length, unless the applicant can demonstrate to the technical administrator's satisfaction that a larger dimension is warranted because of slope or other site considerations. Trees greater than 12 inches in diameter at breast height shall be preserved, but may be shaped, windowed, thinned or pruned.

3. Clearing shall not take place where increased risks or adverse impacts, including cumulative impacts, to critical area functions and values are likely to occur.

4. Low-growing native vegetation shall be retained and/or planted in the view corridor to provide habitat, stabilize the area, and achieve dense growth.

5. This provision does not apply to open space set aside in a subdivision or other approval to which specific conditions are attached that prohibit clearing of vegetation without a written approval or permit.

View areas established under this section shall be considered lawfully established and may be maintained as provided for in subsection B of this section.

6. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation, provided, that the project is approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction.

6.8. Household herbicides, pesticides, and fertilizers or household herbicides to address noxious weed infestation may be used in critical area buffers, but not in critical areas when either must be applied at times and rates specified on the label in accordance with Washington State Department of Agriculture and other applicable regulations.

7. Routine maintenance of drainage channels/ditches on agricultural lands; provided, that all of the following are met:
   1. The maintenance is necessary to support ongoing agricultural operations;
   2. The maintenance activity does not expand the dimensions of the drainage channel beyond the original, lawfully established dimensions;
   3. The maintenance activity is conducted pursuant to an approved conservation farm plan prepared pursuant to WCC 16.16.290;
   4. The farm operator obtains a hydraulic project approval (HPA), if required, from the Washington State Department of Fish and Wildlife (WDFW) prior to the maintenance activity; and
   5. The farm operator provides a copy of the HPA to the technical administrator as part of the written notification. No other written notification is needed.

8. Alteration or removal of beaver-built structures two years old or less; provided, that:
   1. There is no adverse impact to wetland or river or stream functions.
   2. The property owner obtains an HPA from WDFW (if required) prior to the maintenance activity.
   3. The property owner provides a copy of the HPA to the technical administrator as part of the written notification.


The technical administrator is the Whatcom County director of planning and development services or his/her designee. The hearing examiner is appointed by the County Council. The technical administrator and the County Hearing Examiner shall administer and enforce the provisions of this chapter pursuant to the following:
A. The technical administrator shall have the primary responsibility for reviewing development proposals for compliance with this chapter and is authorized to approve, deny, or condition permits in accordance with the standards set forth herein. The technical administrator shall also have the following authority:

1. Authority to convene an interdisciplinary team to assist in reviewing development proposals or to solicit review from outside experts in accordance with WCC 16.16.245.

2. Authority to grant, condition, or deny reasonable use permits for single-family residential buildings, or properties proposed to be located outside of geologically hazardous areas and/or their critical areas.

3. Authority to grant, condition, or deny reasonable use permits for other development proposals that would affect critical area buffers, but not the critical areas themselves.

4. Authority to serve a cease and desist order pursuant to WCC 16.16.285 upon a person undertaking activity within a critical area or buffer in violation of this chapter.

5. Any additional responsibility and/or authority specifically provided for in the subsequent articles of this chapter.

B. The technical administrator’s authority shall transfer to another County decision-maker when another decision-maker is specified for a separate project permit. In such cases, the technical administrator shall ensure that all procedural requirements of this chapter are met and shall make a recommendation to the designated decision-maker as to how the provisions of this chapter apply to the permit action, including project permits.

C. The Whatcom County hearing examiner is hereby vested with responsibility and authority to hear appeals and perform the following duties:

1. Authority to grant or deny variances.

2. Authority to grant, condition, or deny reasonable use permits for all non-single-family developments, except single-family building permits, which affect critical areas and for all developments in geologically hazardous areas.

3. Authority to decide on appeals of administrative decisions including, but not limited to, variances and reasonable use permits issued by the technical administrator.

4. Authority to hold public hearings pursuant to Chapters 20.84 and 20.92 WCC.

D. In granting, revising, or extending a permit, the technical administrator, or hearing examiner, as appropriate, may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development is consistent with criteria set forth in this chapter. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to allow for future review or reevaluation to assure conformance with this chapter. The technical administrator and/or hearing examiner shall render a final decision in accordance with the timelines established in WCC 2.33.090 and 20.92.430, as applicable. All decisions of the technical administrator and hearing examiner may be appealed pursuant to WCC 20.84.240 and 20.92.600.

16.16.245 Interdisciplinary team.

The technical administrator may call upon outside expertise including an interdisciplinary team if the technical administrator determines that additional technical assistance is required to assess a critical areas development proposal or ensure the application of best available science.

A. The interdisciplinary team shall include the applicant and/or their technical representative, local, state, or federal agency or tribal representatives with expertise in the field, and/or independent qualified professionals with expertise relating to the critical area issue.

B. The functions of the interdisciplinary team are to field check and verify critical area determinations/boundaries and assess species/habitat presence by providing written peer review of the in-
formation included with an application, identify areas of concern in the application of best available
science, provide professional opinions and recommendations relevant to the provisions of this chap-
ter, and help focus the preparation of subsequent reports and environmental documentation on the
most relevant issues.
C. The technical administrator will coordinate this effort and seek advice from the team.
D. In lieu of convening an interdisciplinary team, the County may require third party review by a quali-
fied professional for any development proposal, mitigation plan, mitigation bank proposal, or other
project for which additional technical expertise is needed. The cost of the third party review shall be
the permit applicant’s responsibility.

16.16.250 Submittal requirements and critical areas review process.
A. All applicants shall complete a prescreening are encouraged to contact and/or meet with the technical administrator prior to submitting an application subject to this chapter. The purpose of
this meeting shall be to discuss the requirements for a complete application, the critical area stand-
ards and procedures; to review conceptual site plans prepared by the applicant; to discuss appropri-
ate investigative techniques and methods; and to determine reporting requirements.
B. Review and approval of a proposed development within a critical area may be initiated through the
application for any project permit in Whatcom County. If another authority does not require a pro-
ject permit, application shall be made pursuant to Chapter 2.33 WCC.
C. The technical administrator shall be responsible, in a timely manner, to make one of the following
determinations regarding critical areas review:
1. Initial Determination. Upon receipt of a permit application, the technical administrator shall use
best available science, including but not limited to the County’s critical areas maps, his/her field
investigation results, his/her own knowledge of the site, information from appropriate resource
agencies, or documentation from a scientific or other credible source to determine if the project
is will more probably than not located within adversely impact a critical area or its buffer. The
technical administrator may request that the applicant submit a critical area identification form
provided by the County to assist in the initial determination.
2. Determination of Compliance. If the applicant demonstrates to the satisfaction of the technical
administrator that the project meets the provisions of this chapter and is not likely to adversely
affect critical areas or buffers, the technical administrator shall issue written verification that the
proposal complies with this chapter. Written verification shall be included in the project review
record for the underlying permit, or issued in accordance with Chapter 2.33 WCC, and no further
critical areas review is required.
3. Need for Additional Critical Area Assessment. If the proposed activity does not meet the criteria
of subsection (C)(2) of this section and would more probably than not affect a critical area or
buffer, the technical administrator shall require confirmation of the presence or absence of crit-
ical areas through site inspection by a qualified professional or other appropriate means con-
sistent with best available science, and shall notify the applicant in writing of the need to pre-
pare a critical areas assessment report.
4. Decision to Approve, Condition, or Deny. The technical administrator shall review all pertinent
information pertaining to the proposed development and shall approve, condition, or deny the
permit based on their review, and shall provide a written decision, including findings of fact to
support the decision made. Such determinations shall be provided to the applicant in writing.
D. The technical administrator may waive the requirement for critical areas review under this chapter
when he/she determines that all of the following conditions are met:
1. The proposed development activity is located on a parcel that received approval of a previous
critical areas review within the prior 5 years, site conditions have not changed, and the applica-
1. Regulations have not substantively changed, and appropriate County permits were issued.

2. All critical areas on the parcel have been identified and delineated and the effects of the proposed development activity have been thoroughly considered in accordance with the most current regulations in effect at the time of Best Available Science.

3. The activity is in compliance with all permit conditions including mitigating measures, as applicable. Where issues were raised as part of the prior review and there are no outstanding violations of conditions that were imposed as part of the previous review:

4. The prior permit has not expired.

5.4. The development activity involves a use that is equally or less intensive than the development activity that was subject to the prior permit. Land use intensity shall be based on factors including development density, critical areas impacts, impervious surface, noise, glare, dust, hours of operation, and traffic.

6. Upon the applicant's request, the technical administrator shall provide brief written findings of fact to support the decision made.

1. Complete Application

2. A detailed site map drawn to a common scale, or survey, showing at least the following:
   a. Vicinity Map
   b. Topographic, hydrologic, and vegetative features.
   c. The location and description of known wildlife and habitat features and all known critical areas.
   d. Proposed development activity with dimensions.

6. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc. Structures shall be dimensioned.

7.3. 16.16.255 Critical areas assessment reports.

The intent of these provisions is to require a reasonable level of technical study and alternatives analysis pursuant to WCC 16.16.225 sufficient to assess potential project impacts and to protect critical areas.

A. When the technical administrator determines a need for additional critical area assessment pursuant to WCC 16.16.255(C)(3), proposed development is within, abutting, or is likely to adversely affect a critical area or buffer pursuant to the provisions of this chapter, he/she shall have the authority to require a critical areas assessment report to be prepared by a qualified professional, as defined by this chapter, shall prepare the report and be consistent with best available science. The intent of these provisions is to require a reasonable level of technical study and analysis sufficient to protect critical areas. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.

B. The Critical Areas assessment report shall:

1. Demonstrate that the submitted proposal is consistent with the purposes and specific standards of this chapter;

2. Describe all relevant aspects of the development proposal and critical areas adversely affected by the proposal including any geological hazards and risks associated with the proposal, and assess impacts on the critical area from activities and uses proposed; and

3. Where impacts are unavoidable, demonstrate through an alternatives analysis that no other feasible alternative exists.

4. Consider the cumulative impacts of the proposed action that includes past, present, and reasonably foreseeable future actions to facilitate the goal of no net loss of critical areas. Such im-
pacts shall include those to wildlife, habitat, and migration corridors; water quality and quantity; and other watershed processes that relate to critical area condition, process, and/or service.

3. The technical administrator shall review the critical areas assessment report for completeness and accuracy and shall consider the recommendations and conclusions of the critical areas assessment report to assist in making administrative decisions concerning approval, conditional approval, or denial of the subject project and to resolve issues concerning critical areas jurisdiction and appropriate mitigation and protective measures.

D. Critical areas assessment reports shall generally be valid for a period of five years from the date the assessment is approved by the technical administrator. Future land use applications may require preparation of new or supplemental critical area assessment reports unless it can be demonstrated to the satisfaction of the technical administrator that the previously prepared report is adequate for current analysis. The technical administrator may also require the preparation of a new critical area assessment report or a supplemental report when new information is found demonstrating that the initial assessment is in error. If the technical administrator requires more information in the report, s/he shall make the request in writing to the applicant stating what additional information is needed and why.

E. The technical administrator may reject or request revision of the field and literature findings and conclusions reached in a critical areas assessment report when the technical administrator can demonstrate that the assessment is inaccurate, incomplete, or does not fully address the critical areas impacts involved.

F. To avoid duplication, the reporting requirements of this chapter shall be coordinated if more than one critical area assessment report is required for a site or development proposal. Similarly, where other agencies assessments or reports are required pursuant to other state or federal laws, the applicant is encouraged to submit one report that satisfies all such agencies' requirements.

G. In addition to a hard copy, applicants shall provide reports and maps to the County in an electronic format that allows site data to be incorporated into the County critical areas database; provided, however, that the County may waive the electronic format this requirement for single-family developments. Applicants shall follow Whatcom County's electronic submittal guidelines. This requirement shall not be construed as a requirement to use specific computer software, though it must be in a format usable by the County.

H. At a minimum, a critical areas assessment report shall include the following information:

1. A site plan showing the proposed development footprint and clearing limits, all relevant critical areas and buffers within and abutting the site, a written description of the project, an examination of project on-site design alternatives, and an explanation of why the proposed activity requires a location on, or access across, a critical area and why alternatives are not feasible;

2. A written description of the critical areas and buffers on or abutting the site, including their size, type, classification or rating, condition, disturbance history, and functions and values. Projects in frequently flooded areas must comply with the reporting requirements of WCC Title 17. Projects on or adjacent to geologically hazardous areas shall identify the type of hazard and assess the associated risks posed by the development or that the development may be subject to;

3. An analysis of potential adverse critical area impacts associated with the proposed activity including, but not limited to, effects related to clearing, grading, noise, light/glare, drilling, damming, draining, creating impervious surface, managing stormwater, releasing hazardous materials, and other alterations, and including an explanation of critical area processes and functions that may be affected.
4. An analysis of how critical area impacts or risks will be avoided and/or minimized, and/or an analysis of the proposed measures to prevent or minimize hazards. When impacts cannot be avoided, the report shall include a plan describing mitigation that will be provided to replace critical area functions and values altered as a result of the proposal. The mitigation plan shall be consistent with the provisions of WCC 16.16.260 and provide written documentation showing what the applicant considered for each step in the mitigation sequencing process and the other applicable articles of this chapter;

5. The dates, names, signatures, and qualifications of the persons preparing the report and documentation of analysis methods including any fieldwork performed on the site; and

6. Additional reasonable information requested by the technical administrator for the assessment of critical areas impacts or otherwise required by the subsequent articles of this chapter.

16.16.260 General mitigation requirements.
Developments permitted pursuant to this chapter that adversely impact or alter a critical area or buffer shall include mitigation sufficient to minimize risks associated with geologic hazards and/or maintain or replace critical areas functions and values. Any proposed development that cannot adequately mitigate critical area impacts as determined by the technical administrator shall be denied.

A. Mitigation Sequence.
1. When an alteration or impact to a critical area is proposed, the applicant shall conduct an alternatives/mitigation sequencing analysis and demonstrate that all reasonable efforts have been taken to mitigate impacts in the following prioritized order:
   a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
   b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
   c. Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.
   d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.
   e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.

2. Mitigation for individual projects may include a sequenced combination of the above measures as needed to achieve the most effective protection or compensatory mitigation for critical area functions.

B. Mitigation Plan.
1. Compensatory mitigation shall be provided for all unavoidable adverse alterations to a critical area or buffer. A mitigation plan shall be developed in accordance with an approved critical areas assessment report and be consistent with best available science. Where appropriate, the mitigation plan should be compatible with watershed and recovery planning goals for Whatcom County. The intent of these provisions is to require a level of technical study and analysis sufficient to protect critical areas and/or protect developments and occupants from critical areas involving hazards. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.

2. The mitigation plan shall provide for construction, maintenance, monitoring, and contingencies as required by conditions of approval and consistent with the requirements of this chapter.
3. The mitigation plan shall be prepared by a qualified professional; provided, that the technical
administrator may waive the requirement to hire a qualified professional to prepare a mitigation
plan when the required mitigation involves standard planting or enhancement practices. The
waiver shall not be granted for mitigation practices involving wetland creation, rehabilitation
and/or restoration.

4. The mitigation plan shall contain the following information:
   a. A description and scaled drawings of the activities proposed to reduce risks associated with
      geologic hazards and/or flooding, and/or to mitigate for impacts to critical area functions
      and values. This shall include all clearing, grading/ excavation, drainage alterations, planting,
      invasive weed management, installation of habitat structures, construction sequencing, best
      management practices, site protection, irrigation, and other site treatments associated with
      the development activities.
   b. Specific information on construction or the proposed mitigation activity including timing,
      sequence, equipment needs, and best management practices, and responsible parties.
   c. A description of the functions and values that the proposed mitigation area(s) shall provide,
      and/or a description of the level of hazard mitigation provided.
   d. The goals, objectives, and performance standards that the proposed mitigation action(s)
      shall achieve or demonstrate consistency with.
   e. A description of how the mitigation area(s) will be evaluated and monitored to determine if
      the performance standards are being met.
   f. A program and schedule for construction and post-construction performance monitoring of
      the mitigation project.
   g. An evaluation of potential adverse impacts on adjacent property owners resulting from the
      proposed mitigation and measures to address such impacts. Mitigation projects shall not re-
      sult in adverse impacts to adjacent property owners.
   h. Identification of potential courses of action or contingencies, and any corrective measures
      to be taken if monitoring or evaluation indicates that project performance standards are not
      being met.
   i. Plan sheets with scale identified, showing the edge of the critical area and buffer area. The
      affected critical area and buffer shall be clearly staked, flagged, and/or fenced prior to and
      during any site clearing and construction to ensure protection for the critical area and buffer
      during construction.
   j. A description of other permits and approvals being sought, including the need for permits
      from state and/or federal agencies.
   k. Additional information as required by the subsequent articles of this chapter.

C. Mitigation Monitoring and Maintenance.

1. The technical administrator shall have the authority to require that compensatory mitigation
   projects be monitored annually for at least five years to establish that performance standards
   have been met. Required monitoring reports shall be submitted to the County annually during
   the monitoring period to document milestones, successes, problems, and contingency actions of
   the compensatory mitigation. The technical administrator may reduce the monitoring
   timeframe to three years for minor mitigation projects involving critical area or buffer revegeta-
   tion or vegetation enhancement, but not for projects involving wetland creation, wetland resto-
   ration, stream restoration or other activities that require manipulation of soils or water. All miti-
   gation areas shall be maintained and managed to prevent degradation and ensure protection of
   critical area functions and values subject to field verification by the technical administrator.

2. The technical administrator shall have the authority to extend the monitoring period, require
   corrective measures, and/or require additional monitoring reports beyond the initial monitoring
period for any project that does not meet the performance standards identified in the mitigation plan, or does not provide adequate replacement for the functions and values of the impacted critical area.

3. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.

D. Mitigation Assurance.

1. The applicant and his/her representatives shall demonstrate sufficient scientific expertise and capability to implement the mitigation, monitor the site, and make corrections if the project fails to meet projected goals. The technical administrator may require the following to ensure that the mitigation is fully functional:

   a. The applicant shall post a mitigation surety in the amount of 125% of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater. The surety shall be based on an itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring, and other costs.

   b. The surety shall be in the form of an assignment of funds or other means approved by the technical administrator.

   c. Surety authorized by this section shall remain in effect until the technical administrator determines, in writing, that the standards bonded for have been met. Surety shall generally be held by the County for a period of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary. Surety for construction may be reduced after initial completion in an amount not to exceed the cost of monitoring plus not less than 25% of the construction cost.

   d. Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, or monitoring.

   e. Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, or monitoring.

   f. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default subject to the provisions of WCC 16.16.280, and the County may demand payment of any financial guarantees or require other action authorized by the County code or any other law.

   g. Any funds recovered pursuant to this section shall be used to complete the required mitigation.
E. Permanent Protection. All mitigation areas shall be protected and managed to prevent degradation and ensure protection of critical area functions and values in perpetuity. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.285. If additional development is proposed that impacts a mitigation area and those impacts are accounted for under a new, approved mitigation plan, such protection may be removed so long as the final plan meets the requirements of this chapter for all cumulative impacts.

6. 16.16.261 Alternative or Innovative Mitigation Approaches Plans and Watershed-Based Management Plans. [TAC 35]
   —The County shall consider shall facilitate review and may approve or approval of:
   A. An alternative or innovative mitigation plans for a major development (as defined by this in Article 9 of this chapter), a planned unit developments (pursuant to Chapter 20.85 WCC), and/or a development agreements (pursuant to RCW 36.708.170 through 36.708.210); or,
   —A watershed-based management plan sponsored by a watershed improvement district, other special purpose district, or other government agency.
   B. The mitigation if approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:
   1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
   2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;
   3. There is a clear likelihood for success of the proposed plan based on supporting scientific information and demonstrated experience in implementing similar plans;
   4. in terms of functional value, the proposed project mitigation plan results in equal or greater protection and conservation of critical areas functions, services, and values than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
   5. The plan is consistent with the general purpose and intent of this chapter, the Shoreline Management Program (WCC Title 23), and the comprehensive plan;
   6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and
   7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.
   8. The County shall facilitate review and approval of a watershed-based management plan sponsored by a watershed improvement district, other special purpose district, or other government agency. Such plans may be used to satisfy the requirements of this chapter and provide relief from the specific standards and requirements thereof when it is demonstrated that all of the following circumstances exist:
   9. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
   10. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;
11. There is a clear likelihood for success of the proposed plan based on demonstrated experience in implementing similar plans or supporting scientific information;

12. The proposed project results in equal or greater protection and conservation of critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

13. The plan is consistent with an approved watershed plan prepared pursuant to Chapter 90.82 RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter 90.82 RCW;

14. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and

15.7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

B. Alternative mitigation plans shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process. A watershed-based management plan and/or an alternative mitigation plan developed under this section for a major development, planned unit development, or developer agreement shall be allowed to substitute for the standards and requirements of this chapter when approved by the designated decision-maker for the underlying development permit, as per County code. The process for approval shall be as follows:

C. The plan shall be reviewed by the technical administrator to ensure compliance with the general purpose and intent of the purposes of this chapter, the Whatcom County Shoreline Management Program (WCC Title 28), and with the comprehensive plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the technical administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts.

D.C. If the technical administrator finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision-maker shall solicit comment pursuant to the public notice provisions of Chapter 2.38 WCC prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.

1. Alternative mitigation plans associated with major developments, planned unit developments, or developer agreements shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process.

2. Watershed-based management plans approved by the Whatcom County council shall be adopted by ordinance and appended to this chapter.

3. The designated decision-maker shall not approve watershed-based management plans that conflict with Chapter 90.82 RCW.

16.16.262 Watershed-Based Management Plans.

A. The County may consider watershed-based management plans as a watershed-based management plan sponsored by a watershed improvement districts, other special purpose districts, or other government agency.
B. If approved, said plan may be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:

1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;
3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;
4. In terms of functional value, the proposed mitigation plan results in equal or greater restoration, protection, and conservation of the impacted critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
5. The plan is consistent with the general purpose and intent of this chapter, the comprehensive plan, and an approved watershed plan prepared pursuant to Chapter 90.82 RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter 90.82 RCW;
6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and
7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

D. Watershed-Based Management Plans shall be approved by the County Council by ordinance and appended to this chapter. The process for approval shall be as follows:

1. The plan shall be reviewed by the technical administrator to ensure compliance with the purposes of this chapter, the Whatcom County Shoreline Management Program (WCC Title 23), and with the comprehensive plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the technical administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts.
2. If the technical administrator finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision-maker shall solicit comment pursuant to the public notice provisions of Chapter 2.33 WCC prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.
3. The designated decision-maker shall not approve watershed-based management plans that conflict with Chapter 90.82 RCW.

F. 16.16.263 Mitigation Banking.

A. The County may approve mitigation banking as a form of compensatory mitigation for wetland and habitat conservation area impacts when the provisions of this chapter require mitigation and when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of critical area functions and values when compared to on-site mitigation; provided, that all of the following criteria are met:
1. Banks shall only be used when they provide significant ecological benefits including long-term
conservation of critical areas, important species, habitats and/or habitat linkages, and when
they are consistent with the County Comprehensive Plan and create a viable alternative to the
piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation
goals.

2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking
Rule, Chapter 173-700 WAC or as revised, and Chapter 90.82 RCW and the federal mitigation
banking guidelines as outlined in the Federal Register, Volume 60, No. 228, November 28, 1995.
These guidelines establish the procedural and technical criteria that banks must meet to obtain
state and federal certification.

3. Preference shall be given to mitigation banks that implement restoration actions that have been
identified formally by an adopted shoreline restoration plan, watershed planning document
prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that
has been identified on the Salmon Recovery Board Habitat Project List or by the Washington
State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

4. Mitigation banks shall require a major project permit in accordance with Chapter 20.88 WCC and
shall be subject to a formal review process including public review as follows:

1. The bank sponsor shall submit a bank prospectus for County review. The prospectus shall ident-
ify the conceptual plan for the mitigation bank, including:
   a. The ecological goals and objectives of the bank;
   b. The rationale for site selection, including a site map and legal description of the prospective
      bank site;
   c. A narrative demonstrating compliance with the Whatcom County comprehensive plan, as-
      sociated development standards and this chapter, shoreline restoration plan, watershed
      planning documents prepared and adopted pursuant to Chapter 90.82 RCW, and/or the
      salmonid recovery plan;
   d. A description of the existing site conditions and expected changes in site conditions as a re-
      sult of the banking activity, including changes on neighboring lands;
   e. A conceptual site design;
   f. A description of the proposed protective mechanism such as a conservation easement; and
   g. Demonstration of adequate financial resources to plan, implement, maintain, and adminis-
      ter the project.

2. The technical administrator shall review the bank prospectus either by participating in the
state’s Mitigation Bank Review Team (MBRT) process and/or by hiring independent, third-party
expertise to assist in the review.

3. If the technical administrator determines that the bank prospectus is complete, technically accu-
rate, and consistent with the purpose and intent of this chapter, s/he/she shall forward the pro-
spectus to the County Council for initial review. If the proposed bank involves conversion of ag-
gricultural land to nonagricultural uses, the County Council shall seek an initial recommendation
from the Agricultural Advisory Committee as to whether the conversion shall be allowed. The
Committee’s recommendation shall be nonbinding. The County Council may require mitigation
for the loss of agricultural lands.

4. If the County Council determines, based on the initial review, that the prospectus is valid, it shall
issue a notice to proceed to the bank sponsor. Following receipt of the notice to proceed, the
bank sponsor may submit application for a major project permit in accordance with Chapter
20.88 WCC. The notice to proceed shall not be construed as final approval of the bank proposal,
but shall indicate approval to proceed with the development of the mitigation bank instrument,
which details all of the legal requirements for the bank.

http://www.whatcomcounty.us/documentscenter/view/39171
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5. Upon receipt of a draft mitigation banking instrument from the bank sponsor and major project
permit application, the technical administrator shall review the banking instrument and major
project permit in consultation with the MBRT and/or other third-party expert. Following review
of the mitigation banking instrument and major project permit, the technical administrator shall
make a recommendation to certify and approve, conditionally certify and approve, or deny the
bank proposal and major project permit in accordance with the procedures of Chapter 20.88
WCC.

6. Following receipt of the recommendation, the County Council shall proceed with review in ac-
cordance with the procedures outlined in Chapter 20.88 WCC. The county council shall seek a fi-
nal recommendation from the agricultural advisory committee if the proposal involves conver-
tion of agricultural land (cass).

7. The bank sponsor shall be responsible for the cost of any third-party review.

C. The award of bank credits for an approved bank may be negotiated based on habitat acreage, habi-
tat quality, and contribution to a regional conservation strategy that has been approved by the
County and other appropriate regulatory agency(ies). Credit availability may vary in accordance with
agreed upon performance criteria for the development of the resource value in question. Awarded
bank credits, subject to the approval of the County and regulatory agency(s), may be made transfer-
able. Whether out-of-kind mitigation credit will be allowed at a particular bank will require a fact-
specific inquiry on a case-by-case basis for the project creating the impacts.

D. Use of Bank Credits

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoid-
able impacts to wetlands when:
   a. The bank is certified under state rules;
   b. The Administrator determines that the wetland mitigation bank provides appropriate com-
      pensation for the authorized impacts; and
   c. The proposed use of credits is consistent with the terms and conditions of the certified bank
      instrument.

2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios
   specified in the certified bank instrument.

3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located
   within the service area specified in the certified bank instrument. In some cases, the service area
   of the bank may include portions of more than one adjacent drainage basin for specific wetland
   functions.

16.16.264 In-Lieu Fees

To aid in the implementation of off-site mitigation, the County may develop an in-lieu fee program. This
program shall be developed and approved through a public process and be consistent with federal rules,
state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee pro-
gram sells compensatory mitigation credits to permittees whose obligation to provide compensatory
mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural re-
source management entity. Credits from an approved in-lieu-fee program may be used when para-
graphs 1-6 below apply.

1. The approval authority determines that it would provide environmentally appropriate compensa-
tion for the proposed impacts.

2. The mitigation will occur on a site identified using the site selection and prioritization process in
   the approved in-lieu-fee program instrument.

3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-
   fee program instrument.
4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.

5. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant’s qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.

6. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

16.16.265 Critical areas protective measures.

When an impact to critical area or a buffer has been proposed, a standard buffer width has been altered, or mitigation is required, one or more of the following protective measures shall be applied:

A. Deterrent Devices/Signage. The technical administrator, as a condition of permit approval, may require that the outer boundary of a wetland or habitat conservation area, critical area, and its or buffer, a mitigation site, a designated open space, or a conservation easement be identified with signs, markers, and/or fencing when needed to minimize potentially harmful intrusions from adjacent land uses, to alert citizens to a potential public health or safety risk associated with a critical area, or to accomplish other objectives specifically provided for elsewhere in this chapter. The technical administrator shall provide specifications on the type, content, and size of the signs prior to permit approval. The signs shall be posted near primary access points and approximately every 200 feet along the critical area boundary unless the technical administrator determines that more or less frequent spacing is adequate considering the size and location of the site. (See also Appendix C of this chapter.)

B. Notice on Title. The owner of any property containing any critical area or buffer for which a development permit is about to be issued shall record a notice with the County Auditor real estate records, in a format approved by the technical administrator, and provide a copy of the filed notice to the Planning and Development Services Department at the time the permit is issued. The notice shall state the general presence of the critical area or buffer on the property, and the fact that limitations on actions in or affecting the critical area or buffer exist. The notice shall provide that restrictions on uses within the critical area exist until such time as the technical administrator approves a change in restriction and such approval is filed. This notice on title shall not be required for a development proposal by a public agency or public or private utility within a right-of-way or easement for which they do not have fee-simple title. This requirement may be waived by the technical administrator for certain geologically hazardous areas if it finds that the risk is so low as to not warrant notification (e.g., old alluvial deposits).

C. Tracts and Easements. Prior to final approval of any development permits, subdivisions, short subdivisions, or binding site plans, the part of the critical area and required buffer that is located on the site shall be protected using one of the following mechanisms:

1. Placed in a separate tract or tracts owned in common by all lots within a subdivision, short subdivision, or binding site plan;

2. Covered by a protective easement, or public or private land trust dedication; or

3. Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the County Technical Administrator or Hearing Examiner.

D. Building Setback. The County shall require buildings and other structures to be set back a minimum distance of 10 feet from the edge of a geological hazard setback, a critical area buffer, or from the critical area where no buffer is required. The following uses are allowed in the building setback:

1. Landscaping;

2. Uncovered decks;
3. Building overhangs less than 18 inches.

4. Impervious surfaces such as driveways, parking lots, roads, and patios; provided, that such surfaces conform to the applicable water quality standards and that construction equipment does not enter or damage the buffer or critical area;

5. Clearing and grading;

6. Wells.

E. Indemnification. At the technical administrator’s discretion, when a permit is granted for development or use within a geologic, flood, or other hazard area, the property owner shall sign an indemnification agreement acknowledging hazards posed to the development and absolving the County of all responsibility, to be recorded against the property prior to permit issuance.

E.F. Temporary protection measures to identify location of critical areas and buffers such as construction fencing, erosion and sediment control, or similar shall be required during construction of the proposed project areas.

16.16.270 Reasonable use and variances.

A. Permit applicants for a property so encumbered by critical areas and/or buffers that application of this chapter—including buffer averaging, buffer reduction, or other mechanism—would deny all reasonable use who are unable to comply with the specific standards of this chapter may seek approval pursuant to the reasonable use or variance standards and procedures provided for in this section.

A-B. Reasonable Use Standards.

1. Nothing in this chapter is intended to preclude all reasonable economic use of property. If the application of this chapter would deny all reasonable economic use of the subject property, including agricultural use, use or development shall be allowed if it is consistent with the zoning code and the purposes of this chapter.

2. To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:

   a. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;

   b. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since 5 September 30, 2005, or the effective date of the ordinance codified in this chapter, change in use, reduction in size, change in timing of activity, and/or revision of project design;

   c. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area;

   d. The proposed activities will not result in adverse effects on endangered or threatened species as listed by the federal government or the state of Washington, or be inconsistent with an adopted recovery plan;

   e. Measures shall be taken to ensure the proposed activities will not cause degradation of groundwater or surface water quality, or adversely affect drinking water supply;

   f. The proposed activities comply with all state, local and federal laws, including those related to erosion and sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
g. The proposed activities will not cause there will be no damage to nearby public or private other property properties;

h. The proposed activities will not increase risk and no threat to the health or safety of people on or off the site.

d. The inability to derive reasonable economic use of the property is not the result of segregating or dividing the property and/or creating the condition of lack of use after the effective date of the ordinance codified in this chapter September 30, 2005; and

the project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter;

for single-family residences, the maximum impact area shall be no larger than 2,500 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages, decks, driveways, parking, utilities (exclusive of an on-site septic system), and all lawn and landscaping, with the following exceptions:

a. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the 2,500 square foot maximum impact area provided that the access road meets the standards of WCC 16.16.620(E) or 16.16.720(C), as applicable.

b. On lots within the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, approval of those driveway portions shall be sought through a Shoreline Variance (WCC 23.60.030) and demonstrate that the size and location of the driveway is the minimum relief necessary to access the development site.

B. Variance Standards. In cases where the reasonable use criteria of subsection A of this section do not apply, or for a variance from other standards of this chapter, the hearing examiner may grant a variance from the requirements in this chapter when the applicant proves by clear, cogent and convincing evidence of all of the following elements:

1. Because of special circumstances applicable to the subject property, including, but not limited to, size, shape, topography, location, surroundings, and other physical conditions, the application of this chapter precludes development of the property by the property owner as otherwise allowed in WCC Title 25 and

2. The granting of the variance will not be injurious to the health or safety of the community and every reasonable effort has been made to minimize adverse effects on critical areas and

3. The variance does not constitute a grant of special privilege, and is not based upon reasons of hardship caused by previous actions of the current property owner after July 15, 1992, and the proposed modification to a critical area will be the minimum necessary to allow reasonable and economically viable use of the property and

4. The project includes mitigation for unavoidable critical area and buffer impacts.

C. Reasonable Use and Variance Procedures.

1. Procedural requirements for variances and reasonable use permit applications shall be as follows:

a. Variance and reasonable use permit applications shall be subject to an open record public hearing; except provided, that reasonable use permit applications for single-family residential building permits, use proposed to be located outside of geologically hazardous areas (non) or for other development proposals that would affect critical area buffers, but not the critical areas themselves, shall be processed administratively by the technical administrator.
b. Variances and reasonable use permit applications that require an open record hearing shall be processed in accordance with Chapter 2.33 WCC and WCC 20.84.730.

Reasonable use permit applications that are subject to administrative approval by the technical administrator shall be processed in accordance with WCC 20.84.735.

d. The hearing examiner or technical administrator shall have the authority to set an expiration date for any or all variance and/or reasonable use approvals. The development proposal must be completed before the approval expires.

e. Any person aggrieved by the granting, denying, or rescinding of a reasonable use permit by the technical administrator or any party of record may appeal the Technical Administrator’s pursuant to WCC 16.16.280 or the hearing examiner decision pursuant to Chapter 20.92 WCC.

f. Any person aggrieved by the granting, denying, or rescinding of a reasonable use permit by the technical administrator may seek review from the hearing examiner pursuant to WCC 16.16.280.

g. Any application for a variance or reasonable use permit or approval which remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.

2. All variance or reasonable use permit applications or other approvals shall be subject to the provisions of this chapter, which are in effect at the time of application.

3. Each application for a variance or reasonable use permit shall be accompanied by a fee as stated in the unified fee schedule.

4. In making reasonable use or variance decisions, the technical administrator and/or hearing examiner shall have the authority to require submittal of technical reports in accordance with WCC 16.16.255 and/or 15.15.260(B).

16.16.273 Variances [Res] A. Where strict application of requirements of this chapter renders compliance with these provisions an undue hardship in cases where the reasonable-use criteria of WCC 16.16.270 do not apply, permit applicants may seek a variance pursuant to the variance standards and procedures provided in this section.

B. Variance Standards. In cases where the reasonable-use criteria of subsection A of this section do not apply, or for a variance from other standards of this chapter, the hearing examiner may grant a variance from the dimensional requirements in this chapter when the applicant proves by clear, cogent, and convincing evidence of all of the following elements:

1. Because of special circumstances applicable to the subject property, including, but not limited to, size, shape, topography, location, surroundings, and other physical conditions, the application of this chapter precludes development of the property by the property owner, as otherwise allowed in WCC Title 20, and,

2. The granting of the variance will not be injurious to the health or safety of the community and every reasonable effort has been made to minimize adverse effects on critical areas, and,

3. The variance does not constitute a grant of special privilege, and is not based upon reasons of hardship caused by previous actions of the current property owner after July 18, 1992, and the proposed modification to a critical area will be the minimum necessary to allow reasonable and economically viable use of the property, and,

4. The project includes mitigation for unavoidable critical area and buffer impacts.
5. No other feasible alternative exists.

C. Variance Procedures

1. Procedural requirements for variances applications shall be as follows:
   a. Variance applications shall be subject to an open record public hearing, processed in accordance with Chapter 2.33 WCC and WCC 20.84.230.
   b. The hearing examiner shall have the authority to set an expiration date for any or all variance approvals. The development proposal must be completed before the approval expires. The hearing examiner will render a decision pursuant to Chapter 20.92 WCC.
   c. Any party of record may appeal the hearing examiner decision pursuant to Chapter 20.92 WCC.
   d. Any application for a variance that remains inactive for a period of 180 days shall expire and all new application and repayment of fees shall be required to reactivate the proposal provided that the technical administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review, litigation indirectly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.

2. All variance applications shall be subject to the provisions of this chapter that are in effect at the time of application.

3. Each application for a variance shall be accompanied by a fee as stated in the unified fee schedule.

4. In making variance decisions, the hearing examiner shall require submittal of technical reports in accordance with WCC 16.16.255 and/or 16.16.260(B).[7]SS

16.16.275 Nonconforming uses/buildings.

The following provisions shall apply to legally existing uses and/or buildings and/or structures that do not meet the specific standards of this chapter:

A. The lawful use of any legal nonconforming building, structure, land, or premises existing on September 30, 2005 the effective date of the adoption or amendment of this chapter, is prohibited under a permit or approval issued, or otherwise vested, prior to that effective date of the adoption or amendment of this chapter. Any use of such premises may be continued subject to the provisions for a nonconforming structure in Chapter 20.83 WCC; provided, that agricultural activities shall conform to section WCC 16.16.280A Article 88 (Conservation Program on Agriculture Lands). If a nonagricultural nonconforming use is intentionally abandoned for a period of 12 months or more, then any future use of the nonconforming building, land, or premises shall be consistent with the provisions of this chapter.

B. Expansion, alteration, and/or intensification of a nonconforming use is prohibited.

C. Expansion, alteration, and/or intensification of a legal nonconforming building, or structure, (excluding normal maintenance and repair), is prohibited unless such use will produce impacts that degrade the critical area, including but not limited to vegetation clearing, additional impervious surfaces; generation of surface water runoff, discharge, or risk of discharge of pollutants; increased noise, light or glare, or increased risk associated with geologically hazardous areas.

D. Nonconforming structures that are destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind. If there is no alternative that allows for compliance with the standards of this chapter, provided, that the following are met:

1. The reconstruction process is commenced within 18 months of the date of such damage; and
2. The reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsection C of this section.

16.16.280 Appeals.
A. Final permit decisions made by the technical administrator shall be subject to appeal in accordance with the procedures of Chapter 2.33 WCC and WCC Title 20; provided, that the applicant may request administrative review by the director of planning and development services prior to initiating a formal appeal process. Decisions of conditions applied to specific permits shall be subject to the appeal provisions for that permit.
B. Any person may appeal to the hearing examiner a final administrative order, final requirement, final permit decision, or final determination made; provided, that such appeal shall be filed in accordance with the appeal procedure for the underlying permit. If there is no appealable permit or if the appeal is for a reasonable use permit decision issued by the technical administrator, the appeal shall be filed in writing within 14 calendar days of the date the written decision, order, requirement, or determination is issued and public notice provided, unless the decision is issued as part of a SEPA determination of nonsignificance for which a public comment period is required, in which case a 21-day appeal period shall be provided.
C. The appeal will be upheld if the applicant proves that the decision appealed is clearly erroneous or based upon error of law.
D. The hearing examiner shall have the authority to set an expiration date for any or all appeal approvals. The hearing examiner will render a decision pursuant to Chapter 20.92 WCC.
E. Each application for an appeal of an administrative decision to the hearing examiner shall be accompanied by a fee as stated in the unified fee schedule.
F. Pursuant to WCC 20.92.610, the applicant, any party of record, or any County department may appeal any final decision of the hearing examiner to the County Council. The appellant shall file a written notice of appeal at the County Council office within 10 business days of the final decision of the Hearing Examiner.
G. Any issue not raised by the time of appeal in the original appeal filing to superior court is thereafter waived.

16.16.285 Penalties and enforcement.
A. Any person who violates any of the provisions of this chapter shall be guilty of a civil offense and may be fined a sum not to exceed $1,000 for each offense. After a notice of violation has been given, each day of site work in conjunction with the notice of violation shall constitute a separate offense.
B. 1. The penalty provided in subsection A of this section shall be assessed and may be imposed by a notice in writing either by certified mail with return receipt requested or by personal service to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.
C. 2. Within 30 calendar days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County’s final decision on mitigation or revision shall be reviewed by
the hearing examiner if the aggrieved party files a written appeal therewith of said decision
within 10 calendar days of its issuance.

D. B. If work activity has occurred on a site in violation of this chapter, prompt corrective action, re-

toration, or mitigation of the site will be required when appropriate. If this provision is not complied
with, the County may restore or mitigate the site and charge the responsible person or property owner
for the full cost of such an activity. Additionally, any and all permits or approvals issued by the
County may be denied for that site for a period of up to six years.

E. C. In the event any person violates any of the provisions of this chapter, the County may issue a correc-
tion notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a
nonemergency situation, such notice may include notice of the intent to issue a stop work order no
less than 10 calendar days following the receipt of the correction notice, and provide for an adminis-
trative predeprivation hearing within 10 calendar days of the notice. In an emergency situation
where there is a significant threat to public safety or the environment, the County may issue a stop
work order. The stop work order shall include, in writing, the right to request an administrative pre-
deposition hearing within 72 hours following receipt of the stop work order. Failure to comply with
the order to stop work shall be a gross misdemeanor punishable upon conviction by a minimum fine
of $500 up to a maximum fine of $1,000 or one year in jail, or both. Under no circumstance may the
court defer or suspend any portion of the minimum $500 fine for any conviction under this section.
Each day or part thereof of noncompliance with said order to stop work shall constitute a separate
offense.

F. D. The County may suspend or revoke a permit if the applicant violates the conditions or limitations set
forth in the permit or exceeds the scope of the work set forth in the permit.

G. E. The prosecuting attorney may enforce compliance with this chapter by such injunctive, declaratory,
or other actions as deemed necessary to ensure that violations are prevented, ceased, or abated.

F. Any person who, through an act of commission or omission, procures, aids, or abets in the violation
shall be considered to have committed a violation for the purposes of the civil penalty.

H. G. After the Fact Permit Fee. After the fact application fees shall be double the amount established
by the Unified fee Schedule [NRSS0].

16.16.290 Conservation program on agriculture lands (CPAL) [CRS1]

16.16.295 Open space and conservation.

The following programs may be employed to achieve the purposes of this chapter and minimize the
burden to individual property owners from application of the provisions of this chapter:

A. Open Space. Any property owner whose property contains a critical area or buffer and who meets
the applicable qualifying criteria may apply for open space taxation assessment pursuant to Chapter
84.34 RCW.

B. Conservation Easement. Any person who owns an identified critical area or its associated buffer may
place a conservation easement over that portion of the property by naming the County or its quali-
fied designee under RCW 64.04.130 as beneficiary of the conservation. This conservation easement
may be in lieu of separate critical areas tracts that qualify for open space tax assessment described
in subsection A of this section. The purpose of the easement shall be to preserve, protect, maintain,
and limit use of the affected property. The terms of the conservation easement may include prohibi-
tions or restrictions on access and shall be approved by the property owner and the County.

C. Conservation Futures Fund. The County may consider using the conservation futures property tax
fund as authorized by RCW 84.34.230 for the acquisition of properties containing significant critical
areas and their associated buffers.
PROPOSED FINDINGS OF FACT

(AS ADOPTED BY THE PLANNING COMMISSION)
Proposed Findings of Fact (as adopted by the Planning Commission)

WHEREAS, the adopted Whatcom County Comprehensive Plan supports the protection of environmentally critical areas through the adoption of development regulations; and

WHEREAS, the State Growth Management Act (GMA) includes adopted goals and requirements to guide the development and adoption of comprehensive plans and development regulations including requirements to designate and protect environmentally critical areas; and

WHEREAS, the County has considered those adopted goals, policies, and requirements in development of the proposed Whatcom County Code Amendments related to critical areas, and, has considered other state requirements, law, rules, guidelines, and agency comments; and

WHEREAS, the County researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating critical areas, undertook a Best Available Science (BAS) review and public process in accordance with the requirements of the GMA, developed Whatcom County Code amendment drafts, prepared environmental documents in accordance with the requirements of the State Environmental Policy Act (SEPA), and held meetings and hearings throughout the code development process; and

WHEREAS, the County has been provided feedback on draft work products and guidance from members of the public, County staff, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, the Washington State Department of Commerce, the Lummi Nation, the Nooksack Indian Tribe, other stakeholders and experts, the Whatcom Planning Commission, and elected and appointed officials during the development of the recommended code amendments; and

WHEREAS, in developing this ordinance, the County has followed the GMA’s requirements, including to provide “early and continuous public involvement” through a variety of mechanisms described in the public record; and

WHEREAS, the County has followed the State guidelines for the BAS process required by RCW 36.70A.172 and WAC 365-195-900 through 925, employing a variety of mechanisms described in the public record; and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the State of Washington Department of Commerce and to other State agencies on February 2, 2016, for a 60-day review and comment period in accordance with State law; and

WHEREAS, an environmental review has been conducted in accordance with the requirements of State Environmental Policy Act (SEPA), and a SEPA threshold determination was issued, and published on March 17, 2016, in the Bellingham Herald; and

WHEREAS, the Planning Commission held a total of 7 public meetings to consider the proposed amendments, which included two public hearings, one on May 12 and one on June 9, 2016, with deliberations throughout these meetings; and

WHEREAS, the Planning Commission has provided a recommendation to the County Council related to the proposed amendments; and
WHEREAS, the County Council held X study sessions on the proposed amendments on X, 2016, and a public hearing on X, 2016 and continued public hearing on X, 2016; and

WHEREAS, the County Council has considered the recommendation of the County Planning Commission and the public comments received; and

WHEREAS, the County Council has reviewed and considered a variety of information sources including Best Available Science materials, informational documents in the public record, and public testimony submitted verbally and in writing to the Planning Commission and to the County Council; and

WHEREAS, the County Council desires the proposed amendments to be effective throughout the County including within shoreline jurisdiction, a subsequent Shoreline Master Program amendment should be prepared for submittal to the State Department of Ecology for approval; and

WHEREAS, based upon the foregoing process, the County Council has made the following Findings of Facts and Conclusions:

General Critical Areas Findings

1. The Growth Management Act requires critical areas to be designated and protected and to include and be informed by BAS when developing critical areas regulations. [RCW 36.70A]

2. Critical areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas.

3. The Whatcom County has within its borders a variety of environmentally sensitive areas that require protection of important functions and values.

4. Unregulated development may result in cumulative impacts to those functions and values of critical areas that contribute to and are necessary for a healthy natural environment and perceived quality of life.

5. The unregulated development of residences, businesses, shopping areas and other structures, and the clearing of land for accommodation of livestock and for such development all have the potential of adversely and significantly impacting the functions and values of critical areas.

6. The unregulated development of resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life.

7. It is more costly to remedy the loss of critical area functions and values than to conserve and protect them from loss or degradation.

8. In determining what critical areas are to be afforded a particular degree of protection, Whatcom County has evaluated a wide range of the best science available with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

9. The sources of this best available science that were evaluated and included in this ordinance are contained in Exhibit B: Whatcom County Critical Areas Ordinance 2016 Update – Best Available Science Review: Addendum to the 2005 BAS Report.
10. Protection standards for one critical area often provide protection for one or more other critical areas.

11. Critical areas may also be protected by other actions by the County, such as stormwater management standards, clearing and grading regulations, critical area restoration, and public education; and from other regulations, such as the Forest Practices Act, the Shoreline Management Act, the State Environmental Policy Act, and others.

12. The U.S. Constitution prohibits the taking of private property without just compensation.

13. The proposed regulations for critical areas are sufficient and appropriate to protect the functions and values of those areas, consistent with the Whatcom Comprehensive Plan and Growth Management Act.

14. The amendments hereafter set forth address requirements related to development in and near environmentally critical areas including environmentally critical areas buffers, performance standards, mitigation requirements, exemptions and exceptions.

15. The amendments serve to further implement the Comprehensive Plan, and provide protection for critical areas that is consistent with BAS and with providing options and development flexibility, and are in the public interest.

16. The critical areas regulations continue to allow for reasonable use of property to ensure that such regulations do not infringe on constitutional private property rights.

17. The public record demonstrates that the amendments were developed through a review of the BAS literature available to the County for review and consideration.

18. The County has followed the GMA’s requirements for public involvement and for including and considering BAS in modification of the regulations for critical areas.

19. The public testimony provided to the County included both support for the proposed amendments and suggestions for modifications.

20. Based on the review of the testimony and public record, the amendments attached to this ordinance reflect the County’s requirement to protect critical areas and to consider the planning goals of the GMA, while recognizing public and private interests.

**Wetlands**

21. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced.

22. The scientific literature supports in the inclusion of protective buffers from wetlands to provide sediment control and nutrient inputs to wetlands, and to protect important wetland functions.

24. The scientific literature supports the inclusion of protective buffers of relatively intact native
vegetation from wetlands to adequately protect wetland functions and values.

25. Appropriate wetland mitigation ratios—ratios of areas of wetland replacement and
enhancement to that altered or destroyed—are established in *Wetland Mitigation
Replacement Ratios: Defining Equivalency*, published by Ecology, 1992, and *Wetlands in
Publication 05-06-008, April 2005.

**Critical Aquifer Recharge Areas**

26. WAC 365-190-080 defines wellhead protection areas, sole source aquifers, special protection
areas, and other areas that are susceptible or vulnerable to ground water contamination as
areas with a critical recharging effect on aquifers used for potable water (also referred to as
critical aquifer recharge areas).

27. Potable water is an essential life-sustaining element.

28. Much of the County’s drinking water in rural areas comes from groundwater supplies.

29. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean
up.

30. Preventing groundwater contamination is necessary to avoid exorbitant costs, hardships, and
potential physical harm to people.

Ecology, 2000, includes scientific recommendations for protecting ground water, including
limiting certain uses and the intensity of development in critical aquifer recharge areas.

**Frequently Flooded Areas**

32. Flood hazard areas are subject to periodic inundation that results in loss of life and property,
health, and safety hazards, disruption of commerce and governmental services, extraordinary
public expenditures for flood protection and relief, and impairment of the tax base, all of
which adversely affect the public health, safety, and general welfare.

33. These flood losses are caused by development in areas prone to inundation that increase
flood heights and velocities, and when inadequately anchored, damage uses in other areas.
Uses that are inadequately floodproofed, elevated, or otherwise protected from flood
damage also contribute to flood loss.

34. Floodplain and stream connectivity are major elements in maintaining healthy riparian habitat
and off-channel habitats for the survival of fish species and conveyance of floodwaters. If
river, floodplains, and other systems are not viewed holistically as biological,
geomorphological units, this can lead to serious degradation of habitat and increase flood
hazards, which in turn can contribute to listing of various fish species as threatened or
endangered and result in extraordinary public expenditures for flood protection and relief.

35. Frequently flooded areas, including the 100-year floodplain and the floodway, are commonly
mapped on flood insurance maps, often known as Flood Insurance Rate Maps, or FIRM's.
Geologically Hazardous Areas

36. Geologically hazardous areas are subject to periodic geological events that result in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

37. Geologic hazards may be exacerbated by development and human activity in sensitive areas, and impacts resulting from geologic hazards may be reduced by limiting development and human activity within or adjacent to the geologic hazard.

38. Some geologic hazards may be intensified during periods of consistent or heavy rainfall that results in ground saturation or surface water drainage flows.

Fish and Wildlife Habitat Conservation Areas

39. Fish and wildlife habitat conservation areas perform many important physical and biological functions that benefit Whatcom County and its residents, including but not limited to: maintaining species diversity and genetic diversity; providing opportunities for food, cover, nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas.

40. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations these functions cannot be adequately replicated or replaced.

41. The scientific literature supports the inclusion of protective buffers from streams to provide sediment control, nutrient inputs to downstream waters, large woody debris, and other functions important to riparian areas.

42. The Washington Department of Fish and Wildlife (WDFW) has prepared management recommendations for the preservation of priority habitat and species, which are based on the best available science, and include, in some instances, recommended protective buffer distances.

43. Kelp and eelgrass beds have been identified and mapped by the Washington State Department of Natural Resources (DNR) in some areas. Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260. Locations for both may be found by referring to Critical Spawning Habitat for Herring, Surf Smelt, Sand Lance and Rock Sole in Puget Sound, Washington: A Guide for Local Governments and Interested Citizens, 2002, and the Puget Sound Environmental Atlas, Volumes 1 and 2.

44. Salmonid and anadromous fish may be more impacted by development and human activity during some times than others. Such times are referred to as “fish windows,” which have been documented by WDFW.

45. DNR has classified watercourses according to two stream-typing systems based on channel width, fish use, and perennial or intermittent status.
46. WAC 365-190-080(5) grants [the jurisdiction] the flexibility to make decisions in the context of local circumstances, and specifically excuses local jurisdictions from being required to protect “all individuals of all species at all time.”
TITLE OF DOCUMENT:
2016 Critical Areas Ordinance Update - Article 5 - Critical Aquifer Recharge Areas

ATTACHMENTS: (all current and past materials provided to the Council can be found at http://www.whatcomcounty.us/2417/County-Council-Review)

A. Staff memo to Council dated 12/20/2016

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

This is another workshop (in a series of many) on the proposed ordinance to amend Whatcom County Critical Areas Ordinance (CAO) (WCC 16.16) pursuant to RCW 36.70A.130(1). The Growth Management Act (RCW 360.70A) defines critical areas as wetlands, frequently flooded areas, fish and wildlife habitat conservation areas (including streams), geologically hazardous areas, and critical aquifer recharge areas. The purpose of this periodic update is to ensure that the CAO meets the GMA requirements, including consistency with the Whatcom County Comprehensive Plan, best available science, and state agency guidance updates. Numerous amendments are being proposed, though most of them pertain to correcting grammar, updating references to other documents or laws, clarifying and updating administrative procedures, etc. The County is also required to integrate the CAO provisions with its Shoreline Master Program (SMP). Whatcom County has done so by adopting the CAO by reference within the SMP (WCC 23.10.060(A)). This reference is also proposed to be amended.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:  
Related File Numbers:  
Ordinance or Resolution Number:  

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
Memorandum

TO: The Honorable County Council
    Jack Louws, County Executive
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Asst. Director
DATE: December 20, 2016
SUBJECT: 2016 Critical Areas Ordinance Update
            County Council Review, Workshop 2, 10 January 2017

On January 10th the Council will continue its review of the 2016 Critical Areas Ordinance Update. Topics to be covered include:

- Anticipated Schedule
- A note about changes proposed post-Planning Commission recommendation
- Overview of Certain Proposed Amendments to:
  - Global Changes
  - Article 1 – Purpose
  - Article 2 – Administrative Provisions
  - Article 5 – Critical Aquifer Recharge Areas
  - Article 5.5 – Lummi Island
  - Article 9 – Definitions

Anticipated Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic(s)</th>
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<tbody>
<tr>
<td>9/20/16</td>
<td>Overview</td>
</tr>
<tr>
<td>10/25/16</td>
<td>Public Hearing</td>
</tr>
<tr>
<td>1/10</td>
<td>Article 1 – Purpose</td>
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<tr>
<td></td>
<td>Article 2 – Administrative Provisions</td>
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<td></td>
<td>Article 5 – Critical Aquifer Recharge Areas</td>
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<td>Article 5.5 – Lummi Island</td>
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<td></td>
<td>Article 9 – Definitions</td>
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<tr>
<td>1/24</td>
<td>Article 4 – Frequently Flooded Areas</td>
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<td></td>
<td>Article 7 – Habitat Conservation Areas</td>
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<tr>
<td>2/7</td>
<td>Article 6 – Wetlands</td>
</tr>
<tr>
<td></td>
<td>Article 8 – Conservation Program on Agriculture Lands</td>
</tr>
<tr>
<td>2/21</td>
<td>Article 3 – Geologically Hazardous Areas</td>
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<tr>
<td>3/7</td>
<td>Review of Any Outstanding Issues</td>
</tr>
<tr>
<td>3/21</td>
<td>Introduction of Ordinance</td>
</tr>
<tr>
<td>4/11</td>
<td>Public Hearing</td>
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<td></td>
<td>Adoption</td>
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</table>
Changes Proposed Post-Planning Commission Recommendation

There have been a few issues brought to staff’s attention since the Planning Commission made their recommendation that we would like the Council to consider. Some are still being worked on so can’t all be listed now, but staff will point out these proposed amendments as we progress through the chapters.

Remember the Supporting Materials

Please remember that there is supporting documentation on the CAO Update webpage for your reference and consideration. These include:

- 2005 Best Available Science Report
- 2016 Best Available Science Supplemental Report
- Best Available Science studies
- Written comments provided prior to the Planning Commission action from the Citizens Advisory Committee, the Technical Advisory Committee, staff, and the public (public comments received since are found on the Council’s website)

All these are posted on the CAO Update website: http://www.whatcomcounty.us/2417/County-Council-Review (or to navigate to it: Home > Your Government > Departments > Planning & Development Services > Planning > Long Range Planning > Projects & Programs > Critical Areas Update > County Council Review)

Proposed Amendments

Global Changes
Remember from the overview workshop that in general, many of the amendments pertain to:

- Correcting grammar
- Updating references to other documents or laws
- Clarifying procedures
- Moved a few subsections to sections they seemed to fit into better.
- Separated a few larger sections into distinct sections
- Many of the “mays” are proposed to be changed to “shall”

Article 1 – Purpose

- No proposed changes

Article 2 – Administrative Provisions

<table>
<thead>
<tr>
<th>WCC Section</th>
<th>Proposed Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Throughout</td>
<td>Many of the “mays” are proposed to be changed to “shall,” as it is believed that, in instances where the language spoke to the Technical Administrator, less discretion should be afforded due to a perceived history of previous staff being too lenient.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
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<tr>
<td>16.16.230</td>
<td>Exempt activities. Moved tree felling activities from Exempt Activities to 16.16.235(B)(4) Activities allowed with notification, as a tree risk assessment is a submittal requirement to determine if a tree meets the definition of Hazard Tree.</td>
</tr>
<tr>
<td>16.16.230(G)</td>
<td>Exempt activities. Moved restoration activities to Exempt Activities (from Activities allowed with notification), as these types of activities are exempt per RCW 77.55.181(4)).</td>
</tr>
<tr>
<td>16.16.235(B)(8)</td>
<td>Activities allowed with notification. Deleted the use of pesticides in buffers as an “Activity allowed with notification” since insects are important to the food chain. Also clarified that herbicides only be allowed for eradicating invasive species, not native plants.</td>
</tr>
<tr>
<td>16.16.240(A)(2) &amp; (C)(2)</td>
<td>Technical administrator and hearing examiner authority. Proposed amendment would give the Technical Administrator decision-making authority over all Reasonable Use Permits for single-family residential uses, including those in geohazard area, so as to minimize cost to the typical homeowner.</td>
</tr>
<tr>
<td>16.16.250</td>
<td>Submittal requirements and critical areas review process. Amended section to reflect process developed under Kaizan review procedures and now used.</td>
</tr>
<tr>
<td>16.16.260</td>
<td>General mitigation requirements. Though mitigation sequencing has always been a requirement, and that alternatives and cumulative impacts be analyzed, the code wasn’t clear that these should be explicitly addressed. Amendments to this section make that more clear.</td>
</tr>
<tr>
<td>16.16.260(E)</td>
<td>General mitigation requirements. Added a paragraph explicitly stating that mitigation areas are to be permanently protected, though that if future development is proposed on the mitigation site, any restrictions can be removed as long as the final plan meets the requirements of this chapter for all cumulative impacts.</td>
</tr>
<tr>
<td>16.16.261, 262, and 263</td>
<td>Three different alternative mitigation strategies (Alternative or Innovative Mitigation Plans, Watershed-Based Management Plans, and Mitigation Banking) were contained in one section. These have been broken into three sections now, and a new section 263(D) (Use of Bank Credits) added based on DOE guidance.</td>
</tr>
<tr>
<td>16.16.264</td>
<td>In-Lieu Fees. Added a new section to allow an in-lieu fee program be set up. This language, which comes from DOE guidance documents, allows for such a program to be established.</td>
</tr>
<tr>
<td>16.16.265(B)</td>
<td>Critical areas protective measures. Added language that would allow the Technical Administrator to waive the notice on title requirement for certain, low risk geohazards.</td>
</tr>
<tr>
<td>16.16.265(E)</td>
<td>Critical areas protective measures. Added a requirement that applicants indemnify the County when a permit is granted for development or use within a geologic, flood, or other hazard area.</td>
</tr>
<tr>
<td>16.16.265(F)</td>
<td>Critical areas protective measures. Added a paragraph notifying applicants that temporary protection measures are required during construction.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
</tr>
<tr>
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<tr>
<td>16.16.270 and 16.16.273</td>
<td>Reasonable use and Variances. In the existing code, the rules for reasonable use permits and variances are contained in the same section. However, these are very different mechanisms, and it was thought they each deserve their own section so were split. Most changes in these sections have to do with separating them out.</td>
</tr>
<tr>
<td>16.16.270(B)(2)(g &amp; h)</td>
<td>Reasonable use. Split g &amp; h into two sections. Amended (g) to state that any proposed activities won’t cause damage to other properties, and (h) to state that the activities won’t increase risk, as opposed to guarantee no threat, which is an impossibility (earthquakes and other geohazards may still happen; no one can guarantee they won’t).</td>
</tr>
<tr>
<td>16.16.270(B)(2)(k)</td>
<td>Reasonable use. PDS Administrative Policy PL5-85-001A (CAO Reasonable Use/SMP Variance (has been incorporated into the code. This policy sets the Maximum Impact Area of 2,500 sf for CAO reasonable uses and Shoreline Management Program variances and has been in place since 4/17/08.</td>
</tr>
<tr>
<td>16.16.280</td>
<td>Appeals. Amended the language to require that any issues brought on appeal to the courts were raised and heard by the County’s appeal body first. This is a standard legal practice for appeals these days.</td>
</tr>
<tr>
<td>16.16.285(l)</td>
<td>Penalties and enforcement. Added an “After the Fact Permit Fee.” Charging “after the fact” fees is consistent with how PDS handles “att” building permits. It should be cheaper to ask for permission than forgiveness.</td>
</tr>
<tr>
<td>16.16.290</td>
<td>Conservation program on agricultural lands. The CPAL provisions (290 and Appendix A) have been combined and moved to a new Article 8.</td>
</tr>
</tbody>
</table>

**Article 5 – Critical Aquifer Recharge Areas**
- No proposed changes other than a cross-reference

**Article 5.5 – Lummi Island**
- No proposed changes other than grammatical

**Article 9 – Definitions**
Adding definitions of:
- “Bankfull width”
- “Cumulative Impact”
- “Designated Species, Federal” “Designated Species, State”
- “Habitats of Local Importance” (from WAC 365-190-030)
- “Maximum Credible Event”
- “Practicable Alternative”
- "Species of Local Importance" (from WAC 365-190-030)
- “Stormwater Manual” (referred to throughout as a source for Best Management Practices)
- “Waters of the State” (from RCW 90.56.010(26))
Amending definitions of:

- “Critical Facilities” to keep maximum occupancy of uses under 500 and to exclude cell towers from the definition (needed if an emergency occurs)
- “Drainage Ditch” to try to clear up the public confusion between ditches and streams
- “Fish and wildlife habitat conservation areas” as the state definition has been amended (amended since the P/C recommendation)
- “Geologically Hazardous Areas” to make consistent with the GMA definition in RCW 36.70A.030(9)
- “High Intensity Land Use” to include Class IV Special forest practices (conversion of forest to development)
- “Hydric Soil” by changing the reference to that commonly used now
- “Moderate Intensity Land Use” to exclude nurseries and logging roads, both of which the TAC believe should be in the high intensity land use category
- “Planning Advisor,” rather than “Qualified Planning Advisor” (“qualified” is not used in the text so it was hard to find in the definitions.)
- “Qualified Professional” to increase the years of professional experience needed for wetland biologist from 3 to 5 years, and to exclude those consultants who’ve had their certification revoked
- “Reestablishment,” “Rehabilitation,” and “Restoration” to make consistent with USACE definitions
ARTICLE 5. CRITICAL AQUIFER RECHARGE AREAS

16.16.500 Purpose.
The purposes of this article are to:
A. Preserve, protect, and conserve Whatcom County’s groundwater resources and their functions and values for current and future generations by protecting critical aquifer recharge areas from contamination.
B. Prevent adverse impacts on groundwater quantity by regulating development activities that could deplete aquifer storage, reduce groundwater levels, and/or diminish infiltration and replenishment of groundwater.
C. Prioritize the management, protection, and conservation of groundwater recharge areas as sources of potable water supply.
D. Establish review procedures for development activities that have the potential to adversely affect critical aquifer recharge areas.

16.16.510 Designation, classification and mapping – Critical aquifer recharge areas.
A. Critical aquifer recharge areas play a crucial role in supplying potable water (as defined by WAC 365-190-030(2)). These recharge areas have geologic conditions that allow high infiltration rates, which contribute significantly to the replenishment of groundwater. These conditions also create a high potential for groundwater contamination. These areas are hereby designated as critical areas and subject to the provisions of this chapter.
B. The approximate location and extent of critical aquifer recharge areas are shown on the County’s critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as recharge areas are identified and as new information becomes available.
C. Critical aquifer recharge areas shall be designated and classified as follows:
1. Low, Moderate, and High Susceptibility Aquifer Recharge Areas. Aquifer recharge areas susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the State Department of Ecology (Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances, July 2000, Publication No. 97-30, Version 4.0).
2. Wellhead Protection Areas. The area defined by the boundaries of the 10-year time of groundwater travel, in accordance with WAC 246-290-135. For purposes of this chapter, all wellhead protection areas shall be designated as highly susceptible critical aquifer recharge areas.
D. If special groundwater management areas or susceptible groundwater management areas are established in Whatcom County in accordance with WAC 173-200-090 or 173-100-010, respectively, then these areas shall be incorporated into the highly susceptible aquifer designation.

16.16.520 Critical aquifer recharge areas – General standards.
In addition to the applicable general protective measures found in WCC 16.16.265, all development in a critical aquifer recharge area shall meet the following standards:
A. The proposed development will not cause contaminants to enter the aquifer and will not significantly adversely affect the recharging of the aquifer in an adverse manner.
B. The proposed development must comply with the water source protection requirements and recommendations of the Federal Environmental Protection Agency, State Department of Health, and the Whatcom County health department.
C. The proposed development must be designed and constructed in accordance with the County stormwater management requirements or other applicable stormwater management standards (Whatcom County Development Standards Chapter 2, WCC Title 20).

16.16.525 Standards—Activity subject to critical areas review.

The following development activities, when proposed in moderate and high susceptibility critical aquifer recharge areas, have the potential to adversely affect groundwater quality and/or quantity and shall require submittal of a critical areas assessment report as defined in WCC 16.16.255 and 16.16.535:

A. Any development with an on-site domestic septic system at a gross density greater than one system per residence per acre.

B. All storage tanks and storage facilities for hazardous substances and/or hazardous wastes; provided, that:
   1. The tanks must comply with Department of Ecology regulations contained in Chapters 173-360 and 173-303 WAC as well as International Building Code requirements;
   2. All new underground tanks and facilities shall be designed and constructed so as to prevent releases due to corrosion or structural failure for the operational life of the tank, or have a secondary containment system to prevent the release of any stored substances;
   3. All new aboveground storage tanks and facilities shall be designed and constructed so as to prevent the release of a hazardous substance to the ground, groundwaters, or surface waters by having primary and secondary containment.

C. Vehicle repair, servicing and salvaging facilities; provided, that the facility must be conducted over an impervious pad and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur. Dry wells shall not be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the State Department of Ecology prior to commencement of the proposed activity.

D. Use of reclaimed wastewater must be in accordance with adopted water or sewer comprehensive plans that have been approved by the State Departments of Ecology and Health and the Whatcom County council per Chapter 57.16 RCW; provided, that:
   1. Surface spreading must meet the groundwater recharge criteria given in RCW 90.46.010(10) and 90.46.080.
   2. Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.

E. Any other development activity that the technical administrator determines is likely to have a significant adverse impact on groundwater quality or quantity, or on the recharge of the aquifer. The determination must be made based on credible scientific information.

F. Metals and hard rock mining and new sand and gravel mining subject to the provisions of the County’s current MRD review procedures in Chapter 20.73 WCC; provided, that for new MRDs such activities shall be prohibited within the 10-year travel time zone of wellhead protection areas.

16.16.530 Standards—Prohibited uses.

The following developments and uses are prohibited in critical aquifer recharge areas:

A. New landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste of more than 2,000 cubic yards, and inert and demolition waste landfills.

B. Underground injection wells. Class I, II, and IV wells and subclasses SF01, SD03, SF04, SW09, SW10, SW11, SW31, SX13, SX14, SX15, SW20, SX28, and SW24 of Class V wells.

http://www.whatcomcounty.us/documentcenter/view/19171
1. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).
2. Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).
3. Facilities that store, process, or dispose of radioactive substances.
4. Other activities that the technical administrator determines would significantly degrade groundwater quality and/or reduce the recharge to aquifers currently or potentially used as a potable water source, or that may serve as a significant source of base flow to a regulated stream. The determination must be made based on credible scientific information.

16.16.535 Review and report requirements.

A. When County critical area maps or other sources of credible information indicate that the proposed development activities listed in WCC 16.16.525 occur within a critical aquifer recharge area, the technical administrator shall have the authority to require a critical area assessment report and to regulate developments accordingly. Critical areas assessment reports for aquifer recharge areas shall meet the requirements WCC 16.16.255 and this section. Assessment reports shall include the following site- and proposal-related information unless the technical administrator determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

1. Available information regarding geologic and hydrogeologic characteristics of the site, including the surface location of all critical aquifer recharge areas located on-site or immediately adjacent to the site, and permeability of the unsaturated zone;
2. Groundwater depth, flow direction and gradient based on available information;
3. Currently available data on wells and springs within 1,300 feet of the project area;
4. The presence and approximate location of other critical areas, including surface waters, within 1,300 feet of the project area based on available data and maps;
5. Existing and available historic water quality data for the area to be affected by the proposed activity;
6. Proposed best management practices;
7. The effects of the proposed project on the groundwater quality and quantity, including:
   a. Potential effects on stream flow, wetlands and/or other resources, and on ecosystem processes;
   b. Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features; and
   c. Predictive evaluation of contaminant transport based on potential releases to groundwater;
8. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for emergency response provisions as well as regular inspection, repair, and replacement of structures and equipment that could fail.
B. If the applicant can demonstrate through a valid hydrogeological assessment that geologic and soil conditions underlying their property do not meet the criteria for low, moderate, or high susceptibility, the property shall not be considered a critical aquifer recharge area.
PROPOSED FINDINGS OF FACT

(AS ADOPTED BY THE PLANNING COMMISSION)
Proposed Findings of Fact (as adopted by the Planning Commission)

WHEREAS, the adopted Whatcom County Comprehensive Plan supports the protection of environmentally critical areas through the adoption of development regulations; and

WHEREAS, the State Growth Management Act (GMA) includes adopted goals and requirements to guide the development and adoption of comprehensive plans and development regulations including requirements to designate and protect environmentally critical areas; and

WHEREAS, the County has considered those adopted goals, policies, and requirements in development of the proposed Whatcom County Code Amendments related to critical areas, and, has considered other state requirements, law, rules, guidelines, and agency comments; and

WHEREAS, the County researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating critical areas, undertook a Best Available Science (BAS) review and public process in accordance with the requirements of the GMA, developed Whatcom County Code amendment drafts, prepared environmental documents in accordance with the requirements of the State Environmental Policy Act (SEPA), and held meetings and hearings throughout the code development process; and

WHEREAS, the County has been provided feedback on draft work products and guidance from members of the public, County staff, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, the Washington State Department of Commerce, the Lummi Nation, the Nooksack Indian Tribe, other stakeholders and experts, the Whatcom Planning Commission, and elected and appointed officials during the development of the recommended code amendments; and

WHEREAS, in developing this ordinance, the County has followed the GMA’s requirements, including to provide “early and continuous public involvement” through a variety of mechanisms described in the public record; and

WHEREAS, the County has followed the State guidelines for the BAS process required by RCW 36.70A.172 and WAC 365-195-900 through 925, employing a variety of mechanisms described in the public record; and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the State of Washington Department of Commerce and to other State agencies on February 2, 2016, for a 60-day review and comment period in accordance with State law; and

WHEREAS, an environmental review has been conducted in accordance with the requirements of State Environmental Policy Act (SEPA), and a SEPA threshold determination was issued, and published on March 17, 2016, in the Bellingham Herald; and

WHEREAS, the Planning Commission held a total of 7 public meetings to consider the proposed amendments, which included two public hearings, one on May 12 and one on June 9, 2016, with deliberations throughout these meetings; and

WHEREAS, the Planning Commission has provided a recommendation to the County Council related to the proposed amendments; and
WHEREAS, the County Council held X study sessions on the proposed amendments on X, 2016, and a public hearing on X, 2016 and continued public hearing on X, 2016; and

WHEREAS, the County Council has considered the recommendation of the County Planning Commission and the public comments received; and

WHEREAS, the County Council has reviewed and considered a variety of information sources including Best Available Science materials, informational documents in the public record, and public testimony submitted verbally and in writing to the Planning Commission and to the County Council; and

WHEREAS, the County Council desires the proposed amendments to be effective throughout the County including within shoreline jurisdiction, a subsequent Shoreline Master Program amendment should be prepared for submittal to the State Department of Ecology for approval; and

WHEREAS, based upon the foregoing process, the County Council has made the following Findings of Facts and Conclusions:

General Critical Areas Findings

1. The Growth Management Act requires critical areas to be designated and protected and to include and be informed by BAS when developing critical areas regulations. [RCW 36.70A]

2. Critical areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas.

3. The Whatcom County has within its borders a variety of environmentally sensitive areas that require protection of important functions and values.

4. Unregulated development may result in cumulative impacts to those functions and values of critical areas that contribute to and are necessary for a healthy natural environment and perceived quality of life.

5. The unregulated development of residences, businesses, shopping areas and other structures, and the clearing of land for accommodation of livestock and for such development all have the potential of adversely and significantly impacting the functions and values of critical areas.

6. The unregulated development of resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life.

7. It is more costly to remedy the loss of critical area functions and values than to conserve and protect them from loss or degradation.

8. In determining what critical areas are to be afforded a particular degree of protection, Whatcom County has evaluated a wide range of the best science available with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

9. The sources of this best available science that were evaluated and included in this ordinance are contained in Exhibit B: Whatcom County Critical Areas Ordinance 2016 Update – Best Available Science Review: Addendum to the 2005 BAS Report.
10. Protection standards for one critical area often provide protection for one or more other critical areas.

11. Critical areas may also be protected by other actions by the County, such as stormwater management standards, clearing and grading regulations, critical area restoration, and public education; and from other regulations, such as the Forest Practices Act, the Shoreline Management Act, the State Environmental Policy Act, and others.

12. The U.S. Constitution prohibits the taking of private property without just compensation.

13. The proposed regulations for critical areas are sufficient and appropriate to protect the functions and values of those areas consistent with the Whatcom Comprehensive Plan and Growth Management Act.

14. The amendments hereafter set forth address requirements related to development in and near environmentally critical areas including environmentally critical areas buffers, performance standards, mitigation requirements, exemptions and exceptions.

15. The amendments serve to further implement the Comprehensive Plan, and provide protection for critical areas that is consistent with BAS and with providing options and development flexibility, and are in the public interest.

16. The critical areas regulations continue to allow for reasonable use of property to ensure that such regulations do not infringe on constitutional private property rights.

17. The public record demonstrates that the amendments were developed through a review of the BAS literature available to the County for review and consideration.

18. The County has followed the GMA’s requirements for public involvement and for including and considering BAS in modification of the regulations for critical areas.

19. The public testimony provided to the County included both support for the proposed amendments and suggestions for modifications.

20. Based on the review of the testimony and public record, the amendments attached to this ordinance reflect the County’s requirement to protect critical areas and to consider the planning goals of the GMA, while recognizing public and private interests.

Wetlands

21. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced.

22. The scientific literature supports in the inclusion of protective buffers from wetlands to provide sediment control and nutrient inputs to wetlands, and to protect important wetland functions.

24. The scientific literature supports the inclusion of protective buffers of relatively intact native vegetation from wetlands to adequately protect wetland functions and values.


**Critical Aquifer Recharge Areas**

26. WAC 365-190-080 defines wellhead protection areas, sole source aquifers, special protection areas, and other areas that are susceptible or vulnerable to ground water contamination as areas with a critical recharging effect on aquifers used for potable water (also referred to as critical aquifer recharge areas).

27. Potable water is an essential life-sustaining element.

28. Much of the County’s drinking water in rural areas comes from groundwater supplies.

29. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean up.

30. Preventing groundwater contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.


**Frequently Flooded Areas**

32. Flood hazard areas are subject to periodic inundation that results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

33. These flood losses are caused by development in areas prone to inundation that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

34. Floodplain and stream connectivity are major elements in maintaining healthy riparian habitat and off-channel habitats for the survival of fish species and conveyance of floodwaters. If river, floodplains, and other systems are not viewed holistically as biological, geomorphological units, this can lead to serious degradation of habitat and increase flood hazards, which in turn can contribute to listing of various fish species as threatened or endangered and result in extraordinary public expenditures for flood protection and relief.

35. Frequently flooded areas, including the 100-year floodplain and the floodway, are commonly mapped on flood insurance maps, often known as Flood Insurance Rate Maps, or FIRMs.
Geologically Hazardous Areas

36. Geologically hazardous areas are subject to periodic geological events that result in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

37. Geologic hazards may be exacerbated by development and human activity in sensitive areas, and impacts resulting from geologic hazards may be reduced by limiting development and human activity within or adjacent to the geologic hazard.

38. Some geologic hazards may be intensified during periods of consistent or heavy rainfall that results in ground saturation or surface water drainage flows.

Fish and Wildlife Habitat Conservation Areas

39. Fish and wildlife habitat conservation areas perform many important physical and biological functions that benefit Whatcom County and its residents, including but not limited to: maintaining species diversity and genetic diversity; providing opportunities for food, cover, nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas.

40. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations these functions cannot be adequately replicated or replaced.

41. The scientific literature supports the inclusion of protective buffers from streams to provide sediment control, nutrient inputs to downstream waters, large woody debris, and other functions important to riparian areas.

42. The Washington Department of Fish and Wildlife (WDFW) has prepared management recommendations for the preservation of priority habitat and species, which are based on the best available science, and include, in some instances, recommended protective buffer distances.

43. Kelp and eelgrass beds have been identified and mapped by the Washington State Department of Natural Resources (DNR) in some areas. Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260. Locations for both may be found by referring to Critical Spawning Habitat for Herring, Surf Smelt, Sand Lance and Rock Sole in Puget Sound, Washington: A Guide for Local Governments and Interested Citizens, 2002, and the Puget Sound Environmental Atlas, Volumes 1 and 2.

44. Salmonid and anadromous fish may be more impacted by development and human activity during some times than others. Such times are referred to as "fish windows," which have been documented by WDFW.

45. DNR has classified watercourses according to two stream-typing systems based on channel width, fish use, and perennial or intermittent status.
46. WAC 365-190-080(5) grants [the jurisdiction] the flexibility to make decisions in the context of local circumstances, and specifically excuses local jurisdictions from being required to protect “all individuals of all species at all time.”
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

Initial Date Date Received in Council Office Agenda Date Assigned to:
Originator: Cliff Strong 12/27/2016 1/10/2017 COTW
Division Head: Mark Pearson Jan 03 2016
Dept. Head: Sam Ryan
Prosecutor: Royce Buckingham 12/29/16
Purchasing/Budget: 12/29/16
Executive: Jack Louws 1/3/17

TITLE OF DOCUMENT:
2016 Critical Areas Ordinance Update - Article 5.5 - Lummi Island

ATTACHMENTS: (all current and past materials provided to the Council can be found at http://www.whatcomcounty.us/2417/County-Council-Review)
A. Staff memo to Council dated 12/20/2016

SEPA review required? (X) Yes ( ) NO Should Clerk schedule a hearing? ( ) Yes (X) NO
SEPA review completed? (X) Yes ( ) NO Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
This is another workshop (in a series of many) on the proposed ordinance to amend Whatcom County Critical Areas Ordinance (CAO) (WCC 16.16) pursuant to RCW 36.70A.130(1). The Growth Management Act (RCW 360.70A) defines critical areas as wetlands, frequently flooded areas, fish and wildlife habitat conservation areas (including streams), geologically hazardous areas, and critical aquifer recharge areas. The purpose of this periodic update is to ensure that the CAO meets the GMA requirements, including consistency with the Whatcom County Comprehensive Plan, best available science, and state agency guidance updates. Numerous amendments are being proposed, though most of them pertain to correcting grammar, updating references to other documents or laws, clarifying and updating administrative procedures, etc. The County is also required to integrate the CAO provisions with its Shoreline Master Program (SMP). Whatcom County has done so by adopting the CAO by reference within the SMP (WCC 23.10.060(A)). This reference is also proposed to be amended.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
Memorandum

TO: The Honorable County Council
    Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner

THROUGH: Mark Personius, Asst. Director

DATE: December 20, 2016

SUBJECT: 2016 Critical Areas Ordinance Update
           County Council Review, Workshop 2, 10 January 2017

On January 10th the Council will continue its review of the 2016 Critical Areas Ordinance Update. Topics to be covered include:

- Anticipated Schedule
- A note about changes proposed post-Planning Commission recommendation
- Overview of Certain Proposed Amendments to:
  - Global Changes
  - Article 1 – Purpose
  - Article 2 – Administrative Provisions
  - Article 5 – Critical Aquifer Recharge Areas
  - Article 5.5 – Lummi Island
  - Article 9 – Definitions

**Anticipated Schedule**

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic(s)</th>
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<tbody>
<tr>
<td>9/20/16</td>
<td>• Overview</td>
</tr>
<tr>
<td>10/25/16</td>
<td>• Public Hearing</td>
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<tr>
<td>1/10</td>
<td>• Article 1 – Purpose</td>
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<td>• Article 2 – Administrative Provisions</td>
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<td>• Article 5 – Critical Aquifer Recharge Areas</td>
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<td>• Article 5.5 – Lummi Island</td>
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<td>• Article 9 – Definitions</td>
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<tr>
<td>1/24</td>
<td>• Article 4 – Frequently Flooded Areas</td>
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<td>• Article 7 – Habitat Conservation Areas</td>
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<tr>
<td>2/7</td>
<td>• Article 6 – Wetlands</td>
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<td></td>
<td>• Article 8 – Conservation Program on Agriculture Lands</td>
</tr>
<tr>
<td>2/21</td>
<td>• Article 3 – Geologically Hazardous Areas</td>
</tr>
<tr>
<td>3/7</td>
<td>• Review of Any Outstanding Issues</td>
</tr>
<tr>
<td>3/21</td>
<td>• Introduction of Ordinance</td>
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<tr>
<td>4/11</td>
<td>• Public Hearing</td>
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<td></td>
<td>• Adoption</td>
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</table>
Changes Proposed Post-Planning Commission Recommendation

There have been a few issues brought to staff’s attention since the Planning Commission made their recommendation that we would like the Council to consider. Some are still being worked on so can’t all be listed now, but staff will point out these proposed amendments as we progress through the chapters.

Remember the Supporting Materials

Please remember that there is supporting documentation on the CAO Update webpage for your reference and consideration. These include:

- 2005 Best Available Science Report
- 2016 Best Available Science Supplemental Report
- Best Available Science studies
- Written comments provided prior to the Planning Commission action from the Citizens Advisory Committee, the Technical Advisory Committee, staff, and the public (public comments received since are found on the Council’s website)

All these are posted on the CAO Update website:
http://www.whatcomcounty.us/2417/County-Council-Review (or to navigate to it:
Home > Your Government > Departments > Planning & Development Services >
Planning > Long Range Planning > Projects & Programs > Critical Areas Update >
County Council Review)

Proposed Amendments

Global Changes
Remember from the overview workshop that in general, many of the amendments pertain to:

- Correcting grammar
- Updating references to other documents or laws
- Clarifying procedures
- Moved a few subsections to sections they seemed to fit into better.
- Separated a few larger sections into distinct sections
- Many of the “mays” are proposed to be changed to “shall”s”

Article 1 – Purpose

- No proposed changes

Article 2 – Administrative Provisions

<table>
<thead>
<tr>
<th>WCC Section</th>
<th>Proposed Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Throughout</td>
<td>Many of the “mays” are proposed to be changed to “shall,” as it is believed that, in instances where the language spoke to the Technical Administrator, less discretion should be afforded due to a perceived history of previous staff being too lenient.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
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<tr>
<td>16.16.230</td>
<td>Exempt activities. Moved tree felling activities from Exempt Activities to 16.16.235(B)(4) Activities allowed with notification, as a tree risk assessment is a submittal requirement to determine if a tree meets the definition of Hazard Tree.</td>
</tr>
<tr>
<td>16.16.230(G)</td>
<td>Exempt activities. Moved restoration activities to Exempt Activities (from Activities allowed with notification), as these types of activities are exempt per RCW 77.55.181(4)).</td>
</tr>
<tr>
<td>16.16.235(B)(8)</td>
<td>Activities allowed with notification. Deleted the use of pesticides in buffers as an &quot;Activity allowed with notification&quot; since insects are important to the food chain. Also clarified that herbicides only be allowed for eradicating invasive species, not native plants.</td>
</tr>
<tr>
<td>16.16.240(A)(2) &amp; (C)(2)</td>
<td>Technical administrator and hearing examiner authority. Proposed amendment would give the Technical Administrator decision-making authority over all Reasonable Use Permits for single-family residential uses, including those in geohazard area, so as to minimize cost to the typical homeowner.</td>
</tr>
<tr>
<td>16.16.250</td>
<td>Submittal requirements and critical areas review process. Amended section to reflect process developed under Kaizen review procedures and now used.</td>
</tr>
<tr>
<td>16.16.260</td>
<td>General mitigation requirements. Though mitigation sequencing has always been a requirement, and that alternatives and cumulative impacts be analyzed, the code wasn’t clear that these should be explicitly addressed. Amendments to this section make that more clear.</td>
</tr>
<tr>
<td>16.16.260(E)</td>
<td>General mitigation requirements. Added a paragraph explicitly stating that mitigation areas are to be permanently protected, though that if future development is proposed on the mitigation site, any restrictions can be removed as long as the final plan meets the requirements of this chapter for all cumulative impacts.</td>
</tr>
<tr>
<td>16.16.261, 262, and 263</td>
<td>Three different alternative mitigation strategies (Alternative or Innovative Mitigation Plans, Watershed-Based Management Plans, and Mitigation Banking) were contained in one section. These have been broken into three sections now, and a new section 263(D) (Use of Bank Credits) added based on DOE guidance.</td>
</tr>
<tr>
<td>16.16.264</td>
<td>In-Lieu Fees. Added a new section to allow an in-lieu fee program be set up. This language, which comes from DOE guidance documents, allows for such a program to be established.</td>
</tr>
<tr>
<td>16.16.265(B)</td>
<td>Critical areas protective measures. Added language that would allow the Technical Administrator to waive the notice on title requirement for certain, low risk geohazards.</td>
</tr>
<tr>
<td>16.16.265(E)</td>
<td>Critical areas protective measures. Added a requirement that applicants indemnify the County when a permit is granted for development or use within a geologic, flood, or other hazard area.</td>
</tr>
<tr>
<td>16.16.265(F)</td>
<td>Critical areas protective measures. Added a paragraph notifying applicants that temporary protection measures are required during construction.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
</tr>
<tr>
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<tr>
<td>16.16.270 and 16.16.273</td>
<td>Reasonable use and Variances. In the existing code, the rules for reasonable use permits and variances are contained in the same section. However, these are very different mechanisms, and it was thought they each deserve their own section so were split. Most changes in these sections have to do with separating them out.</td>
</tr>
<tr>
<td>16.16.270(B)(2)(g &amp; h)</td>
<td>Reasonable use. Split g &amp; h into two sections. Amended (g) to state that any proposed activities won’t cause damage to other properties, and (h) to state that the activities won’t increase risk, as opposed to guarantee no threat, which is an impossibility (earthquakes and other geohazards may still happen; no one can guarantee they won’t).</td>
</tr>
<tr>
<td>16.16.270(B)(2)(k)</td>
<td>Reasonable use. PDS Administrative Policy PL5-85-001A (CAO Reasonable Use/SMP Variance (has been incorporated into the code. This policy sets the Maximum Impact Area of 2,500 sf for CAO reasonable uses and Shoreline Management Program variances and has been in place since 4/17/08.</td>
</tr>
<tr>
<td>16.16.280</td>
<td>Appeals. Amended the language to require that any issues brought on appeal to the courts were raised and heard by the County’s appeal body first. This is a standard legal practice for appeals these days.</td>
</tr>
<tr>
<td>16.16.285(I)</td>
<td>Penalties and enforcement. Added an “After the Fact Permit Fee.” Charging “after the fact” fees is consistent with how PDS handles “atf” building permits. It should be cheaper to ask for permission than forgiveness.</td>
</tr>
<tr>
<td>16.16.290</td>
<td>Conservation program on agricultural lands. The CPAL provisions (290 and Appendix A) have been combined and moved to a new Article 8.</td>
</tr>
</tbody>
</table>

Article 5 – Critical Aquifer Recharge Areas
- No proposed changes other than a cross-reference

Article 5.5 – Lummi Island
- No proposed changes other than grammatical

Article 9 – Definitions
Adding definitions of:
- “Bankfull width”
- “Cumulative Impact”
- “Designated Species, Federal” “Designated Species, State”
- “Habitats of Local Importance” (from WAC 365-190-030)
- “Maximum Credible Event”
- “Practicable Alternative”
- "Species of Local Importance" (from WAC 365-190-030)
- “Stormwater Manual” (referred to throughout as a source for Best Management Practices)
- “Waters of the State” (from RCW 90.56.010(26))
Amending definitions of:

- “Critical Facilities” to keep maximum occupancy of uses under 500 and to exclude cell towers from the definition (needed if an emergency occurs)
- “Drainage Ditch” to try to clear up the public confusion between ditches and streams
- “Fish and wildlife habitat conservation areas” as the state definition has been amended (amended since the P/C recommendation)
- “Geologically Hazardous Areas” to make consistent with the GMA definition in RCW 36.70A.030(9)
- “High Intensity Land Use” to include Class IV Special forest practices (conversion of forest to development)
- “Hydric Soil” by changing the reference to that commonly used now
- “Moderate Intensity Land Use” to exclude nurseries and logging roads, both of which the TAC believe should be in the high intensity land use category
- “Planning Advisor,” rather than “Qualified Planning Advisor” (“qualified” is not used in the text so it was hard to find in the definitions.)
- “Qualified Professional” to increase the years of professional experience needed for wetland biologist from 3 to 5 years, and to exclude those consultants who’ve had their certification revoked
- “Reestablishment,” “Rehabilitation,” and “Restoration” to make consistent with USACE definitions
ARTICLE 5.5. AREAS WITHIN THE RURAL RESIDENTIAL DISTRICT OF LUMMI ISLAND

16.16.540 Areas within the rural residential district of Lummi island.

16.16.541 Exempt wells.
Wells drilled as a replacement of an existing well are exempt from this article as long as the withdrawal rate is not increased by more than 20% percent of the existing well. If baseline withdrawal rate information is not available, this must be established by a licensed well driller prior to well replacement.

16.16.542 Minimum well spacing for all new wells.
Wells shall have a minimum of 200 feet distance between a new well and an existing operating well.

16.16.543 Requirements for public water system wells, non-Group B two party wells and nondomestic wells.
In addition to the minimum well spacing, the following measures are required for public water system wells, non-Group B two party wells, and nondomestic wells. (Includes “public water system” wells and non-Group B two party wells as defined under Whatcom County drinking water regulations and nondomestic use wells pumping greater than 250 gpd. “Public water system” is defined under Chapter 24.11 WCC as any water system providing piped water for consumption, excluding a system serving only one single-family residence and any system with four or fewer connections serving only residences on the same farm. A “non-Group B two party well” is defined in Chapter 24.11 WCC as a water system utilizing one well to serve two single-family residences for which the director of health has waived all public water system requirements.)

A. Chloride Monitoring and Testing.
1. Monitoring. Well owners shall collect and have water samples analyzed for chloride concentration twice annually, in April and August, and submitted to the Whatcom County health department.
2. Chloride Determinations for New Wells or Increased Pumping of Existing Wells. Applications for new wells, applications to convert an existing private well into a two party well, any application to expand the number of connections of a public water system, and nondomestic use wells proposing greater than 20% percent increase in groundwater withdrawals in an existing well require a minimum 24-hour-duration pumping test at 100% percent of the proposed average daily demand, at the end of which a water sample will be collected for analysis of chloride concentration. Subdivisions using individual wells are required to test wells simultaneously, or alternatively have a licensed hydrogeologist evaluate well interference and water quality changes. Subdivision wells shall remain accessible for future testing in the event of subdivision expansion.
3. Restrictions on New Wells or Increased Pumping of Existing Wells. New wells cannot be permitted, existing private wells cannot be converted to two party wells, existing public water systems cannot expand beyond their existing number of approved connections, and nondomestic wells cannot increase pumping rates greater than 20% percent if chloride concentrations measured at the end of the test specified in subsection (A)(2) of this section are greater than 100 mg/L. For systems expanding 20% percent or less within one year, the highest chloride determination within the past year in subsection (A)(1) of this section cannot be greater than 100 mg/L.
4. Limit on Water Use by Existing Wells. Any increase (zero to 20% percent) in water use will not be permitted if either semi-annual analysis in the previous 12-month period indicates greater
than 100 mg/L chloride concentration. If the semi-annual chloride determinations have not been submitted as required, then the pump testing requirement of subsection (A)(2) of this section shall apply.

5. Prior to 10 days before the pumping test, all property owners within 1,000 feet of the well location shall be notified by first class mail informing them of the test and providing contact information of the person responsible for the testing.

B. Arsenic Monitoring and Testing in the Unconsolidated Aquifer.

1. The following monitoring and testing is required unless the well is determined not to be located in the unconsolidated sandstone aquifer. A Washington state licensed hydrogeologist must make the determination in a submitted report.

2. Arsenic Determinations for New Wells or Increased Pumping of Existing Wells. Applications for new wells, applications to convert an existing private well into a two party well, any application to expand the number of connections of a public water system, and nondomestic use wells proposing a greater than 20% percent increase in groundwater withdrawals in an existing well require a minimum 24-hour-duration pumping test at 100% percent of the proposed average daily demand, at the end of which a water sample will be collected for analysis of arsenic concentration.

3. Restrictions on New Wells or Increased Pumping of Existing Wells. New wells cannot be permitted, existing private wells cannot be converted to two party wells, existing public water systems cannot expand beyond their existing number of approved connections, and nondomestic wells cannot increase pumping rates greater than 20% percent if arsenic concentrations measured at the end of the test specified in subsection (B)(2) of this section are greater than 10 μg/L.

4. Limit on Water Use by Existing Wells. Any increase (zero to 20% percent) in water use will not be permitted if the most recent arsenic determination indicated greater than 10 μg/L arsenic concentration. If no arsenic concentration has been determined in the past three years, the pumping test requirement in subsection (B)(2) of this section shall apply.

5. Prior to 10 days before the pumping test, all property owners within 1,000 feet of the well location shall be notified by first class mail informing them of the test and providing contact information of the person responsible for the testing.

16.16.544 Administrative waiver.

Administrative waivers may be granted to any section of these requirements by petition to the administering agency. Waiver request must demonstrate that the project is consistent with the intent of these requirements; no health hazard would result from this action, and must be stamped by a licensed Washington state hydrogeologist.
PROPOSED FINDINGS OF FACT

(AS ADOPTED BY THE PLANNING COMMISSION)
Proposed Findings of Fact (as adopted by the Planning Commission)

WHEREAS, the adopted Whatcom County Comprehensive Plan supports the protection of environmentally critical areas through the adoption of development regulations; and

WHEREAS, the State Growth Management Act (GMA) includes adopted goals and requirements to guide the development and adoption of comprehensive plans and development regulations including requirements to designate and protect environmentally critical areas; and

WHEREAS, the County has considered those adopted goals, policies, and requirements in development of the proposed Whatcom County Code Amendments related to critical areas, and, has considered other state requirements, law, rules, guidelines, and agency comments; and

WHEREAS, the County researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating critical areas, undertook a Best Available Science (BAS) review and public process in accordance with the requirements of the GMA, developed Whatcom County Code amendment drafts, prepared environmental documents in accordance with the requirements of the State Environmental Policy Act (SEPA), and held meetings and hearings throughout the code development process; and

WHEREAS, the County has been provided feedback on draft work products and guidance from members of the public, County staff, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, the Washington State Department of Commerce, the Lummi Nation, the Nooksack Indian Tribe, other stakeholders and experts, the Whatcom Planning Commission, and elected and appointed officials during the development of the recommended code amendments; and

WHEREAS, in developing this ordinance, the County has followed the GMA's requirements, including to provide "early and continuous public involvement" through a variety of mechanisms described in the public record; and

WHEREAS, the County has followed the State guidelines for the BAS process required by RCW 36.70A.172 and WAC 365-195-900 through 925, employing a variety of mechanisms described in the public record; and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the State of Washington Department of Commerce and to other State agencies on February 2, 2016, for a 60-day review and comment period in accordance with State law; and

WHEREAS, an environmental review has been conducted in accordance with the requirements of State Environmental Policy Act (SEPA), and a SEPA threshold determination was issued, and published on March 17, 2016, in the Bellingham Herald; and

WHEREAS, the Planning Commission held a total of 7 public meetings to consider the proposed amendments, which included two public hearings, one on May 12 and one on June 9, 2016, with deliberations throughout these meetings; and

WHEREAS, the Planning Commission has provided a recommendation to the County Council related to the proposed amendments; and
WHEREAS, the County Council held X study sessions on the proposed amendments on X, 2016, and a public hearing on X, 2016 and continued public hearing on X, 2016; and

WHEREAS, the County Council has considered the recommendation of the County Planning Commission and the public comments received; and

WHEREAS, the County Council has reviewed and considered a variety of information sources including Best Available Science materials, informational documents in the public record, and public testimony submitted verbally and in writing to the Planning Commission and to the County Council; and

WHEREAS, the County Council desires the proposed amendments to be effective throughout the County including within shoreline jurisdiction, a subsequent Shoreline Master Program amendment should be prepared for submittal to the State Department of Ecology for approval; and

WHEREAS, based upon the foregoing process, the County Council has made the following

Findings of Facts and Conclusions:

General Critical Areas Findings

1. The Growth Management Act requires critical areas to be designated and protected and to include and be informed by BAS when developing critical areas regulations. [RCW 36.70A]

2. Critical areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas.

3. The Whatcom County has within its borders a variety of environmentally sensitive areas that require protection of important functions and values.

4. Unregulated development may result in cumulative impacts to those functions and values of critical areas that contribute to and are necessary for a healthy natural environment and perceived quality of life.

5. The unregulated development of residences, businesses, shopping areas and other structures, and the clearing of land for accommodation of livestock and for such development all have the potential of adversely and significantly impacting the functions and values of critical areas.

6. The unregulated development of resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life.

7. It is more costly to remedy the loss of critical area functions and values than to conserve and protect them from loss or degradation.

8. In determining what critical areas are to be afforded a particular degree of protection, Whatcom County has evaluated a wide range of the best science available with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

9. The sources of this best available science that were evaluated and included in this ordinance are contained in Exhibit B: Whatcom County Critical Areas Ordinance 2016 Update – Best Available Science Review: Addendum to the 2005 BAS Report.
10. Protection standards for one critical area often provide protection for one or more other critical areas.

11. Critical areas may also be protected by other actions by the County, such as stormwater management standards, clearing and grading regulations, critical area restoration, and public education; and from other regulations, such as the Forest Practices Act, the Shoreline Management Act, the State Environmental Policy Act, and others.

12. The U.S. Constitution prohibits the taking of private property without just compensation.

13. The proposed regulations for critical areas are sufficient and appropriate to protect the functions and values of those areas consistent with the Whatcom Comprehensive Plan and Growth Management Act.

14. The amendments hereafter set forth address requirements related to development in and near environmentally critical areas including environmentally critical areas buffers, performance standards, mitigation requirements, exemptions and exceptions.

15. The amendments serve to further implement the Comprehensive Plan, and provide protection for critical areas that is consistent with BAS and with providing options and development flexibility, and are in the public interest.

16. The critical areas regulations continue to allow for reasonable use of property to ensure that such regulations do not infringe upon constitutional private property rights.

17. The public record demonstrates that the amendments were developed through a review of the BAS literature available to the County for review and consideration.

18. The County has followed the GMA’s requirements for public involvement and for including and considering BAS in modification of the regulations for critical areas.

19. The public testimony provided to the County included both support for the proposed amendments and suggestions for modifications.

20. Based on the review of the testimony and public record, the amendments attached to this ordinance reflect the County’s requirement to protect critical areas and to consider the planning goals of the GMA, while recognizing public and private interests.

Wetlands

21. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced.

22. The scientific literature supports the inclusion of protective buffers from wetlands to provide sediment control and nutrient inputs to wetlands, and to protect important wetland functions.

24. The scientific literature supports the inclusion of protective buffers of relatively intact native vegetation from wetlands to adequately protect wetland functions and values.


**Critical Aquifer Recharge Areas**

26. WAC 365-190-080 defines wellhead protection areas, sole source aquifers, special protection areas, and other areas that are susceptible or vulnerable to ground water contamination as areas with a critical recharging effect on aquifers used for potable water (also referred to as critical aquifer recharge areas).

27. Potable water is an essential life-sustaining element.

28. Much of the County’s drinking water in rural areas comes from groundwater supplies.

29. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean up.

30. Preventing groundwater contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.


**Frequently Flooded Areas**

32. Flood hazard areas are subject to periodic inundation that results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

33. These flood losses are caused by development in areas prone to inundation that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

34. Floodplain and stream connectivity are major elements in maintaining healthy riparian habitat and off-channel habitats for the survival of fish species and conveyance of floodwaters. If river, floodplains, and other systems are not viewed holistically as biological, geomorphological units, this can lead to serious degradation of habitat and increase flood hazards, which in turn can contribute to listing of various fish species as threatened or endangered and result in extraordinary public expenditures for flood protection and relief.

35. Frequently flooded areas, including the 100-year floodplain and the floodway, are commonly mapped on flood insurance maps, often known as Flood Insurance Rate Maps, or FIRMs.
Geologically Hazardous Areas

36. Geologically hazardous areas are subject to periodic geological events that result in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

37. Geologic hazards may be exacerbated by development and human activity in sensitive areas, and impacts resulting from geologic hazards may be reduced by limiting development and human activity within or adjacent to the geologic hazard.

38. Some geologic hazards may be intensified during periods of consistent or heavy rainfall that results in ground saturation or surface water drainage flows.

Fish and Wildlife Habitat Conservation Areas

39. Fish and wildlife habitat conservation areas perform many important physical and biological functions that benefit Whatcom County and its residents, including but not limited to: maintaining species diversity and genetic diversity; providing opportunities for food, cover, nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas.

40. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations these functions cannot be adequately replicated or replaced.

41. The scientific literature supports the inclusion of protective buffers from streams to provide sediment control, nutrient inputs to downstream waters, large woody debris, and other functions important to riparian areas.

42. The Washington Department of Fish and Wildlife (WDFW) has prepared management recommendations for the preservation of priority habitat and species, which are based on the best available science, and include, in some instances, recommended protective buffer distances.

43. Kelp and eelgrass beds have been identified and mapped by the Washington State Department of Natural Resources (DNR) in some areas. Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260. Locations for both may be found by referring to Critical Spawning Habitat for Herring, Surf Smelt, Sand Lance and Rock Sole in Puget Sound, Washington: A Guide for Local Governments and Interested Citizens, 2002, and the Puget Sound Environmental Atlas, Volumes 1 and 2.

44. Salmonid and anadromous fish may be more impacted by development and human activity during some times than others. Such times are referred to as "fish windows," which have been documented by WDFW.

45. DNR has classified watercourses according to two stream-typing systems based on channel width, fish use, and perennial or intermittent status.
46. WAC 365-190-080(5) grants [the jurisdiction] the flexibility to make decisions in the context of local circumstances, and specifically excuses local jurisdictions from being required to protect "all individuals of all species at all time."
TITLES OF DOCUMENT:
2016 Critical Areas Ordinance Update - Article 9 - Definitions

ATTACHMENTS: (all current and past materials provided to the Council can be found at
http://www.whatcomcounty.us/2417/County-Council-Review)
A. Staff memo to Council dated 12/20/2016

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public
hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be
clear in explaining the intent of the action.)
This is another workshop (in a series of many) on the proposed ordinance to amend Whatcom County Critical
Areas Ordinance (CAO) (WCC 16.16) pursuant to RCW 36.70A.130(1). The Growth Management Act (RCW
360.70A) defines critical areas as wetlands, frequently flooded areas, fish and wildlife habitat conservation areas
(including streams), geologically hazardous areas, and critical aquifer recharge areas. The purpose of this
periodic update is to ensure that the CAO meets the GMA requirements, including consistency with the Whatcom
County Comprehensive Plan, best available science, and state agency guidance updates. Numerous amendments
are being proposed, though most of them pertain to correcting grammar, updating references to other documents
or laws, clarifying and updating administrative procedures, etc. The County is also required to integrate the CAO
provisions with its Shoreline Master Program (SMP). Whatcom County has done so by adopting the CAO by
reference within the SMP (WCC 23.10.060(A)). This reference is also proposed to be amended.

COMMITTEE ACTION:

COUNCIL ACTION:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on
the County’s website at: www.co.whatcom.wa.us/council.
TO: The Honorable County Council
   Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner

THROUGH: Mark Personius, Asst. Director

DATE: December 20, 2016

SUBJECT: 2016 Critical Areas Ordinance Update
County Council Review, Workshop 2, 10 January 2017

On January 10th the Council will continue its review of the 2016 Critical Areas Ordinance Update. Topics to be covered include:

- Anticipated Schedule
- A note about changes proposed post-Planning Commission recommendation
- Overview of Certain Proposed Amendments to:
  - Global Changes
  - Article 1 – Purpose
  - Article 2 – Administrative Provisions
  - Article 5 – Critical Aquifer Recharge Areas
  - Article 5.5 – Lummi Island
  - Article 9 – Definitions

**Anticipated Schedule**

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic(s)</th>
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<tbody>
<tr>
<td>9/20/16</td>
<td>Overview</td>
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<tr>
<td>10/25/16</td>
<td>Public Hearing</td>
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<tr>
<td>1/10</td>
<td>Article 1 – Purpose</td>
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<td>Article 2 – Administrative Provisions</td>
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<td>Article 5 – Critical Aquifer Recharge Areas</td>
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<td>Article 5.5 – Lummi Island</td>
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<td>Article 9 – Definitions</td>
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<tr>
<td>1/24</td>
<td>Article 4 – Frequently Flooded Areas</td>
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<td>Article 7 – Habitat Conservation Areas</td>
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<tr>
<td>2/7</td>
<td>Article 6 – Wetlands</td>
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<td></td>
<td>Article 8 – Conservation Program on Agriculture Lands</td>
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<tr>
<td>2/21</td>
<td>Article 3 – Geologically Hazardous Areas</td>
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<tr>
<td>3/7</td>
<td>Review of Any Outstanding Issues</td>
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<tr>
<td>3/21</td>
<td>Introduction of Ordinance</td>
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<tr>
<td>4/11</td>
<td>Public Hearing</td>
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<td></td>
<td>Adoption</td>
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</table>
Changes Proposed Post-Planning Commission Recommendation
There have been a few issues brought to staff’s attention since the Planning Commission made their recommendation that we would like the Council to consider. Some are still being worked on so can’t all be listed now, but staff will point out these proposed amendments as we progress through the chapters.

Remember the Supporting Materials
Please remember that there is supporting documentation on the CAO Update webpage for your reference and consideration. These include:

- 2005 Best Available Science Report
- 2016 Best Available Science Supplemental Report
- Best Available Science studies
- Written comments provided prior to the Planning Commission action from the Citizens Advisory Committee, the Technical Advisory Committee, staff, and the public (public comments received since are found on the Council’s website)

All these are posted on the CAO Update website:
http://www.whatcomcounty.us/2417/County-Council-Review (or to navigate to it:

Proposed Amendments
Global Changes
Remember from the overview workshop that in general, many of the amendments pertain to:

- Correcting grammar
- Updating references to other documents or laws
- Clarifying procedures
- Moved a few subsections to sections they seemed to fit into better.
- Separated a few larger sections into distinct sections
- Many of the “mays” are proposed to be changed to “shall”s”

Article 1 – Purpose
- No proposed changes

Article 2 – Administrative Provisions

<table>
<thead>
<tr>
<th>WCC Section</th>
<th>Proposed Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Throughout</td>
<td>Many of the &quot;mays&quot; are proposed to be changed to “shall,” as it is believed that, in instances where the language spoke to the Technical Administrator, less discretion should be afforded due to a perceived history of previous staff being too lenient.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
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<tr>
<td>16.16.230</td>
<td>Exempt activities. Moved tree felling activities from Exempt Activities to 16.16.235(B)(4) Activities allowed with notification, as a tree risk assessment is a submittal requirement to determine if a tree meets the definition of Hazard Tree.</td>
</tr>
<tr>
<td>16.16.230(G)</td>
<td>Exempt activities. Moved restoration activities to Exempt Activities (from Activities allowed with notification), as these types of activities are exempt per RCW 77.55.181(4)).</td>
</tr>
<tr>
<td>16.16.235(B)(8)</td>
<td>Activities allowed with notification. Deleted the use of pesticides in buffers as an &quot;Activity allowed with notification&quot; since insects are important to the food chain. Also clarified that herbicides only be allowed for eradicating invasive species, not native plants.</td>
</tr>
<tr>
<td>16.16.240(A)(2) &amp; (C)(2)</td>
<td>Technical administrator and hearing examiner authority. Proposed amendment would give the Technical Administrator decision-making authority over all Reasonable Use Permits for single-family residential uses, including those in geohazard area, so as to minimize cost to the typical homeowner.</td>
</tr>
<tr>
<td>16.16.250</td>
<td>Submittal requirements and critical areas review process. Amended section to reflect process developed under Kaizan review procedures and now used.</td>
</tr>
<tr>
<td>16.16.260</td>
<td>General mitigation requirements. Though mitigation sequencing has always been a requirement, and that alternatives and cumulative impacts be analyzed, the code wasn’t clear that these should be explicitly addressed. Amendments to this section make that more clear.</td>
</tr>
<tr>
<td>16.16.260(E)</td>
<td>General mitigation requirements. Added a paragraph explicitly stating that mitigation areas are to be permanently protected, though that if future development is proposed on the mitigation site, any restrictions can be removed as long as the final plan meets the requirements of this chapter for all cumulative impacts.</td>
</tr>
<tr>
<td>16.16.261, 262, and 263</td>
<td>Three different alternative mitigation strategies (Alternative or Innovative Mitigation Plans, Watershed-Based Management Plans, and Mitigation Banking) were contained in one section. These have been broken into three sections now, and a new section 263(D) (Use of Bank Credits) added based on DOE guidance.</td>
</tr>
<tr>
<td>16.16.264</td>
<td>In-Lieu Fees. Added a new section to allow an in-lieu fee program be set up. This language, which comes from DOE guidance documents, allows for such a program to be established.</td>
</tr>
<tr>
<td>16.16.265(B)</td>
<td>Critical areas protective measures. Added language that would allow the Technical Administrator to waive the notice on title requirement for certain, low risk geohazards.</td>
</tr>
<tr>
<td>16.16.265(E)</td>
<td>Critical areas protective measures. Added a requirement that applicants indemnify the County when a permit is granted for development or use within a geologic, flood, or other hazard area.</td>
</tr>
<tr>
<td>16.16.265(F)</td>
<td>Critical areas protective measures. Added a paragraph notifying applicants that temporary protection measures are required during construction.</td>
</tr>
<tr>
<td>WCC Section</td>
<td>Proposed Amendment</td>
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<tr>
<td>16.16.270 and 16.16.273</td>
<td>Reasonable use and Variances. In the existing code, the rules for reasonable use permits and variances are contained in the same section. However, these are very different mechanisms, and it was thought they each deserve their own section so were split. Most changes in these sections have to do with separating them out.</td>
</tr>
<tr>
<td>16.16.270(B)(2)(g &amp; h)</td>
<td>Reasonable use. Split g &amp; h into two sections. Amended (g) to state that any proposed activities won’t cause damage to other properties, and (h) to state that the activities won’t increase risk, as opposed to guarantee no threat, which is an impossibility (earthquakes and other geohazards may still happen; no one can guarantee they won’t).</td>
</tr>
<tr>
<td>16.16.270(B)(2)(k)</td>
<td>Reasonable use. PDS Administrative Policy PL5-85-001A (CAO Reasonable Use/SMP Variance) has been incorporated into the code. This policy sets the Maximum Impact Area of 2,500 sf for CAO reasonable uses and Shoreline Management Program variances and has been in place since 4/17/08.</td>
</tr>
<tr>
<td>16.16.280</td>
<td>Appeals. Amended the language to require that any issues brought on appeal to the courts were raised and heard by the County’s appeal body first. This is a standard legal practice for appeals these days.</td>
</tr>
<tr>
<td>16.16.285(I)</td>
<td>Penalties and enforcement. Added an “After the Fact Permit Fee.” Charging “after the fact” fees is consistent with how PDS handles “atif” building permits. It should be cheaper to ask for permission than forgiveness.</td>
</tr>
<tr>
<td>16.16.290</td>
<td>Conservation program on agricultural lands. The CPAL provisions (290 and Appendix A) have been combined and moved to a new Article 8.</td>
</tr>
</tbody>
</table>

**Article 5 – Critical Aquifer Recharge Areas**
- No proposed changes other than a cross-reference

**Article 5.5 – Lummi Island**
- No proposed changes other than grammatical

**Article 9 – Definitions**
Adding definitions of:
- “Bankfull width”
- “Cumulative Impact”
- “Designated Species, Federal” “Designated Species, State”
- “Habitats of Local Importance” (from WAC 365-190-030)
- “Maximum Credible Event”
- “Practicable Alternative”
- "Species of Local Importance" (from WAC 365-190-030)
- "Stormwater Manual" (referred to throughout as a source for Best Management Practices)
- “Waters of the State” (from RCW 90.56.010(26))
Amending definitions of:

- “Critical Facilities” to keep maximum occupancy of uses under 500 and to exclude cell towers from the definition (needed if an emergency occurs)
- “Drainage Ditch” to try to clear up the public confusion between ditches and streams
- “Fish and wildlife habitat conservation areas” as the state definition has been amended (amended since the P/C recommendation)
- “Geologically Hazardous Areas” to make consistent with the GMA definition in RCW 36.70A.030(9)
- “High Intensity Land Use” to include Class IV Special forest practices (conversion of forest to development)
- “Hydric Soil” by changing the reference to that commonly used now
- “Moderate Intensity Land Use” to exclude nurseries and logging roads, both of which the TAC believe should be in the high intensity land use category
- “Planning Advisor,” rather than “Qualified Planning Advisor” (“qualified” is not used in the text so it was hard to find in the definitions.)
- “Qualified Professional” to increase the years of professional experience needed for wetland biologist from 3 to 5 years, and to exclude those consultants who’ve had their certification revoked
- “Reestablishment,” “Rehabilitation,” and “Restoration” to make consistent with USACE definitions
ARTICLE 89. DEFINITIONS

16.16.800-900 Definitions.

“Accessory structure” means a structure that is incidental and subordinate in intensity to a primary use. Barns, garages, storage sheds, and similar appurtenances are examples.

“Active alluvial fan” means a portion or all of a fan that has experienced channel changes, erosion, or deposition. Active fans can be identified based on determination by field geomorphic and topographic evidence, and by historical accounts.

“Actively farmed” means land that has a documented history of ongoing agricultural use and that is currently used primarily for the production of crops and/or raising or keeping livestock.

“Activity” means human activity associated with the use of land or resources.

“Adaptive management” means using scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. Management policy may be adapted based on a periodic review of new information.

“Adequate water supply” means a water supply that meets requirements specified in the Whatcom County drinking water ordinance (Chapter 24.11 WCC).

“Agricultural activities” means those activities directly pertaining to the production of crops or livestock including, but not limited to: cultivation; harvest; grazing; animal waste storage and disposal; fertilization; the operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, and canals; and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Neither the construction of new structures nor activities that bring an existing, non-ongoing agricultural area into agricultural use are not-considered agricultural activities.

“Agricultural land” is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apairy, or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and/or lands that have been designated as capable of producing food and fiber, which have not been developed for urban density housing, business, or other uses incompatible with agricultural activity.

“Alluvial fan” means a fan-shaped deposit of sediment and organic debris formed where a stream flows or has flowed out of a mountainous upland onto a level plain or valley floor because of a sudden change in sediment transport capacity (e.g., significant change in slope or confinement).

“Alluvium” is a general term for clay, silt, sand, gravel, or similar other unconsolidated detrital materials, deposited during comparatively recent geologic time by a stream or other body of running water, as a sorted or semi-sorted sediment in the bed of the stream or on its floodplain or delta.

“Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the critical area.

“Anadromous fish” means fish species that spend most of their lifecycle in salt water, but return to freshwater to reproduce.

“Animal unit” means 1,000 pounds of livestock live weight.
"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs (Chapter 173-160 WAC).

"Aquifer susceptibility" means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

"Aquifer vulnerability" is the combined effect of susceptibility to contamination and the presence of potential contaminants.

"Bankfull width" means:
(a) For streams – The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).
(b) For lakes, ponds, and impoundments – Line of mean high water.
(c) For tidal water – Line of mean high tide.
(d) For periodically inundated areas of associated wetlands – Line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Base flood" is a flood event having a one percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letters A (zone subject to flooding during a 100-year flood, but less so than V zones) or V (zone subject to the highest flows, wave action, and erosion during a 100-year flood).

"Bedrock" is a general term for rock, typically hard, consolidated geologic material that underlies soil or other unconsolidated, superficial material or is exposed at the surface.

"Best available science" means information from research, inventory, monitoring, surveys, modeling, synthesis, expert opinion, and assessment that is used to designate, protect, or restore critical areas. As defined by WAC 365-195-900 through 365-195-975, best available science is derived from a process that includes peer-reviewed literature, standard methods, logical conclusions, and reasonable inferences, quantitative analysis, and documented references to produce reliable information.

"Best management practices" means conservation practices or systems of practices and management measures that:
1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;
2. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitat;
3. Control plant site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material.

"Buffer (the buffer zone)" means the area adjacent to the outer boundaries of critical areas including wetlands; habitat conservation areas such as streams, lakes, and marine shorelines; and/or landslide hazard areas that separates and protects critical areas from adverse impacts associated with adjacent land uses.

"Channel migration zone (CMZ)" means the area along a river or stream within which the channel can reasonably be expected to migrate over time as a result of normally occurring processes. It encompasses
that area of current and historic lateral stream channel movement that is subject to erosion, bank de-
estabilization, rapid stream incision, and/or channel shifting, as well as adjacent areas that are suscepti-
ble to channel erosion. There are three components of the channel migration zone: (1) the historical
migration zone (HMZ) – the collective area the channel occupied in the historical record; (2) the avulsion
hazard zone (AHZ) – the area not included in the HMZ that is at risk of avulsion over the timeline of the
CMZ; and (3) the erosion hazard area (EHA) – the area not included in the HMZ or the AHZ that is at risk
of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The channel migration
zone may not include the area behind a lawfully constructed flood protection device. Channel migration
zones shall be identified in accordance with guidelines established by the Washington State Department
of Ecology.

"Clearing" means destruction of vegetation by manual, mechanical, or chemical methods resulting in
exposed soils. "Clearing" means the removal of vegetation or plant cover by manual, chemical, or me-
chanical means. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flood-
ing, killing, poisoning, girdling, uprooting, or burning. [NR8205]

"Commercial fish" means those species of fish that are classified under the Washington State De-
partment of Fish and Wildlife Food Fish Classification as commercial fish (WAC 220-12-010).

"Compensatory mitigation" means a project for the purpose of mitigating, at an equivalent or greater
level, unavoidable critical area and buffer impacts that remain after all appropriate and practicable
avoidance and minimization measures have been implemented. Compensatory mitigation includes, but
is not limited to: wetland creation, restoration, enhancement, and preservation; stream restoration and
relocation; rehabilitation; and buffer enhancement.

"Conservation" means the prudent management of rivers, streams, wetlands, wildlife and other envi-
ronmental resources in order to preserve and protect them. This includes the careful utilization-use of
natural resources in order to prevent depletion or harm to the environment.

"Conservation easement" means a legal agreement that the property owner enters into to restrict uses
of the land for purposes of natural resources conservation. The easement is recorded on a property
deed, runs with the land, and is legally binding on all present and future owners of the property.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur
naturally in groundwater, air, or soil or that occurs at concentrations greater than those in the natural
levels (Chapter 172-200 WAC).

"County" means Whatcom County, Washington.

"Covered assembly" means any structure that has the potential to provide capacity for large numbers of
people or assemblies such as but not limited to convention centers, churches, theatres, etc.

"Critical aquifer recharge areas" means areas designated by WAC 365-190-080(2) that are determined
to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for
potable water as defined by WAC 365-190-030(2).

"Critical Areas." The following areas shall be regarded as critical areas:
1. Critical aquifer recharge areas;
2. Wetlands;
3. Geologically hazardous areas;
4. Frequently flooded areas;
5. Fish and wildlife habitat conservation areas.
"Critical areas report" means a report prepared by a qualified professional or qualified consultant based on best available science, and the specific methods and standards for technical study required for each applicable critical area. Geotechnical reports and hydrogeological reports are critical area reports specific to geologically hazardous areas and critical aquifer recharge areas, respectively.

"Critical area tract" means land held in private ownership and retained in an open undeveloped condition (native vegetation is preserved) in perpetuity for the protection of critical areas.

"Critical facilities (essential facilities)" in (a) means buildings and other structures that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow, volcanic activities, or earthquakes pursuant to the most current International Building Code (IBC), 2003 Edition. These include, but are not limited to:

1. Buildings and other structures that represent a substantial hazard to human life in the event of failure including, but not limited to:
   a. Buildings and other structures where more than 200 people congregate in one area;
   b. Buildings and other structures with elementary school, secondary school or day care facilities with an occupant load greater than 250;
   c. Buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities;
   d. Health care facilities with an occupant load of 50 or more resident patients but not having surgery or emergency treatment facilities;
   e. Falls and detention facilities;
   f. Any other occupancy with an occupant load greater than 5,000 (5,000);
   g. Power generating stations, water treatment for potable water, wastewater treatment facilities, and other public utility facilities not including cell towers not included in subsection 2 of this definition;
   h. Buildings and structures not included in subsection 2 of this definition containing sufficient quantities of toxic or explosive substances to be dangerous to the public if released.

2. Buildings and other structures designed as essential facilities including, but not limited to:
   a. Hospitals and other health care facilities having surgery or emergency treatment facilities;
   b. Fire, rescue and police stations, and emergency vehicle garages;
   c. Designated earthquake, hurricane, or other emergency shelters;
   d. Designated emergency preparedness, communication, and operation centers and other facilities required for emergency response;
   e. Structures containing highly toxic materials as defined by IBC Section 307 where the quantity of the material exceeds the maximum allowable quantities of IBC Table 307.7(2);
   f. Aviation control towers, air traffic control centers, and emergency aircraft hangars;
   g. Buildings and other structures having critical national defense functions;
   h. Water treatment facilities required to maintain water pressure for fire suppression;
   i. Power generating stations and other public utility facilities required as emergency backup facilities for structures listed above.

"Critical habitat" means habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified herein with reference to lists, categories, and definitions promulgated by the Washington State Department of Fish and Wildlife as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) Program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.
"Cumulative Impact" [CAC208] means effects on the environment that are caused by the combined results of past, current and reasonably foreseeable future activities. Evaluation of such cumulative impacts should consider: (i) current circumstances affecting the critical area and relevant natural processes; (ii) reasonably foreseeable future development that may affect the critical area; and (iii) beneficial effects of any established regulatory programs under other local, state, and federal laws.

"Debris flow" means a moving mass of rock fragments, soil, and mud, more than half of the particles being larger than sand size; a general term that describes a mass movement of sediment mixed with water and air that flows readily on low slopes.

"Debris torrent" means a violent and rushing mass of water, logs, boulders and other debris.

"Deepwater habitats" means permanently flooded lands lying below the deepwater boundary of wetlands. Deepwater habitats include environments where surface water is permanent and often deep, so that water, rather than air, is the principal medium in which the dominant organisms live. The boundary between wetland and deepwater habitat in the marine and estuarine systems coincides with the elevation of the extreme low water of spring tide; permanently flooded areas are considered deepwater habitats in these systems. The boundary between wetland and deepwater habitat in the riverine and lacustrine systems lies at a depth of two meters (6.6 feet) below low water; however, if emergent vegetation, shrubs, or trees grow beyond this depth at any time, their deepwater edge is the boundary.

"Delineation" means the precise determination of wetland boundaries in the field according to the application of the specific method described in the 1997 Washington State Wetland Delineation Manual and/or the Corps of Engineers Wetlands Delineation Manual, 1987 Edition, as amended.

"Designated Species, Federal." Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

"Designated Species, State." State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 223-22-014 (state endangered species) and WAC 223-12-011 (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

"Development" means any activity that requires federal, state, or local approval for the use or modification of land or its resources. These activities include, but are not limited to: subdivision and short subdivisions; binding site plans; planned unit developments; variances; shoreline substantial development and exemptions; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; and septic approval.

"Drainage Ditch" means an artificially created watercourse constructed to drain convey surface or groundwater. Ditches are graded (manmade) channels installed to collect and convey runoff water to or from fields and roadways. Ditches may include:

- irrigation ditches,
- waste ways,
- drains,
- outfalls,
operational spillways,
channels,
stormwater runoff facilities
or other wholly artificial watercourses, except those that directly result from the modification to
a natural watercourse.

Ditched channels that support fish are considered to be streams or other artificial watercourses where
natural streams existed prior to human alteration, and/or
the waterway is used by anadromous or resident salmonid or other fish populations, or
flows directly into shellfish habitat conservation areas
are not considered ditches, but are considered streams for the purposes of this Chapter 4-522.09.

"Emergency activities" means those activities which require immediate action within a time too short to
allow full compliance with this chapter due to an unanticipated and imminent threat to public health,
safety or the environment. Emergency construction does not include development of new permanent
protective structures where none previously existed. All emergency construction shall be consistent with
the policies of Chapter 90.58 RCW and this chapter. As a general matter, flooding or other seasonal
events that can be anticipated and may occur but that are not imminent are not an emergency.

"Emergent wetland" means a wetland with at least 30% percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

"Enhancement" means actions performed within an existing degraded critical area and/or buffer to in-
tentionally increase or augment one or more functions or values of the existing critical area or buffer.
Enhancement actions include, but are not limited to, increasing plant diversity and cover, increasing
wildlife habitat and structural complexity (snags, woody debris), installing environmentally compatible
erosion controls, or removing nonindigenous plant or animal species.

"Erosion" means a process whereby wind, rain, water and other natural agents mobilize, transport, and
deposit soil particles.

"Erosion hazard areas" means lands or areas underlain by soils identified by the U.S. Department of Ag-
iculture Natural Resource Conservation Service (NRCS) as having "severe" or "very severe" erosion haz-
ards and areas subject to impacts from lateral erosion related to moving water such as river channel mi-
gration and shoreline retreat.

"Essential facilities" means those facilities that are necessary to maintain life, health, welfare, and safety
functions such as but not limited to: fire and police stations; emergency medical facilities or medical fa-
cilities containing surgery or emergency treatment areas; emergency response services or preparedness
centers and their associated buildings, shelters, or vehicle storage areas; jail, and detention centers;
structures and equipment in government communications centers and other facilities required for
emergency response; power generating stations, standby power generating equipment or other types of
public utility facilities that if interrupted would cause disruption to normal living and business opera-
tions; and wastewater treatment plants.

"Essential public facilities" means those facilities that are typically difficult to site, such as airports, state
education facilities, state or regional transportation facilities, state and local correctional facilities, solid
waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facili-
ties, and group homes.

"Estuarine wetland" means the zero-gradient sector of a stream where it flows into a standing body of
water together with associated natural wetlands; tidal flows reverse flow in the wetland twice daily, de-
terminating its upstream limit. It is characterized by low bank channels (distributaries) branching off the
main stream to form a broad, near-level delta; bank; bed and delta materials are silt and clay; banks are
stable; vegetation ranges from marsh to forest; and water is usually brackish due to daily mixing and
layering of fresh and salt water.

"Exotic" means any species of plants or animals that is not indigenous to the area.

"Farm pond" means an open water depression created from a non-wetland site in connection with agri-
cultural activities.

"Feasible" means an action, such as a development project, mitigation, or preservation requirement
that meets all of the following conditions:
  a. The action can be accomplished with technologies and methods that have been used in the past
     in similar circumstances, or studies or tests have demonstrated in similar circumstances that
     such approaches are currently available and likely to achieve the intended results;
  b. The action provides a reasonable likelihood of achieving its intended purpose; and,
  c. The action does not physically preclude achieving the project's primary intended legal use.
In cases where this chapter requires certain actions, unless they are infeasible, the burden of proving
infeasibility is on the applicant/proponent. In determining an action's infeasibility, the county may
weigh the action's relative costs and public benefits, considered in the short- and long-term time
frames.

"Feasible alternative" means an action, such as development, mitigation, or restoration, that meets all
of the following conditions: (1) the action can be accomplished with technologies and methods that
have been used in the past in similar circumstances, or studies or tests have demonstrated in similar
circumstances that such approaches are currently available and likely to achieve the intended results; (2)
the action provides a reasonable likelihood of achieving its intended purpose; and (3) the action does
not physically preclude achieving the project's primary intended legal use. Feasibility shall take into ac-
count both short- and long-term monetary and nonmonetary costs and benefits.

"Fen" means a mineral-rich wetland formed in peat that has a neutral to alkaline pH. Fens are wholly or
partly covered with water and dominated by grass-like plants, grasses, and sedges.

"Filling" means the act of transporting or placing by any manual or mechanical means fill material from,
to, or on any soil surface, including temporary stockpiling of fill material.

"Fill material" means any solid or semi-solid material, including rock, sand, soil, clay, plastics, construc-
tion debris, wood chips, overburden from mining or other excavation activities, and materials used to
create any structure or infrastructure that, when placed, changes the grade or elevation of the receiving
site.

"Fish and wildlife habitat conservation areas" means areas important for maintaining species in suitable
habitats within their natural geographic distribution so that isolated populations are not created.

"Fish habitat" means a complex of physical, chemical, and biological conditions that provide the life-
supporting and reproductive needs of a species or life stage of fish. Although the habitat requirements
of a species depend on its age and activity, the basic components of fish habitat in rivers, streams,
ponds, lakes, estuaries, marine waters, and nearshore areas include, but are not limited to, the follow-
ing:
  1. Clean water and appropriate temperatures for spawning, rearing, and holding;
  2. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-
channel habitat;
3. Abundance of bank and in-stream structures to provide hiding and resting areas and stabilize stream banks and beds;
4. Appropriate substrates for spawning and embryonic development. For stream- and lake-dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand;
5. Presence of riparian vegetation as defined in this article. Riparian vegetation creates a transition zone, which provides shade and food sources of aquatic and terrestrial insects for fish;
6. Unimpeded passage (i.e., due to suitable gradient and lack of barriers) for upstream and downstream migrating juveniles and adults.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

“Floodplain” means the total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

“Floodway” means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the surface water elevation more than one foot. Also known as the “zero rise floodway.”

“Forested wetland” means a wetland with at least 30% percent of the surface area covered by woody vegetation greater than 20 feet in height, excluding monotypic stands of red alder or cottonwood that average eight inches in diameter at breast height or less.

“Frequently flooded areas” means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the County in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the “Special Flood Hazard Area” 100-year floodplain-designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

“Functions, services, and value” means the beneficial functions that roles served by critical areas perform, the services they provide humans, and the values people derive from these roles including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, protection from hazards, providing historical and archaeological resources, noise and visual screening, open space, and recreation. These beneficial roles are not listed in order of priority.

“Function assessment” or “functions and values assessment” means a set of procedures, applied by a qualified consultant, to identify the ecological functions being performed in a wetland or other critical area, usually by determining the presence of certain characteristics, and determining how well the critical area is performing those functions. Function assessments can be qualitative or quantitative and may consider social values potentially provided by the wetland or other critical area. Function assessment methods must be consistent with best available science.

“Functions” means the processes or attributes provided by areas of the landscape (e.g., wetlands, rivers, streams, and riparian areas) including, but not limited to, habitat diversity and food chain support for fish and wildlife, groundwater recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and flood water attenuation and flood peak desynchronization, and water quality enhancement through biofiltration and retention of sediments, nutrients, and toxicants. These beneficial roles are not listed in order of priority.
“Game fish” means those species of fish that are classified by the Washington State Department of Wildlife as game fish (WAC 232-12-019).

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns (CEQ121).

“Gradient” means a degree of inclination, or a rate of ascent or descent, of an inclined part of the earth’s surface with respect to the horizontal; the steepness of a slope. It is expressed as a ratio (vertical to horizontal), a fraction (such as meters/kilometers or feet/miles), a percentage (of horizontal distance), or an angle (in degrees).

“Grading” means any excavating or filling of the earth’s surface or combination thereof.

“Groundwater” means all water that exists beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves (Chapter 90.44 RCW).

“Groundwater management area” means a specific geographic area or subarea designated pursuant to Chapter 173-100 WAC for which a groundwater management program is required.

“Groundwater management program” means a comprehensive program designed to protect groundwater quality, to assure groundwater quantity, and to provide for efficient management of water resources while recognizing existing groundwater rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated groundwater management area or subarea and developed pursuant to Chapter 173-100 WAC.

“Growing season” means the portion of the year when soil temperatures are above biologic zero (41 degrees Fahrenheit).

“Growth Management Act” means Chapters 36.70A and 36.70B RCW, as amended.

“Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by Whatcom County pursuant to WCC 16.16.710(C)(14), (E) (9).

“Hazard tree” means any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

“Hazardous facilities” means those occupancies or structures housing or supporting toxic or explosive chemicals or substances and any non-building structures housing, supporting or containing quantities of toxic or explosive substances that, if contained within a building, would cause that building to be defined as a hazardous facility. Hazardous facilities include any elements contained in the definition for “hazardous waste treatment and storage facility.” Hazardous facilities may be classified as a group “H” occupancy in the UBC.

“Hazardous substance” means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

“High intensity land use” means land use that includes the following uses or activities: commercial, urban, industrial, institutional, retail sales, residential (more than one unit/acre), high-intensity new agri-
culture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high-intensity recreation (golf courses, ball fields), hobby farms, and Class IV Special forest practices, including the building of logging roads (note that pursuant to WCC 16.16.230(A) all other forest practices are exempt from this chapter).

"Hydraulic project approval (HPA)" means a permit issued by the State Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 75.20 RCW.

"Hydric soil" means a soil that is or has been saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the NRCS Field Indicators of Hydric Soils version 7, and/or the Corps of Engineers Wetlands Delineation Manual, as amended Washington State Wetland Identification and Delineation Manual (RCW 36.70A.175). [C32722]

"Hydrologic soil groups" means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:

1. Low runoff potential and a high rate of infiltration potential;
2. Moderate infiltration potential and a moderate rate of runoff potential;
3. Slow infiltration potential and a moderate to high rate of runoff potential; and
4. High runoff potential and very slow infiltration and water transmission rates.

"Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

"Hyporheic zone" means the saturated zone located beneath and adjacent to streams that contain some proportion of surface water from the surface channel. The hyporheic zone serves as a filter for nutrients, as a site for macroinvertebrate production important in fish nutrition and provides other functions related to maintaining water quality.

"Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow compared to natural conditions prior to development. Common impervious surfaces may include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Impervious surfaces do not include surface created through proven low impact development techniques.

"Infiltration" means the downward entry of water into the immediate surface of soil.

"In-kind compensation" means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity.

"Intertidal zone" means the stratum from extreme low water of spring tides to the upper limit of spray or influence from ocean-derived salts. It includes areas that are sometimes submerged and sometimes exposed to air, mud and sand flats, rocky shores, salt marshes, and some terrestrial areas where salt influences are present.

"Invasive species" means a species that is: (1) nonnative (or alien) to Whatcom County, and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In-
vasive species can be plants, animals, and other organisms (e.g., microbes). Human actions are the primary means of invasive species introductions.

“Lahar” means a mudflow and debris flow originating from the slopes of a volcano.

“Lahar inundation hazard zone” means areas that have been or potentially could be inundated by lahar or other types of debris flows, according to a map showing Volcano Hazards from Mount Baker, Washington.

“Lake” means a naturally or artificially created body of deep (generally greater than 6.6 feet) open water that persists throughout the year. A lake is larger than a pond, greater than one acre in size, equal to or greater than 6.6 feet in depth, and has less than 30% percent aerial coverage by trees, shrubs, or persistent emergent vegetation. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake’s ordinary high water mark with the stream where the stream enters the lake.

“Landfill” means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

“Landslide” means a general term covering a wide variety of mass movement landforms and processes involving the downslope transport, under gravitational influence of soil and rock material en masse; included are debris flows, debris avalanches, earthflows, mudflows, slumps, mudslides, rock slides, and rock falls.

“Landslide hazard areas” means areas that, due to a combination of site conditions like slope inclination and relative soil permeability, are susceptible to mass wasting.

“Low intensity land use” means land use that includes the following uses or activities: forestry (cutting of trees only), low-intensity open space (such as passive recreation and natural resources preservation), and unpaved trails.

“Maintenance or repair” means those usual activities required to prevent a decline, lapse or cessation from a lawfully established condition or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition. This does not include any activities that change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design.

“Major development” means any project for which a major project permit is required pursuant to Chapter 29.88 WCC. For the purposes of this chapter, “major development” shall also mean any project associated with an existing development for which a major development permit has been required or other existing legally nonconforming development for which a major development permit would otherwise be required if developed under the current land use regulations outlined in WCC Title 26.

“Mass wasting” means downslope movement of soil and rock material by gravity. This includes soil creep, erosion, and various types of landslides, not including bed load associated with natural stream sediment transport dynamics.

“Mature forested wetland” means a wetland with an overstory dominated by mature trees having a wetland indicator status of facultative (FAC), facultative-wet (FACW), or obligate (OBL). Mature trees are considered to be at least 21 inches in diameter at breast height.

“Maximum Credible Event” means the largest debris flow event that can be hypothesized from geologic processes within the watershed above the alluvial fan with consideration of the volume of sediment and debris that would be available within the drainage combined with the material the from landslides that
would enter the drainage, and the volume of water that could become trapped behind and within the
debris flow or dammed within the drainage.

"Mean annual flow" means the average flow of a river or stream (measured in cubic feet per second)
from measurements taken throughout the year. If available, flow data for the previous 10 years should
be used in determining mean annual flow.

"Mitigation" means individual actions that may include a combination of the following measures, listed
in order of preference:

1. Avoiding an impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
3. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating an impact over time by preservation and maintenance operations dur-
ing the life of the action;
5. Compensating for an impact by replacing or providing substitute resources or environments;
and
6. Monitoring the mitigation and taking remedial action when necessary.

"Mitigation bank" means a site where wetlands or similar habitats are restored, created, enhanced, or in
exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation
in advance of authorized impacts to aquatic resources.

"Mitigation bank instrument" means the documentation of agency and bank sponsor concurrence on
the objectives and administration of the bank. The "bank instrument" describes in detail the physical
and legal characteristics of the bank, including the service area, and how the bank will be established
and operated.

"Mitigation Bank Review Team" or "MBRT" means an interagency group of federal, state, tribal and local
regulatory and resource agency representatives that are invited to participate in negotiations with the
bank sponsor on the terms and conditions of the bank instrument.

"Mitigation Bank Review Team process" or "MBRT process" means a process in which the County and
other agencies strives to reach consensus with the MBRT members on the terms, conditions, and proce-
dural elements of the bank instrument.

"Mitigation bank sponsor" means any public or private entity responsible for establishing and, in most
circumstances, operating a bank.

"Mitigation plan" means a detailed plan indicating actions necessary to mitigate adverse impacts to crit-
ical areas.

"Moderate intensity land use" means land use that includes the following uses or activities: residential
(one unit/gross acre or less), moderate-intensity open space (parks), moderate-intensity new agriculture
(orchards and hay fields), plant nurseries (1 acre), and paved trails, and building of logging roads.

"Monitoring" means evaluating the impacts of development proposals over time on the biological, hydro-
logical, pedological, and geological elements of ecosystem functions and processes, and/or assessing
the performance of required mitigation measures through the collection and analysis of data by various
methods for the purpose of understanding and documenting changes in natural ecosystems and fea-
tures compared to baseline or pre-project conditions and/or reference sites.

"Native vegetation" means plant species that are indigenous to Whatcom County and the local area.
"Nearshore habitat" means the zone that extends seaward from the marine shoreline to a water depth of approximately 20 meters (66 feet). Nearshore habitat is rich biologically, providing important habitat for a diversity of plant and animal species.

"No net loss" means the maintenance of the aggregate total of the County's critical area functions and values as achieved through a case-by-case review of development proposals. Each project shall be evaluated based on its ability to meet the no net loss goal.

"Off-site mitigation" means to replace critical areas away from the site on which a critical area has been adversely impacted by a regulated activity.

"Ongoing agriculture" means those activities conducted on lands defined in RCW 84.34.070(2), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

"Ordinary high water mark" means the mark or line on all lakes, rivers, streams, and tidal water that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years, as to mark upon the soil a character different from that of the abutting upland in respect to vegetation (RCW 90.58.030(2)(b)).

"Overnight accommodations" for the purposes of this chapter only, means any use that allows more than 10 persons to sleep overnight, either as a primary use (such as hotels/motels, camps, or other lodging), or occasionally (such as churches hosting sleepovers), whether in a bed or otherwise. While this latter group of uses may be allowed, hosting overnight groups shall not be and the permit authorizing the use shall include such a condition.

"Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, state agency or local governmental unit, however designated, or Indian nation or tribe.

"Planned unit development (PUD)" means one or a group of specified uses, such as residential, resort, commercial or industrial, to be planned and constructed as a unit. Zoning or subdivision regulations with respect to lot size, building bulk, etc., may be varied to allow design innovations and special features in exchange for additional and/or superior site amenities or community benefits.

"Qualified planning advisor" means those qualified individuals who have technical experience and training necessary to prepare conservation plans for agricultural lands and who have completed the two-week training course delivered by the technical administrator and achieved a minimum of 75 percent on the course exam and assignments and signed the practice and confidentiality agreement, or been certified a technical service provider by the USDA Natural Resources Conservation Service (see http://techreg.usda.gov) and signed the practice and confidentiality agreement.

"Pond" means an open body of water, generally equal to or greater than 6.6 feet deep, that persists throughout the year and occurs in a depression of land or expanded part of a stream and has less than 30% percent aerial coverage by trees, shrubs, or persistent emergent vegetation. Ponds are generally smaller than lakes. Farm ponds, ponds built for the primary purpose of combating fires, stormwater fa-
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"Potable" means water that is suitable for drinking by the public (Chapter 246-290 WAC).

"Preservation" means actions taken to ensure the permanent protection of existing, ecologically im-
portant critical areas and/or buffers that the County has deemed worthy of long-term protection.

"Prior Converted Croplands," (PCCs) are identified for the purpose of implementing the Food Security Act
(FFS), and refers to wetlands that were converted from a non-agricultural use to production of a com-
modity crop prior to December 23, 1985. In other words, PCCs are wetlands that were drained, dredged,
filled, leveled, or otherwise manipulated, including the removal of woody vegetation, to enable produc-
tion of an agricultural commodity.

To be considered a PCC, the area must have had an agricultural commodity planted or produced at
least once prior to December 23, 1985. After 1985 these sites must continue to be in active agricultural
use. This means a commodity crop that requires annual tilling must be produced at least once every five
years.

In addition, PCCs must not have standing water present for more than 14 consecutive days during
the growing season. If an agricultural site has standing water for greater than 14 consecutive days it
would be considered a "farmed wetland." Many farmed areas in valleys flood throughout the winter and
would not be considered PCC. Therefore, it is important to document surface water levels throughout
the year (i.e., determining the hydroperiod during the dry season alone is not adequate). [P/218]

"Primary association" means the use or potential use of a habitat area by a listed or priority species for
breeding/spawning, rearing, young, roosting, feeding, foraging, and/or migrating on a frequent
and/or regular basis during the appropriate season(s) as well as habitats that are used less frequently
or regularly but which provide for essential life cycle functions such as breeding/nesting/spawning.

"Priority habitat" means a habitat type with unique or significant value to one or more species. An area
classified and mapped as priority habitat must have one or more of the following attributes: compar-
tively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning hab-
itat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife
movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited
availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A pri-
ority habitat may be described by a unique vegetation type or by a dominant plant species that is of
primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat
may also be described by a successional stage (such as old growth and mature forests). Alternatively, a
priority habitat may consist of specific habitat element (such as a consolidated marine/estuarine
shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain pri-
ority and/or non-priority fish and wildlife (WAC 173-26-020(24)).

"Priority species" means wildlife species of concern due to their population status and their sensitivity to
habitat alteration, as defined by the Washington State Department of Fish and Wildlife.

"Project" means any proposed or existing activity regulated by Whatcom County.

"Project permit" or "project permit application" means any land use or environmental permit or ap-
proval required by Whatcom County, including, but not limited to, building permits, subdivisions, bind-
ing site plans, planned unit developments, conditional uses, shoreline substantial development permits,
variances, lot consolidation relief, site plan review, permits or approvals authorized by a comprehensive
plan or subarea plan.
"Qualified planning advisor" means those individuals who have technical experience and training necessary to prepare farm conservation plans for agricultural lands and who have:

1. Completed the two-week training course delivered by the technical administrator and achieved a minimum of 75 percent on the course exam and assignments and signed the practice and confidentiality agreement; or
2. Been certified as a technical service provider by the USDA Natural Resources Conservation Service (see http://teched.usda.gov) and signed the practice and confidentiality agreement.

"Qualified professional" or "qualified consultant" means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or a related field, and related work experience, and meet the following criteria:

1. Is listed on a roster of qualified professionals or qualified consultants prepared by the PDS Natural Resource Supervisor (C152217)
2. A qualified professional for wetlands must have a degree in wildlife biology, ecology, soil science, botany, or a closely related field and a minimum of five years of professional experience in wetland delineation identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems. The following is required to be submitted to be placed on the roster:
   i. Curriculum vitae or resume; and
   ii. Three complete and approved wetland delineations (as primary author on at least one), conducted in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987, or as amended.
   iii. One complete and approved wetland delineation using the U.S. Army Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual, Western Mountains, Valleys, and Coast Region, 2010, or as amended. Successful completion of a wetland class using this manual may be substituted for this requirement.
3. A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or a closely related field and a minimum of three years of professional experience related to the subject species/habitat type or approved equivalent work experience.
4. A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.
5. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.
6. A qualified professional for tree risk assessment means a certified arborist or certified tree professional with a current ISA Tree Risk Assessment Qualification.

"Reasonable Use" means any one of the uses allowed within a given zone that has the least impact on the critical areas found on the subject property. For zones that allow single-family residential uses, this typically would mean a house that has a development footprint (including all appurtenances except drainfields) and landscaping of 2,500 square feet or less.

"Recharge" means the process involved in the absorption and addition of water from the unsaturated zone to groundwater.
"Reestablishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former critical area. Reestablishment results in rebuilding a former critical area and results in a gain in acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles measures taken to intentionally restore an altered or damaged natural feature or process including:

- Active steps taken to restore damaged wetlands, streams, protected habitat, and/or their buffers to the functioning condition that existed prior to an unauthorized alteration;
- Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or other events; and
- Restoration can include restoration of wetland functions and values on a site where wetlands previously existed but are no longer present due to lack of water or hydric soils. [CES220]

"Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded critical area. Rehabilitation results in a gain in function but does not result in a gain in area. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland, a type of restoration action that restores a critical area to its original form or type such as restoring a wetland to its original hydrogeomorphic class. [CES221]

"Resident fish" means a fish species that completes all stages of its life cycle within freshwater and frequently within a local area.

"Restoration" means measures taken to restore an altered or damaged natural feature, including:

(a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and

(b) Actions performed to re-establish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events. [CES221]

"Rills" means steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

"Riparian corridor" or "riparian zone" means the area adjacent to a water body (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.

"Riparian vegetation" means vegetation that tolerates and/or requires moist conditions and periodic free flowing water, thus creating a transitional zone between aquatic and terrestrial habitats which provides cover, shade and food sources for aquatic and terrestrial insects for fish species. Riparian vegetation and their root systems stabilize stream banks, attenuate high water flows, provide wildlife habitat and travel corridors, and provide a source of limbs and other woody debris to terrestrial and aquatic ecosystems, which, in turn, stabilize stream beds.

"Scrub-shrub wetland" means a wetland with at least 30% of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.
"Seiche" is a standing wave in an enclosed or partially enclosed body of water. Seiches are typically caused when strong winds and rapid changes in atmospheric pressure push water from one end of a body of water to the other. When the wind stops, the water rebounds to the other side of the enclosed area. The water then continues to oscillate back and forth for hours or even days. In a similar fashion, earthquakes, tsunamis, or severe storm fronts may also cause seiches along ocean shelves and ocean harbors. Seiches and seiche-related phenomena have been observed on lakes, reservoirs, swimming pools, bays, harbors, and seas. The key requirement for formation of a seiche is that the body of water be at least partially bounded, allowing the formation of the standing wave. [pc222]

"Seismic hazard areas" means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

"SEPA" is a commonly used acronym for the State Environmental Policy Act.

"Shellfish" means invertebrates of the phyla Arthropoda (class Crustacea), Mollusca (class Pelecypoda) and Echinodermata.

"Shellfish habitat conservation areas" means all public and private tidelands suitable for shellfish, as identified by the Washington State Department of Health classification of commercial growing areas, and those recreational harvest areas as identified by the Washington State Department of Ecology are designated as shellfish habitat conservation areas pursuant to WAC 365-190-80. Any area that is or has been designated as a shellfish protection district created under Chapter 90.72 RCW is also a shellfish habitat conservation area.

"Shellfish protection district" means the Drayton Harbor shellfish protection district (DHSPD) and the Portage Bay shellfish protection district (PBSPD) (Chapter 16.20 WCC), or other area formed by the County based on RCW Title 90, in response to State Department of Health (DOH) closures or downgrades of a commercial shellfish growing area due to a degradation of water quality as a result of pollution. These areas include the watershed draining to the shellfish beds as part of the shellfish habitat conservation area.

"Shorelands" or "shoreland areas" means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58 RCW.

"Shoreline" (Shoreline Management Act) means all of the water areas of the state, including reservoirs and their associated wetlands, together with lands underlying them, except:

1. Shorelines on segments of streams upstream from a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
2. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

"Shorelines" means all of the water areas of the state as defined in RCW 90.58.030, including reservoirs and their associated shorelands, together with the lands underlying them, except:

1. Shorelines of statewide significance;
2. Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second (cfs) or less and the wetlands associated with such upstream segments; and
3. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

"Shorelines of statewide significance" means those areas defined in RCW 90.58.030(2)(e).

"Shorelines of the state" means the total of all "shorelines," as defined in RCW 90.58.030(2)(d), and "shorelines of statewide significance" within the state, as defined in RCW 90.58.030(2)(e).
“Single-family development” means the development of a single-family residence permanently installed and served with utilities on a lot of record.

“Site” means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way, under the applicants/proponent’s ownership or control that is the subject of a development proposal or change in use.

“Slope” means:
1. Gradient.
2. The inclined surface of any part of the earth’s surface, delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

“Soil” means all unconsolidated materials above bedrock described in the Soil Conservation Service Classification System or by the Unified Soils Classification System.

“Sphagnum bog” means a type of wetland dominated by mosses that form peat. Sphagnum bogs are very acidic, nutrient-poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.

“Special occupancies” means those structures that have the potential to provide capacity for special groups of people such as but not limited to schools, daycare centers, resident incapacitated patients, etc.

“Species of local importance” are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species [wa22a]


“Streams” means those areas where surface waters produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the annual passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition includes drainage ditches or other artificial water courses where natural streams existed prior to human alteration, and/or the waterway is used by anadromous or resident salmonid or other fish populations, or flows directly into shellfish habitat conservation areas. (See also “drainage ditch” definition.)

“Structure” means a permanent or temporary building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether installed on, above, or below the surface of the ground or water, except for vessels.

“Technical administrator” means the director of the planning and development services department or staff member designated by the director to perform the review functions required in this chapter.

“Top” means the lowest part of a slope or cliff; the downslope end of an alluvial fan, landslide, etc.

“Top” means the top of a slope; or in this chapter it may be used as the highest point of contact above a landslide hazard area.

“Unavoidable” means adverse impacts that remain after all appropriate avoidance and minimization measures have been implemented.

“Utilities” means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.
“Volcanic hazard areas” means geologically hazardous areas that are subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

“Waters of the state” or “state waters” means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

“Watershed” means a geographic region within which water drains into a particular river, stream or body of water. There are approximately 122 watersheds (e.g., Bertrand, Ten Mile, Dakota, Canyon Creek, Lake Whatcom, Lake Samish) identified in WRIA 1 and 3. These are nested within approximately 14 sub-basins (e.g., North Fork Nooksack, Drayton Harbor, Sumas River, Friday Creek), which are nested within four basins (e.g., Nooksack River, Fraser River, Samish River, coastal).

“Watershed improvement district” means a special district established pursuant to Chapter 85.38 RCW citation.

“Wellhead protection area” means the area (surface and subsurface) managed to protect ground-water-based public water supplies.

“Wetland” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate wetland impacts.

“Wetland buffer” means a designated area contiguous or adjacent to a wetland that is required for the continued maintenance, function, and ecological stability of the wetland.

“Wetland class” means the general appearance of the wetland based on the dominant vegetative life form or the physiography and composition of the substrate. The uppermost layer of vegetation that possesses an aerial coverage of 30% percent or greater of the wetland constitutes a wetland class. Multiple classes can exist in a single wetland. Types of wetland classes include forest, scrub/shrub, emergent, and open water.


“Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in this chapter.

Wetland Enhancement. See “mitigation.”

“Wetland mitigation bank” means a site where wetlands and buffers are restored, created, enhanced or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

Wetland Restoration. See “mitigation” and “reestablishment.”
“Wet meadow” means palustrine emergent wetlands, typically having disturbed soils, vegetation, or hydrology.

“Wet season” means the period generally between November 1st and March 30th of most years when soils are wet and prone to instability. The specific beginning and end of the wet season can vary from year to year depending on weather conditions.

“Windthrow” means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

“Wood waste” means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel, and log sort yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

Table 6. Table of Acronyms used in this chapter.

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>AASHTO</td>
<td>American Association of State Highway and Transportation Officials</td>
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<tr>
<td>AFO</td>
<td>Animal feeding operation</td>
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<td>AHZ</td>
<td>Avulsion hazard zone</td>
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<tr>
<td>CAFO</td>
<td>Concentrated animal feeding operations</td>
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<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
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<tr>
<td>CMZ</td>
<td>Channel migration zone</td>
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<tr>
<td>CPAL</td>
<td>Conservation program on agriculture lands</td>
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<tr>
<td>DHSPD</td>
<td>Drayton Harbor shellfish protection district</td>
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<tr>
<td>DOH</td>
<td>Washington State Department of Health</td>
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<tr>
<td>EHA</td>
<td>Erosion hazard area</td>
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<tr>
<td>ESU</td>
<td>Ecologically significant unit</td>
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<tr>
<td>FAC</td>
<td>Facultative</td>
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<tr>
<td>FACW</td>
<td>Facultative – Wet</td>
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<tr>
<td>FIMA</td>
<td>Federal Insurance and Mitigation Administration</td>
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<tr>
<td>FIRM</td>
<td>Flood Insurance Rate Maps</td>
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<tr>
<td>FCO</td>
<td>Federal species of concern</td>
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<tr>
<td>FE</td>
<td>Federal endangered</td>
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<tr>
<td>FT</td>
<td>Federal threatened</td>
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<tr>
<td>HGM</td>
<td>Hydrogeomorphic</td>
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<tr>
<td>HMP</td>
<td>Habitat management plan</td>
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<tr>
<td>HMZ</td>
<td>Historical migration zone</td>
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<tr>
<td>HPA</td>
<td>Hydraulic project approval</td>
</tr>
<tr>
<td>IBC</td>
<td>International Building Code</td>
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<tr>
<td>LWD</td>
<td>Large woody debris</td>
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<tr>
<td>MBRT</td>
<td>Mitigation Bank Review Team</td>
</tr>
<tr>
<td>MTBE</td>
<td>Methyl tertiary butyl ether</td>
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<tr>
<td>MRL</td>
<td>Mineral resource lands</td>
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<tr>
<td>NGPE</td>
<td>Native growth protection easement</td>
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http://www.whatcomcounty.us/documentcenter/View/28571
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>NOAA</td>
<td>National Oceanic and Atmospheric Administration</td>
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<td>NRCS</td>
<td>Natural Resource Conservation Service</td>
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<tr>
<td>OBL</td>
<td>Obligate</td>
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<tr>
<td>OSS</td>
<td>On-site sewage disposal system</td>
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<tr>
<td>PBSPD</td>
<td>Portage Bay shellfish protection district</td>
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<tr>
<td>PCE</td>
<td>Perchloroethylene</td>
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<tr>
<td>PHS</td>
<td>Priority habitat and species</td>
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<tr>
<td>PUD</td>
<td>Planned unit development</td>
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<tr>
<td>RCT</td>
<td>Recreational, commercial or tribal importance</td>
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<tr>
<td>RCW</td>
<td>Revised Code of Washington</td>
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<tr>
<td>SC</td>
<td>State candidate</td>
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<td>SE</td>
<td>State endangered</td>
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<td>SEPA</td>
<td>State Environmental Policy Act</td>
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<td>SM</td>
<td>State monitor</td>
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<td>SMA</td>
<td>Shoreline Management Act</td>
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<td>SMP</td>
<td>Shoreline Management Program</td>
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<tr>
<td>SS</td>
<td>State sensitive</td>
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<tr>
<td>ST</td>
<td>State threatened</td>
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<tr>
<td>TMDL</td>
<td>Total maximum daily load</td>
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<tr>
<td>U</td>
<td>Unstable</td>
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<tr>
<td>UCS</td>
<td>Unstable old slides</td>
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<tr>
<td>URS</td>
<td>Unstable recent slides</td>
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<tr>
<td>USC</td>
<td>United States Code</td>
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<tr>
<td>USDA</td>
<td>United States Department of Agriculture</td>
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<tr>
<td>USEPA</td>
<td>United States Environmental Protection Agency</td>
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<tr>
<td>VA</td>
<td>Vulnerable aggregations</td>
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<tr>
<td>WAC</td>
<td>Washington Administrative Code</td>
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<tr>
<td>WCC</td>
<td>Whatcom County Code</td>
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<tr>
<td>WDFW</td>
<td>Washington State Department of Fish and Wildlife</td>
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<tr>
<td>WRIA</td>
<td>Water resource inventory area</td>
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</table>
PROPOSED FINDINGS OF FACT

(AS ADOPTED BY THE PLANNING COMMISSION)
Proposed Findings of Fact (as adopted by the Planning Commission)

WHEREAS, the adopted Whatcom County Comprehensive Plan supports the protection of environmentally critical areas through the adoption of development regulations; and

WHEREAS, the State Growth Management Act (GMA) includes adopted goals and requirements to guide the development and adoption of comprehensive plans and development regulations including requirements to designate and protect environmentally critical areas; and

WHEREAS, the County has considered those adopted goals, policies, and requirements in development of the proposed Whatcom County Code Amendments related to critical areas, and, has considered other state requirements, law, rules, guidelines, and agency comments; and

WHEREAS, the County researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating critical areas, undertook a Best Available Science (BAS) review and public process in accordance with the requirements of the GMA, developed Whatcom County Code amendment drafts, prepared environmental documents in accordance with the requirements of the State Environmental Policy Act (SEPA), and held meetings and hearings throughout the code development process; and

WHEREAS, the County has been provided feedback on draft work products and guidance from members of the public, County staff, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, the Washington State Department of Commerce, the Lummi Nation, the Nooksack Indian Tribe, other stakeholders and experts, the Whatcom Planning Commission, and elected and appointed officials during the development of the recommended code amendments; and

WHEREAS, in developing this ordinance, the County has followed the GMA’s requirements, including to provide “early and continuous public involvement” through a variety of mechanisms described in the public record; and

WHEREAS, the County has followed the State guidelines for the BAS process required by RCW 36.70A.172 and WAC 365-195-900 through 925, employing a variety of mechanisms described in the public record; and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the State of Washington Department of Commerce and to other State agencies on February 2, 2016, for a 60-day review and comment period in accordance with State law; and

WHEREAS, an environmental review has been conducted in accordance with the requirements of State Environmental Policy Act (SEPA), and a SEPA threshold determination was issued, and published on March 17, 2016, in the Bellingham Herald; and

WHEREAS, the Planning Commission held a total of 7 public meetings to consider the proposed amendments, which included two public hearings, one on May 12 and one on June 9, 2016, with deliberations throughout these meetings; and

WHEREAS, the Planning Commission has provided a recommendation to the County Council related to the proposed amendments; and
WHEREAS, the County Council held X study sessions on the proposed amendments on X, 2016, and a public hearing on X, 2016 and continued public hearing on X, 2016; and

WHEREAS, the County Council has considered the recommendation of the County Planning Commission and the public comments received; and

WHEREAS, the County Council has reviewed and considered a variety of information sources including Best Available Science materials, informational documents in the public record, and public testimony submitted verbally and in writing to the Planning Commission and to the County Council; and

WHEREAS, the County Council desires the proposed amendments to be effective throughout the County including within shoreline jurisdiction, a subsequent Shoreline Master Program amendment should be prepared for submittal to the State Department of Ecology for approval; and

WHEREAS, based upon the foregoing process, the County Council has made the following

Findings of Facts and Conclusions:

**General Critical Areas Findings**

1. The Growth Management Act requires critical areas to be designated and protected and to include and be informed by BAS when developing critical areas regulations. [RCW 36.70A]

2. Critical areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas.

3. The Whatcom County has within its borders a variety of environmentally sensitive areas that require protection of important functions and values.

4. Unregulated development may result in cumulative impacts to those functions and values of critical areas that contribute to and are necessary for a healthy natural environment and perceived quality of life.

5. The unregulated development of residences, businesses, shopping areas and other structures, and the clearing of land for accommodation of livestock and for such development all have the potential of adversely and significantly impacting the functions and values of critical areas.

6. The unregulated development of resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life.

7. It is more costly to remedy the loss of critical area functions and values than to conserve and protect them from loss or degradation.

8. In determining what critical areas are to be afforded a particular degree of protection, Whatcom County has evaluated a wide range of the best science available with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

9. The sources of this best available science that were evaluated and included in this ordinance are contained in Exhibit B: *Whatcom County Critical Areas Ordinance 2016 Update – Best Available Science Review: Addendum to the 2005 BAS Report.*
10. Protection standards for one critical area often provide protection for one or more other critical areas.

11. Critical areas may also be protected by other actions by the County, such as stormwater management standards, clearing and grading regulations, critical area restoration, and public education; and from other regulations, such as the Forest Practices Act, the Shoreline Management Act, the State Environmental Policy Act, and others.

12. The U.S. Constitution prohibits the taking of private property without just compensation.

13. The proposed regulations for critical areas are sufficient and appropriate to protect the functions and values of those areas, consistent with the Whatcom Comprehensive Plan and Growth Management Act.

14. The amendments hereafter set forth address requirements related to development in and near environmentally critical areas including environmentally critical areas buffers, performance standards, mitigation requirements, exemptions and exceptions.

15. The amendments serve to further implement the Comprehensive Plan, and provide protection for critical areas that is consistent with BAS and with providing options and development flexibility, and are in the public interest.

16. The critical areas regulations continue to allow for reasonable use of property to ensure that such regulations do not infringe on constitutional private property rights.

17. The public record demonstrates that the amendments were developed through a review of the BAS literature available to the County for review and consideration.

18. The County has followed the GMA’s requirements for public involvement and for including and considering BAS in modifications of the regulations for critical areas.

19. The public testimony provided to the County included both support for the proposed amendments and suggestions for modifications.

20. Based on the review of the testimony and public record, the amendments attached to this ordinance reflect the County’s requirement to protect critical areas and to consider the planning goals of the GMA, while recognizing public and private interests.

**Wetlands**

21. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced.

22. The scientific literature supports in the inclusion of protective buffers from wetlands to provide sediment control and nutrient inputs to wetlands, and to protect important wetland functions.

24. The scientific literature supports the inclusion of protective buffers of relatively intact native vegetation from wetlands to adequately protect wetland functions and values.


**Critical Aquifer Recharge Areas**

26. WAC 365-190-080 defines wellhead protection areas, sole source aquifers, special protection areas, and other areas that are susceptible to ground water contamination as areas with a critical recharging effect on aquifers used for potable water (also referred to as critical aquifer recharge areas).

27. Potable water is an essential life-sustaining element.

28. Much of the County's drinking water in rural areas comes from groundwater supplies.

29. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean up.

30. Preventing groundwater contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.


**Frequently Flooded Areas**

32. Flood hazard areas are subject to periodic inundation that results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

33. These flood losses are caused by development in areas prone to inundation that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

34. Floodplain and stream connectivity are major elements in maintaining healthy riparian habitat and off-channel habitats for the survival of fish species and conveyance of floodwaters. If river, floodplains, and other systems are not viewed holistically as biological, geomorphological units, this can lead to serious degradation of habitat and increase flood hazards, which in turn can contribute to listing of various fish species as threatened or endangered and result in extraordinary public expenditures for flood protection and relief.

35. Frequently flooded areas, including the 100-year floodplain and the floodway, are commonly mapped on flood insurance maps, often known as Flood Insurance Rate Maps, or FIRMs.
Geologically Hazardous Areas

36. Geologically hazardous areas are subject to periodic geological events that result in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

37. Geologic hazards may be exacerbated by development and human activity in sensitive areas, and impacts resulting from geologic hazards may be reduced by limiting development and human activity within or adjacent to the geologic hazard.

38. Some geologic hazards may be intensified during periods of consistent or heavy rainfall that results in ground saturation or surface water drainage flows.

Fish and Wildlife Habitat Conservation Areas

39. Fish and wildlife habitat conservation areas perform many important physical and biological functions that benefit Whatcom County and its residents, including but not limited to: maintaining species diversity and genetic diversity; providing opportunities for food, cover, nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas.

40. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations these functions cannot be adequately replicated or replaced.

41. The scientific literature supports the inclusion of protective buffers from streams to provide sediment control, nutrient inputs to downstream waters, large woody debris, and other functions important to riparian areas.

42. The Washington Department of Fish and Wildlife (WDFW) has prepared management recommendations for the preservation of priority habitat and species, which are based on the best available science, and include, in some instances, recommended protective buffer distances.

43. Kelp and eelgrass beds have been identified and mapped by the Washington State Department of Natural Resources (DNR) in some areas. Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260. Locations for both may be found by referring to Critical Spawning Habitat for Herring, Surf Smelt, Sand Lance and Rock Sole in Puget Sound, Washington: A Guide for Local Governments and Interested Citizens, 2002, and the Puget Sound Environmental Atlas, Volumes 1 and 2.

44. Salmonid and anadromous fish may be more impacted by development and human activity during some times than others. Such times are referred to as “fish windows,” which have been documented by WDFW.

45. DNR has classified watercourses according to two stream-typing systems based on channel width, fish use, and perennial or intermittent status.
46. WAC 365-190-080(5) grants [the jurisdiction] the flexibility to make decisions in the context of local circumstances, and specifically excuses local jurisdictions from being required to protect “all individuals of all species at all time.”
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Carl Weimer, Rud Browne, Ken Mann (via conference call), and Barry Buchanan.

Absent: Todd Donovan

FLAG SALUTE

ANNOUNCEMENTS

MINUTES CONSENT

*Browne moved to approve Minutes Consent items one through three.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)

Nays: None (0)

Absent: Donovan (1)

1. SPECIAL COMMITTEE OF THE WHOLE FOR MAY 31, 2016

2. SPECIAL COUNTY COUNCIL FOR JUNE 14, 2016

3. REGULAR COUNTY COUNCIL FOR JUNE 14, 2016

PUBLIC HEARINGS

1. PETITION TO CREATE THE COLUMBIA VALLEY PARK AND RECREATION DISTRICT (AB2016-218)

Buchanan opened the public hearing, and the following people spoke:
Vern Jaden, Kendall Chapel Pastor and Kendall/Columbia Valley trail planning association, stated the Parks and Recreation Commission endorsed the proposal unanimously. He and the community support the creation of the district.

Carl Isin McDaniel stated he supports the creation of the park and recreation district. The community needs a park.

Shorty Bjornstead stated he supports the creation of the park and recreation district. The community members have developed this project themselves.

Jessica Bea stated she worked on the petition for community support to create the park and recreation district. The community needs a safe park area, which has many community benefits.

Hearing no one else, Buchanan closed the public hearing.

SPECIAL ORDER OF BUSINESS

1. ORDINANCE ORDERING AN ELECTION TO DETERMINE THE FORMATION OF THE COLUMBIA VALLEY PARK AND RECREATION DISTRICT (AB2016-218A)

Brenner moved to adopt the ordinance.

The motion was seconded.

Councilmembers spoke in support of the community members who created a plan for the district for their community involvement.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)
Nays: None (0)
Absent: Donovan (1)

OPEN SESSION

The following people spoke:

- Amy Glasser spoke about the cost of the Donald Trump rally in Lynden and proposed changes to the County purchasing policy (AB2016-191).
- Catherine Waters spoke about the lack of mental health services in the criminal justice system and the proposed new jail.
- Brad Owens, Northwest Jobs Alliance, spoke about the resolution initiating Comprehensive Plan and Zoning amendments (AB2016-232).
- Kathy Waters spoke about the lack of mental health services in the criminal justice system.
- Roger Almskaar spoke about the cost of housing.
- Andrew Reding, Whatcom County Democrats, submitted and read from his testimony (on file) about the proposed Council resolution initiating Comprehensive Plan and Zoning amendments (AB2016-232).
• Ronna Loerch submitted and read from her testimony (on file) regarding the Comprehensive Plan (AB2016-047O) and proposed Council resolution initiating Comprehensive Plan and Zoning amendments (AB2016-232) regarding the Cherry Point urban growth area.

• Sandy Robson spoke about the Comprehensive Plan (AB2016-047O) regarding the Cherry Point urban growth area.

• Riley O’Leary spoke about the proposed Council resolution initiating Comprehensive Plan and Zoning amendments (AB2016-232) regarding the Cherry Point urban growth area.

• Glen Farmer, International Association of Machinist and Aerospace Workers Business Representative, spoke about the Comprehensive Plan (AB2016-047O) regarding the Cherry Point urban growth area and the proposed Council resolution initiating Comprehensive Plan and Zoning amendments (AB2016-232).

• Max Perry spoke about the history of the herring population around the piers at Cherry Point and allowing the refineries to improve their businesses.

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through five.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)

Nays: None (0)

Absent: Donovan (1)

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO AWARD BID #16-36 AND ENTER INTO A CONTRACT FOR THE CONSTRUCTION OF THE SOUTH FORK PARK PARKING LOT AND TRAILHEAD IMPROVEMENTS TO LOWEST BIDDER, DIRT WORKS BELLINGHAM, INC., IN THE AMOUNT OF $314,809.50 (AB2016-235)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND FIRE PROTECTION DISTRICT #7 FOR THE PURPOSE OF INCREASING THE ANNUAL SERVICE FEE IN 2017 SHOULD THE EMS LEVY NOT PASS (AB2016-236)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND THE OPPORTUNITY COUNCIL FOR THE EAST WHATCOM REGIONAL RESOURCE CENTER, IN THE AMOUNT OF $105,412 ANNUALLY (AB2016-237)

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO AWARD BID #16-41 AND ENTER INTO A CONTRACT FOR THE SOUTH PASS ROAD FAILURE PROJECT TO THE LOWEST BIDDER, GRANITE CONSTRUCTION COMPANY, IN THE AMOUNT OF $429,651.25 (AB2016-238)
5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND SAZON GROUP FOR DESIGN AND CONSTRUCTION SERVICES FOR PLANTATION INDOOR RANGE HVAC REPLACEMENT, IN THE AMOUNT OF $64,993 (AB2016-239)

OTHER ITEMS

1. ORDINANCE AMENDING WHATCOM COUNTY CODE 3.08, PURCHASING SYSTEM (AB2016-191)

Browne reported for the Finance and Administrative Services Committee and stated this item is held in committee.

2. ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, TWELFTH REQUEST, IN THE AMOUNT OF $190,003 (AB2016-230)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)
Nays: None (0)
Absent: Donovan (1)

3. ORDINANCE AMENDING WHATCOM COUNTY CODE TITLE 2, ADMINISTRATION AND PERSONNEL, TO ADD LANGUAGE RELATED TO AN INCREASE IN THE NUMBER OF WHATCOM COUNTY COUNCIL DISTRICTS (AB2016-220)

Browne reported for the Finance and Administrative Services Committee and stated this item is held in committee.

4. RESOLUTION RELATED TO THE SALE OF SURPLUS PROPERTY AND SETTING A DATE FOR PUBLIC HEARING PURSUANT TO WHATCOM COUNTY CODE 1.10 (AB2016-231)

Browne reported for the Finance and Administrative Services Committee and moved to approve the resolution.

Brenner stated she needs more information about the equipment being sold.

The motion carried by the following vote:
Ayes: Sidhu, Browne, Buchanan, Weimer, and Mann (5)
Nays: Brenner (1)
Absent: Donovan (1)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND FLO ANALYTICS FOR GIS AND DATA MANAGEMENT ASSISTANCE WITH THE 2016 AND 2017 BIRCH BAY...
WATERSHED AND AQUATIC RESOURCE MANAGEMENT DISTRICT ANNUAL FEE ROLL, IN THE AMOUNT OF $49,950 (AB2016-233)

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:
Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)
Nays: None (0)
Absent: Donovan (1)

6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO AWARD BID #16-28 AND ENTER INTO A CONTRACT FOR THE MARIETTA STRUCTURES REMOVAL PROJECT TO THE LOWEST BIDDER, JT MUENSCHER, IN THE AMOUNT OF $72,695 (AB2016-234)

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:
Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)
Nays: None (0)
Absent: Donovan (1)

7. RESOLUTION INITIATING COMPREHENSIVE PLAN AND ZONING AMENDMENTS BY AMENDING RESOLUTION 2016-009 (AB2016-232)

Weimer moved to approve the resolution.

The motion was seconded.

Brenner stated she’s opposed to the resolution as it’s written.

Weimer moved to add language, “Be it further resolved, that the County Council request the Planning Commission act on this amendment as soon as possible and provide the report of their deliberations no later than …2017.”

The motion was seconded.

The motion to amend carried by the following vote:
Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)
Nays: None (0)
Absent: Donovan (1)
Brenner moved to send all the changes proposed to Chapter 2 regarding the Cherry Point urban growth area (UGA) by councilmembers over the next two days to the Planning Commission.

The motion was seconded.

Councilmembers discussed the process for sending their comments to the Planning Commission.

The motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Sidhu, Browne, Buchanan, Weimer, and Mann (5)

**Absent:** Donovan (1)

Browne read the following statement:

I've been concerned that some people across the political spectrum believe that the County government has broad powers to regulate international trade, and the truth is we don't. Our powers are actually very limited, and we can't override State or federal law. We also can't take away an existing permit for any facility of any nature in the county. The latest version of this proposal has been revised from the original. The previous versions asked to ban all fossil fuel exports. Which, because it wasn't defined by definition, it included refined and unrefined fossil fuel exports. Now this would have shut down Cherry Point, because Cherry Point is already a significant exporter of fossil fuels. It is the principal supplier, I think maybe the only supplier, of jet fuel to the City of Vancouver, for example. It supplies jet fuel to SeaTac. It provides jet fuel down into Oregon. It also provides calcine coke around the world. So to propose that we stop them from exporting fossil fuels would have, in fact, created or certainly created the fear amongst the people out there, and the contractors, that those families would lose their source of income. The other reason I was concerned about that is, it wouldn't have changed the demand for those products. What it simply would have done was shifted the production of those products overseas into markets where the environmental controls are much less regulated. We would have seen an increase in fossil fuel shipping in Puget Sound, because places like Vancouver would have been forced to buy their jet fuel from places like Asia, and they come through Puget Sound and the Strait of Juan de Fuca, which would expose Whatcom County to the same risk as or greater risk, because it would have increased the tanker traffic. I'd much rather see fossil fuels, if we have to use them, refined on U.S. soil by U.S. workers, under U.S. environmental controls with a minimum of transportation necessary to get them to market. I want to make it clear. I'm also a very strong believer in climate change, and I'm a very strong believer it is a manmade problem. I make no bones about that. I believe we're going to find common ground in how we deal with these issues, but we have to listen and work together as a community. For that reason, I'm supporting pushing this to the Planning Commission for a full public hearing and full public involvement.
Sidhu stated he agrees with Councilmember Browne. He read the following statement:

Let me briefly state my background. I’m an engineer, and I worked in the petroleum industry for more than 20 years. My son is an engineer at BP Cherry Point for the past eight years. I understand the petroleum industry, its place in our economy, and its place in our community. For the past several weeks, we’ve listened to arguments like, “are you for petroleum, or are you against it?” or “are you for saving the environment, or are you against it.” As I analyze these arguments from both sides, I can clearly see that the issue is not petroleum versus environment. It is all about our need for energy to sustain our lifestyle. Energy can come from running water, wood, coal, petroleum, nuclear, sun, wind, or tidal waves, or other forms. We as a society need to choose what forms of energy are best for our use, for our environment, for sustainability, and affordability. The best form of energy, which is most practical and efficient to use as we know of today, is electricity, which can be produced from any fuel, like running water, like wood, coal, petroleum, nuclear, sun, wind, or tidal waves. And, I just want to remind you, electricity, as we know, is just about 100 years old. For many centuries, we used running water and wood as a resource for energy, and then came the coal to make steam, and steam power was the king. Then we discovered electricity. Later, about a century ago, petroleum came along and opened many new possibilities for humans to use energy. And then we discovered nuclear energy. Now we have learned how to harness the energy from sun, wind, and tidal waves, which do not pollute the air we breathe, the water we drink, and the land we grow our food on. I fail to understand what is the harm in taking steps to transition to better options as humans have done from time-to-time for the sake of future generations. To me, petroleum is a valuable resource, but it is limited in its availability. This is something which will be part of our energy mix for many decades. Wouldn’t it be smart to use this limited resource wisely and sparingly, so we can benefit for it most and for the longest time? How do we use petroleum? We take it out of the ground, we clean it, and burn it away, like there’s no tomorrow. We actually go to wars to get more of it so we can burn it even faster. How come we stopped using wood as a fuel? Because we learned better ways to use wood. It is stupid to cut forest and burn it away, one tree at a time, much faster than we can grow them. We learned that half of our lungs are hanging out there on the trees, because we breathe what trees give out. Why don’t we use nuclear energy? Because we saw what happened at Three Mile Island, Chernobyl, and Fukushima. We learned our lesson. I’m not against petroleum. I’m against irresponsible use of a valuable, God-given resource by burning it away like there is no tomorrow. I believe petroleum should be $500 a barrel. This product will thrive economically at this price by using it sparingly to make things we cannot otherwise make. We will extend the life of this resource. What does it matter what fuel my car uses? All I need is mobility. If Scotty can beam me up all the time, I don’t even need a car, nevermind the fuel. It is ridiculous to argue that petroleum is the only fuel to use for our cars. All we need is something which is affordable, which does not pollute our air, our water, and our land. I think petroleum does not quite fit this bill. What’s wrong with this picture? We all have our cars, which run...
on electricity, but its seats, body, and tires are made from petroleum. Let us be smart to use the God-given bounties on our planet. I’m not against industry at Cherry Point. I’m for a time-bound transition to better energy alternatives available to us. We must create and develop better options for our kids and grandkids and for their kids and grandkids. How do we do that? Certainly not putting our head in the sand and ignoring all the real possibilities in front of us. The only constant in life is change. Let’s make this change for the better. The changes proposed by Councilmember Weimer deserve a conversation. Let us get to the facts and cut out the emotions and political scores. We need to hear a constructive discussion from the industry and the residents alike, on both sides. Yes, I agree, there is a good case to devise the wording proposed for the Cherry Point UGA to reflect the reality on the ground and the short-term versus long-term impacts on our community, our state, and our country. Thank you.

Councilmembers continued to discuss how to forward amendments to the Planning Commission.

The motion to approve the resolution as amended carried by the following vote:

Ayes: Sidhu, Browne, Buchanan, Weimer, and Mann (5)
Nays: Brenner (1)
Absent: Donovan (1)

8. RESOLUTION ACCEPTING THE WHATCOM COUNTY COORDINATED WATER SYSTEM PLAN 2016 UPDATE (AB2016-192)

Buchanan reported for the Special Committee of the Whole and moved to approve the resolution.

Brenner read a letter from legal counsel about language in the resolution. She moved to hold in committee until they have the correct documents from the Public Works Department.

The motion was seconded.

The motion to hold in committee carried by the following vote:

Ayes: Mann, Sidhu, Browne and Brenner (4)
Nays: Weimer and Buchanan (2)
Absent: Donovan (1)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT TO THE SUMAS/EVERSON/NOOKSACK FLOOD SUBZONE ADVISORY COMMITTEE, APPLICANT: ED BOSSCHER (AB2016-221)

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Browne moved to appoint Ed Bosscher.
The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)
Nays: None (0)
Absent: Donovan (1)

2. APPOINTMENTS TO THE JAIL STAKEHOLDER WORKGROUP: ONE COUNTY OR SMALL CITY RESIDENT LIVING OUTSIDE THE CITY OF BELLINGHAM (APPLICANT - HOWARD HILL CUMMINGS) AND ONE RESIDENT FROM THE CITY OF BELLINGHAM (APPLICANT - KELLI CARROLL) (AB2016-179A)

Sidhu moved to appoint Howard Hill Cummings and Kelli Carroll by acclamation.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)
Nays: None (0)
Absent: Donovan (1)

3. CONFIRMATION OF ALL MEMBERS APPOINTED TO THE JAIL STAKEHOLDER WORKGROUP (AB2016-179C)

Buchanan stated the Small Cities put forward two mayors as members instead of one mayor and one small city council member.

Weimer stated he would like to know if any of the small city council members were asked.

The councilmembers discussed whether either Tribes have expressed an interest in participating, making the workgroup smaller.

Buchanan stated this item is held in Council.

4. APPOINTMENT OF MEMBERS TO SERVE ON THE PRO AND CON STATEMENT COMMITTEES FOR THE EMS LEVY MEASURE (AB2016-167A)

Browne nominated Bamesberger, Boyd, and Work. The nomination was seconded.

Brenner nominated Graham. The nomination was seconded.

The Council appointed Marisa Bamesberger, Bill Boyd, and Erica Work to the Pro Statement Committee

Brenner moved to appoint by acclamation Ray Baribeau, Karl Uppiano, and Patricia Dunn to the Con Statement Committee.

The motion was seconded.
The motion carried by the following vote:

**Ayes:** Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)

**Nays:** None (0)

**Absent:** Donovan (1)

5. **APPOINTMENT OF MEMBERS TO SERVE ON THE PRO AND CON STATEMENT COMMITTEES FOR THE PROPOSAL TO FORM THE COLUMBIA VALLEY PARK AND RECREATION DISTRICT (AB2016-218B)**

_Brenner moved_ to appoint Richard Whitson and Rebecca Boonstra to the pro statement committee.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)

**Nays:** None (0)

**Absent:** Donovan (1)

**EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**

1. **REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE'S APPOINTMENT OF LINDSEY KARAS AND CHI-NA (KIM) STOANE TO THE WHATCOM COUNTY PUBLIC HEALTH ADVISORY BOARD (AB2016-240)**

_Brenner moved_ to confirm the request.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)

**Nays:** None (0)

**Absent:** Donovan (1)

**INTRODUCTION ITEMS**

_Brenner moved_ to approve Introduction Items one through five, including the revisions to Introduction Item 4 submitted by staff and reviewed by the Special Committee of the Whole earlier in the day.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Sidhu, Browne, Buchanan, Weimer, and Mann (6)

**Nays:** None (0)

**Absent:** Donovan (1)
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1. ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, THIRTEENTH REQUEST, IN THE AMOUNT OF $161,200 (AB2016-241)

2. ORDINANCE AMENDING THE COMPREHENSIVE PLAN DESIGNATION IN THE SMITH ROAD/GUIDE MERIDIAN AREA FROM RURAL TO RURAL COMMUNITY AND AMENDING THE OFFICIAL WHATCOM COUNTY ZONING MAP FROM R5A TO RIM (SPECIFIED FITTINGS) (AB2016-242)

3. ORDINANCE ADOPTING DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE 2016 COMPREHENSIVE PLAN PERIODIC UPDATE (AB2016-047M)

4. ORDINANCE ADOPTING WHATCOM COUNTY COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE 2016 COMPREHENSIVE PLAN UPDATE AND URBAN GROWTH AREA REVIEW (AB2016-047O)

5. RESOLUTION AUTHORIZING THE SALE OF WHATCOM COUNTY SURPLUS PROPERTY PURSUANT TO WHATCOM COUNTY CODE 1.10 (AB2016-231A)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 8:36 p.m.

The County Council approved these minutes on December 6, 2016.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________  
Jill Nixon, Minutes Transcription
Whatcom County Council

Special Surface Water Work Session

November 15, 2016

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 10:30 a.m. in the Civic Center Garden Level Conference Room, 322 Commercial Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, and Carl Weimer

Absent: Todd Donovan

SURFACE WATER WORK SESSION (AB2016-024)

1. JOINT BOARD PLANNING UNIT UPDATE

Gary Stoyka, Public Works Department, updated the Council on the next Planning Unit meeting, including the watershed management plan, groundwater monitoring, nongovernmental water system caucus outreach, and a review of the current caucus structure. He answered questions about possible changes to the caucus structure, what groundwater modeling can be done for $16,000 per year, who reviews the caucus outreach materials, Geneva Consulting, and duplication and overlap of work on water issues by different groups and stakeholders.

Stoyka updated the Council on the Joint Board, finalizing the new Joint Board/Salmon Recovery Funding Board process, and the regional ecosystem recovery plan. He answered questions on funding for the Joint Board.

2. OVERVIEW OF 2017-2022 WATER RESOURCES IMPROVEMENT PROGRAM (WRIP)

Gary Stoyka, Public Works Department, gave a staff report on the Water Resources Improvement Program (WRIP) and stated it will be before the Council on November 22. He referenced the handout in the Council packet and updated the Council on stormwater maintenance and repair project 12.

Kirk Christensen, Public Works Department, referenced the handout in the Council packet and updated the Council on the Lake Whatcom stormwater projects one through seven.

Staff and councilmembers discussed the benefit evaluation score (BES), how projects are prioritized, the higher priority of a Sudden Valley project with a lower BES, the influence of legal mandates and funding opportunities on a project’s priority, funding sources, and prioritizing other funding sources to slow the decline of the flood fund.
Kraig Olason, Public Works Department, referenced the handout and updated the Council on Birch Bay Watershed and Aquatic Resources Management (BBWARM) District projects eight through 11.

Councilmembers discussed the BBWARM projects having their own funding source and the higher-ranked projects that have already been done.

Cathy Craver, Public Works Department, answered questions on getting grant funds for stormwater maintenance and repair.

Roland Middleton, Public Works Department, reported on Birch Bay Drive and Pedestrian Facility project 13 and Swift Creek projects 14 through 16. He answered questions about the completion date of the Birch Bay project, Canadians using Sumas River water for irrigation, and a long term solution for Swift Creek asbestos problems.

Paula Harris, Public Works Department, updated the Council on the river and flood projects 17 through 34. She answered questions about the total for the lower Nooksack River project, whether the Lummi Nation will contribute funding, the value of the property impacted by the High Creek project, and the status of the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP).

3. POLLUTION IDENTIFICATION & CORRECTION (PIC) AND SHELLFISH UPDATE

Erika Douglas, Public Works Department, submitted and read from a presentation (on file) and talked about the work done in the past 21 years to achieve the upgrade.

Steve Seymour, Drayton Harbor Oyster Company, spoke on the community’s and County’s efforts to restore water quality in the Drayton Harbor watershed.

Douglas continued the presentation on recent, current, and future work necessary to make sure the harbor stays open to shellfish harvesting; shifting efforts to more urban areas where high pollution counts persist; expanding the PIC Program, and; the status of the shellfish protection district advisory committees.

She answered questions about the County’s ability to do midstream water quality surveys and getting water quality data from White Rock, British Columbia, and other Canadian locations.

ADJOURN

The meeting adjourned at 12:20 p.m.

The Council approved these minutes on ________________, 2016.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

Dana Brown-Davis, Council Clerk  Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription
**CLEARANCES**

<table>
<thead>
<tr>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
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<td>County Cou 1/4/2017</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>Executive:</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:**
Appointment to Drainage District #3, Applicant Roger Blok

**ATTACHMENTS:**
Application

**SEPA review required?**

<table>
<thead>
<tr>
<th>( ) Yes</th>
<th>( ) NO</th>
</tr>
</thead>
</table>

**SEPA review completed?**

<table>
<thead>
<tr>
<th>( ) Yes</th>
<th>( ) NO</th>
</tr>
</thead>
</table>

**Should Clerk schedule a hearing?**

| ( ) Yes | (X) NO |

**Requested Date:**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
District boundaries are approximately the Four Mile Creek/Green Lake area, including tributary drainage to Green Lake along the Central Road and Noon Road. Duties include field review of drainage needs, attending an annual meeting to determine the next year's work schedule and assessment levy, elect internal officers, and review, discuss, or act on any other official and district business. The person appointed will serve until the next special district election (RCW 85.06 and RCW 85.38.070(5))

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
</table>

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: __________ Mr. Roger Blok 687 Board Rd. Lynden, WA 98264
Street Address: __________ Date: __________
City: __________ Zip Code: __________

Mailing Address (if different from street address):

Day Telephone: 360-342-3327 Evening Telephone: 360-815-1817
E-mail address: reggie@yahoo.com

1. Name of board or committee—please see reverse:  
   Drainage District #2
   Supervisor - PEG

2. You must specify which position you are applying for.  
   Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?  
   (If applicable, please refer to vacancy list.)  
   Yes ( ) No ( )

4. Which Council district do you live in?  
   ( ) One ( ) Two ( ) Three ( ) Four ( ) Five

5. Are you a US citizen?  
   Yes ( ) No ( )

6. Are you registered to vote in Whatcom County?  
   Yes ( ) No ( )

7. Have you ever been a member of this Board/Commission?  
   Yes ( ) No ( )
   If yes, dates: __________

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?  
   Yes ( ) No ( )
   If yes, please explain: __________

You may attach a résumé or detailed summary of experience, qualifications, and interest in response to the following questions.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.  
   Farmer for over 35 years

10. Please describe why you're interested in serving on this board or commission:  
    As a landowner, I have a vested interest in seeing that the ditches are properly maintained

References (please include daytime telephone number):  
   Sacon Vandeven - 354-1194
   Doug Dostal - 354-4644

Signature of applicant: __________

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<td></td>
<td>1/10/2017 County Council</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Division Head:**

**Dept. Head:**

**Prosecutor:**

**Purchasing/Budget:**

**EXECUTIVE:**

**TITLE OF DOCUMENT:**

Annual appointments to various Boards and Commissions

**ATTACHMENTS:**

List of vacancies; applications

**SEPA review required?** ( ) Yes ( ) NO

**SEPA review completed?** ( ) Yes ( ) NO

**Should Clerk schedule a hearing?** ( ) Yes ( X ) NO

**Requested Date:**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Annual appointments to Council-appointed citizen boards, commissions, and committees. See attached list of vacancies.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
LUMMI ISLAND FERRY ADVISORY COMMITTEE: 2 Vacancies, partial terms.

- 1 Vacancy for a person living and/or owning property on Lummi Island, partial term ending 1/31/2018.
- 1 Vacancy for a person NOT living and/or owning property on Lummi Island, partial term ending 1/31/2019.

The Committee provides review and recommendations to the County Council and Executive on issues that affect the ongoing operations and infrastructure of ferry service to Lummi Island. Review includes: proposed changes to ferry operations and fares; an annual review of the ferry fund; demands of and improvements to ferry services; and ferry replacement options. Meets monthly.

Applications Received - Resident/Property Owner (1 Vacancy):

Michael Skehan

PLANNING COMMISSION: 3 Vacancies, 4-year terms

2 current members eligible to reapply. Applicants must be a resident of New County Council District 1, 2, 3, or 4. The Planning Commission shall assist the Planning & Development Services Department in carrying out its duties, including assistance in the preparation and execution the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments. The Commission shall conduct hearings as required under RCW 36.70, and shall make findings and conclusions that shall be transmitted to the Planning and Development Services Department and County Council. The Planning Commission meets on the second and fourth Thursday of every month in the evenings.

Applications Received - County Council District 2: Council can appoint only 1 person per District

Stephen Jackson - County Council District 2
Andrew Rowlson (incumbent) - County Council District 2

Applications Received - County Council District 3: Council can appoint only 1 person per District

Atul Deshmane (incumbent)
PORTAGE BAY SHELLFISH PROTECTION DISTRICT: 4 vacancies, 4-year terms
Current members eligible to reapply. Members must have a direct interest in the shellfish protection district. Duties are to advise the County Council on the proposed actions and operations relating to the restoration of water quality in the Portage Bay Shellfish Protection District.

Applications Received (4 Vacancies):
Christine Woodward (incumbent)
Lee First (incumbent)
Dorie Belisle (incumbent)

SOLID WASTE ADVISORY COMMITTEE: 3 Vacancies. 3-year terms
- 1 vacancy representing a public interest group
- 1 vacancy representing business/industry, current member eligible to reapply
- 1 vacancy representing a Solid Waste Disposal Facility
No two representatives can be from the same company or public interest group. The committee provides ongoing public input and advice to Whatcom County on solid waste management issues. Generally meets quarterly on Thursday evenings, but meeting schedule and frequency subject to change upon committee approval.

Applications Received - Business Industry Representative (1 Vacancy):
Amber Jones (incumbent)

Applications Received - Solid Waste Disposal Facility (1 Vacancy):
Larry McCarter
Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement

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First Name  Michael

Last Name  Skehan

Date  12/11/2016

Street Address  2040 Granger Way

City  Lummi Island

Zip  98262

Do you live in & are you registered to vote in Whatcom County?  Yes

Do you have a different mailing address?  Field not completed.

Primary Telephone  3607587333

Secondary Telephone  3606031702

Email Address  KF7okj@gmail.com

Step 2

1. Name of Board or Committee  Lummi Island Ferry Advisory Committee

Lummi Island Ferry  Lummi Island resident and/or property owner

Skehan application, Page 1
Committee (Part 2)

Lummi Island Ferry Advisory Committee

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? Yes

3. Which Council district do you live in? District 3

4. Are you a US citizen? Yes

5. Are you registered to vote in Whatcom County? Yes

6. Have you ever been a member of this Board/Commission? No

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

Field not completed.

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, King County Dept of Transportation - Transit Division, Retired
and education

9. Please describe why you're interested in serving on this board or commission

To offer suggestions to Council, PW, and my community to provide for safe, reliable and efficient ferry service to and from Lummi Island. I was formerly on the WSDOT Long Range Planning Committee, and Co-Founder of Transportation Choices (a statewide advocacy 501c3), VP of Lummi Island Heritage Trust and Secretary of the Community Assn., Currently I serve as Lead on Nextdoor Lummi Island and Lead of our Fire Department Auxiliary Communication System.

References (please include daytime telephone number):

Jon Hutchings, Dir PW Paul Davis, Editor of Lummi Island Tome, 758-2414 Duncan McLane, Chief, FD11 758-2411 Nancy Ging, LIFAC, Vice Chair 758-2529 Beth Louis, Pres. Protect Lummi Island, 758-2158

Signature of applicant:

Michael Skehan

Place Signed / Submitted

Lummi Island, WA

(Section Break)

Email not displaying correctly? [View it in your browser](#)
Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement
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First Name  Stephen
Last Name  Jackson
Date  12/19/2016
Street Address  3704 Home Road, Unit 203
City  Bellingham
Zip  98225
Do you live in & are you registered to vote in Whatcom County?  Yes
Do you have a different mailing address?  Field not completed.
Primary Telephone  17024032243
Secondary Telephone  Field not completed.
Email Address  stephen@swjlv.com

Step 2

1. Name of Board or Committee  Planning Commission
2. Do you meet the  Yes
residency, employment, and/or affiliation requirements of the position for which you're applying?

3. Which Council district do you live in? District 2

4. Are you a US citizen? Yes

5. Are you registered to vote in Whatcom County? Yes

6. Have you ever been a member of this Board/Commission? No

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

I am a Deputy Public Defender for Whatcom County. My duties include representing indigent defendants in criminal matters. I am well-versed in the laws and statutes of Washington and Whatcom County. I am also a member of the North Sound Behavioral Health Advisory Board.

9. Please describe why you're interested in serving on this board or commission

I believe that Whatcom County is headed for a significant period of growth. As a result, this growth must be managed in a way that is sustainable, logical, and serves all members of the community. I would like to lend my talents and expertise to
assist with reaching that goal. I am a proud resident of Whatcom County and look forward to serving my community for years to come.

References (please include daytime telephone number):

<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jill Bernstein</td>
<td>(360) 961-2677</td>
</tr>
<tr>
<td>Jane Boman</td>
<td>(206) 353-2508</td>
</tr>
<tr>
<td>Darrin Hall</td>
<td>(360) 632-8434</td>
</tr>
</tbody>
</table>

Signature of applicant: Stephen W. Jackson

Place Signed / Submitted: Bellingham, WA

Email not displaying correctly? View it in your browser.
Stephen W. Jackson  
3704 Home Road, Unit 203  
Bellingham, WA 98225  
(702) 403-2243  
swjaxon@gmail.com

Education:  
William S. Boyd School of Law, University of Nevada, Las Vegas  
Juris Doctor, December 2014

University of Nevada, Las Vegas  
Bachelor of Arts, May 2012  
Major: Criminal Justice

Experience:  
Whatcom County Public Defender  
Deputy Public Defender  
April 2015 – Present  
• Make daily court appearances representing clients and negotiating plea deals  
• Manage a large felony, misdemeanor and juvenile court caseload  
• Assist with Whatcom County Mental Health Court

Office of the Federal Public Defender for the District of Nevada – Non-Capital Habeas Unit  
Law Clerk  
January 2014 – May 2014  
• Wrote pleadings, briefs, and motions for indigent clients seeking appellate relief from federal and state courts

U.S. District Court for the District of Nevada  
Judicial Extern to the Honorable Kent Dawson  
May 2013 – August 2013  
• Worked on a complex issue of first impression involving changes to Nevada’s foreclosure laws  
• Wrote draft orders to be signed by the judge on criminal and civil cases that came before the court

Legal Aid Center of Southern Nevada  
Law Clerk – Special Education Unit  
May 2013 – August 2013  
• Support legal staff with research and writing on local special education issues  
• Advocated on behalf of special-needs students at hearings with school district staff

KLAS-TV  
Online News Editor – Assignment Editor  
December 2006 – July 2012  
• Responsible for writing and copyediting stories for a large news website  
• Produced all online elements for a nationally recognized investigative journalism team  
• Managed Las Vegas’ largest television newsroom

Volunteering:  
Washington State Bar Association  
Editorial Advisory Committee  
July 2016 – Present  
• Work with WSBA staff to oversee the publication of WSBA’s magazine

North Sound Behavioral Health Advisory Board  
Board Member  
August 2016 – Present  
• Enact policy and budgetary recommendations for behavioral health services for five Washington counties

Awards:  
• 2013 duPont – Columbia Award for Excellence in Broadcasting  
• 2011 Peabody Award for Excellence in Broadcasting  
• 2006 Emmy Awards – Crime Reporting and Investigative Reporting  
• Four-time Edward R. Murrow Award winner
Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement
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<table>
<thead>
<tr>
<th>First Name</th>
<th>Andrew</th>
</tr>
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<tbody>
<tr>
<td>Last Name</td>
<td>Rowlson</td>
</tr>
<tr>
<td>Date</td>
<td>11/11/2016</td>
</tr>
<tr>
<td>Street Address</td>
<td>3449 Highfield Ct</td>
</tr>
<tr>
<td>City</td>
<td>Bellingham</td>
</tr>
<tr>
<td>Zip</td>
<td>98226</td>
</tr>
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<tr>
<td>Primary Telephone</td>
<td>360-441-4817</td>
</tr>
<tr>
<td>Secondary Telephone</td>
<td>Field not completed.</td>
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<tr>
<td>Email Address</td>
<td><a href="mailto:rowlson1@gmail.com">rowlson1@gmail.com</a></td>
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Step 2

1. Name of Board or Committee
   Planning Commission

2. Do you meet the residency, employment, and/or affiliation requirements
   Yes
of the position for which you’re applying?

3. Which Council district do you live in?
   District 2

4. Are you a US citizen?
   Yes

5. Are you registered to vote in Whatcom County?
   Yes

6. Have you ever been a member of this Board/Commission?
   Yes
   If yes, please list dates: January 1, 2016 through present.

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?
   No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education
   • Director of Human Resources at Whatcom Transportation Authority (WTA) from 2010 forward. Member of the senior management team, crafting and implementing strategic efforts including; Agency-wide policies, 5-year budgetary planning, workforce management and long range service delivery planning. • Former Everson City Council member from 2001 to 2013. Set policy and direction for the City of Everson while also soliciting citizen input and following appropriate open government regulations.

9. Please describe why you’re interested in serving on this board or
   I am currently serving on the Planning Commission, and have done so since January 2016. I am interested and enjoy medium and long term planning for my community, and feel it an important way to shape our future. I enjoy working the
current commission, which I find to have many diverse opinions. I appreciate being part of the collaborative, collegiate and productive work the Commission currently does, and would like to continue serving.

References (please include daytime telephone number):

Jack Lowes, County Executive 360-676-6700

Signature of applicant:

Andrew Rowlson

Place Signed / Submitted:

Bellingham WA

(Section Break)
Andrew N. Rowlson

3449 Highfield Ct
Bellingham WA 98226

(360) 441-4817
rowlson1@gmail.com

OBJECTIVE
To obtain a position on the Whatcom County Planning Commission, in order to promote and support appropriate medium and long-term planning for my community.

PROFILE
Human Resources Director with 20 years of experience in local municipal organizations. Also served 12 years on the Everson City Council including as Mayor Pro-Tem. Served as an Executive Board member for the Whatcom Council of Governments and also served as the City of Everson’s representative to a County-wide strategic planning effort in approximately 2008.

PROFESSIONAL EXPERIENCE
• Director of Human Resources at Whatcom Transportation Authority (WTA) from 2010 forward. Member of the senior management team, crafting and implementing strategic efforts including; Agency-wide policies, 5-year budgetary planning, workforce management and long range service delivery planning.
• Former Everson City Council member from 2001 to 2013. Set policy and direction for the City of Everson while also soliciting citizen input and following appropriate open government regulations.

GOVERNMENT & COMMUNITY INVOLVEMENT
Whatcom Council of Governments Executive Board Member/Everson City Council Member
• Served as Everson’s Mayor-Pro Tem
• Served as an Executive Board member on the Whatcom Council of Governments
• Served on Everson City Council’s Public Properties Committee and the Finance Committee

Washington State Transit Association (WSTA)
• Served as Chairperson for the Association’s Human Resources Committee from 2003-2015
• Currently serving as Past Chairperson

Washington Self-Insurers Association President, 2005-2006
• Chaired Association board meetings, which set policy and general direction for the Association.
• Represented the Association with the Labor and Industry Department in Olympia.
• Oversaw a strategic review of the organization.
• Spoke at Labor and Industry’s 2006 Olympia Worker Memorial event, to commemorate workers who lost their life on the job in 2005.
• Previously served as a Board Member from 1999-2003

EDUCATION
• Certified Human Resources Professional SHRM-CP
• Labor Relations Institute, Association of Washington Cities, 2002 - 2015
• FEMA Emergency Management Institute Training, Maryland campus - 2008
• NIMS ICS-400 Emergency Response Training - 2008
• University of Washington, 1984 – 1986, Business-related course work
Board and Commission Application

**Step 1**

Application for Appointment to Whatcom County Boards and Commissions

**Public Statement**

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<td>Deshmane</td>
</tr>
<tr>
<td>Date</td>
<td>11/23/2016</td>
</tr>
<tr>
<td>Street Address</td>
<td>664 East Laurel Road</td>
</tr>
<tr>
<td>City</td>
<td>Bellingham</td>
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<td>Zip</td>
<td>98226</td>
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<tr>
<td>Do you live in &amp; are you registered to vote in Whatcom County?</td>
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<tr>
<td>Email Address</td>
<td><a href="mailto:adeshman@yahoo.com">adeshman@yahoo.com</a></td>
</tr>
</tbody>
</table>

**Step 2**

1. **Name of Board or Committee**

   Planning Commission

2. **Do you meet the**

   Yes
residency, employment, and/or affiliation requirements of the position for which you're applying?

3. Which Council district do you live in? District 3

4. Are you a US citizen? Yes

5. Are you registered to vote in Whatcom County? Yes

6. Have you ever been a member of this Board/Commission? Yes
   If yes, please list dates: February 2016 till present

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? Yes
   If yes, please explain: Whole Energy Fuels Corporation has an office in downtown Bellingham. We currently have no customers or business arrangements in Whatcom County.

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, Manage a company that makes and distributes renewable fuels and chemicals for the last 10 years.
9. Please describe why you're interested in serving on this board or commission

To utilize my background on innovation and clean energy to benefit the community that I live in. To bring greater cultural diversity to discussions affecting the community that I live in.

References (please include daytime telephone number):

Satpal Sidhu Kelli Linnville

Signature of applicant:

Atul Deshmane

Place Signed / Submitted:

Bellingham WA

(Section Break)

Email not displaying correctly? View it in your browser.
Experience

Atul S. Deshmane
Bellingham, Washington

• Whole Energy Fuels
  President/CEO
  March 2004 – Current
  Leading glycerin, bio-methane, biodiesel distribution and production services firm with presence from Southern California to British Columbia. Assembled a world-class team to achieve volume sales and best reputation for product quality in the markets Whole Energy serves.
  www.whole-energy.com

• Clean Energy Fuels Inc.
  Director of Technology Advancement
  October 2001 – October 2003
  Developed strategy and business plan for hydrogen energy business
  Successfully oversaw development of 10,000 psi hydrogen fueling station.

• Azure Dynamics Inc.
  Director of Product Development
  October 2000 – September 2001
  Lead a team of 10 engineers to successfully deliver a series hybrid delivery truck and demonstrated it successfully with Canada Post.

• Ford Motor Company
  April 1994 – January 2001
  Led development of numerous projects to commercialize alternative fuels technology including fuel cells, hybrid vehicles, and advanced testing and development tools for powertrains.

Education

• B.S. in Electrical Engineering, Univ. of Missouri-Rolla, August, 1989
• Graduate coursework in industrial engineering, University of Michigan-Ann Arbor

Special Accomplishments/Innovations

• Atul is on the board of Sustainable Bellingham, Three Rivers Cooperative School and is a Whatcom County Planning Commissioner.
• Industry expert reviewer for the US Department of Energy.
• Since 2006, work with Orion Lekos to develop technology innovations. These innovations are patented and relate to the refining and use of co-product glycerin.
• In 2003-2005, Atul helped developed and co-invented a new plug-in hybrid electric powertrain that debuted at the 2008 Detroit International Auto Show.
• While at Ford Motor Company, Atul received a Trade Secret Award for the development of a new powertrain development tool in 1998.
Board and Commission Application

**Step 1**

Application for Appointment to Whatcom County Boards and Commissions

Public Statement

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<table>
<thead>
<tr>
<th>First Name</th>
<th>Christine</th>
</tr>
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<tbody>
<tr>
<td>Last Name</td>
<td>Woodward</td>
</tr>
<tr>
<td>Date</td>
<td>11/15/2016</td>
</tr>
<tr>
<td>Street Address</td>
<td>2715 W. Illinois</td>
</tr>
<tr>
<td>City</td>
<td>Bellingham</td>
</tr>
<tr>
<td>Zip</td>
<td>98225</td>
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<td>Field not completed.</td>
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<tr>
<td>Email Address</td>
<td><a href="mailto:cwoodward5893@gmail.com">cwoodward5893@gmail.com</a></td>
</tr>
</tbody>
</table>

**Step 2**

1. Name of Board or Committee: Portage Bay Shellfish Protection District Advisory Committee

2. Do you meet the... Yes
residency, employment, and/or affiliation requirements of the position for which you're applying?

3. Which Council district do you live in?  
   District 1

4. Are you a US citizen?  
   Yes

5. Are you registered to vote in Whatcom County?  
   Yes

6. Have you ever been a member of this Board/Commission?  
   Yes
   If yes, please list dates: January 2015-January 2017

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?  
   No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

Field not completed.

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

Director of Natural Resources for the Samish Indian Nation At this time, vice chair for the Portage committee

9. Please describe why you're interested in

I have served for the past 2 years and would like to continue my service
serving on this board or commission

References (please include daytime telephone number):

Erika Douglas, 360-6766876

Signature of applicant:

Christine Woodward

Place Signed / Submitted

Bellingham WA

Email not displaying correctly? View it in your browser.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Lee First
Street Address: 1914 W. North St
City: Bellingham, WA
Zip Code: 98225

Date: 11/9/2016

1. Name of board or committee—please see reverse:
   Portage Bay Shellfish Protection District (citizen)

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
   (If applicable, please refer to vacancy list.) (X) yes ( ) no

4. Which Council district do you live in? (X) One ( ) Two ( ) Three ( ) Four ( ) Five

5. Are you a US citizen? (X) yes ( ) no

6. Are you registered to vote in Whatcom County? (X) yes ( ) no

7. Have you ever been a member of this Board/Commission? If yes, dates: Current term (X) yes ( ) no

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) yes (X) no
   If yes, please explain: ____________________________________________________________

You may attach a résumé or detailed summary of experience, qualifications, and interest in response to the following questions.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
   Please see previous application

10. Please describe why you’re interested in serving on this board or commission:

References (please include daytime telephone number):

Signature of applicant: Lee First

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Dorie Belisle

Street Address: 231 Ten Mile Rd

City: Lynden, WA 98264

Mailing Address (if different from street address):

Day Telephone: 360-318-7720  
Evening Telephone: 360-388-9187  
Cell Phone: 303-0274

E-mail address: doriebelisle@woodfarms.com

1. Name of board or committee—please see reverse:
   Portage Bay Shellfish Protection District Advisory Board

2. You must specify which position you are applying for.
   Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
   (If applicable, please refer to vacancy list.)
   ( ) Yes  ( ) No

4. Which Council district do you live in?
   ( ) One  ( ) Two  ( ) Three  ( ) Four  ( ) Five

5. Are you a US citizen?
   ( ) Yes  ( ) No

6. Are you registered to vote in Whatcom County?
   ( ) Yes  ( ) No

7. Have you ever been a member of this Board/Commission?
   If yes, dates: 2003-2016  
   ( ) Yes  ( ) No

8. Do you or your spouse have a financial interest in or are you an employee or officer of any
   business or agency that does business with Whatcom County?
   If yes, please explain:
   ( ) Yes  ( ) No

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community
   activities, and education.

See attached sheet

10. Please describe why you’re interested in serving on this board or commission:

See attached sheet

References (please include daytime telephone number):
   Steve Seymour - 733-0823  
   George Boggs - 526-2389

Signature of applicant: Dorie Belisle

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available to the County Council, County Executive, and the public. All board and commission members are
expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these
expectations may result in revocation of appointment and removal from the appointive position.
Dorie Belisle

Application for the Portage Bay Shellfish Protection District Advisory Board

9. My husband and I have been farming in Whatcom since 1995. BelleWood Acres is situated in the Tenmile Creek watershed with the Tenmile Creek running through our farm. I have worked with landowners in our watershed to improve the quality and quantity of water in the creek since 2000. Although I am retired from direct involvement in the grant funded project, I continue to support the Tenmile Project lead by Lee First. As Tenmile Creek runs into the Nooksack that runs into Portage bay. I believe it is important to participate.

10. I have been very frustrated with the downgrades of Portage Bay. I was not going to sign on again. Then I participated in the "Shellabration" for Drayton Harbor. It took twenty some years to reach the level of quality to open up 800 more acres to shellfish harvest. What an accomplishment for our community. It was truly inspirational. I want that for Portage Bay. I believe it happened in Drayton Harbor because of the direct involvement of the community. We all know that many agencies, businesses, farms, cites, etc. have been involved in reducing the fecal count in the river. But how many citizens of this county know the story? How many identify with the Lummi Nation and the resource we are losing? I am not ready to give up. If chosen, I will be proud to serve again.
Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement
THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

First Name
Amber

Last Name
Jones

Date
10/31/2016

Street Address
2524 NEW HAVEN PL

City
BELLINGHAM

Zip
98226-613

Do you have a different mailing address?
Field not completed.

Primary Telephone
3603937428

Secondary Telephone
3603937428

Email Address
amber@ssc-inc.com

Step 2

1. Name of Board or Committee
Solid Waste Advisory Committee

Solid Waste Advisory Committee (SWAC) Solid Waste Business/Industry representative

2. Do you meet the residency,
Yes
3. Which Council district do you live in?  
District 2

4. Are you a US citizen?  
Yes

5. Are you registered to vote in Whatcom County?  
Yes

6. Have you ever been a member of this Board/Commission?  
Yes

If yes, please list dates:  
Solid Waste Advisory Committee - Reapplying for 2nd term as Solid Waste Business/Industry representative

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?  
Yes

If yes, please explain  
I am an officer at Sanitary Service Company, Inc.

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education  
CFO at Sanitary Service Company, Inc.
9. Please describe why you’re interested in serving on this board or commission:

To utilize my knowledge and experience to provide input and advice on solid waste management issues while collaborating with the other committee members.

References (please include daytime telephone number):

Paul Razore - 360-527-9783

Signature of applicant:

Amber Jones

Place Signed / Submitted:

Bellingham, WA

(Section Break)

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Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement
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<table>
<thead>
<tr>
<th>First Name</th>
<th>Larry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Last Name</td>
<td>McCarter</td>
</tr>
<tr>
<td>Date</td>
<td>12/8/2016</td>
</tr>
<tr>
<td>Street Address</td>
<td>212 Hawthorn</td>
</tr>
<tr>
<td>City</td>
<td>bellingham</td>
</tr>
<tr>
<td>Zip</td>
<td>98225</td>
</tr>
<tr>
<td>Do you live in &amp; are you registered to vote in Whatcom County?</td>
<td>Yes</td>
</tr>
<tr>
<td>Do you have a different mailing address?</td>
<td>Field not completed.</td>
</tr>
<tr>
<td>Primary Telephone</td>
<td>360.739.4843</td>
</tr>
<tr>
<td>Secondary Telephone</td>
<td>360.676.6002</td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:rdsLarry@mac.com">rdsLarry@mac.com</a></td>
</tr>
</tbody>
</table>

Step 2

1. Name of Board or Committee
   Solid Waste Advisory Committee

Solid Waste Advisory
Solid Waste Disposal Facility representative
Committee (SWAC)

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? Yes

3. Which Council district do you live in? District 5

4. Are you a US citizen? Yes

5. Are you registered to vote in Whatcom County? Yes

6. Have you ever been a member of this Board/Commission? Yes
   If yes, please list dates: ten years ago...

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? No
   You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions Field not completed.

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education
   I started and own Recycling and Disposal Services.
9. Please describe why you're interested in serving on this board or commission.

To insure Disposal Sites issues are represented.

References (please include daytime telephone number):

Pete Edwards 360.319.1978

Signature of applicant: Larry McCarter

Place Signed / Submitted: Bellingham, WA

(Section Break)

Email not displaying correctly? View it in your browser.
TITLE OF DOCUMENT:
Board of Supervisors annual appointment to Advisory Committees

ATTACHMENTS:
List of Vacancies; Applications

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Annual appointments to Board of Supervisor-appointed Flood Control Zone District Advisory Committee and subzone advisory committees. See attached list of vacancies.

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS
ADVISORY COMMITTEE VACANCIES
Through January 31, 2017

FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE - 5 Vacancies.
Various terms
- 1 Vacancy representing geographical areas. 4-year term.
- 2 vacancies representing Special Districts. 1-year terms, current members eligible to reapply.
- 2 vacancies representing Impacted Cities. 1-year terms, current members eligible to reapply.
- Any person interested in serving on the advisory committee may be appointed as an alternate for a term of six years. Alternate members shall be notified of each meeting and are encouraged to attend.

Committee assists and makes recommendations to the Board of Supervisors in performing flood damage repairs, maintenance and improvements, and minimizing future flood damage through prevention and management on the Nooksack River, its watershed, and the other watersheds within Whatcom County. Meets the second Thursday of the month or as needed.

Applications Received - Special Districts (2 Vacancies):

Ron Bronsema (incumbent)
Scott Hulse (incumbent)

Applications Received - Impacted Cities (2 Vacancies):

Robert Bromley (incumbent)

BIRCH BAY WATERSHED AND AQUATIC RESOURCES MANAGEMENT ADVISORY COMMITTEE - 1 Vacancy, 4-year term

Applicants must live within the district boundary. The BBWARM Committee assists and makes recommendations to the Flood Control Zone District Board of Supervisors regarding implementing the BBWARM District stormwater program. Committee members geographically represent a broad spectrum of stakeholders from within the BBWARM District boundaries. Meets monthly.

Applications Received (1 Vacancy):

Scott Hulse (incumbent)
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Ron Bronsema Date: 12-26-16
Street Address: 9135 Northwood Rd
City: Everson Zip Code: 98247
Mailing Address (if different from street address): _____________________________
Day Telephone: 360-297-2250 Evening Telephone: same Cell Phone: 961-7792
E-mail address: rb6dairy1@gmail.com

1. Name of board or committee-please see reverse: Flood Control Zone District A.C.

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? (If applicable, please refer to vacancy list.) ☑ yes ( ) no

4. Which Council district do you live in? ( ) One ( ) Two ( ) Three ( ) Four ( ) Five

5. Are you a US citizen? ☑ yes ( ) no

6. Are you registered to vote in Whatcom County? ☑ yes ( ) no

7. Have you ever been a member of this Board/Commission? ( ) Yes ( ) No

If yes, dates: 1992-2010 2012-2017

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ☑ yes ( ) no

If yes, please explain: __________________________________________

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

Dairy Farmer, Past Flood Control A.C. Chair (15 years), Past Lynden/Everson Sub-Zone Chair (15 years) Grad Lynden High School, Bellingham Tech College

10. Please describe why you’re interested in serving on this board or commission: Return Flood A.C. to science based decisions. Update comprehensive Flood Hazard Management Plan.

References (please include daytime telephone number): Paula Harris 778-6285
John Perry Everson Mayor 966-3189

Signature of applicant: _________________

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Scott E. Hulse
Date: 1 January 2017

Street Address: 6911 Holeman Avenue
City: Blaine
Zip Code: 98230

Mailing Address (if different from street address): _____________________________

Day Telephone: 360 243 0745 Evening Telephone: 360 243 0745 Cell Phone: None

E-mail address: scottehulse@gmail.com

1. Name of board or committee—please see reverse:
   Flood Control Zone District Advisory Committee
   Special District Representative, Geographic Area Representative

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? (If applicable, please refer to vacancy list.) (x) yes ( ) no

4. Which Council district do you live in? ( ) One ( ) Two (x) Three

5. Are you a US citizen? (x) yes ( ) no

6. Are you registered to vote in Whatcom County? (x) yes ( ) no

7. Have you ever been a member of this Board/Commission? (x) yes ( ) no

If yes, dates: ____________________________

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? If yes, please explain: ( ) yes (x) no

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
   Education: BS Mine Engineering, BS Geological Sciences-Geophysics, MS Geological Sciences-Geophysics-Hydrology
   PhD Radiological Health Sciences-Health Physics, Registered Professional Engineer, Colorado Registration Number 22254
   Qualifications Related to Position: 20 years mine/geotechnical engineering, 20 years multidisciplinary project and program management, 8 years research and development characterizing risk from environmental transport and deposition of man-made radionuclides in soil. Member of Birch Bay Water and Resource Management Committee since February, 2012.

10. Please describe why you’re interested in serving on this board or commission: Our family has lived on Whitehorn Point along the southern boundary of Birch Bay since 1960. Storm water disposition and flooding are issues that affect our quality of life.

References (please include daytime telephone number): Mr. Keats Garman 360 371 3554,
   Mr. Jack Westford 360 303 6596, Mr. Peter Winterfeld 360 441 6833

Signature of applicant: ____________________________

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Robert J. Bromley Date: 11/23/16

Street Address: 308 Vancouver St
City: Sumas Zip Code: 98295

Mailing Address (if different from street address): P.O. Box 343 Sumas, WA. 98295
Day Telephone: (360) 988-4721 Evening Telephone: (360) 988-8233 Cell Phone: (360) 961-2303
E-mail address: mayorbromley@cityofsumas.com

1. Name of board or committee-please see reverse: Flood Control Zone District Advisory Comm.
   Impacted Cities Rep.

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? (If applicable, please refer to vacancy list.) yes ( ) no

4. Which Council district do you live in? ( ) One ( ) Two ( ) Three ( ) Four ( ) Five

5. Are you a US citizen? Yes ( ) No ( )

6. Are you registered to vote in Whatcom County? Yes ( ) No ( )

7. Have you ever been a member of this Board/Commission? Yes ( ) No ( )
   If yes, dates: 2002 to present

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? yes ( ) no
   If yes, please explain:

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education. Mayor, City of Sumas & Small Business owner, graduate of Nookac Valley HS. and attended Western Wash U. Chair of WCOG and Small Cities Partnership/Caucus, Member of Sumas Chamber and Lions Club. Resident of an Impacted City.

10. Please describe why you’re interested in serving on this board or commission: My interest are in the process of preventing flooding & flood related events in our Cities and County. Also the budgeting and financing of flood related projects.

References (please include daytime telephone number): Chris Haugen 961-7224
Scott Korthuis 306-3500 Jim Ackerman 961-2375 or 966-3222

Signature of applicant: ____________________________

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Scott E. Hulse
Date: 30 December 2016

Street Address: 6911 Holeman Avenue
City: Blaine
Zip Code: 98230

Mailing Address (if different from street address): ________________________________

Day Telephone: 360 243 0745 Evening Telephone: 360 243 0745 Cell Phone: None
E-mail address: scottehulse@gmail.com

1. Name of board or committee - please see reverse: Birch Bay Watershed & Aquatic Resource Management

2. You must specify which position you are applying for. Please refer to vacancy list.

   Birch Bay Watershed & Aquatic Resource Management
   Advisory Committee Member

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? (If applicable, please refer to vacancy list.)

   (x) yes ( ) no

4. Which Council district do you live in?

   ( ) One ( ) Two (x) Three

5. Are you a US citizen?

   (x) yes ( ) no

6. Are you registered to vote in Whatcom County?

   (x) yes ( ) no

7. Have you ever been a member of this Board/Commission?

   If yes, dates: ________________________________

   (x) yes ( ) no

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?

   If yes, please explain: ________________________________

   ( ) yes ( ) no

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

   Education: BS Mine Engineering, BS Geological Sciences-Geophysics, MS Geological Sciences-Geophysics-Hydrology
   PhD Radiological Health Sciences-Health Physics, Registered Professional Engineer, Colorado Registration Number 22254

   Qualifications Related to Position: 20 years mine/geotechnical engineering, 20 years multidisciplinary project and program management, 8 years research and development characterizing risk from environmental transport and deposition of man-made radionuclides in soil. I have been a member of the Birch Bay Water and Aquatic Resources Committee since 2012.

10. Please describe why you’re interested in serving on this board or commission: Our family has lived on Whitehorn Point along the southern boundary of Birch Bay since 1960. Storm water disposition is an issue that affects our quality of life.

   References (please include daytime telephone number): Mr. Richard Langabeer 360 671 6460,
   Mr. Jack Westford 360 303 6596, Mr. John Shuhler 360 933 1989

   Signature of applicant: ________________________________

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TITLE OF DOCUMENT:
Ordinance adopting amendments to Whatcom County Code Title 20 Zoning, relating to commercial dog kennels in the Agriculture zone.

ATTACHMENTS:
1. Staff Memorandum
2. Draft Ordinance
3. Staff Report
4. Planning Commission Minutes
5. Application

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Discussion of proposed amendments to WCC Title 20 zoning relating to commercial dog kennels in the Agriculture zone.

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
TO: The Honorable Jack Louws, Whatcom County Executive  
The Honorable Whatcom County Council
FROM: Gary Davis, AICP, Senior Planner
THROUGH: Mark Personius, AICP, Assistant Director
DATE: December 27, 2016
SUBJECT: Title 20 Amendments – Kennels in Agriculture Zone

The application to amend the zoning code to allow kennels as a conditional use in the agriculture zone is scheduled for discussion at the January 10 Planning and Development Committee meeting, and a draft ordinance is scheduled for introduction at that evening’s County Council meeting. On September 8, 2016 the Planning Commission held a public hearing on the application and unanimously recommended denial. PDS had recommended that if the application is approved, the amendments should include several specified measures intended to avoid displacement of agriculture uses and minimize impacts to surrounding residents (see attached staff report).

Staff has prepared the draft ordinance based on the proposed amendments discussed at the Planning Commission meeting, and on the draft findings prepared by staff. The current Public Participation Plan lists this application as a level 2 project. Section 4.2.1.5 of that plan requires the County Council to hold a public hearing for any level 2 project regardless of whether the County Council departs from the Planning Commission’s recommendation. Therefore the County Council will be required to hold public hearing on the application at a future Council meeting. If the County Council adopts the code amendment, the applicant would still need to obtain a conditional use permit to allow the use. The Public Participation plan also requires coordination with the Agriculture Advisory Committee. The committee discussed the application at its October 12, 2016 meeting but lacked a quorum needed to make any formal recommendation. The Committee is scheduled to discuss the application again on January 11.

The Hearing Examiner recently granted a conditional use permit for a related use on the property owned by the applicant: boarding of U.S. Customs and Border Patrol
dogs and parking of official vehicles. WCC 20.40.151 lists "public facility for emergency-related health and safety purposes" as a conditional use in the Agriculture zone. The conditional use permit does not permit boarding of dogs other than those owned by U.S. Customs and Border Patrol. If the code amendment is adopted, the applicant would be required to obtain an additional conditional use permit for boarding of privately owned dogs.

If you have any questions about the amendments, please call Gary Davis, Senior Planner, at extension 5931.

Attachments:

- Draft ordinance
- Staff Report
- Minutes of Planning Commission's September 8, 2016 meeting
- Application
ORDINANCE NO. ________________

ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING, PERMITTING KENNELS IN THE AGRICULTURE ZONE AS A CONDITIONAL USE

WHEREAS, the applicants have proposed amendments to Whatcom County Code Title 20 Zoning; and

WHEREAS, The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, city recommendations, advisory committee recommendations, Tribal government comments, and public comments on the Comprehensive Plan update; and

WHEREAS, legal notice requirements have been met; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The applicant has submitted an application for amendments to WCC Title 20 Zoning to list commercial kennels as a conditional use in the Agriculture zoning district.

2. A determination of non-significance (DNS) was issued under the State
Environmental Policy Act (SEPA) on August 26, 2016.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on August 2, 2016.

4. Notice of the Planning Commission public hearing for the amendments was published in the Bellingham Herald on August 26, 2016.

5. The Planning Commission held a public hearing on the proposed amendments on September 8, 2016.

6. Comprehensive Plan Policy 8A-1 supports conserving productive agricultural lands and agricultural resource lands, including areas with prime soils that are not now zoned agriculture, or where the area is composed of agricultural operations that have historically been and continue to be economically viable.


8. Comprehensive Plan Policy 7K-1 supports small and cottage businesses in rural areas that minimally impact productive agricultural, forest, or mineral resource land.

CONCLUSIONS

1. The amendments to the zoning code are the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown on Exhibit A.
ADOPTED this ______ day of ____________, 2016.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

__________________________________________
Dana Brown-Davis, Council Clerk

__________________________________________
Barry Buchanan, Chairperson

APPROVED as to form:

__________________________________________
Civil Deputy Prosecutor

( ) Approved  ( ) Denied

__________________________________________
Jack Louws, Executive

Date: ____________________________
Chapter 20.40
AGRICULTURE (AG) DISTRICT

20.40.150 Conditional Uses.

.165 Commercial kennels, as identified in WCC 20.97.191, which shall be located,
designed, and operated so as not to interfere with the overall agricultural character
of the area, provided the following criteria are met:

(1) The use shall be on a parcel five acres or less in size but not less than one
    acre in size.
(2) No kennel building or outdoor animal space shall be located within 50 feet
    of any property line and or within 300 feet of any existing dwelling other
    than those on the property. The distance to a dwelling shall be measured
    as the shortest straight line distance from the closest point of a dwelling
    to any structure or fence used for a kennel.
(3) All facilities associated with the kennel use, including but not limited to
    parking and on-site septic systems, shall be contained on the same
    parcel.
(4) The building(s) and associated facilities shall, to the extent feasible, be
    located to avoid interference with the agricultural use of the property and
    surrounding properties.
(5) In addition to the requirements of WCC 20.84.220, the Hearing Examiner
    shall consider the following when reviewing a conditional use permit
application in order to reduce negative impacts to surrounding residents, and set conditions if warranted:

a. Hours when animals are to be kept indoors,
b. Sound abating building or screening materials,
c. Maximum number of animals, and
d. Visual screening or buffering, including but not limited to landscaping and fencing.
Whatcom County
Planning & Development Services
Staff Report

Kennels in Agriculture Zoning Code Amendment

I. BACKGROUND INFORMATION

File # PLN2016-00002

File Name: Title 20 Zoning Code Amendments – Kennels in Agriculture District

Applicants: Ken and Charmae Scheffer

Summary of Request: Amend Whatcom County Code Title 20 Zoning to list kennels as conditional uses in the Agriculture (AG) district.

Location: County-wide.

Staff Recommendation: If approved, the use should be conditional and limited to parcels under 5 acres in size, with additional requirements.

History
The applicants operate a kennel at 6451 Hannegan Road, in the Agriculture zone. A kennel, which is defined as “a commercial establishment in which five or more dogs, cats, or other household pets are housed, groomed, bred, boarded, trained or sold for a fee or compensation,” (WCC 20.97.191) is not a permitted or conditional use in that zone. PDS has received complaints about barking dog noise coming from the kennel use and cited the applicants for zoning and building code violations connected with the use and new buildings constructed without permits.

The applicants continue to operate the kennel in violation of County code and have been charged substantial fines. If their request for a zoning code amendment is adopted, the applicants will be required to obtain a conditional use permit and satisfy all other code requirements before the use can be operated in compliance with County Code.
II. ZONING CODE AMENDMENT

The applicants request that WCC Chapter 20.40 be amended to include kennels as a conditional use on lots smaller than five acres (see attached application). PDS has drafted a code amendment (attached) consistent with the applicant’s request with the addition of several criteria aimed at minimizing impacts to surrounding residents, and avoiding displacement of agricultural uses.

The amendment would make kennels a conditional use in the Agriculture zone. Each proposed kennel use – including the one owned by the applicants – would be subject to the conditional use process, requiring notice to surrounding property owners and a public hearing before the Hearing Examiner. Under a conditional use process, an application for a kennel use could be approved subject to conditions (such as measures to mitigate noise or traffic), or denied.

Currently in Whatcom County kennels are conditional uses in the Rural, Rural General Commercial, Small Town Commercial, and Rural Forestry zones, except in the Lake Whatcom and Water Resource Protection Overlay Districts, where they are prohibited. Kennels accessory to veterinary offices are permitted uses in the Small Town Commercial and Rural Industrial Manufacturing zones, except in the water protection overlays. Residential density is typically much lower in the Agriculture zones than in Rural and Small Town Commercial zones, so there is – theoretically at least – less potential for noise to impact neighboring residents in Agriculture zones. With the conditional use permit requirement, surrounding residents have the opportunity to review and provide input on proposed kennel uses.

Staff’s two foremost concerns are farmland preservation and adverse impacts to surrounding residents. The draft amendment prepared by PDS staff based on the application would require that the use be on lots smaller than five acres (as suggested) but larger than one acre. This would minimize non-farm use of agricultural land while allowing adequate room for accessory facilities such as parking and on-site-septic systems.

PDS proposes additional requirements aimed at minimizing displacement of agricultural land, including a requirement that all such facilities be located on the same lot as the kennel, and a requirement that the use be designed to avoid interference with agricultural use of the property or surrounding properties. To address impacts to surrounding properties, PDS has proposed minimum distances from the kennel to the property line and neighboring dwellings, as well as additional criteria the Hearing Examiner shall consider during the conditional use permit process involving noise abatement and screening.

In their application the applicants point out that among the top 15 agricultural counties in Washington State, only two prohibit dog kennels in the agriculture zone: Whatcom and Benton. In 12 of those counties, kennels require a conditional...
administrative, or other special use permit process. PDS has reviewed those counties’ requirements and has incorporated into the draft amendments several of their provisions addressing preservation of agriculture uses and minimizing impacts to surrounding residents. For example, the proposed 300-foot spacing requirement to surrounding dwellings is the same spacing Spokane County uses, and is consistent with Whatcom County’s current residential spacing from “farm uses such as barns, pens, milking sheds, packinghouses and slaughterhouses, or areas used to contain, house or feed animals or store manure or feed” (WCC 20.80.255) and from marijuana production and processing facilities (WCC 20.40.059).

III. COMPREHENSIVE PLAN EVALUATION

The Comprehensive Plan, as amended in August 2016, contains policies that support both farmland preservation and rural economic activity.

Policy 8A-1: Conserve productive agricultural lands and agricultural resource lands, including areas with prime soils that are not now zoned agriculture, or where the area is composed of agricultural operations that have historically been and continue to be economically viable, by developing and implementing a long-range strategy. The planning horizon should be twenty years in the short-term and 100 years in the long-term.

Policy 8A-5: Discourage conversion of productive agricultural land to incompatible non-agricultural uses.

Policy 7K-1: Support small and cottage businesses in rural areas that minimally impact productive agricultural, forest, or mineral resource land.

While Policy 7K-1 refers to “rural” areas, the wording of the policy indicates it may be a general reference to non-urban areas including resource lands, rather than applying strictly to the “Rural” Comprehensive Plan designation. With the proposed restrictions on lot size and location of accessory facilities, the draft amendment can be consistent with discouraging conversion of agricultural land and supporting rural small business.

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. The applicant has submitted an application for amendments to WCC Title 20 Zoning to list commercial kennels as a conditional use in the Agriculture zoning district.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on August 26, 2016.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on August 2, 2016.

4. Notice of the Planning Commission public hearing for the amendments was published in the Bellingham Herald on August 26, 2016.

5. The Planning Commission held a public hearing on the proposed amendments on September 8, 2016.

6. Comprehensive Plan Policy 8A-1 supports conserving productive agricultural lands and agricultural resource lands, including areas with prime soils that are not now zoned agriculture, or where the area is composed of agricultural operations that have historically been and continue to be economically viable.


8. Comprehensive Plan Policy 7K-1 supports small and cottage businesses in rural areas that minimally impact productive agricultural, forest, or mineral resource land.

V. PROPOSED CONCLUSIONS

1. The amendments to the zoning code are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VI. RECOMMENDATION

Planning and Development Services recommends that if the Planning Commission forwards the proposed amendments to the County Council with a recommendation of approval, the amendments include the measures to avoid displacement of agriculture uses and minimize impacts to surrounding residents, as proposed in Exhibit A.

ATTACHMENTS

A. Exhibit A: Draft zoning code amendments
B. Application
Regular Meeting

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Council Chambers.

Roll Call
Present: Natalie McClendon, Jerry Vekved, Nicole Oliver, Michael Knapp, Andy Rowlson, Atul Deshmane
Absent: Gary Honcoop, Kelvin Barton
David Hunter arrived at 7:00 p.m.

Staff Present: Mark Personius, Gary Davis, Nick Smith, Becky Boxx

Department Update
Mark Personius updated the commission on:
• The County Council schedule
• The Planning Commission schedule

Open Session for Public Comment
There was no public comment.

Commissioner Comments
Commissioner Rowlson stated he may have a potential conflict of interest regarding the issue of dog kennels in the Agricultural zone. Rover Stay Over is a client of his wife. He spoke with staff regarding the issue who stated that because this is a change to all agricultural areas in the county, not just one specific site, it would not be a conflict of interest to participate in the proceedings. He stated he would like to participate in the proceedings unless there were objections from the other commissioners.

Commissioner Deshmane stated he did not have an issue with Commissioner Rowlson participating.

Commissioner McClendon stated she did not have an issue with Commissioner Rowlson participating.

Hearing no objections Commissioner Rowlson stated he would participate in the discussion.

Approval of Minutes
July 28, 2016: Commissioner McClendon moved to approve the minutes as written. Commissioner Knapp seconded. The motion carried.
August 11, 2016: Commissioner Oliver changed page 10, line 21 to read: There was discussion of sketch versus site plan. Commissioner Rowlson moved to approve the minutes as amended. Commissioner Vekved seconded. The motion carried.

**Public Hearing**

File #PLN2016-00002: Proposed amendments to the Whatcom County Code Title 20 Zoning, adding kennels as a conditional use in the Agriculture zone.

Gary Davis presented the staff report.

This application is for a legislative action that affects all lands zoned Agriculture in the county. The history section of the staff report briefly explains why the applicants submitted the application. The application and the hearing are not about any single property. If the amendments are adopted the applicants would still be required to apply for a conditional use permit in order to permit a kennel. That would require a public hearing where the specific property and operation will be discussed. The Hearing Examiner would make the decision whether or not to approve the permit and to add any conditions. Based on the application staff has drafted a proposed amendment which would place additional conditions, above the five acre maximum, on kennel uses. Staff's two major concerns are impacts to surrounding property owners and the preservation of agricultural land. Most of the proposed conditions have to do with ensuring that the facility is contained within a small lot, does not encroach on neighboring agricultural parcels and are designed so they do not interfere with agricultural uses on the lot or adjacent lots. To minimize impacts to neighbors staff proposes setbacks of 300 feet between a kennel and adjacent house. Listed are suggested hours animals are to be kept indoors, sound proofing materials, limits on maximum number of animals and visual screening. The application noted that 13 of the top 15 agricultural producing counties in the state now allow kennels in the agricultural zone. Most require a conditional use permit which is what is proposed here. Staff researched those counties and from that borrowed a number of standards to include into the proposed draft. In staff's review of the Comprehensive Plan policies they found that policies from the agriculture chapter, Policies 8A-1 and 8A-5, to be most applicable. Those deal with conserving productive farmland. Policy 7K-1, from the Economics Chapter, supports small and cottage businesses in the rural areas that minimally impact productive resource land. Staff's recommendation is that if the Planning Commission finds the zoning code amendment to be in the public interest and recommends approval to the County Council, that the recommendation should include the additional standards such as the ones proposed in Exhibit A. Staff will then forward the Planning Commission’s findings and recommendations to the County Council who will consider the application and make a final decision.

The hearing was opened to the public.

William Zuidmeer, Whatcom County: His family has continually farmed, off of Hannegan Road, for over 117 years. His family was instrumental in clearing the land to make it suitable for farming. About 20 years ago he approached the county to get permission to use part of his agriculturally zoned land to build a separate residence for
his family. He was told there would be no modification of the existing zoning. It was understood that the agricultural land in Whatcom County would not be touched. He accepted these terms, along with his family and neighbors. Not so long ago a family moved into his neighborhood, put up a sign and started grooming dogs, in violation of the zoning laws. The neighbors went to the county and questioned how this could be. A building was then erected and a fence was put up to store vehicles. The neighbors again went to the county asking how can this be. The traffic on Hannegan Road has increased, the noise level has increased and again more neighbors went to the county. The neighbors did not ask for this. They are essentially being robbed of their homestead by a family that has shown little respect for others land rights. They have no respect in following the zoning laws of our county, no respect for the building codes of the county, no respect for following the proper procedures by opening a business that impacts others. He asked the commission to look at the impact, both current and future, that this will have on our agricultural land. Consider the loss of future property values for all of the neighbors located in this area and in other areas of the county that are going to be affected by this amendment. What the applicant asks for in this amendment is not farming. The charts they have provided are flawed. If you look at the charts you will see that Whatcom County is different than the other counties that we have been compared to.

Denise Zuidmeer, Whatcom County: She lives on Central Road, close to the intersection of Hannegan Road. She distributed documents for the Commission’s consideration. The documents compare Whatcom County to other counties regarding kennels. Of the 15 comparable counties 12 of them are in eastern Washington. The populations and agriculture can’t be compared to Whatcom County. Also, they do not have doggy day cares in eastern Washington. The county has spent the last nine months developing a plan that includes retaining agricultural land. This is the first thing that comes before you that will break that up. That is not acceptable. There are currently 14 properties within a five mile radius of the current facility that are on Rural Five that can have kennels. All of these properties are for sale. To say there is no place for a dog kennel is wrong. In this whole county there are approximately 30 properties that this change in law will affect. You are basically changing the law for one circumstance, not the whole county. Under goal 7A they say it will foster adverse private sector job base. In researching this she found that all of the kennels in the area have 5-7 workers, the average age is 22 and all of them have their own family members working. To say they are going to provide family wage jobs is not true. The benefits of this will only go to the business owner, not an employee. Under H2, private property rights will recognize the importance of the rights of the community, including protecting the natural environment. Paving over agricultural land and putting up chain link fences are not preserving those rights. What about the rights of private property owners that have to live next to this? She lives in the county for the peace and tranquility of it, not to listen to this. She also stated she had an issue with Commissioner Rowlson taking part in the discussion.

Veronica Wisniewski, Whatcom County: She served on the Purchase of Development Rights (PDR) committee for 11 years. This is a committee that purchases development rights from farmers in order to protect large parcels of agricultural land. One of the
goals is to maintain at least 100,000 acres of farmland in order to keep farming viable. One of the overarching issues is that less than 100,000 acres are designated agricultural and within that zone there are many small parcels whose development will contribute to the death of agriculture. Through the PDR program the county has spent several million dollars in order to conserve some of those parcels in agriculture. What the commission is considering, by allowing dog kennels on five acre parcels in the agricultural zone, essentially contradicts the principle of maintaining large acreage in the agricultural zone. This proposed usage is not related to agriculture. When they considered appropriate uses for lands in the PDR program two principles always guided them. They were: Was the activity related to agriculture? Is the activity an obstacle to agriculture? With regard to the relationship of a dog kennel to agriculture she, in this particular case, suggested dog kennels are boarding areas that provide services like urban areas. They do not provide a service to agricultural areas. They have little to do with animal husbandry which involves raising animals rather than boarding them. More importantly, is the question of whether or not the activity is an obstacle. She has been told by farmers that the increase in traffic that development brings in the agricultural zone is a big obstacle and can make farming become less viable. Traffic from urban zones tends to be less tolerant of the slow moving nature of farm vehicles and often creates hazards. Farmers have stated this is not in keeping with the need of the farming community. The proposal does not foster agriculture and is an obstacle to it. There are many other areas a dog kennel can be sited. We are a country based on the rule of law. The facility, in this case, has made a lot of efforts to go around the rule of law. If we decide to support spot zoning we are feeding into a rigged system. That is not what we want for our county.

Kathi Seaman, Skagit County: One of the reasons this issue was proposed is for additional income for farmers. If that is part of it then it should be expanded to all agricultural properties, not 1 to 5 acres. She would like to see it not just limited to dog boarding, but it be allowed for boarding of animals, such as horses. Horse stables currently are not legal in the agricultural or rural zones.

Edoh Amiran, Whatcom County: Proposed the commission turn down this suggested amendment. Agricultural zoning is supposed to promote agriculture. The exceptions to that are to provide a service to agriculture or to provide an opportunity to provide people with agriculture that is not available to them. Boarding dogs, especially overnight, is not a service to agriculture. It is possible to kennel dogs in lots of other places. In a county where there a huge farms and not a lot of employment opportunities a dog kennel might make sense. In our county that is not the case. There are many rural zones where businesses can operate.

Eddie Escobar, Whatcom County: Told the commission he could not state who he worked for even though he wanted to. He has spent years protecting our rights. He works for an agency that found out that this kennel was illegal. He found out through public knowledge. He is no longer a canine handler because he was the one that said the kennel is illegal. Because he was a whistle blower he is no longer a canine handler. He was the number one canine handler in the county. He had the most seizures of anyone in the county. When he brought up the fact the kennel was illegal false
accusations were made. He stated he hoped Commissioner Rowlson would recuse himself. If the commission rubber stamps this he will tell everyone that when you start a business don’t get any permits, just go ahead and do it because the county won’t do anything to you. He would never lie but the applicants did.

Lisa Escobar, Whatcom County: This business has affected her family. In government there should be impartiality and no preferential treatment. They require the highest degree of public trust. She found it ironic that the county chooses to not enforce the laws. She did not care if the people had a kennel but they should have done the research before they opened in an illegal area. They have been ruled against over and over. Why would the county now give them everything they want? If it was your ancestors who had this land all of these generations how would you feel? Dogs need to be in an environment that is more isolated.

Todd Beld, Whatcom County: He is a farmer in the county and runs the Everson Livestock Auction. He was surprised this was an issue because to his way of thinking it is where the kennels should be, which is where other animals are. He knows how much traffic farms create, especially dairy farms. Kennels are a perfect fit for agricultural areas. A lot of dairies cut off a house and five acres for residential use. With a lot of farms going out of business the owners keep the house and five acres and sell off the rest of the land so there are a lot of these five acre parcels out there. These small acreages have no good way to generate an income. There is no type of livestock you can make a living with on only five acres so the kennel business would be very sustainable on these properties.

Max Perry, Whatcom County: It is difficult to make a decent living by agriculture in this region. A dog kennel is as much of an agricultural use as goats, sheep, llamas, etc. I agree that the neighbors are impacted by the kennel so the kennel may be better suited on a larger acreage in the center.

Jaime White, Whatcom County: A lot of her work is with farmers and they have a hard time making a living in this county. Whatcom County has done a great job in preserving farmland. Part of that is because they allow for the division of a farmer’s residence, as large as three acres, so they can retire and sell their farm at a reduced price to another farmer in order to continue the farming industry. This county has a lot of small lots. A lot of farmers are losing their farms to the bank because of the difficulty of farming in this county. Allowing kennels or other industries on these small lots actually preserves farmland. Already the agricultural zone allows for cottage industry and in a lot of cases it is not limited in size. This is in keeping with those cottage industries.

Dannon Traxler, Whatcom County: Attorney representing the applicant. She addressed the submission from Belcher, Swanson representing the neighbors opposed to the proposal. She stated it seems to be more of a personal issue rather than making any legal arguments. We are not here to pass judgement on her clients for past actions but to determine if the proposed zoning text amendment complies with the Growth Management Act (GMA). Staff has clearly laid out that it does. The applicants did go to
the county and attempted to get a permit for their business. They were told, by a
county staff member, that having a dog kennel constituted animal husbandry, which is
outright permitted in the agricultural zone. During the appeal the county never
disputed this fact; they only said the staff member was wrong. They are now trying to
come into compliance. The commission is only getting part of the history from Belcher,
Swanson. There is case law, in other states, which call dogs, in kennels, livestock and
animal husbandry. The argument from Belcher, Swanson states that the zoning text
amendment would be a violation of the GMA because it erodes farmland. If that were
true then 13 other counties in the state, that allow kennels in the agricultural zone,
would be in violation of the GMA. Currently outright permitted in the agricultural zone
are gravel bar scalping, family daycare, trails and restroom facilities, marijuana
production, mental health facilities, adult homes and substance abuse facilities.
Accessory uses allow bed and breakfasts. Conditional uses allow public facilities,
aircraft landing areas, cottage industries which can be anything, rendering plants, solid
waste facilities, wildlife animal rescue facilities, substance abuse facilities, mitigation
banks, restaurants subordinate to agricultural use, rock crushing and asphalt plants
and regional parks. The arguments against the proposal are without merit. Regarding
the 100,000 acres of agricultural land there are about 88,000 acres of zoned
agricultural land and 128,000 acres being actively farmed. There are restrictions in
place to limit this small parcel such as separation from surrounding activities. Any bad
blood that exists with the neighbors has no place here. She has talked to members of
the farming community and they are not opposed to this.

The hearing was closed to the public.

Work Session

Commissioner Deshmane asked staff what led them to making the proposed
amendment and what was the process by which this went from a single issue to
deciding it was necessary countywide.

Mr. Davis stated it was not staff that decided to take it countywide. There was a
request from the public to allow kennel use in the agricultural zone. It was staff's
interpretation that it did not constitute animal husbandry, therefore to proceed forward
there would need to be a change in the zoning code.

Commissioner Hunter stated his first reaction to this proposal was it is spot zoning.
The only reason it is not spot zoning is because the applicant understood that if they
just asked for it to apply to their property that would be spot zoning. So they have
made a larger request to avoid the spot zoning issue. He stated he was very troubled
that this applicant has been consistently engaged in unlawful behavior and now is
attempting to get a sanction for that by having their situation approved. He did not
know how he would vote on this if it were to come from somebody with a clean slate.
He will not support it.

Commissioner Deshmane stated he wanted to change his position regarding
Commissioner Rowlson's participation. He had misunderstood some things previously.
Commissioner Rowlson agreed to recuse himself and left the meeting at 7:40 p.m.

Commissioner Oliver addressed the comments she heard regarding other animals such as horses. What livestock is allowed in the agricultural zone?

Mr. Davis stated keeping your own animals is permitted but commercial stables that board horses for others are not allowed.

Commissioner Deshmane suggested staff address the issue of boarding in the future.

Commissioner Hunter stated he is not convinced that dogs are anything like llamas, sheep, etc. which are raised on farms. Keeping dogs in a kennel is not the same thing.

Commissioner Knapp agreed with Commissioner Hunter. There is also the nuisance factor, such as noise, that concerned him. He would not support the proposal.

Commissioner McClendon asked if there is a right to farm ordinance which considers the impacts of farm activity on the neighbors.

Mr. Davis stated there is a right to farm ordinance which, as it is worded, may be broad enough to address kennels. A dog kennel would be considered a non-agricultural use, an accessory use.

Commissioner Vekved stated it is hard to make comparisons between dogs and horses. Horses have a historical legacy regarding use on farms.

Commissioner Hunter stated agriculture is about raising animals on your land to be sold. Dog kennels are not associated with agriculture. Let’s not pretend a lot of people are going to be doing this. This is for one place that has been operating without the sanction of law for quite some time.

Commissioner McClendon asked how the rules in the other zones, where dog kennels are allowed, differ from the agricultural zone.

Mr. Davis stated that in the other zones there are not the same setbacks which are being proposed here. The proposal is a little more complete in addressing the impacts to surrounding property owners.

Commissioner McClendon asked if 5 acre parcels are still being carved out of agricultural land.

Mr. Smith stated the minimum lot size in the agricultural zone is 40 acres but someone could apply for a farmstead exemption. That is a division a land which takes out the farmstead, one to three acres - it used to be up to five acres - and the remainder would be used for farming. The development rights are lost on that remaining acreage.
Commissioner McClendon asked if there is any expectation that farmstead area would allow someone to make a living or is it just supposed to be residential.

Mr. Davis stated the code does not state the expectation regarding that property. Everything that is allowed in the code would still be allowed on that property there just may not be enough room to economically farm it.

Commissioner Vekved stated there is plenty of others zones that are more suitably zoned for this use.

Commissioner Knapp moved to recommend denial of the proposed amendment. Commissioner Deshmane seconded.

Commissioner Oliver stated she would not vote in favor of the motion because a dog kennel is very different from other agricultural uses. They are more appropriate in urban areas. The proposal does not meet the analysis of the Comprehensive Plan. The reality is that it is a tainted proposal and it is impossible to look at it any other way.

Commissioner Deshmane stated he did not want to encourage a culture of neighbor turning against neighbors.

Commissioner Hunter stated he did not agree with staff's interpretation of right to farm. It is anticipated that when you live in a farm area there will be farming activities, smells, etc. It does not apply to other uses that may be noisy.

Roll Call Vote: Ayes – Deshmane, Hunter, Knapp, Oliver, Vekved; Nays-0; Abstain – McClendon; Absent: Honcoop, Barton; Recused: Rowlson. The motion carried.

Other Business

Commissioner Hunter advised the commission that he will be bringing up the issue of continuing the pledge of allegiance.

The meeting was adjourned at 8:10 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair
Becky Boxx, Secretary
Application for Zoning Amendments

Please check one of the following:

☐ Standard Map Amendment Complete Sections A, B, C, F
☐ Site Specific Rezone Complete Sections A, B, D, F
☐ Zoning Text Amendment Complete Sections A, E, F

Do not write in this section of the application for official use only.

Date Received: ___________________ File: ___________________
Date Complete: ___________________ Initials of reviewer: ________________

Topic of Proposed Amendment: Commercial Kennels in the Agricultural zone as a Conditional Use.

A. General Information – All applicants must complete this section.

Applicant’s Name: Ken and Charmae Scheffer

Signature: ____________________________________________

Mailing Address: 6451 Hannegan Road, Lynden, WA 98264

Email Address: cscheffer@aol.com

Home Phone #: ___________ Cell Phone #: (509)948-0690 Business Phone #: ___________
1. Give a complete but short description of the proposed amendment.
   To allow Commercial Kennels as a Conditional Use in the Agricultural zone on parcels five acres or less in size, but not less than one acre in size; also provided that the criteria set for in WCC 20.84.220 are met.

2. Explain how the proposed amendment is consistent with the goals, policies, and overall intent of the Comprehensive Plan by listing specific goals or policies and explaining how the proposal complies with each of them.
   See attached.

3. Describe the “changed” condition(s) which support the amendment.
   See attached.
B. Zoning Map Amendments (Standard Map Amendments and Site Specific Rezones)

1. Property Interest of Applicant:
   - [ ] Purchaser/Owner  [ ] Lessee  [ ] Other: ________________

   Existing Comprehensive Plan Designation: _______________________________

   Existing Zoning District: _____________________________________________

   Subarea: ___________________________________________________________

2. What is the proposed zoning classification? _____________________________

3. What is the present use of the property or properties within the proposed rezone?

4. Describe the land use of the surrounding properties.
C. Standard Map Amendments

1. Supporting information for standard map amendments. Attach the following items:

   a. A vicinity map showing property lines, roads, buildings and their use, easements, existing and proposed zoning, wells and other pertinent data.

   b. A list of all property owners and others having a legal interest in the property covered by the proposed change.

   c. A list of the names and mailing addresses of the owners of all property within 300 feet (exclusive of roads and alleys).

A site plan may be requested at a future date if the intended amendment is to accommodate a particular development. The applicant may wish to submit a plan at the time of application. The site plan is a scaled drawing showing approximate location of buildings, roadways, parking, drainage facilities, sanitation and water facilities, and easements. Where appropriate, the location of landscaping, buffers, common areas, and typical individual lease spaces for mobile home and recreational vehicle parks shall be included in the site plan.

D. Site Specific Rezones

1. Does the proposed amendment have a substantial relationship to public health, safety, morals, general welfare or community needs?

2. Will the proposed use be serviced adequately by essential public facilities such as highways, streets, public safety and fire protection, drainage structure, refuse disposal, water and sewers, and schools; or will the persons or agencies responsible for the establishment of the proposed use be able to adequately provide any such services? Describe.
3. Is the proposal is located within an Urban Growth Area? [ ] Yes  [ ] No (go to question #14)

   a. Will the site be serviced by full urban services or be capable of receiving urban services in time to serve the development?  [ ] Yes  [ ] No

   b. Will the proposed site use preclude development at urban levels of density when the area is annexed into the city? [ ] Yes  [ ] No

   c. Will the proposed site be five (5) or more acres in size? [ ] Yes  [ ] No

4. Supporting information for site-specific map amendment. Attach the following items:

   a. A vicinity map showing property lines, roads, buildings and their use, easements, existing and proposed zoning, wells and other pertinent data.

   b. A conceptual site plan drawn at not less than one (1) inch to one-hundred (100), unless mutually agreed to by the proponent and administrative official, including, but not be limited to:
      1. General location of structures.
      2. Location and number of access points.
      3. Approximate gross floor area of structures.
      4. Name of the proposal.
      5. Identification of areas requiring special treatment due to their sensitive nature.
      6. North directional arrow.
      7. Names and location of all public streets or roads bordering the site.
      8. General legal description(s) for the site.

   c. Concurrent submittal of a Discretionary Development Permit or Building Permit, if required for the project.

      NOTE: If the project does not require a Discretionary Development Permit or Building Permit or will be constructed in phases, then a narrative statement must be submitted with the conceptual site plan that provides a detailed description of the project proposal and a project completion date. If the project will be constructed in phases provide start and completion dates for each phase and include a final completion date for the entire proposed project.

   d. A list of all property owners and others having a legal interest in the property covered by the proposed change.

   e. Evidence that all property owners within the proposed rezone boundary concur with the rezone and project proposal.
f. Mailing labels with names and mailing addresses of the owners of all property included within the area proposed for re-designation and:

- For a map amendment within an existing urban growth area, mailing labels with the typed address of each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor.

- For a map amendment outside existing urban growth areas, mailing labels with the typed address of each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

For map amendments that involve rezoning property to an Airport Operations District, mailing labels with the typed address of each property owner within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor.

g. A completed Environmental Checklist.

E. Zoning Text Amendments

Are there any other circumstances that justify the proposed change?

See attached.

F. Authorization:

Signature of Applicant(s) or Agent:

[Signature] for Ken & Charmee Schroeter Date: 12/30/15

_______________________________________________ Date: __________________

_______________________________________________ Date: __________________

_______________________________________________ Date: __________________
2. Explain how the proposed amendment is consistent with the goals, policies, and overall intent of the Comprehensive Plan by listing specific goals or policies and explaining how the proposal complies with each of them.

The proposal is consistent with the following general and specific goals and policies of the Comprehensive Plan as described below:

**Goal 2H:** Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources.

- Approving the Text Amendment to allow Commercial Kennels as a Conditional Use in the Agriculture zone preserves private property rights by allowing greater flexibility in uses of property, while still protecting the natural environment and conserving resources.

**Goal 7A:** Promote a healthy economy which provides ample opportunity for family-wage jobs for diverse segments of the community is essential to the quality of life in the area.

**Policy 7A-2:** Foster a diverse, private-sector Job base, which will provide family wage jobs at the state median income level or greater, and facilitate the retention and expansion of existing businesses.

- Approval of the Text Amendment to conditionally allow Commercial Kennels in the Agriculture zone helps to promote a healthy economy by providing more opportunities for family-wage jobs and to facilitates the retention and expansion of existing businesses in Whatcom County.
Policy 7A-3: Employ innovating techniques to attract a mix of diversified industries for a broader economic base.

- Conditionally allowing Commercial Kennels in the Agriculture zone, on smaller parcel sizes allows for diversified industries for a broader economic base.

Policy 7A-4: In addition to stimulating family-wage jobs and jobs in diverse sectors, plan for service-related jobs such as those necessary to support tourism, recreation, and retailing as well as those that relate to industry.

- Approval of the Text Amendment conditionally allowing Commercial Kennels in the Agriculture zone will help to stimulate family-wage jobs and provide for service-related jobs caring for and housing family pets for Whatcom County residents.

Goal 7D: Consistent with other goals of the county, strive for balanced, clear, and predictable overall policies, practices and regulations which do not unnecessarily or inadvertently prevent, confuse, delay or create costly hurdles restricting effective and desireable economic development.

- Approving the Text Amendment listing Commercial Kennels in the Agriculture zone as a conditional use will help to clarify practices and regulations to allow a use in similar in nature to other uses approved as "Cottage Industries". This will help to not restrict effective and desireable economic development.

Policy 7D-9: Create options for greater flexibility in the regulatory and development review process.

- Approving the Text Amendment will allow for greater flexibility in the development review process by allowing the use of Commercial Kennels as a Conditional Use, which is similar to other uses that are also allowed as "Cottage Industries" in the Agriculture zone.
Policy 7F-1: Support existing local businesses as the major contributors of job creation and regeneration and afford them every opportunity to continue their success in the community.

Policy 7J-1: Support creation of job opportunities for local residents, especially family wage jobs to decrease unemployment and underemployment.

- Approving the proposed Text Amendment to conditionally allow Commercial Kennels in the Agriculture zone will help to support many existing Commercial Kennel businesses, which provide job creation and regeneration. Allowing a legislative path for these businesses to be permitted will afford them the opportunity to continue their success in the community, which will provide for family wage jobs to help decrease unemployment and underemployment.

Goal 7K: Enable a geographic balance for economic growth within the capacities of the county's natural resources, natural systems, public services, and public facilities.

- Approving the proposed Text Amendment to conditionally allow Commercial Kennels in the Agriculture zone will allow for a service related industry and economic growth to be located in the rural/agricultural areas and communities in which they serve.

Goal 8C: Preserve and enhance the cultural heritage that is related to agriculture.

- The practice of farming to many Whatcom County farm operators is a cultural heritage that has been passed down through generations. However, according to the 2012 Census of Agriculture, farming is not the primary occupation of the majority of Principal farm operators in Whatcom County. This means that many Principal farm operators continue to farm, but supplement income by other means. Approving the Text Amendment to allow Commercial
Kennels in the Agricultural zone will provide additional opportunities for farmers to supplement income so to encourage continued farming and the cultural heritage related to agriculture.

Policy 8C-4: Support the continuation of owner occupied/family owned farms.

- As described above, the majority of Whatcom County Principal farm operators list their primary occupation as something other than farming (USDA, 2012 Census of Agriculture). This means that Principal farm operators supplement farm income with other means. Approving the Text Amendment conditionally allowing Commercial Kennels in the Agriculture zone will provide a mechanism for farmers to help supplement farm income, which will encourage the continuation of owner occupied/family owned farms.

3. Describe the “changed” condition(s) which support the amendment.

The current Whatcom County Code that governs Divisions or Modification of Parcels in the Agriculture zone was adopted in 2013 to allow divisions of land to benefit the long term viability of agriculture. Pursuant to WCC 20.40.250, retiring farmers or farm land owners may separate their home from the farm, creating more affordable farm land pricing and allowing retiring farmers to remain in their existing residences. As such, there are many parcels in the Agricultural zone that are less than five acres in size, and under current county code provisions many less than three acres in size.

With the exception of small hobby farms or very specialized crops that do not take up much land area, land owners of small sized Agriculture zoned lots or farmers who retire from farming are severely restricted in uses allowed on their property. Additionally, under the provisions of WCC 20.40.253(4) many vacant or unused agricultural structures (barns, milking parlors etc.) remain with the homesite and not the farm.
Approving the proposed Text Amendment allowing Commercial Kennels as a Conditional Use will therefore provide for additional income opportunities for Whatcom County residents that live on these small lots in the Agricultural zone. Further, retiring farmers or purchasers of these small farmstead homesite parcels who retain unused agricultural structures (such as barns or loafing sheds) will be afforded additional flexibility to utilize these buildings for income generating uses such as Commercial Kennels, while having very little to no impact on surrounding properties and agricultural lands.

E. Zoning Text Amendments

Are there any other circumstances that justify the proposed change?

Allowing Commercial Kennels in the Agricultural zone is in keeping with what most agricultural counties in Washington State also allow. Of the top 15 agricultural producing counties in Washington State (according to the Washington State Department of Agriculture 2012 Census) 13 of these counties also allow Commercial Kennels as a Permitted, Administrative or Conditional Uses in the Agriculture zone (see attached list). Whatcom County is currently one of only two top agricultural producing counties that do not allow Commercial Kennels in the Agriculture zone. Approval of the proposed Text Amendment conditionally allowing Commercial Kennels in the Agriculture zone will be consistent with the vast majority of agricultural producing counties in Washington State.

Additionally, allowing for Commercial Kennels to be listed as a Conditional Use in the Agriculture zone is in keeping with other uses that have been approved as a “Cottage Industry” in the Agriculture zone. Examples of recent Cottage Industries approved in Whatcom County in the Agriculture zone have included Wedding venues and Autobody repair and maintenance. Commercial Kennels are similar in nature to these types of approved uses, and are not more impactive on surrounding properties or agricultural lands, particularly with the proposed parcel size limitations.
Kennels in Agricultural Zones of top 15 agricultural producing counties in Washington*
* From 2012 Census of Agriculture, USDA. (Listed in order of highest producing to lowest producing.)

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<thead>
<tr>
<th>County</th>
<th>Allowed (Y/N)</th>
<th>Type of Permit Required</th>
<th>Authorizing code</th>
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<tr>
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<td>2. Yakima County</td>
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<td>Type 2 Permit - Administrative Decision</td>
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<td>3. Benton County</td>
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<td>Chapter 14.05 BCC</td>
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<td>4. Franklin County</td>
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<td>6. Adams County</td>
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<td>7. Whitman County</td>
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<td>8. Whatcom County</td>
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<td>9. Okanogan County</td>
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<td>11. Chalan County</td>
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<td>12. Douglas County</td>
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<td>Date Received in Council Office</td>
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<td>01/24/17 Finance Committee; Council</td>
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</table>

**TITLE OF DOCUMENT:** 2017 Supplemental Budget Request #1

**ATTACHMENTS:** Ordinance, Memoranda & Budget Modification Requests

**SEPA review required?**
- Yes (X) No

**SEPA review completed?**
- Yes (X) No

**Should Clerk schedule a hearing?**
- Yes (X) No

**Requested Date:**
- 6/3/17

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

**Supplemental #1 requests funding from the General Fund:**
1. To appropriate $25,500 in Health to fund Social Research project from Whatcom Community Foundation grant.
2. To re-appropriate $10,302 in Health to fund HPV vaccine program from Group Health grant.
3. To re-appropriate $89,500 to fund lower level remodel – Girard Street Emergency Management Fund:
4. To appropriate $45,000 to fund WUECC Situational Assessment Management System from grant proceeds.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**
WHEREAS, the 2017-2018 budget was adopted December 6, 2016; and,
WHEREAS, changing circumstances require modifications to the approved 2017-2018
budget; and,
WHEREAS, the modifications to the budget have been assembled here for deliberation by
the Whatcom County Council.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2017-2018
Whatcom County Budget Ordinance #2016-068 is hereby amended by adding the following
additional amounts to the 2017 budget included therein:

<table>
<thead>
<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
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<td>Health</td>
<td>35,802</td>
<td>(40,302)</td>
<td>(4,500)</td>
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<tr>
<td>Total General Fund</td>
<td>35,802</td>
<td>(40,302)</td>
<td>(4,500)</td>
</tr>
<tr>
<td>Chemical Dependency / Mental Health Fund</td>
<td>89,500</td>
<td>-</td>
<td>89,500</td>
</tr>
<tr>
<td>Emergency Management Fund</td>
<td>45,000</td>
<td>-</td>
<td>45,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>170,302</td>
<td>(40,302)</td>
<td>130,000</td>
</tr>
</tbody>
</table>

ADOPTED this ____ day of ____________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

Chair of the Council

APPROVED AS TO FORM:

Daniel L. Gibson
Civil Deputy Prosecutor

( ) Approved ( ) Denied

Jack Louws, County Executive
Date: ________________________________
<table>
<thead>
<tr>
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<th>Description</th>
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<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
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<tr>
<td>Health</td>
<td>To fund Social Research project from Whatcom Community Foundation grant.</td>
<td>25,500</td>
<td>(30,000)</td>
<td>(4,500)</td>
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<tr>
<td>Health</td>
<td>To re-appropriate funding for HPV vaccine program from Group Health grant.</td>
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<td><strong>Total General Fund</strong></td>
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<td>35,802</td>
<td>(40,302)</td>
<td>(4,500)</td>
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<tr>
<td>Chemical Dependency / Mental Health Fund</td>
<td>To re-appropriate funds for lower level remodel - Girard Street.</td>
<td>89,500</td>
<td>-</td>
<td>89,500</td>
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<tr>
<td>Emergency Management Fund</td>
<td>To fund WUECC Situational Assessment Management System from grant proceeds.</td>
<td>45,000</td>
<td>-</td>
<td>45,000</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td></td>
<td>170,302</td>
<td>(40,302)</td>
<td>130,000</td>
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Supplemental Budget Request

Status: Pending

<table>
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<th>Health</th>
<th>Community Health</th>
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<tr>
<td>Supp#</td>
<td>Fund</td>
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<td>2230</td>
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</tbody>
</table>

Expenditure Type: One-Time  Year 1  2017  Add'l FTE  Add'l Space  Priority 1

Name of Request: Children and Family Assessment

![Signature]

Department Head Signature (Required on Hard Copy Submission)  Date: 12/21/16

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
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<tr>
<td></td>
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<td>($4,500)</td>
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</table>

1a. Description of request:

The Community Health division of the Health Department plans to conduct a social research project to learn what families of children prenatal to age three are currently experiencing focusing on their strengths, assets, resources and needs. This will provide information that will help our community focus in on creating safe, stable and nurturing relationships and environments for children in Whatcom County. Qualitative data from families will be used in tandem with data from our Community Health Status Assessment to convene community members and stakeholders to review the assessment findings and develop an implementation plan for change.

1b. Primary customers:

Those in our community that have an interest in improving community supports and services for families with young children, including:
- Community service providers
- Systems leaders
- Community organizations
- Families

2. Problem to be solved:

Through the Community Health Assessment (2011) and other local efforts, there is growing recognition that a significant number of families in Whatcom County are experiencing high levels of stress due to economic instability, housing challenges, mental health and substance use issues, strained family relationships, and challenging social contexts. Manifestations of significant family stress can be seen in our child abuse and neglect rates, child development outcomes, readiness for school statistics, and increasing behavior challenges seen in pre-school and school-aged children. Our community understands these issues impact some populations more than others, leading to an "uneven start" for some children and families in Whatcom County. In order to optimize child development, promote school readiness, and help our children and families thrive, our community must provide families the support they need to nurture their children and buffer or reduce toxic stress. In particular, we must find a way to support our most vulnerable families.

In order to provide a foundation for this work, it is necessary to collect information directly from families about their strengths and needs. Currently, very little is known about the period between birth and kindergarten. In fact, the time of birth is often the last reliable point of contact between a family and system of community services before a child enters kindergarten.

3a. Options / Advantages:

While the Community Health Assessment can identify data trends and pockets of vulnerability, the design of it is intentionally broad. Through a well-designed social research project, we aim to gather in-depth...
information about and from the families in Whatcom County and find the best leverage points for our community to take action to support families and young children, especially those families that are most vulnerable to poor outcomes.

3b. Cost savings:
This supplemental budget request is to accept funds from the Whatcom Community Foundation in order to engage consultants in work that adds to our current divisional capacity and goals. The proposal is cost neutral but will provide gains in productivity

4a. Outcomes:
• Increase our understanding of the current experiences of young families (prenatal to 3 years) in Whatcom County focusing on challenges, opportunities, hopes and dreams.
• Identify gaps in services and supports, including utilization of existing services.
• Provide a foundation for cross-sector collaboration and system change focused on young children and families

4b. Measures:
The success of this funding will be measured by the successful completion of a family assessment project to increase our understanding of families with children prenatal to age three.

5a. Other Departments/Agencies:
The Health Department is the lead for this work and will be collaborating with external agencies and coalitions including: The Opportunity Council, Whatcom Early Learning Alliance, First Steps Coalition and Whatcom Taking Action

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:
Grant from Whatcom Community Foundation
**Supplemental Budget Request**

**Health**

**Communicable Disease & Epidemiology**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
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<tr>
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**Expenditure Type:** One-Time  
**Year:** 2017  
**Add'l FTE:**  
**Add'l Space:**  
**Priority:** 1

**Name of Request:** HPV Immunization Project Group Health

**Department Head Signature (Required on Hard Copy Submission):**  
**Date:** 12/21/16

<table>
<thead>
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<th>Costs</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
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<td><strong>Request Total</strong></td>
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</tr>
</tbody>
</table>

1a. **Description of request:**  
This is a resubmission of a supplemental budget from 2016. The project did not complete by the end of 2016. This project will promote disease prevention/immunization with emphasis on increasing rates of HPV vaccine. Our strongest attribute lies with our community partners. We participate in Washington State's Vaccine for Children program and consult with over 30 health care clinics to ensure safe and viable vaccines. Our ties to the local university and to our school districts are strong and we have worked with both entities in the past to hold mass vaccination clinics during outbreaks and as immunization needs have been identified.

1b. **Primary customers:**  
Whatcom County healthcare providers  
9 to 26 year olds and parents.

2. **Problem to be solved:**  
Low vaccine rates for human papilloma virus vaccine which can prevent most genital warts and most cases of cervical cancer.

3a. **Options / Advantages:**  
The goal of this grant is to provide an infrastructure to educate healthcare providers, adolescents and parents about HPV infection and HPV vaccine. Vaccination for HPV is highly recommended but is not required by law in Washington State. It is also a newer vaccine approved in 2006, many adolescents start the series of three injections but do not complete. Reasons cited by parents for not vaccinating or not planning to vaccinate their adolescent include: lack of knowledge about the vaccine, belief that the vaccine is not necessary, concerns about safety of the vaccine and side effects, it was not recommended to them, and their adolescent is not sexually active.

"HPV infection in the U.S. is widespread; there are more than 14 million new infections annually, and it is estimated that 50% of sexually

3b. **Cost savings:**

4a. **Outcomes:**

4b. **Measures:**

5a. **Other Departments/Agencies:**

**Wednesday, December 21, 2016**
5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:
The program is funded by a Group Health grant received in 2016 for $45,000. A portion of the funds were spent in 2016 and the balance will be in 2017.
Supplemental Budget Request

Status: Pending

Health

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Expenditure Type: One-Time Year 1 2017 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Lower Level Remodel - Girard

Department Head Signature (Required on Hard Copy Submission) Date

<table>
<thead>
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<td>7190</td>
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</table>

1a. Description of request:
   This request will fund the creation of four additional staff offices in the lower level of the Girard Street Health Department building. This remodel addresses immediate space shortages that would have been addressed in the multi building remodel and move that has been put on indefinite hold. This request was made and approved in 2016. However, the work has been delayed and requires a request for 2017.

1b. Primary customers:
   Human Services staff within the Health Department

2. Problem to be solved:
   Large open spaces in the lower level are currently underutilized. Minor upgrades that create dedicated office spaces will allow for full utilization of space. Staff meet with community members and clients and have a need for confidential space that currently is not available.

3a. Options / Advantages:
   The offices will allow for confidential meetings with citizens.

3b. Cost savings:

4a. Outcomes:
   Confidential space for staff meeting with public.

4b. Measures:

5a. Other Departments/Agencies:
   No

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:
   Chemical Dependency and Mental Health Program Fund

Monday, December 12, 2016
MEMO

To: Jack Louws, County Executive

From: Sheriff Bill Elfo, Director of Emergency Management
       John Gargett, Deputy Director of Emergency Management

Subject: Supplemental Budget Request ID # 2231
       WUECC Situational Assessment Management System

Date: December 21, 2015

The attached Supplemental Budget Request seeks authority to purchase a Situational Assessment Management System for the Whatcom Unified Emergency Coordination Center to be funded by a Phillips 66 Corporate Citizenship General Grant.

- Background and Purpose
The Whatcom Unified Emergency Coordination Center (WUECC) is the single coordinated emergency point for all of Whatcom County and includes participation from the private sector and multiple political jurisdictions. The WUECC currently has very limited audio/visual capabilities for display of situational status during events. The display equipment that is in place is old and does not support the software that has been acquired by the WUECC, the Incident Action Plan (IAP) software made by the Response Group.

This project will provide the display boards used with the Incident Action software which will provide the Incident Management Teams that respond to the WUECC the ability to manage and organize the entirety of an incident response from the necessary resources (personnel & equipment) to the finances and logistics. This will ensure that command officials have valid, up-to-the-minute data through the duration of an incident.

During actual activations of the WUECC, the display boards will be used to brief community and partner leaders on the status of operations on a common display, providing a truly common operating picture.

The WUECC will be supporting this effort by providing the briefing room, staffing and operating environment for use of this display system. The briefing room is a dedicated and secure operating environment.

- Funding Amount and Source
$45,000 from a Phillips 66 Corporate Citizenship General Grant.

Please contact John Gargett or Frances Burkhart if you have any questions.
Supplemental Budget Request

**Sheriff**

**Emergency Management**

<table>
<thead>
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<tr>
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<td>Frances Burkhart</td>
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**Supp'JID #** 2231  
**Expenditure Type:** One-Time  
**Year:** 2017

**Name of Request:** WUECC Situational Assessment Management System

**Department Head Signature (Required on Hard Copy Submission):**

**Date:** 12/22/14

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<th><strong>Object Description</strong></th>
<th><strong>Amount Requested</strong></th>
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<tr>
<td></td>
<td>7410</td>
<td>Equipment-Capital Outlay</td>
<td>$45,000</td>
</tr>
<tr>
<td>Request Total</td>
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<td>$45,000</td>
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</table>

**Status:** Pending

1a. Description of request:

The Whatcom Unified Emergency Coordination Center (WUECC) is the single coordinated emergency point for all of Whatcom County and includes participation from the private sector and multiple political jurisdictions. The WUECC currently has very limited audio/visual capabilities for display of situational status during events. The display equipment that is in place is old and does not support the software that has been acquired by the WUECC, the Incident Action Plan (IAP) software made by the Response Group. This is the same software used by the US Coast Guard as well as the industry partners of the WUECC.

This project will provide the display boards used for the display of the Incident Action software which will provide the ability for the Incident Management Teams that respond to the WUECC to be able to manage and organize the entirety of an incident response from the necessary resources (personnel & equipment) to the finances and logistics. This will insure that command officials have valid, up-to-the-minute data through the duration of an incident.

The ability to have the necessary display boards will support pre-planning and facilitation of many types of Whatcom counties incident management team drills/exercises both in Whatcom County as well as with our international partners in British Columbia and with our private sector partners.

During actual activations of the WUECC, the display boards will be used to brief community and partner leaders on the status of operations on a common display, providing a truly common operating picture.

The WUECC will be supporting this effort by providing the briefing room, staffing, and operating environment for use of this display system. The briefing room is a dedicated and secure operating environment.

1b. Primary customers:

Whatcom County, Whatcom County Emergency Management Council members, City of Bellingham, and partner agencies that utilize the Whatcom Unified Emergency Coordination Center.

2. Problem to be solved:

The Whatcom Unified Emergency Coordination Center (WUECC) is the single coordinated emergency point for all of Whatcom County and includes participation from the private sector and multiple political jurisdictions. The WUECC currently has very limited audio/visual capabilities for display of situational status during events. The display equipment that is in place is old and does not support the software that has been acquired by the WUECC, the Incident Action Plan (IAP) software made by the Response Group. This is the same software used by the US Coast Guard as well as the industry partners of the WUECC.

**Wednesday, December 21, 2016**

Rpt: Rpt Suppl Regular
### Supplemental Budget Request

**Status:** Pending

<table>
<thead>
<tr>
<th>Sheriff</th>
<th>Emergency Management</th>
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<tbody>
<tr>
<td>Supp'1 ID # 2231</td>
<td>Fund 167</td>
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</table>

#### 3a. Options / Advantages:

Phillips 66 Corporate Citizenship General Grant was awarded to Whatcom County for the purchase of the Situational Awareness Management System for use in the Whatcom Unified Emergency Coordination Center.

#### 3b. Cost savings:

$45,000 in direct cost savings due to funding provided by Phillips 66. Additional indirect cost savings will result in the increased efficiency in gathering and disseminating information to support a shared situational awareness which will lead, in turn, to a more effective and coordinated response.

#### 4a. Outcomes:

The primary outcome of this project will be a Whatcom Unified Emergency Coordination Center that can brief on the status of incidents in a truly interactive manner. A second outcome will be the elimination of the need for the renting of similar equipment for drills, exercises and real-world events.

#### 4b. Measures:

The Situational Assessment Management System will be purchased, installed, and tested.

#### 5a. Other Departments/Agencies:

Whatcom County, Whatcom County Emergency Management Council members, City of Bellingham, and partner agencies that utilize the Whatcom Unified Emergency Coordination Center.

#### 5b. Name the person in charge of implementation and what they are responsible for:

N/A

#### 6. Funding Source:

WCSO-DEM received a Phillips 66 Corporate Citizenship General Grant in the amount of $45,000 to fund this project.

The $45,000 check was received and deposited on 12/15/2016.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
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<tr>
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<th>Date</th>
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**TITLE OF DOCUMENT:**

Ord amendment Ord2015-037 to extend due date for Incarceration Prevention Task Force

**ATTACHMENTS:**

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( ) NO</td>
</tr>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Ordinance Amending Ordinance 2015-037, Which Amended Ordinance 2015-025 (Establishment Of The Whatcom County Incarceration Prevention And Reduction Task Force) To Extend Due Dates For Delivery Of The Initial And Final Phase III reports.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
ORDINANCE 2017-_______

ORDINANCE AMENDING ORDINANCE 2015-037, WHICH AMENDED ORDINANCE 2015-025 (ESTABLISHMENT OF THE WHATCOM COUNTY INCARCERATION PREVENTION AND REDUCTION TASK FORCE) TO EXTEND DUE DATES FOR DELIVERY OF THE INITIAL AND FINAL PHASE III REPORTS

WHEREAS, since 2015, the Incarceration Prevention and Reduction Task Force (the Task Force) and three subcommittees have met monthly; and

WHEREAS, in January of 2016, the Task Force delivered its Phase I report to the Whatcom County Council; and

WHEREAS, in October of 2016, the Task Force delivered its Phase II report; and

WHEREAS, both reports were well developed and provided excellent information and proposals to reduce and prevent incarceration in Whatcom County; and

WHEREAS, the authorizing legislation instructed the Task Force to deliver its Phase III report in March of 2017; and

WHEREAS, completion of the Phase III report is dependent on not only the efforts of the Task Force, but also support from Whatcom County staff and expertise from outside consultants; and

WHEREAS, the County Council recognizes that additional time is needed to properly complete the work assigned in the report, including specific operational plans for implementation of appropriate crisis intervention, triage services and incarceration and reduction programs.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Task Force will deliver the initial Phase III report with sufficient details to proceed with construction and programming of a new or expanded crisis triage center no later than July 11, 2017.

BE IT FINALLY ORDAINED that the Task Force will deliver the final Phase III report no later than December 5, 2017.

APPROVED this ______ day of ______________________, 2017.

ATTEST:

Dana Brown-Davis,
Clerk of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan
Council Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

( ) Approved    ( ) Denied

Date Signed: __________
## WHATCOM COUNTY COUNCIL AGENDA BILL

**CLEARANCES**

| Originator: | Weimer |
| Date Received in Council Office: | 1/4/2017 |
| **Division Head:** | |
| **Dept. Head:** | 1/4/2017 |
| **Prosecutor:** | |
| **Purchasing/Budget:** | |
| **Executive:** | |

**TITLE OF DOCUMENT:**

Ordinance providing local procedures to process development permit applications efficiently and to promote finality of decisions

### ATTACHMENTS:

| SEPA review required? | ( ) Yes | ( ) NO |
| SEPA review completed? | ( ) Yes | ( ) NO |
| Should Clerk schedule a hearing? | ( ) Yes | ( ) NO |

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Ordinance providing local procedures to process development permit applications efficiently and to promote finality of decisions.

### COMMITTEE ACTION:  

### COUNCIL ACTION:

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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ORDINANCE NO. _____________

PROVIDING LOCAL PROCEDURES TO PROCESS DEVELOPMENT PERMIT APPLICATIONS EFFICIENTLY AND TO PROMOTE FINALITY OF DECISIONS

WHEREAS, the State Environmental Policy Act (SEPA), RCW Chapter 43.17 and WAC Chapter 197-11, authorize local agencies to enact and implement local agency procedures to carry out the requirements of SEPA; and

WHEREAS, WAC 197-11-030(2)(b) requires that agencies implementing SEPA, including Whatcom County, find ways to make the SEPA process more useful to decision makers and the public, and reduce paperwork and the accumulation of extraneous data; and

WHEREAS, projects involving an environmental impact statement (EIS) under SEPA require the County to prepare the EIS and conduct integral public processes, including the maintenance of public records and response to inquiries and comments from the applicant, agencies, tribes and the public until a final decision is made on the underlying application; and

WHEREAS, this type of extended application review process generates high transaction and personnel costs to county government which cannot be recaptured, despite the fact that applicants pay for outside consultants to prepare an EIS; and

WHEREAS, there are circumstances during the permit review process where it is possible for the County to determine, prior to completion of the EIS, that a project has been denied by other local, state, or federal agencies, on grounds independent of SEPA and therefore are not dependent on completion of the County's EIS; and

WHEREAS, the county code presently does not have an explicit process for denial of these projects already disapproved by other agencies, which are in the midst of a County SEPA EIS process; and

WHEREAS, allowing applications for projects with unfinished SEPA EIS processes to remain in the County permit review system without a clear and defined ending point is a significant financial burden on the taxpayers and county government, does not promote finality of land use decisions, and creates significant uncertainty in the permitting process for the applicant, other agencies, tribes, and the general public; and

WHEREAS, the burden on the public health, safety, and welfare is great when projects remain unresolved in the County permit review system but have been denied by other agencies and therefore will not proceed, based on grounds unrelated to completion of the County's SEPA EIS; and

WHEREAS, a number of other local governments around the state, including Snohomish County and Island County, have similar provisions in code; and

WHEREAS, the Whatcom County Council finds that it is in the best interest of the citizens of Whatcom County and the general public health, safety and welfare to provide for finality of decisions and a clear and meaningful ending point for projects languishing in the permitting process;
NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as findings of fact in support of this action.

BE IT FURTHER ORDAINED that this amendment is categorically exempt from the procedural requirements of SEPA under WAC 197-11-800 (19) (c).

BE IT FURTHER ORDAINED that Whatcom County Code Chapter 16.08 is hereby amended to add Section 16.08.157, Denial without environmental impact statement (EIS), as outlined in Exhibit A to this ordinance.

BE IT FINALLY ORDAINED that Whatcom County Code Section 20.92.210 is hereby amended as outlined in Exhibit B to this ordinance.

ADOPTED this _____ day of ___________________, 2017.

ATTEST:

Dana Brown-Davis, Clerk of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan
Council Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

( ) Approved ( ) Denied

Date Signed: ______________
WCC 16.08.157 Denial without environmental impact statement (EIS).

(1) When there are grounds independent of SEPA that merit denial of a proposal that is undergoing preparation of a SEPA environmental impact statement (EIS), whether ongoing or postponed by the applicant, the County shall deny the application(s) related to the proposal, following receipt of a recommendation of denial from the Responsible Official, if the following requirements are met:

   (a) the proposal is one for which the Responsible Official has issued a Determination of Significance or an early notice of the likelihood of a Determination of Significance; and

   (b) continued preparation or completion of the EIS is no longer justified because either:

       (i) the applicant has applied for a rezone for which there is a direct conflict with an express limitation adopted in a county plan, policy or regulation, which conflict could not be mitigated through measures identified in an EIS; or

       (ii) prior to completion of the EIS, the applicant has received a denial of a necessary permit or other authorization by another federal, state or local agency with jurisdiction on grounds independent of SEPA, without which the project cannot go forward.

(2) Any denial or recommendation of denial shall be supported by express written findings or conclusions in conformance with subsection (1).

(3) Procedure. The following is applicable to any project proposal for which an EIS has been required:

   (a) When the Responsible Official determines that the requirements of subsection (1) are met, within 30 days he or she shall issue a recommendation of denial and set a hearing before the hearing examiner pursuant to WCC Chapter 20.92. The recommendation shall provide proposed written findings and conclusions to the hearing examiner demonstrating how the provisions of subsection (1) are met.

   (b) The examiner shall hold an open record hearing pursuant to WCC Chapter 20.92 and issue a decision, with findings and conclusions, on whether an order of denial should be entered pursuant to this section.

   (c) The decision of the hearing examiner shall be a final decision appealable to the County Council pursuant to WCC 20.92.600 et seq.

(4) SEPA Compliance. Any denial under this section does not constitute a separate action requiring a new threshold determination.
WCC Section 20.92.210, Final decisions.

The hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters:

(1) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official or committee in the administration of this title, WCC Title 16, Environment, WCC Title 21, Land Division Regulations, or WCC Title 24, Health Regulations.

(2) Appeals from a decision of the administrator of the Shoreline Management Program.

(3) Applications for zoning ordinance conditional use permits.

(4) Applications for variances from the terms of the zoning ordinance.

(5) Applications for shoreline management substantial development permits not accompanied by a major project permit when an open record hearing is required.

(6) Applications for variances from the terms of the Whatcom County Shoreline Management Program.

(7) Applications for variances from the terms of Chapter 16.16 WCC, Critical Areas.

(8) Applications for reasonable use permits under the terms of Chapter 16.16 WCC when an open record hearing is required.

(9) Applications for Shoreline Management Program conditional use permits.

(10) Applications for flood damage prevention variances.

(11) Appeals from SEPA determinations of significance, determinations of nonsignificance, and mitigated determinations of nonsignificance.

(12) Preliminary subdivisions and subdivision variances.

(13) Preliminary binding site plan proposals.

(14) Application for variances from the provisions of WCC Title 22.

(15) Revocation proceedings involving previously approved zoning conditional use permits, shoreline management substantial project permits and shoreline conditional use permits.

(16) Applications to continue operations of nonconforming adult businesses pursuant to WCC 20.83.015.

(17) Appeals of decisions relating to water service issues under Section 9.2 of the Coordinated Water System Plan.

(18) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official relating to essential public facilities.

(19) Recommendations of denial issued pursuant to WCC 16.08.157.
TITLE OF DOCUMENT:
Ordinance amending WCC 24.11.060 Drinking Water (water availability required)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Ordinance adopting interim amendments to the Whatcom County Comprehensive Plan and the Whatcom County Code Title 24 Health Code, Relating to Water Resources

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE
PLAN AND THE WHATCOM COUNTY CODE TITLE 24 HEALTH CODE, RELATING TO
WATER RESOURCES

WHEREAS, an October 6, 2016 Washington State Supreme Court decision
(Whatcom County, Hirst vs. Western Washington Growth Management Hearings Board, No.
91475) has found that Whatcom County’s Comprehensive Plan does not comply with the
Growth Management Act (GMA) requirements for protecting water resources; and

WHEREAS, RCW 36.70A.070(1), requires that the land use element of a county
comprehensive plan “shall provide for protection of the quality and quantity of groundwater
used for public water supplies.”; and

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county
comprehensive plan “shall include measures that apply to rural development and protect the
rural character of the area, as established by the county, by: ... protecting critical
areas...and surface water and groundwater resources.”; and

WHEREAS, RCW 19.27.097(1) states: “Each applicant for a building permit of a
building necessitating potable water shall provide evidence of an adequate water supply for
the intended use of the building. Evidence may be in the form of a water right permit from
the department of ecology, a letter from an approved water purveyor stating the ability to
provide water, or another form sufficient to verify the existence of an adequate water
supply. In addition to other authorities, the county or city may impose conditions on
building permits requiring connection to an existing public water system where the existing
system is willing and able to provide safe and reliable potable water to the applicant with
reasonable economy and efficiency. An application for a water right shall not be sufficient
proof of an adequate water supply.”; and

WHEREAS, RCW 19.27.095(1) states: “A valid and fully complete building permit
application for a structure, that is permitted under the zoning or other land use control
ordinances in effect on the date of the application shall be considered under the building
permit ordinance in effect at the time of application, and the zoning or other land use
control ordinances in effect on the date of application.”; and

WHEREAS, RCW 58.17.110(2) requires that “A proposed subdivision and dedication
shall not be approved unless the...county legislative body makes written findings
that...appropriate provisions are made for...potable water supplies...”; and

WHEREAS, RCW 58.17.170(2) states that lots in a long subdivision "shall be a valid
land use notwithstanding any change in zoning laws for a period of seven years from the
date of filing if the date of filing is on or before December 31, 2014, and for a period of five
years from the date of filing if the date of filing is on or after January 1, 2015,” and, "Any
lots in a final plat filed for record shall be a valid land use notwithstanding any change in
zoning laws for a period of ten years from the date of filing if the project is not subject to
requirements adopted under chapter 90.58 RCW and the date of filing is on or before
December 31, 2007.”; and
WHEREAS, WCC Chapter 24.11 contains requirements for drinking water; and

WHEREAS, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations regulating ground water withdrawals, adding Policy 2DD-2.C.3.7, which adopts by reference WCC 24.11.050 and 24.11.060; and

WHEREAS, because Comprehensive Plan Policy 2DD-2.C.3.7 adopts by reference WCC 24.11.050 and 24.11.060, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and

WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and

WHEREAS, on October 6, 2016, the State Supreme Court (Court), in reversing a Court of Appeals decision, upheld the Board’s decision that the County’s Comprehensive Plan does not satisfy the GMA requirements to protect water availability, and stated, “We hold that the Board properly concluded that the GMA requires counties to make determinations of water availability.”; and

WHEREAS, the Court stated, “...the GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing building permits.”; and

WHEREAS, the Court stated, “...The county’s policies incorporate WCC provisions that do not allow water to be withdrawn from ‘an area where [the Department of Ecology] has determined by rule that water for development does not exist.’ ...these ordinances further provide that an application for a permit-exempt appropriation will be approved without any analysis of that withdrawal’s impact on instream flows. The Board found that these provisions result in water withdrawals from closed basins and senior instream flows—flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA...”; and

WHEREAS, Chapter 173-501 WAC Instream Resources Protection Program – Nooksack Water Resource Inventory Area (WRIA) 1 identifies water bodies in Whatcom County that are closed or partially closed to further appropriation, by listing their status as “closure,” “partial year closure,” “low flow,” or “minimum flow.”; and

WHEREAS, on October 25, 2016 Whatcom County adopted Ordinance 2016-048, an emergency moratorium on the filing, acceptance, and processing of new applications for project permits for uses that rely on permit-exempt groundwater withdrawals within a closed or partially closed basin, to allow the County time to review its Comprehensive Plan and development regulations in light of the Supreme Court ruling, and to draft and enact the necessary amendments as soon as feasible; and

WHEREAS, Ordinance 2016-066 rescinded emergency Ordinance 2016-048 and adopted interim amendments to the Whatcom County Comprehensive Plan and Whatcom County Code Title 14 (Buildings and Construction), Title 20 (Zoning), Title 21 (Land Division Regulations), and Title 24 (Health Code) relating to water resources; and
WHEREAS, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within 60 days of adoption; and

WHEREAS, the County needs additional time to prepare Comprehensive Plan and code amendments that fully and permanently remedy the GMA noncompliance; and

WHEREAS, in accordance with RCW 36.70A.106 Whatcom County Planning and Development Services will notify the Department of Commerce of the proposed interim amendment; and

WHEREAS, this ordinance shall be effective for same duration as Ordinance 2016-066, but may be renewed for one or more six month periods if subsequent public hearings are held and findings of fact are made prior to each renewal.

WHEREAS, the County Council is scheduled to hold a public hearing on this issue on January 24, 2017, or a later date;

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above “WHEREAS” recitals as findings of fact in support of it action as required by RCW 36.70A.390

BE IT FURTHER ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended, on an interim basis, as shown in Exhibit A; and

BE IT FURTHER ORDAINED that this ordinance shall be effective until March 19, 2016.

ADOPTED this ______ day of ____________, 2017.

ATTEST:

Dana Brown-Davis,
Clerk of the Council

Barry Buchanan,
Council Chair

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Jack Louws, County Executive

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

( ) Approved   ( ) Denied

Date Signed: ____________
EXHIBIT A

Whatcom County Code

AMENDMENTS

TITLE 24 HEALTH CODE

24.11.060 Water availability required.
Prior to issuance of a building permit or other project permits, the applicant must provide Whatcom County planning and development services evidence of adequate water supply as documented by a water availability notification signed by the director, except as described in subsection B. The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.

A. The applicant must provide evidence of legal availability in the form of:

1. A water right permit from the Department of Ecology, or
2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water, or
3. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017, or
4. For a permit-exempt well per RCW 90.44.050, documentation that the well site is located in the Samish River watershed, or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060, or
5. For a permit-exempt well per RCW 90.44.050 located outside the Samish River watershed, Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060, one of the following:

a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be the permit applicant’s responsibility.

or

b. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:

   i. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be the permit applicant’s responsibility.

   ii. A monitoring and reporting plan, including a quality assurance/quality control plan.

   iii. Financial assurance to ensure mitigation measures for the duration of the water use, and prohibit water provided for the purpose of mitigation from appropriation for any other purpose.

or

c. A record that the project was substantively and recently active, prior to October 26, 2016.
i. Evidence that a project was substantively and recently active prior to October 26, 2016 shall include: The applicant paid fees to Whatcom County directly related to advancing the project (including land disturbance permit fees, project permit, etc.) prior to October 26, 2016; OR the applicant invested funds on consultant services related to the proposal, OR the applicant has records of meetings with Whatcom County PDS staff related to the project within two years prior to October 26, 2016.

ii. Evidence that a project was substantively and recently active prior to October 26, 2016 shall also include two or more of the following:

1. The applicant has a designed, approved septic system installed on the property prior to October 26, 2016;

2. The applicant has installed a functioning well on the property prior to October 26, 2016;

3. The applicant has established that the well water is potable prior to October 26, 2016;

4. The applicant has established a state approved private water system to serve the property (and no more than 4 total properties) prior to October 26, 2016;

5. The applicant has completed a wetlands study for the property prior to October 26, 2016;

6. The applicant has delineated wetlands and buffers prior to October 26, 2016;

7. The applicant hired an archaeological consultant and completed a study of the property prior to October 26, 2016;

8. The applicant has completed a natural resource assessment.

iii. These permits apply only to applications for residential developments of no more than [four] total properties that use, on annual average, no more than 200 gallons of water per day, per property.

iv. A permit issued under this section is conditional; The applicant may be required to mitigate water use so as not to impair rights that are senior. Mitigation may include water conservation, the use of low flow plumbing fixtures, and other conservation methods.

v. A permit issued under this section does not grant the applicant water rights.
B. A water availability notification is not required for:

1. A project permit that does not require potable water.

2. A project permit relying on a permit-exempt well per RCW 90.44.050, and proposing (a) a remodel of an existing building or (b) replacement of a demolished or removed building, but not proposing a change of use; however, such permits shall require current documentation of water quality and quantity, as approved by the director.

3. A project permit relying on surface water withdrawal for potable water, and proposing (a) a remodel of an existing building or (b) replacement of a demolished or removed building, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require current documentation of water quality and quantity, as approved by the director.
WHATCOM COUNTY
Applicability of Permit-Exempt
Well Requirements
per WCC 24.11.060

Legend
Areas subject to permit-exempt well requirements,
per WCC 24.11.060.A.5
Areas not subject to permit-exempt well requirements,
per WCC 24.11.060.A.4