WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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<th>Initial</th>
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<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<tbody>
<tr>
<td>Originator:</td>
<td>Cliff Strong</td>
<td>1/19/2017</td>
<td>2/7/2017</td>
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<td>Division Head:</td>
<td>Mark Personius</td>
<td>1-24-17</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
<td>Jeff Lowes</td>
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TITLE OF DOCUMENT:
2016 Critical Areas Ordinance Update
- Article 6—Wetlands

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 1/19/2017
B. Best Available Science Report 2016 (previously distributed)
C. Chapter 16.16 Draft Critical Areas Ordinance - 2016-06-09, PC adopted (previously distributed)
D. Release & Indemnification Agreement for Geohazards
(materials also found at http://www.whatcomcounty.us/2417/County-Council-Review)

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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.)

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: January 19, 2017
SUBJECT: 2016 Critical Areas Ordinance Update
           County Council Review, Workshop 4, 7 February 2017

On February 7th the Council will continue its review of the 2016 Critical Areas
Ordinance Update. Topics to be covered include:

- Review of Certain Proposed Amendments to:
  - Article 6 – Wetlands
  - Article 8 – Conservation Program on Agriculture Lands

To prepare for this meeting, please review Articles 6 and 8 of the draft code and
read the Best Available Science Addendum regarding those two sections (in your
previous meeting packet materials), in which I point out the more substantive
recommended amendments.

Council Questions from January 10, 2017

Council had several questions regarding the materials discussed on 1/10/17. Here
are staff responses.

1. 16.16.235(B)(4) – Why is notification necessary for felling trees? How are
   people supposed to know that they even need to do this? There is concern
   that people just aren’t going to know to do this, or even think that this would
   be something that they would need to notify for. If someone out in the
   county has a tree that seems like it is going to fall on their house, they’re
   just going to go cut it down. (Brenner and Browne)

Staff Response: Under the current code there is a glitch in that the felling of
hazard trees within a critical area is an exempt activity, yet to do so also requires
that the property owner submit a tree risk assessment to PDS to ascertain whether
the tree truly is a hazard tree (and not just a tree on a steep slope blocking a view,
for instance). Thus, it seemed best to move this allowance from 16.16.230 (Exempt
Activities) to 16.16.235 (Activities allowed with notification) since it was already required. Staff realizes that folks may not know that to cut a tree one must notify PDS; however, given that it was already a requirement, moving it doesn’t really change anything. It doesn’t get rid of the notification requirement, and it doesn’t really change how many people will know that they’re supposed to notify PDS. It does give us an internally consistent rule, however.

2. 16.16.265(E) – Would like to see the document that indemnifies the county when people choose to build in hazard areas (Brenner)

PDS’s Release & Indemnification Agreement for geohazards is attached.

3. 16.16.270(B)(2)(g) and (h) (Brenner) – Would like to see the whatever form is used to assess the reasonable use criteria.

Staff Response: PDS doesn’t have a form we use to assess the reasonable use criteria. We do have applicants address how they believe they meet the criteria in the reasonable use application, and staff reviews this. We must then also make findings in the permit that’s issued addressing how staff feels they meet (or not) these criteria so that there’s an appealable record.

4. 16.16.500 (Weimer) – Would like to see some suggestions about integrating protecting the aquifer from nitrates. Additionally, why haven’t the studies that have been done on this issue (apparently from Canada?) been included in the best available science?

Staff Response: First, let me point out that the two mentioned nitrate studies are listed in the Best Available Science Addendum:

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However, they are both listed in the section on Article 8 (Conservation Program on Agriculture Lands), as they were introduced by the TAC/CAC during their discussion on that Article. The issue of nitrate contamination was not brought up during the discussion on Critical Aquifer Recharge Areas during our TAC/CAC process; it was only brought up by a few of their members after the committees had finished their review of the Critical Areas Ordinance. Staff did not feel we had the authority to amend something outside of that process. However, the issue was raised by Ms. Harris during the Planning Commission review, which the P/C discussed, but did not make any additional changes.

As for what can be done, I point you to the recommendations of the *Sumas-Blaine Aquifer Nitrate Contamination Summary* (Document #65):
Results of this study support the following recommendations.

- Conduct aquifer-wide follow-up nitrate monitoring in shallow wells to compare with 1997.
- Monitor nitrate concentrations in wells 40 feet deep and greater in the Sumas-Blaine Aquifer (SBA) to evaluate the extent of nitrate contamination throughout the aquifer.
- Work cooperatively among government agencies, with agriculture, environment, and human health responsibilities, to ensure that residents of the SBA are not harmed by drinking water above the nitrate maximum contaminant level (MCL).
- Encourage all residents on private wells to have their drinking water tested for nitrate.
- Provide public education and outreach to residents whose well water exceeds 10 mg/L-nitrogen (N).
- Intensify efforts to minimize nitrate leaching. Examples of strategies include:
  - Improving synchronization of nitrogen application and crop need
  - Track nitrogen mass balance for all crops grown on the SBA
  - Include groundwater and drinking water standards into technical standards for crop management.
  - Curtail fall nitrogen application.
- Coordinate with Canadian federal, provincial, and academic groups conducting monitoring and research to improve groundwater nitrate conditions on both sides of the transboundary Abbotsford-Sumas Aquifer. Investigate the degree of influence of Canadian nitrate sources on groundwater in Washington.

I would suggest that this issue is a multinational, multijurisdictional issue best addressed by those agencies that have better authority to address such transborder and statewide issues, and that they actually are working to address the issue pursuant to those recommendations. That doesn’t mean that Whatcom County shouldn’t be involved, but not as a lead, but rather as a partner with these agencies (which in fact, we are). And as the study points out, it’s a problem decades in the making and will take perhaps even longer for the aquifer to clean itself out once past practices that led to the problem are curtailed.
RELEASE AND INDEMNIFICATION AGREEMENT

GRANTOR: ____________________________
GRANTEE: Whatcom County

ASSESSOR’S TAX PARCEL #(#s): ____________________________
ADDRESS:: ____________________________

LEGAL DESCRIPTION:

REFERENCE NUMBERS OF DOCUMENTS RELEASED OR ASSIGNED:
(use abbreviated legal description on first page attach additional page with full legal description from current deed):

This Release and Indemnification Agreement (this "Agreement") is made by and between the Whatcom County, Washington, a County of the State of Washington ("County") and ("Owner").

RECITALS

A. The Owner owns real property in the County, which real property is legally described on Attachment A attached hereto and incorporated by this reference ("Real Property"). The Real Property is located at
   Whatcom County, WA.

B. The Owner has submitted an application for a development proposal on the Real Property, under the County’s File No.

C. The Real Property contains a geologically hazardous area. This type of area is "susceptible to erosion, landslides, earthquakes, volcanic activity, tsunamis and/or other geological processes," and is "a potential threat to natural resources, public health and safety, and can put the development and surrounding developments and uses at risk."

The Owner agrees that "alterations shall be directed toward portions of parcels or parcels under contiguous ownership that are not subject to, or at risk from, geologic hazards." WCC 16.16.310 and WCC 16.16.320.

Release and Indemnification
PL4-86-001-CC
October 2016
D. In view of the risks inherent in construction of buildings or structures in geologically hazardous areas, the County requires the owners of real property on which development is proposed in a geologically hazardous area to execute an indemnification agreement prior to any construction activities.

**AGREEMENT**

The parties agree as follows:

1. **Permit Processing.** The County agrees that the Owner’s submission of this Agreement satisfies the requirements of WCC 16.16. The County shall process all future building permit applications in accordance with the requirements of Whatcom County Natural Resource Assessment Number subject to the Owner meeting all requirements of all applicable codes, regulations, rules, and other laws.

2. **Release.** The Owner releases and discharges the County and its officers, employees, agents, successors, assigns and consultants from all known and unknown losses, liabilities, claims, damages or causes of action that the Owner has or may have relating to, arising out of, or resulting from, directly or indirectly, soil movement or the construction of buildings, structures and improvements on the Real Property, including but not limited to unintended results from maintenance, modification, or aging of drainage.

3. **Indemnification and Hold Harmless.** The Owner agrees to indemnify and hold harmless the County and its officers, employees, agents, successors, assigns and consultants from and against any losses, liabilities, claims, damages, or causes of action (including attorneys’ fees incurred in defense thereof), for deaths or injuries to persons or loss of or damage to property, occurring either on or off the Real Property, sustained by any person or entity, including but not limited to the property Owner, family, guests, visitors, the County or its officers, employees, agents, successors, assignees and consultants, relating to, arising out of, or resulting from, directly or indirectly, soil movement or the construction of buildings, structures and improvements on the Real Property, including but not limited to unintended results from maintenance, modification, or aging of drainage and any other County or private facilities. The Owner shall give the County prompt notice in the event of claims potentially covered by this Agreement.

4. **Binding Nature.** The provisions of this Agreement shall inure to the benefit of and be binding on the parties and their respective heirs, representatives, successors and assigns. The provisions of this Agreement shall constitute covenants running with the Real Property.

5. **Recording.** This Agreement shall be recorded with the Whatcom County Auditor.

6. **Attorneys’ Fees.** In the event of any dispute relating to or arising out of this Agreement, including mediation, arbitration or litigation, then the prevailing party shall be awarded all costs and expenses, including reasonable attorney fees, incurred in connection with the dispute.
Reviewed and approved by:

Whatcom County Technical Administrator

Date

Date Stamp

Signature of Owner

Signature of Owner

Print Name

Print Name

Date

Date

STATE OF WASHINGTON) ) ss:
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that ________________________________
is/are the person(s) who appeared before me, and said person(s) acknowledged it to be
his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated _______________________

Notary Signature: ________________________________

Printed Name: ________________________________

Residing at: ________________________________

My appointment expires: _____ / _____ / _____

Release and Indemnification
PL4-86-001-CC

- 3 -
October 2016
STATE OF WASHINGTON
COUNTY OF WHATCOM

I certify that I know or have satisfactory evidence that ______________________
is/are the person(s) who appeared before me, and said person(s) acknowledged it to be
his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated ________________

Notary Signature: ____________________________

Printed Name: ______________________________

Residing at: ________________________________

My appointment expires: _______/_____/______
ATTACHMENT A
ARTICLE 6. WETLANDS

16.16.600 Purpose.
The purposes of this article are to:

A. Recognize and protect the beneficial functions, values, uses, and services performed by wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging groundwater; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, retention and transformation of sediments, nutrients, and toxicants.

B. Regulate land use to avoid adverse effects on wetlands and maintain the functions, services, and values of freshwater and estuarine wetlands throughout Whatcom County.

C. Establish review procedures for development proposals in and adjacent to wetlands.

C.D. Establish minimum standards for identifying and delineating wetlands.


A. Wetlands are those areas that are inundated or saturated by surface or ground water 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. Swamps, freshwater, and saltwater marshes, bogs, and some meadows are examples of wetlands. Some riparian areas adjacent to streams are also wetlands.

B.A. Wetlands shall be identified in accordance with the requirements of RCW 36.70A.175. Unless otherwise provided for in this chapter, all areas within the County meeting the criteria in the Washington State Wetlands Identification and Delineation Manual [Ecology Publication 96-94] or the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987 Edition, and the Western Mountains, Valleys, and Coast Region supplement [Version 2.0] 2010 [CA29] or as revised corresponding guidance letters, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this article.

C.B. The approximate location and extent of wetlands are shown on the County’s critical area maps. However, this information has come from multiple sources over many years’ time and is not precise. Thus, these maps are to be used as a guide and do not provide a definitive critical area designation; a property specific assessment is necessary for that. The county shall update the maps as new wetlands are identified and as new information becomes available.

D.C. Wetlands shall be rated based on categories that reflect the functions and values of each wetland. Wetland categories shall be based on the criteria provided in the Washington State Wetland Rating System for Western Washington, revised 2014, and as amended thereafter, August 2004 [Ecology Publication No. 34-06-02904-06-026], as determined using the appropriate rating forms and associated figures contained in that publication. These categories are generally defined as follows:
1. **Category I**. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than 1 acre, (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than 1 acre, (5) wetlands in coastal lagoons; (6) interdunal wetlands that score 8 or 9 habitat points and are larger than 1 acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

2. **Category II**. Category II wetlands are: (1) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; (2) interdunal wetlands larger than 1 acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points). Category II wetlands have significant value based on their function as indicated by a rating system score of between 2051 and 2269 points on the Ecology rating forms. They do not meet the criteria for Category I rating but occur infrequently and have qualities that are difficult to replace if altered.

3. **Category III**. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between 0.1 and 1 acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. Category III wetlands have important resource value as indicated by a rating system score of between 1630 and 1950 points on the Ecology rating forms. They occur commonly in Whatcom County.

4. **Category IV**. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree. Category IV wetlands are wetlands that have been highly altered and are of limited resource value, as indicated by a rating system score of less than 1630 points on the Ecology rating forms. They typically have vegetation of similar age and class, lack special habitat features, and/or are isolated or disconnected from other aquatic systems or high-quality upland habitats. Nevertheless, Category IV wetlands still have value, as cumulatively, they can play a vital role in moderating hydrology. They also have the most potential for ecological lift (difference in value if restored). In cases where all of the following criteria are met:

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http://www.whatcomcounty.us/documentcenter/view/13571

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1. The wetland does not provide significant suitable breeding habitat for native amphibian species. Suitable breeding habitat may be indicated by adequate and stable seasonal inundation, presence of thin-stemmed emergent vegetation, and clean water.

2. The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices.

3. The wetland is not located within a habitat conservation area, or buffer as defined in WCC 16.16.710, or buffer and is not integral to the maintenance of habitat functions of a habitat conservation area.

4. The wetland is not located within a floodplain and/or not associated with a shoreline of the state as defined by the County's Shoreline Master Program (WCC Title 23).

5. The wetland is not part of a mosaic of wetlands and uplands. This criterion shall be determined using the guidance provided in Ecology’s Wetland Rating System for Western Washington (Publication No. 14-06-02994-06-025); and

6. The wetland is not identified as locally significant by a local watershed plan prepared pursuant to Chapter 400-12 WAC.

6.7. Adverse impacts are mitigated pursuant to WCC 16.16.680

16.16.620 Wetlands — General standards.

The following activities may be permitted in wetlands and/or wetland buffers as specified when all reasonable measures have been taken to avoid adverse effects on wetland functions and values as documented through an alternatives analysis (TAC99). The amount and degree of alteration are limited to the minimum needed to accomplish the project purpose, and compensatory mitigation is provided for all adverse impacts to wetlands that cannot be avoided, and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose:

A. Developments that meet the reasonable use or variance standards as set forth in WCC 16.16.270.

B. Surface water discharge into Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no other alternatives for discharge are feasible and the discharge is designed to minimize physical, hydrologic, and ecological impacts to the wetland (TAC99).

C.B. Utility lines in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible conveyance alternative is available shall be designed and constructed to minimize physical, hydrologic, and ecological impacts to the wetland, and meet all of the following:

1. The utility line is located as far from the wetland edge and/or buffer as possible and in a manner that minimizes disturbance of soils and vegetation.

2. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation.

3. Buried utility lines shall be constructed in a manner that prevents adverse impacts to surface and subsurface drainage. This may include locating the approximate original contour or the use of trench plugs or other devices as needed to maintain hydrology.

3.4. Best management practices are used in maintaining said utility corridors such that maintenance activities do not expand the corridor further into the critical area (TAC100).

D.C. Public roads or bridges and/or trails (TAC101) in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible alternative alignment is available and the road or bridge and/or trail is designed and constructed to minimize physical, hydrologic, and ecological impacts to the wetland, including placement on elevated structures as an alternative to fill, where feasible.

E.D. Access to private development sites may be permitted to cross Category II, III, or IV wetlands or their buffers, provided there are no feasible alternative alignments and measures are taken to maintain preconstruction hydrologic connectivity across the access road. Alternative access shall be pur-
suited to the maximum extent feasible, including through the provisions of Chapter 8.24 ROW. Exceptions or deviations from technical standards for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.

E. Agricultural Uses as follows:

1. Construction of an appurtenant structure that is associated with a primary agricultural use; or the reconstruction, remodeling, or maintenance of such structures in wetland buffers, subject to all of the following specific criteria:
   i. The structure is located within an existing lot of record and is an ongoing agricultural use.
   ii. There is no other feasible location with less impact to critical areas.
   iii. Clearing and grading activity and impervious surfaces are limited to the minimum necessary to accommodate the proposed structure and, where possible, surfaces shall be made of pervious materials.

2. Existing ongoing agricultural activities subject to the following:
   i. The activities are conducted in accordance with all applicable provisions of this chapter and WCC Title 17, or
   ii. The agricultural activity is in compliance with the Conservation Program on Agricultural Lands (CPAL) as described in WCC 16.16.290, and Appendix AArticle 8 of this chapter (CAC102).

F. Domestic wells serving single-family developments (including plots, short plats, and individual single-family residences) and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, in wetland buffers when all of the following conditions are met:

1. There is no viable alternative to the well site outside of the buffer and the well is located as far back from the wetland edge as is feasible; and
2. The well is more than 75 feet deep; and
3. Any impacts to the wetland and buffer from staging equipment and the well-drilling process are mitigated.

G. Stormwater management facilities, fractional

3.1. Stormwater management facilities, limited to detention/retention/treatment ponds, media filtration facilities, and lagoons or infiltration basins, or bio-retention cells (engineered or rain gardens) may be permitted within the outer 50% percent of a Category II, III or IV wetland buffer, provided that:
   i. Construction of the stormwater facility does not displace or impact a forested buffer;
   ii. The width of the buffer between the stormwater facility and the wetland edge is not less than the low intensity land use buffer standards in WCC 16.16.620;
   iii. There is no other feasible location for the stormwater facility and the facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent critical areas;
   iv. The stormwater facility is designed to mimic and resemble natural wetlands and meets applicable county or state stormwater management standards and the discharge water meets state water quality standards; and
   v. Low impact development approaches have been considered and TAC105 implemented to the maximum extent feasible per the Department of Ecology Stormwater manual.

3.2. Surface water or stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted within a Category II, III, or IV wetland buffer on a case-by-case basis when the technical administrator determines that all of the following are met:
i. Due to topographic or other physical constraints, there are no feasible alternative locations for these facilities in the outer buffer area or outside the buffer.

ii. The discharge is located as far from the wetland edge and/or buffer as possible and in a manner that minimizes disturbance of soils and vegetation.

iii. The discharge outlet is designed to prevent erosion and promote infiltration.

iv. The dispersion outfall is within the outer 25% of the buffer [access].

G.H. Passive recreation facilities that are part of a nonmotorized trail system or environmental education program, including walkways, wildlife viewing structures, and public education trails in the wetland buffers; provided that all of the following criteria are met:

1. Private trails shall not exceed 46 feet in width, and public [access] trails shall not exceed 10 feet in width.
2. They shall be made of pervious material or on an elevated structure where feasible.
3. They shall be designed to avoid removal of significant trees.
4. When located in the buffer, the trail or the facility is should be located in the outer 25% of the buffer.
5. The area shall be designed to avoid removal of significant trees if they must cross a wetland, they shall be elevated, constructed to minimize supports, and be the minimum size necessary to accommodate the level of service.
6. The trail and/or facility is shall be constructed and maintained in a manner that minimizes disturbance of the buffer and associated critical areas.

H. Existing ongoing agricultural activities subject to the following:

1. The activities are conducted in accordance with all applicable provisions of this chapter and WCC Title 17, or
2. The agricultural activity is in compliance with the Conservation Program on Agricultural Lands (CPAs) as described in WCC 16.16.290, and Appendix A of this chapter [access].

I. Single-family developments may be permitted to encroach into wetland buffers subject to the technical administrator’s approval; provided, that all of the criteria in WCC 16.16.270(A) (Reasonable Use) are met.

J. On-site sewage disposal systems (OSS) may be permitted in wetland buffers when accessory to an approved residential structure; provided, however, it is not feasible to connect to a public sanitary sewer system; and, that:

1. It is located as far as possible from the wetland and,
2. It is operated and maintained in accordance with WCC 24.05.170, provided, that adverse effects on water quality are avoided.

16.16.630 Standards — wetland buffer widths.

The technical administrator shall have the authority to require buffers from the edges of all wetlands in addition to the building setback required by 16.16.265(D) in accordance with the following:

A. Wetland buffers shall be established to protect the integrity, functions and values of the wetland.

B. The buffer standards required by this article presume the existence of a dense, multi-storied native vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer lacks adequate vegetation, the technical administrator may increase the standard buffer, require buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging.
C. The standard buffer shall be based on a combination of wetland category, habitat function score (from the wetland rating form), and land use intensity from the intensity of the proposed land use and the functions and values provided by the wetland. The intensity of the land use shall be determined in accordance with the definitions outlined in Article 8-9 of this chapter unless the technical administrator determines that a lesser level of impact is appropriate based on information provided by the applicant demonstrating that the proposed land use will have a lesser impact on the wetland than that contemplated under the buffer standard otherwise appropriate for the land use, as specified in Section 16.16.640.

D. Standard buffer widths are shown in Table 2. There are three possible standard buffer scenarios listed in the following tables:

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<td>150</td>
</tr>
<tr>
<td></td>
<td>≤ 5</td>
<td>80</td>
</tr>
<tr>
<td>Category IV</td>
<td>8-9</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>5-7</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>≤ 5</td>
<td>50</td>
</tr>
</tbody>
</table>

* Definitions for high, moderate, and low intensity land use are provided in Article 8 of this chapter.

E. For wetlands that have a high level of function for wildlife habitat as indicated by a habitat function score of 8 to 929 points or more on the wetland rating form, the buffers shall be as follows:

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>High Intensity</th>
<th>Moderate Intensity</th>
<th>Low Intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Buffer Width (feet)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category I</td>
<td>300</td>
<td>225</td>
<td>150</td>
</tr>
<tr>
<td>Category II</td>
<td>275</td>
<td>150</td>
<td>100</td>
</tr>
<tr>
<td>Category III</td>
<td>150</td>
<td>100</td>
<td>75</td>
</tr>
<tr>
<td>Category IV</td>
<td>50</td>
<td>40</td>
<td>25</td>
</tr>
</tbody>
</table>
F. For wetlands that have a moderate level of function for wildlife habitat as indicated by a habitat function score of 20 to 285 points on the wetland rating form, the buffers shall be as follows:

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>High Intensity</th>
<th>Moderate Intensity</th>
<th>Low Intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buffer Width (feet)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category I</td>
<td>550</td>
<td>140</td>
<td>76</td>
</tr>
<tr>
<td>Category II</td>
<td>550</td>
<td>140</td>
<td>75</td>
</tr>
<tr>
<td>Category III</td>
<td>550</td>
<td>100</td>
<td>60</td>
</tr>
<tr>
<td>Category IV</td>
<td>50</td>
<td>40</td>
<td>26</td>
</tr>
</tbody>
</table>

Definitions for high, moderate and low intensity land use are provided in Article 8 of this chapter.

G. For wetlands that have a low level of function for wildlife habitat as indicated by a habitat function score of less than 20 points on the wetland rating form, the buffers shall be as follows:

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>High Intensity</th>
<th>Moderate Intensity</th>
<th>Low Intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buffer Width (feet)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category I</td>
<td>400</td>
<td>75</td>
<td>50</td>
</tr>
<tr>
<td>Category II</td>
<td>100</td>
<td>75</td>
<td>60</td>
</tr>
<tr>
<td>Category III</td>
<td>80</td>
<td>60</td>
<td>60</td>
</tr>
<tr>
<td>Category IV</td>
<td>50</td>
<td>40</td>
<td>26</td>
</tr>
</tbody>
</table>

Definitions for high, moderate and low intensity land use are provided in Article 8 of this chapter.

H. Because there is a large increase in width associated with a one-point increase in the habitat score, the technical administrator may deviate from the buffer requirements outlined in subsection D of this section and increase the buffer widths in increments of 20 feet for every one-point increase in the habitat score in accordance with guidance developed by the Department of Ecology in Wetlands in Washington State—Volume 2: Guidance for Protecting and Managing Wetlands (Publication No. 05-06-008) [TAC111].
The technical administrator shall have the authority to reduce the standard buffer widths identified in
WCC 16.16.650; provided, that the general standards for avoidance and minimization per WCC
16.16.260(A)(1)(a) and (b) shall apply; and provided further, that all of the following apply:
A. The buffer reduction shall not adversely affect the functions and values of the adjacent wetlands;
B. The buffer of a Category I, or II, or III wetland shall not be reduced to less than 75% percent of the
required buffer or 50 feet, whichever is greater;
C. The buffer of a Category III or IV wetland shall not be reduced to less than 50% percent of the
required buffer, or 25 feet, whichever is greater;
D. The applicant implements all reasonable measures to reduce the adverse effects of adjacent land
uses and ensure no net loss of buffer functions and values. The specific measures may that shall
be implemented include, but are not limited to, the following:
1. Direct lights away from the wetland and buffer;
2. Locate activities and facilities that generate substantial noise (such as some manufacturing, industrial
and recreational facilities) away from the wetland and buffer.
3. Route all new, untreated stormwater runoff away from the wetland while ensuring wetland is not dewatered.
4. Establish covenants limiting use of pesticides within 150 feet of wetland.
5. Apply integrated pest management programs.
6. Prevent channelized flow from lawns that directly enter the buffer.
7. Prevent channelized flow from lawns that directly enter the buffer.
8. Infiltrate or treat, detain, and disperse runoff into buffer, new runoff from impervious surfaces
and new lawns.
9. Post signs at the outer edge of the critical area or buffer to clearly indicate the location of the
critical area according to the direction of the County.
10. Use privacy fencing.
7-11. Plant buffer with dense native vegetation appropriate for the region to delineate
buffer edge and to create screens or thorny barriers to noise, light, human intrusion and discourage
ordnung domestic animal intrusion.
8-12. Use low impact development where appropriate.
13. Establish a permanent conservation easement to protect the wetland and the associated
buffer.
9-14. Use best management practices to control dust.

16.16.650 Standards—Wetland buffer averaging.
The technical administrator shall have the authority to average wetland buffer widths on a case-by-case
basis; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a)
and (b) shall apply, and when all of the following criteria are met:
A. The buffer averaging does not reduce the functions or values of the wetland;
B. The total area contained in the buffer area after averaging is no less than that which would be contained
within the standard buffer, and all increases in buffer dimension for averaging must be
parallel to the wetland boundary to avoid creating buffer “panhandles” unless it constitutes
an essential-wildlife corridor;
C. The wetland contains variations in sensitivity due to existing physical characteristics or the character
of the buffer varies in slope, soils, or vegetation;
D. The minimum buffer width of a Category I, or II, or III wetland shall not be less than 75% percent of
the widths established under WCC 16.16.630; or 50 feet, whichever is greater;
E. The minimum buffer width of a Category III or IV wetland shall not be less than 50% percent
of the widths established under WCC 16.16.630; or 25 feet, whichever is greater; and
F. The buffer has not been reduced in accordance with WCC 16.16.640. Buffer averaging is not allowed if the buffer has been reduced.

16.16.660 Standards—Wetland buffer increases.
The technical administrator shall have the authority to increase the width of the standard buffer width on a case-by-case basis when there is sound evidence that a larger buffer is required by an approved habitat management plan as outlined in WCC 16.16.750, or such increase is necessary to:
A. Protect the function and value of that wetland including, but not limited to, compensating for a poorly vegetated buffer or a buffer that has a steep slope (greater than 30% percent); or
B. Prevent windthrow damage; or
C. Maintain viable populations of species such as herons and other priority fish and wildlife; or
D. Protect wetlands or other critical areas from landslides, erosion or other hazards.

16.16.670 Review and reporting requirements.
A. Review Process for Non-Single Family Development: When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration may contain or abut wetlands or wetland buffers, the technical administrator may require a site evaluation (field investigation) by a qualified professional to determine whether or not a regulated wetland is present and, if so, its relative location in relation to the proposed project area or site. If the technical administrator determines that a wetland is more likely than not present, the technical administrator shall require a wetland assessment report pursuant to WCC 16.16.255 and subsection B of this section. If no regulated wetlands are present, then wetland review will be considered complete.
B. A wetland assessment report describes the characteristics of the subject property and adjacent areas and must be consistent with WCC 16.16.255. The assessment shall include the occurrence, distribution, delineation, and determination of the wetland category and standard wetland buffers as set forth in WCC 16.16.630. The investigation shall also include field identification and a complete delineation of all wetland boundaries (with delimitations field flagged and left in the field for County verification). It may include analysis of historical aerial photos, review of public records, and interviews with adjacent property owners. 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. Location information (legal description, parcel number, and address);
2. A qualitative written assessment and accompanying maps of critical areas, wetlands and buffers within 300 feet of the site and an estimate of the existing acreage for each. For on-site wetlands, the assessment shall include the dominant and subdominant plant species; soil type, color and texture; sources of hydrology (patterns of surface and subsurface water movement, precipitation, etc.); topography; and other pertinent information. The assessment of off-site wetlands shall be based on available information and shall not require accessing off-site properties;
3. Existing wetland functions and values and a detailed description of the effects of the proposed development on wetland and buffer function and value, including the area of direct wetland disturbance; area of buffer reduction or averaging including documentation that functions and values will not be adversely affected by the reduction or averaging; effects of stormwater management; proposed hydrologic alteration including changes to natural drainage or infiltration patterns; effects on fish and wildlife species and their habitats; clearing and grading impacts; temporary construction impacts; and effects of increased noise, light or human intrusion;
4. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;

6. Wetland Determination and Mapping. The exact location of all wetland boundaries shall be determined through the performance of a field investigation by a qualified wetland professional applying the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987 Edition, and the Western Mountains, Valleys, and Coast Region supplement (Version 2.0) 2010 (Ecology Publication No. 94-06-078). The wetland boundary shall be marked in the field and surveyed. The surveyed wetlands areas shall be mapped showing location and size of all wetlands. The Technical Administrator may request verification of the wetland delineation by the Army Corps of Engineers when a high degree of accuracy is necessary to determine applicable regulations and requirements.

7. Wetland Delineation Requirements. The following are required components of a wetland delineation report:
   a. The report shall be prepared by a qualified professional for wetlands, who meets the minimum requirements as defined in this chapter.
   b. Maps. The wetland delineation report shall include the following maps:
      i. Vicinity map.
      ii. Parcel map, with scale, showing all wetlands within 300 feet of the development footprint unless access is denied in writing by the adjacent property owner. Parcel map shall include all streams and drainages (Type 1, 2, 3, 4, or 5 streams), shorelines, floodplains, flood prone areas, and critical habitat for threatened and endangered species within 150 feet of the development footprint.
      iii. Topographic map based on city or surveyed data.
      iv. Map of development proposal with accurate scale.
   c. Wetland Analysis. A wetland delineation report shall provide an analysis of all wetlands and buffers to the extent they can be legally accessed within 150 feet of the development footprint including, at a minimum, the following information:
      i. Wetland delineation.
      ii. The wetland boundaries shall be surveyed by a licensed surveyor using an equivalent method with an accuracy of plus or minus one foot of a survey.
      iii. Determination of each wetland size.
      iv. Description of each wetland class and category.
      v. Description of overall water sources and drainage patterns on site.
      vi. Description of vegetation, hydrologic conditions, and soil and substrate conditions.
      vii. Description of wildlife and habitat.
      viii. Topographic elevation, at two-foot contours.
      ix. Functional assessment of the wetland and adjacent buffer using a local or state agency-recognized method and including the reference of the method and all data sheets.
      x. Standard buffer requirements for each wetland.
      xi. Site plan that includes scale, and wetlands and associated buffers and proposed development.

C. Review Process for single-family development permits. The following options shall apply when development of a single-family dwelling is proposed on a site that contains wetlands or wetland buffers:

D.C. An assessment report shall be required when the single-family dwelling and associated features are proposed within the wetland or standard buffer of a regulated wetland. The applicant...
may hire a qualified professional to prepare the assessment report or may request that the County assess the regulated wetland(s) and buffers and determine the impacts associated with the project, subject to the following:

a. Field investigation by County staff shall be at the discretion of the technical administrator and subject to workload and scheduling constraints.

b. Fees for County staff services shall be in accordance with the unified fee schedule.

2. When the proposed single-family dwelling and associated features are located outside the standard buffer required under WCC 16.16.630 (no encroachment), no assessment report shall be required. (See 16.16.510.)

E.D. If a regulated wetland buffer from a neighboring property extends onto a proposed development site for which review under this chapter is required, the technical administrator shall have the authority to require that deterrent devices (e.g., split rail fence or other permanent, clearly visible wetland buffer signs) be placed at the edge of the buffer in accordance with WCC 16.16.265. The applicant shall provide written documentation that no buffer encroachment will occur. The documentation shall be in the form of a letter or similar affidavit.


In addition to the applicable general protective measures found in WCC 16.16.265, activities that adversely affect wetlands and/or wetland buffers shall include mitigation sufficient to achieve no net loss of wetland function and values in accordance with WCC 16.16.260 and this section.

A. In determining the extent and type of mitigation required, the technical administrator shall may consider all of the following:

1. The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;

2. The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;

3. Observed or predicted trends regarding the gains or losses of specific wetland types in the watershed, in light of natural and human processes;

4. The likely success of the proposed mitigation measures;

5. Effects of the mitigation actions on neighboring properties; and

6. Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a watershed plan prepared pursuant to Chapter 400-12 WAC, 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, a fully authorized mitigation bank ($16.16.260(1)), or an in lieu fee program.

B. Type of Mitigation.

1. Wetland Alterations. Compensatory mitigation projects shall restore, create, rehabilitate, enhance, and/or preserve equivalent wetland functions and values pursuant to no net loss of function and area. Compensation for wetland alterations shall occur in the following order of preference:

a. Reestablishing (also referred to as restoring) wetlands on upland sites that were formerly wetlands.

b. Creating wetlands on disturbed upland sites such as those consisting primarily of nonnative, invasive plant species.

c. Rehabilitation of existing wetlands for the purposes of repairing or restoring natural and/or historic hydrologic functions.

d. Enhancing existing significantly degraded wetlands.
e. Preserving Category I or II wetlands that are under imminent threat; provided, that preservation shall only be allowed in combination with other forms of mitigation and when the technical administrator determines that the overall mitigation package fully replaces the functions and values lost due to development.

2. Buffer Alterations. Compensatory mitigation for buffer impacts shall be consistent with WCC 16.16.640, 650, and 660 and include enhancement of degraded buffers by planting native species, removing structures and impervious surfaces within buffers, and other measures to achieve equivalent or greater buffer functions.

C. Mitigation Ratios.

1. Compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio.

2. Compensatory mitigation for wetland alterations shall be based on the wetland category and the type of mitigation activity proposed. The replacement ratio shall be determined according to the ratios provided in Table 2 below Table 3; provided, that the replacement ratio for preservation shall be 10 times the ratio for reestablishment or creation. The created, reestablished, rehabilitated, or enhanced wetland area shall, at a minimum, provide a level of function equivalent to the wetland being altered and shall be located in an appropriate landscape setting.

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>Reestablishment or Creation</th>
<th>Rehabilitation</th>
<th>Enhancement Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I</td>
<td>No attention allowed unless an Essential Public Facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category II</td>
<td>3:1</td>
<td>6:1</td>
<td>12:1</td>
</tr>
<tr>
<td>Category III</td>
<td>2:1</td>
<td>4:1</td>
<td>8:1</td>
</tr>
<tr>
<td>Category IV</td>
<td>1.5:1</td>
<td>3:1</td>
<td>6:1</td>
</tr>
</tbody>
</table>

Ratio is the replacement area:impact area

3. The mitigation ratios noted above in Table 3 shall not apply to mitigation banks as defined by this chapter. Credit and debit procedures for mitigation banks shall be determined in accordance with the mitigation banking provisions outlined in WCC 16.16.260(F).

Table 3. Mitigation ratios for projects in western Washington

<table>
<thead>
<tr>
<th>Category and Type of Wetland Impacts</th>
<th>Re-establishment or Creation</th>
<th>Rehabilitation Only</th>
<th>Re-establishment or Creation (R/C) and Rehabilitation (RH)</th>
<th>Re-establishment or Creation (R/C) and Enhancement (E)</th>
<th>Enhancement Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Category I</td>
<td>3:1</td>
<td>6:1</td>
<td>1:1 R/C and 1:1 RH</td>
<td>1:1 R/C and 2:1 E</td>
<td></td>
</tr>
<tr>
<td>All Category II</td>
<td>2:1</td>
<td>4:1</td>
<td>1:1 R/C and 2:1 RH</td>
<td>1:1 R/C and 4:1 E</td>
<td></td>
</tr>
<tr>
<td>Category II Estuarine</td>
<td>Case-by-case</td>
<td>4:1</td>
<td>Case-by-case</td>
<td>Case-by-case</td>
<td>Case-by-case</td>
</tr>
<tr>
<td>All other Category</td>
<td>3:1</td>
<td>6:1</td>
<td>1:1 R/C and 4:1 RH</td>
<td>1:1 R/C and 6:1 E</td>
<td>12:1</td>
</tr>
<tr>
<td>Category I</td>
<td>No attention allowed unless an Essential Public Facility</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\[From Wetlands in Washington, Volume 2, Appendix 8C, Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System, Table 8C-11.\]
E. The technical administrator shall have the authority to adjust the replacement ratios when one or more of the following apply:
1. When a combination of mitigation approaches is proposed. In such cases, the area of altered wetland shall be replaced at a 1:1 ratio through reestablishment or creation, and the remainder of the area needed to meet the ratio can be replaced by enhancement or rehabilitation using Table 3 at a 2:1 ratio. For example, impacts to one acre of a Category II wetland requiring a 3:1 ratio for creation can be compensated by creating one acre and enhancing four acres (instead of the additional two acres of creation that would otherwise be required).
2. When the project proponent has demonstrated ability, based on past performance, to successfully design, construct, monitor and maintain wetland mitigation projects/sites.
3. When use of the guidance for Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington results in a lower mitigation ratio than the standard ratio. When meeting the required ratios would adversely affect other natural and valuable characteristics of an otherwise appropriate and suitable mitigation site. [TAC132]
4. The ratios reduced pursuant to subsections (C)(2) and (3) of this section shall be at least 60 percent of the standard ratios listed in subsection (C)(2) of this section and shall not be less than a 3:1 ratio.
F. Compensatory mitigation shall be provided on-site or off-site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success; provided, that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin would have the greatest ecological benefit and the greatest likelihood of success; provided, that limiting functions shall not be removed from sensitive watersheds identified in WCC Title 20. Mitigation shall occur within WRIA 1 or 3.
G. All mitigation areas shall be protected and managed to prevent degradation and ensure protection of critical area functions and values into perpetuity. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.
H. Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).

16.16.690 Standards — Compensatory wetland mitigation plan.
A. In addition to meeting the requirements of WCC 16.16.260(6), a compensatory mitigation plan for wetland and wetland buffer impacts shall meet the following requirements:
1. The plan shall be based on applicable portions of the Washington State Department of Ecology’s Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals, 2004, or other appropriate guidance document that is consistent with best available science.
2. The plan shall contain sufficient information to demonstrate that the proposed activities are logistically feasible, constructible, ecologically sustainable, and likely to succeed. Specific information to be provided in the plan shall include:
   a. The rationale for site selection;
   b. General goals of the plan, including wetland function, value, and acreage;
c. Description of baseline (existing) site conditions including topography, vegetation, soils, hydrology, habitat features (i.e., snags), surrounding land use, and other pertinent information;

d. Field data confirming the presence of adequate hydrology (surface and/or groundwater) to support existing and compensatory wetland area(s);

e. Nature of mitigation activities, including area of restored, created, enhanced, rehabilitated and preserved wetland, by wetland type;

f. Detailed grading and planting plans showing proposed post-construction topography; general hydrologic patterns; spacing and distribution of plant species; size and type of proposed planting stock; watering or irrigation plans; and other pertinent information;

g. A description of site treatment measures including invasive species removal, use of mulch and fertilizer, placement of erosion and sediment control devices, and best management practices that will be used to protect existing wetlands and desirable vegetation;

h. A demonstration that the site will have adequate buffers sufficient to protect the wetland functions in perpetuity.

B. All compensatory mitigation projects shall be monitored in accordance with WCC 16.16.260(C) for a period necessary to establish that performance standards have been met. The technical administrator shall have the authority to extend the monitoring period for up to 10 years and require additional monitoring reports when any of the following conditions apply:

1. The project does not meet the performance standards identified in the mitigation plan.

2. The project does not provide adequate replacement for the functions and values of the impacted critical area.

3. The project involves establishment of forested plant communities, which require longer time for establishment.

i. Reports shall be submitted annually for the first three years following construction and at the completion of years five, seven and 10 if applicable to document milestones, successes, problems, and contingency actions of the compensatory mitigation.
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, information 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

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<th>CLEARANCES</th>
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<tr>
<td>Originator: Cliff Strong</td>
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<td>Executive: Jack Lawes</td>
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**TITLE OF DOCUMENT:**
2016 Critical Areas Ordinance Update

- Article 8 — Conservation Program on Agriculture Lands

**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 1/19/2017
B. Best Available Science Report 2016 (previously distributed)
C. Chapter 16.16 Draft Critical Areas Ordinance - 2016-06-09, PC adopted (previously distributed)
D. Release & Indemnification Agreement for Geohazards
(materials also found at http://www.whatcomcounty.us/2417/County-Council-Review)

**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: January 19, 2017
SUBJECT: 2016 Critical Areas Ordinance Update 
County Council Review, Workshop 4, 7 February 2017

On February 7th the Council will continue its review of the 2016 Critical Areas Ordinance Update. Topics to be covered include:

- Review of Certain Proposed Amendments to:
  - Article 6 – Wetlands
  - Article 8 – Conservation Program on Agriculture Lands

To prepare for this meeting, please review Articles 6 and 8 of the draft code and read the Best Available Science Addendum regarding those two sections (in your previous meeting packet materials), in which I point out the more substantiive recommended amendments.

Council Questions from January 10, 2017

Council had several questions regarding the materials discussed on 1/10/17. Here are staff responses.

1. 16.16.235(B)(4) – Why is notification necessary for felling trees? How are people supposed to know that they even need to do this? There is concern that people just aren’t going to know to do this, or even think that this would be something that they would need to notify for. If someone out in the county has a tree that seems like it is going to fall on their house, they’re just going to go cut it down. (Brenner and Browne)

Staff Response: Under the current code there is a glitch in that the felling of hazard trees within a critical area is an exempt activity, yet to do so also requires that the property owner submit a tree risk assessment to PDS to ascertain whether the tree truly is a hazard tree (and not just a tree on a steep slope blocking a view, for instance). Thus, it seemed best to move this allowance from 16.16.230 (Exempt
Activities) to 16.16.235 (Activities allowed with notification) since it was already required. Staff realizes that folks may not know that to cut a tree one must notify PDS; however, given that it was already a requirement, moving it doesn’t really change anything. It doesn’t get rid of the notification requirement, and it doesn’t really change how many people will know that they’re supposed to notify PDS. It does give us an internally consistent rule, however.

2. 16.16.265(E) – Would like to see the document that indemnifies the county when people choose to build in hazard areas (Brenner)

PDS’s Release & Indemnification Agreement for geohazards is attached.

3. 16.16.270(B)(2)(g) and (h) (Brenner) – Would like to see the whatever form is used to assess the reasonable use criteria.

Staff Response: PDS doesn’t have a form we use to assess the reasonable use criteria. We do have applicants address how they believe they meet the criteria in the reasonable use application, and staff reviews this. We must then also make findings in the permit that’s issued addressing how staff feels they meet (or not) these criteria so that there’s an appealable record.

4. 16.16.500 (Weimer) – Would like to see some suggestions about integrating protecting the aquifer from nitrates. Additionally, why haven’t the studies that have been done on this issue (apparently from Canada?) been included in the best available science?

Staff Response: First, let me point out that the two mentioned nitrate studies are listed in the Best Available Science Addendum:

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However, they are both listed in the section on Article 8 (Conservation Program on Agriculture Lands), as they were introduced by the TAC/CAC during their discussion on that Article. The issue of nitrate contamination was not brought up during the discussion on Critical Aquifer Recharge Areas during our TAC/CAC process; it was only brought up by a few of their members after the committees had finished their review of the Critical Areas Ordinance. Staff did not feel we had the authority to amend something outside of that process. However, the issue was raised by Ms. Harris during the Planning Commission review, which the P/C discussed, but did not make any additional changes.

As for what can be done, I point you to the recommendations of the *Sumas-Blaine Aquifer Nitrate Contamination Summary* (Document #65):
Results of this study support the following recommendations.

- Conduct aquifer-wide follow-up nitrate monitoring in shallow wells to compare with 1997.
- Monitor nitrate concentrations in wells 40 feet deep and greater in the Sumas-Blaine Aquifer (SBA) to evaluate the extent of nitrate contamination throughout the aquifer.
- Work cooperatively among government agencies, with agriculture, environment, and human health responsibilities, to ensure that residents of the SBA are not harmed by drinking water above the nitrate maximum contaminant level (MCL).
- Encourage all residents on private wells to have their drinking water tested for nitrate.
- Provide public education and outreach to residents whose well water exceeds 10 mg/L-nitrogen (N).
- Intensify efforts to minimize nitrate leaching. Examples of strategies include:
  - Improving synchronization of nitrogen application and crop need
  - Track nitrogen mass balance for all crops grown on the SBA
  - Include groundwater and drinking water standards into technical standards for crop management.
  - Curtail fall nitrogen application.
- Coordinate with Canadian federal, provincial, and academic groups conducting monitoring and research to improve groundwater nitrate conditions on both sides of the transboundary Abbotsford-Sumas Aquifer. Investigate the degree of influence of Canadian nitrate sources on groundwater in Washington.

I would suggest that this issue is a multinational, multijurisdictional issue best addressed by those agencies that have better authority to address such trans-border and statewide issues, and that they actually are working to address the issue pursuant to those recommendations. That doesn't mean that Whatcom County shouldn't be involved, but not as a lead, but rather as a partner with these agencies (which in fact, we are). And as the study points out, it's a problem decades in the making and will take perhaps even longer for the aquifer to clean itself out once past practices that led to the problem are curtailed.
RELEASE AND INDEMNIFICATION AGREEMENT

GRANTOR:

GRANTEE: Whatcom County

ASSESSOR’S TAX PARCEL #(s):

ADDRESS:

LEGAL DESCRIPTION:

REFERENCE NUMBERS OF DOCUMENTS RELEASED OR ASSIGNED:

(use abbreviated legal description on first page attach additional page with full legal description from current deed):

This Release and Indemnification Agreement (this "Agreement") is made by and between the Whatcom County, Washington, a County of the State of Washington ("County") and ("Owner").

RECITALS

A. The Owner owns real property in the County, which real property is legally described on Attachment A attached hereto and incorporated by this reference ("Real Property"). The Real Property is located at Whatcom County, WA.

B. The Owner has submitted an application for a development proposal on the Real Property, under the County’s File No.

C. The Real Property contains a geologically hazardous area. This type of area is "susceptible to erosion, landslides, earthquakes, volcanic activity, tsunamis and/or other geological processes," and is "a potential threat to natural resources, public health and safety, and can put the development and surrounding developments and uses at risk."

The Owner agrees that "alterations shall be directed toward portions of parcels or parcels under contiguous ownership that are not subject to, or at risk from, geologic hazards." WCC 16.16.310 and WCC 16.16.320.
D. In view of the risks inherent in construction of buildings or structures in geologically hazardous areas, the County requires the owners of real property on which development is proposed in a geologically hazardous area to execute an indemnification agreement prior to any construction activities.

AGREEMENT

The parties agree as follows:

1. Permit Processing. The County agrees that the Owner's submission of this Agreement satisfies the requirements of WCC 16.16. The County shall process all future building permit applications in accordance with the requirements of Whatcom County Natural Resource Assessment Number ______________ subject to the Owner meeting all requirements of all applicable codes, regulations, rules, and other laws.

2. Release. The Owner releases and discharges the County and its officers, employees, agents, successors, assigns and consultants from all known and unknown losses, liabilities, claims, damages or causes of action that the Owner has or may have relating to, arising out of, or resulting from, directly or indirectly, soil movement or the construction of buildings, structures and improvements on the Real Property, including but not limited to unintended results from maintenance, modification, or aging of drainage.

3. Indemnification and Hold Harmless. The Owner agrees to indemnify and hold harmless the County and its officers, employees, agents, successors, assigns and consultants from and against any losses, liabilities, claims, damages, or causes of action (including attorneys' fees incurred in defense thereof), for deaths or injuries to persons or loss of or damage to property, occurring either on or off the Real Property, sustained by any person or entity, including but not limited to the property Owner, family, guests, visitors, the County or its officers, employees, agents, successors, assignees and consultants, relating to, arising out of, or resulting from, directly or indirectly, soil movement or the construction of buildings, structures and improvements on the Real Property, including but not limited to unintended results from maintenance, modification, or aging of drainage and any other County or private facilities. The Owner shall give the County prompt notice in the event of claims potentially covered by this Agreement.

4. Binding Nature. The provisions of this Agreement shall inure to the benefit of and be binding on the parties and their respective heirs, representatives, successors and assigns. The provisions of this Agreement shall constitute covenants running with the Real Property.

5. Recording. This Agreement shall be recorded with the Whatcom County Auditor.

6. Attorneys' Fees. In the event of any dispute relating to or arising out of this Agreement, including mediation, arbitration or litigation, then the prevailing party shall be awarded all costs and expenses, including reasonable attorney fees, incurred in connection with the dispute.
Reviewed and approved by:

Whatcom County Technical Administrator

Date

Signature of Owner

Signature of Owner

Print Name

Print Name

Date

Date

STATE OF WASHINGTON) ) ss:
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that__________________________
is/are the person(s) who appeared before me, and said person(s) acknowledged it to be
his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated __________________

Notary Signature:__________________________________________

Printed Name:__________________________________________

Residing at:__________________________________________

My appointment expires:_______/_______/_______

Release and Indemnification
PL4-86-001-CC

- 3 -
October 2016
STATE OF WASHINGTON) ) ss:
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that __________________________ is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated ________________

Notary Signature: ________________________________
Printed Name: ________________________________
Residing at: ________________________________
My appointment expires: _____/_____/______

Release and Indemnification
PL4-86-001-CC

- 4 -
October 2016

38
ATTACHMENT A
ARTICLE B conservation program on agriculture lands (CPAL)

16.16.290 Conservation program on agriculture lands (CPAL)

16.16.800 Purpose.

A. The well-being of farms and ranches in Whatcom County depends in part on good quality soil, water, air, and other natural resources. Agricultural operations that incorporate protection of the environment, including critical areas and their buffers as defined by this chapter, are essential to achieving this goal.

B. The purpose of the CPAL program is to allow farmers practicing ongoing agricultural activities shall be permitted within that may affect critical areas, their functions and values, to do so either (i) in accordance with the standard requirements of this chapter or (ii) pursuant to an conservation farm plan voluntarily prepared and approved conservation program established pursuant to this section Article. Under this program, ongoing agriculture is afforded more flexibility, but only if the farmers are good stewards of the land. This is more than growing beautiful crops and livestock. It necessarily includes protecting critical areas. If farmers and ranchers are willing to enter into this agreement with their community the CPAL program, then flexibility in these provisions may be extended to them. If not, then they must observe the standard provisions of this Chapter articles.

C. This program shall be subject to continued monitoring and adaptive management to ensure that it meets the purpose and intent of this chapter.

16.16.810 Resource Concerns.

Keeping horses and other large animals Agricultural operations have the potential to create potential adverse impacts to critical areas. It is the County's policy to minimize such impacts.

A. Nutrient Pollution of Water. Animal waste contains nutrients (nitrogen and phosphorous). With each rain, these wastes can wash off the land and into the nearest stream, lake, or wetland. In surface water, phosphorous and nitrogen fertilize aquatic plants and weeds. As the plants and weeds proliferate and decay, the dissolved oxygen that fish need to survive is depleted. Nitrogen in the form of nitrate is easily dissolved in and carried with rainfall through our permeable soils to groundwater. Nitrate concentrations exceeding the maximum contaminant level for safe drinking water are found in many wells of Whatcom County. These can present a significant human health risk, particularly to the very old and young.

B. Pathogen Pollution of Water. Manure contains bacteria and other pathogens. These can make the water unfit for drinking without treatment or shellfish unfit for human consumption. They can also make water unsafe for human contact and recreational sports such as fishing, swimming or water skiing. Both surface and groundwater are vulnerable to this type of pollution.

C. Sediment Pollution to Surface Water. Regardless of the amount of supplemental feed provided, large animals will continue grazing until all palatable vegetation is gone. On especially small lots (one or two acres), the animals that are allowed free and continuous access to vegetation quickly graze-out and trample pasture grasses and forbs. These areas are then susceptible to invasion by weeds, including noxious weeds, and brush. The resulting bare ground is subject to erosion from wind and water. Lands that lack adequate vegetation are subject to erosion, and contaminated runoff from these areas can enter water bodies and wetlands and interfere with fish and wildlife habitat.

D. Degradation of Riparian Areas. The term "riparian" is defined in Article 8.9 of this chapter which includes the areas adjacent to streams, lakes, marine shorelines and other waters. A healthy riparian area is essential to protecting fish and wildlife, including salmon and shellfish. Dense riparian vegetation along the water's edge will slow and protect against flood flows; provide infiltration and filter-
ing of pollutants; secure food and cover for fish, birds and wildlife; and keep water cooler in summer. Uncontrolled grazing removes important riparian vegetation.

16.16.820 Classification and Applicability.

A. A conservation farm plan identifies the farming or ranching activities and the practice(s) necessary to avoid their potential negative impacts (resource concerns). Practice selection depends upon the types of livestock raised and crops grown. Based upon the type and intensity of the operation, some generalizations can be made as to the resource concerns and remedies that apply.

B. Some operations present relatively low risks to critical areas because of their benign nature, timing, frequency, or location. For these operations, the resource concerns and remedies are relatively easy to identify and implement. These are described in more detail as Type 1 agricultural operations subject to standardized conservation farm plans in Sections 16.16.830 and 16.16.840(A).

C. Where the potential negative impacts to critical areas are moderate or high, solutions are more difficult to formulate and implement. In those circumstances, a more rigorous planning process is required. In such cases, a formal written plan shall provide the desired environmental protection. These types of operations are described as agricultural operations requiring custom conservation farm plans in Sections 16.16.830 and 16.16.840(B or C).

D. Agricultural activities that qualify for coverage under this section include:

1. **Type 1 (less likely) low impact farm or livestock Operations.**
   a. To qualify as a Type 1 low impact operation, a farm shall not exceed one animal unit per one acre of grazable pasture. (Row and berry crops do not qualify as Type 1). These operations present a low potential risk to critical area degradation including ground/surface water contamination because the animals kept generate fewer nutrients than can be used by the crops grown there. Where
   b. Critical areas on Type 1 operations are protected against the potential negative impacts of agricultural activities through the implementation of an approved standard conservation farm plan prepared in accordance with Sections 16.16.830 and 16.16.840(A)Appendix A, Section 1, of this chapter; or
   c. Those operators qualifying for a Type I (standard) conservation farm plan may elect to do a Type II (custom) conservation farm plan if they want to use “Prescribed Grazing” (NRCS Practice 528A) to manage vegetative filter strips installed alongside critical areas. (CES528A)

2. **Type 2 Moderate Operations.**
   a. Type 2 operations are farms that exceed one animal unit per one acre of grazable pasture; farms that have orchards, vineyards, small-fruit field or row crops; and drainage improvement districts. These operations present a potential moderate risk to critical area degradation, including ground or surface water contamination, because the nutrients applied from manure or commercial fertilizers may exceed that which can be easily used by the crops grown there without careful planning and management. The agricultural activities are also likely to be much more intense than Type 1 operations, posing greater potential risks to other critical areas.
   b. Critical areas on Type 2 operations are protected against the potential negative impacts of agricultural activities through the implementation of an approved custom conservation farm plan prepared in accordance with Sections 16.16.830 and 16.16.840(B).

3. **Type 3 or high impact Operations.**
   a. Type 3 operations include dairies and animal feeding operations/concentrated animal feeding operations (CAFOs). These operations are already highly regulated by state and federal governments (see Chapter 90.64 RCW et seq.; 40 CFR 122.23 and 40 CFR Part 412).
b. Farm or livestock operations where critical areas are protected against the potential negative impacts of Type 2 agricultural activities through the implementation of an approved custom conservation farm plan prepared in accordance with Sections 16.16.830 and 16.16.840(C) Appendix A, Section 2, of this chapter.

16.16.830 Conservation Farm Plans – General Standards.
A. All conservation farm plans shall include all practicable measures to maintain existing critical area functions and values. (CEQ17)

B. The following additional requirements shall apply:
B. A conservation farm plan shall not authorize filling, draining, grading, or clearing activities within critical areas or buffers,  
1. except Only on existing ongoing agricultural land where such activities are an demonstrated essential part of the ongoing agricultural use or part of routine maintenance; and,  
2. When it does not expand the boundaries of the existing ongoing agricultural use; provided and,  
3. When Best Management Practices are used that impacts are mitigated in accordance with an approved conservation farm plan.
C. The A conservation farm plan shall not authorize:
1. The construction of new structures. New structures shall be constructed in compliance with the applicable provisions standard requirements of this chapter and the Whatcom County Code, landowner shall ensure that all of the following are met:
   a. Siting of structures shall not result in surface or groundwater contamination.  
   b. Dust, odor, and noise concerns attendant to the use of the improvement shall be mitigated.  
   c. Impervious surfaces such as building roofs, roads, and yards shall not change the flow, volume, and direction of runoff, or cause erosion or downstream flooding (access)  
2. New or expanded drainage systems. Routine maintenance of existing drainage systems may be allowed but only in compliance with the Washington State hydraulic code (WAC 220-660) and the Best Management Practices found in the "Drainage Management Guide for Whatcom County Drainage Improvement Districts."  
3. The conversion of land to agricultural use. (CEQ190)

16.16.840 Conservation Farm Plan Requirements.
A. Type 1 (Standard) Conservation Farm Plans. Owners of Type 1 low-impact livestock operations have limited options to control animal waste because their operations are small. The required conservation farm plan can be prepared by the landowner and include a simple map of the property, a standard checklist designed to protect water quality, and the following additional components:
1. System Siting and Design. Barns, corrals, paddocks, or lots are to be sited to avoid runoff directly into critical areas.
   a. Where structures exist in critical areas or buffers and cannot be relocated, corrective measures must be taken to avoid runoff of pollutants and bacteria to critical areas.
   b. Where trees and shrubs exist along channels, lakes, ponds, or wetlands:
      i. Where trees and shrubs already exist, they shall be retained and managed to preserve the existing functions of the buffer pursuant to the NRCS Conservation Practice 391, "Riparian Forest Buffer."
      ii. Where trees and shrubs are absent, but the Department of Ecology has not listed the waterbody on the most recent Section 303(d) list of impaired for temperature or established a TMDL for temperature along a stream, lake, pond, or wetland, a strip or ar-
ea of herbaceous vegetation shall be established and maintained between barns, cor-
rels, paddocks, and grazing areas pursuant to the USDA Natural Resource Conserva-
tion Service's [NRCS] Conservation Practice 393, "Vegetative Filter Strip," and USDA's
Buffer Width Design Tool for Surface Runoff found in the publication Conservation
Buffers Design Guidelines for Buffers, Corridors, and Greenways. Livestock shall be ex-
cluded from the vegetative filter strips established to protect critical areas pursuant to
NRCS Practice 472, "Access Control/Livestock Exclusion."

Where trees and shrubs are absent, and the Department of Ecology has listed the wa-
terbody on the most recent Section 803(d) list as impaired for temperature or estab-
lished a TMDL for temperature, NRCS Conservation Practice 422, "Hedgerow Practic-
es/CAE 1931,“ be installed and maintained per the approved conservation farm
plan [FACTS931]

2. Manure Collection, Storage, and Use. Manure and soiled bedding from stalls and paddocks are
to be removed and are to be placed in a storage facility protected from rainfall so that runoff
does not carry pollutants and bacteria to critical areas. Manure is to be used as cropland fertiliz-
er. The rate and timing of manure application shall not exceed crop requirements, or cause sur-
face or groundwater water quality degradation. It is to be applied in a manner to avoid runoff of
nutrients and bacteria to critical areas.

3. Pasture Management. Pastures are to be established and managed pursuant to "Prescribed
Grazing" (NRCS Practice 528A).

4. Exercise or Barn Lots. These normally bare areas must be stabilized and managed to prevent
errosion and sediment movement to critical areas. A diversion terrace shall be installed, where
necessary, to hinder flow to and across the lot or paddock. Runoff from the lot must be treated
via the vegetative filter strip or riparian buffer as described in subsection (A)(1)a of this section
to avoid contaminants reaching critical areas.

5. Existing native vegetation within critical areas and their buffers shall be retained to the extent
practicable.

6. Chemical additions, including fertilizers, fungicides, herbicides, and pesticides, shall not be ap-
plied within 50 feet of standing or flowing water except by a licensed applicator.

B. Type 2 (Custom) Conservation Farm Plans. In addition to the elements of a Type 1 conserva-
tion farm plan, Type 2 plans must address the following:

1. Plan Standards. In developing the elements that an approved conservation farm plan must con-
tain, the technical administrator may authorize the use of the methods and technologies, and
Best Management Practices of the Natural Resources Conservation Service. Other standards
may be used only if they have been developed by the Natural Resources Conservation Service when
such alternatives have been developed by a land grant college or a professional engineer with
expertise in the area of farm conservation planning.

2. Plan Performance. Implementation of the conservation farm plan must protect existing values
and functions of critical areas. Benchmark conditions are to be captured and described in the
plan. This may consist of photo documentation, written reports or both.

3. Treatment of Wetlands. Wetlands shall be conserved pursuant to the provisions of Title 180 –
National Food Security Act Manual (see


4. Custom conservation farm plans need not address the application, mixing, and/or loading of in-
secticides, fungicides, rodenticides, and pesticides; provided, that such activities are carried out
in accordance with the Washington State Department of Agriculture and all other applicable
regulations including, but not limited to: the provisions of Chapter 90.48 RCW, the Clean Water
Act, United States Code (USC) Section 136 et seq. (Federal Insecticide, Fungicide, and Rodenti-
5. Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to mitigate as follows by:
   a. A planning advisor; or
   b. Through the USDA Natural Resources Conservation Service; or
   c. The Whatcom conservation district; or
   d. An eligible farmer or rancher, who participates in this program by:
      • Attending a County-sponsored or approved workshop, and
      • Conducting a risk assessment of their farm or ranch, alone or with a planning advisor’s assistance, and
      • Developing a plan to prevent any identified risks, and
   e. Having the plan approved pursuant to WCC 16.16.290.

One resource for guidance is Tips on Land and Water Management for Small Farm and Livestock Owners in Whatcom County, Washington. It can be obtained from the Whatcom Conservation District’s website: http://www.whatcomcd.org/small-farm. Other guidance may also be used, provided it is consistent with the best available science criteria in WAC 365-195-800 through 195-925.

6. Type 3 (Custom) Conservation Farm Plans

- Conservation farm plans meeting the criteria of these state and federal laws pertaining to AFO/CAFOs (see Chapter 90.64 RCW et seq., 40 CFR 122.23 and 40 CFR Part 412) fulfill the requirements of this chapter. (See USEPA Final Guidance – Managing Manure Guidance for Concentrated Animal Feeding Operations (CAFOs) at: http://epa.gov/guide/cafo/)

16.16.850 Preparation and Approval of Conservation Farm Plans

Conservation farm plans shall be subject to County review, approval, monitoring, adaptive management, and enforcement in accordance with the following:

A. The following Table 5 shows which entities may prepare conservation farm plans and recommendations regarding which type of a conservation farm plan:

Table 5. Who May Prepare Conservation Farm Plans

<table>
<thead>
<tr>
<th>Who May Prepare</th>
<th>Type 1 Operations</th>
<th>Type 2 and 3 Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The farm operator</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Whatcom County Planning and Development Services</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>A Qualified Consultant (TAC194)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>A Watershed Improvement District (for a farm or ranch that is within its boundaries)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>The Whatcom Conservation District</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>A Planning Advisor</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

B. The following shall apply:

a. The Whatcom Conservation District, or;
b. A watershed improvement district for a farm or ranch that is within its boundaries, or;
c. A qualified planning advisor as defined by this chapter.

c. The farm operator can seek conservation farm plan approval directly through the Department of Planning and Development Services, or grant permission to any of the entities listed in Table 5 to prepare and submit it. If the conservation farm plan is prepared by an entity other than the Whatcom Conservation District, the farm operator, the Department will conduct a site visit prior to plan approval in order to assess critical areas and sufficiency of the plan to protect water quality and critical areas. (CE5195)
16.16.860 Monitoring and Compliance

A. The technical administrator and/or the farm operator shall periodically monitor plan implementation and compliance beginning one year after plan approval and every two years thereafter, through the life of the plan, or more frequently at the Technical Administrator’s discretion. The monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions. For a time period of up to five years, self-certification is allowed for Type 1 conservation farm plans, or if the plan is prepared by the Whatcom Conservation District or Planning Advisor and approved by the department. If a sufficient self-certification monitoring report (must include photos and implemented Best Management Practices) is not submitted within 30 days of request, County staff may make a site visit. Site visits will be coordinated with the landowner/farm operator. Prior to carrying out a site inspection, the technical administrator shall provide reasonable notice to the owner or manager of the property as to the purpose or need for the entry, receive confirmation, and afford at least two weeks in selecting a date and time for the visit. At the landowner/farm operator’s discretion, staff may be accompanied by the planning advisor or Whatcom Conservation District planner. [CES196]

B. Where the planning advisor has reason to believe that there is an imminent threat to public health or significant pollution with major consequences occurring as a result of the agricultural operations, the planning advisor will advise the agricultural operator of his or her concerns in writing. While the planning advisor may provide suggestions for resolving the issue, the responsibility for compliance and resolution of issues rests solely with the farm operator. If compliance issues are not promptly resolved, the planning advisor shall promptly withdraw from representing the farm operator, notify the Technical Administrator of such, and[CAC197] may report such situations to the Technical Administrator for subsequent action and enforcement in accordance with WCC 16.16.285.

C. The farm practices described in an approved conservation farm plan will be deemed to be in compliance with this Chapter so long as the landowner/farm operator is properly and fully implementing the practices and responding to possible adaptive management requirements. If the conservation farm plan is found not to be protective of critical areas in the approved conservation farm plan according to the timeline in the plan, this will be verified through conservation farm plan implementation monitoring.[CES198]

C.D. Agricultural operations shall cease to be in compliance with this Article, and a new or revised conservation farm plan will be required, section when the technical administrator determines that any of the following has occurred:

1. When a farm or ranch operator fails to properly and fully implement and maintain their conservation farm plan.

2. When implementation of the conservation farm plan fails to protect critical areas. If so, a new or revised conservation farm plan shall be required to protect the values and functions of critical areas at the benchmark condition.

3. When substantial changes in the agricultural activities of the farm or livestock operation have occurred that render the current conservation farm plan ineffective. Substantial changes that render a conservation farm plan ineffective are those that:

   a. Degrade baseline critical area conditions for riparian and wetland areas that existed when the plan was approved; or,

   b. Result either in a direct discharge or substantial potential discharge of pollution to surface or ground water; or, [CES199].

   c. The type of agricultural practices change from Type 1 to Type 2, Type 2 to Type 3, or Type 1 to Type 3 operations. [CAC200]
4. If the increase in livestock or decrease in land base or nutrient export results in the farm being out of balance between the nutrients generated and to be used by growing crops [TAC201],
   in such cases a new or revised conservation farm plan will be required to meet the purpose and intent of this section.

3.5. When a new or revised conservation farm plan is required, pursuant to either subsection (c)(4)(b) or (c)(6) of this section, and the farm operator the technical administrator has been so advised the owner in writing, and a reasonable amount of time has passed without significant progress being made to develop said plan. Refusal or inability to provide a new plan within a reasonable period of time shall be sufficient grounds to revoke the approved conservation farm plan and require compliance with the standard provisions of this chapter.

4.6. When an owner or manager denies the technical administrator reasonable access to the property for technical assistance, monitoring, or compliance purposes, then the technical administrator shall document such refusal of access and notify the owner of his/her findings. The owner shall be given an opportunity to respond in writing to the findings of the technical administrator, propose a prompt alternative access schedule, and to state any other issues that need to be addressed. Refusal or inability to comply with an approved conservation farm plan within a reasonable period of time shall be sufficient grounds to revoke said plan and require compliance with the standard provisions of this chapter.

5. With one exception, Whatcom County will not use conservation farm plans (standard or custom) as an admission by the landowner that s/he or she has violated this Chapter. Disclosure of current farm practices, structures on conservation farm plan documents, or observations made through monitoring inspections or conservation farm plan approval, will not be used to bring other enforcement actions against a farm operator. The exception is that when matters of major life, health, environment, or safety issues, as determined by the Technical Administrator are observed and the landowner fails to immediately and permanently remediate, then the observations may be used in an enforcement action [CAC202][C5205]

A. Conservation farm plans prepared pursuant to this section will not be open subject to public inspection disclosure unless required by law.
B. Provided, that the County will collect summary information related to the general location of a farming enterprise, the nature of the farming activity, and the specific best management practices to be implemented during the conservation farm plan review process. The summary information shall be provided by the farm operator or his/her designee and shall be used to document the basis for the County's approval of the plan. Plans shall also be subject to disclosure if required by a court of competent jurisdiction. Upon request, the County may provide a sample conservation farm plan, exclusive of site- or property-specific information, to give general guidance on the development of a conservation farm plan.
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: Cheryl Raymond |  |  |  | 2/7/17 | Finance/Council
Division Head: Steven N Oliver |  |  |  |  | 
Dept. Head: Mark Baudheus |  |  |  |  | 
Prosecutor: Royce Buckingham |  |  |  |  | 
Purchasing/Budget: |  |  |  |  | 
Executive: |  |  |  |  | 

Received JAN 31 2017
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
PETITION FOR REFUNDS PAID REPORT

ATTACHMENTS: 1. Cover Letter
2. Resolution
3. List of Property Tax Refunds

SEPA review required? ( ) Yes ( X ) 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.)

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:      Jack Louws, Whatcom County Executive
FROM:    Steven N. Oliver, Whatcom County Treasurer
DATE:    January 17, 2017
RE:      Resolution property tax refunds

We are presenting this resolution, consistent with RCW 84.69.020 for the annual list of property tax refunds. No action is required; however, a formal motion to approve the list would be appropriate.

Please consider this resolution at your February 7, 2017 council meeting.
RESOLUTION NO. _______

A RESOLUTION ACCEPTING THE TREASURER’S LIST OF PETITIONS FOR PROPERTY TAX REFUNDS

WHEREAS, RCW 84.69.020 requires that the County Treasurer present a list of all petitions for property tax refunds made during the previous year to the County Council, and;

WHEREAS, a list of the Whatcom County Treasurer’s Property Tax Refunds for 2016 is attached to this resolution, and;

WHEREAS, the Whatcom County Council has received and reviewed the Treasurer’s list of property tax refunds consisting of the names of the persons receiving the refunds, the amounts of the refunds, and reasons for the refunds for the year 2016 in accordance with RCW 84.69.020.

NOW, THEREFORE BE IT RESOLVED, that the Whatcom County Council accepts the property tax refund list for 2016, hereto attached as “Exhibit A”.

APPROVED this _______ day of ________________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL

WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor
PETITION FOR REFUNDS
PAID REPORT

JANUARY 1, 2016
THROUGH
DECEMBER 31, 2016
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# PROPERTY TAX REFUNDS

## REFUNDED TO
- BETTY R WELSH
- BEVERLY A KULJIS
- BEVERLY R SIGUWA
- BLAINE MARINA INC
- BLISS W & EDELTRAUD H WILDER
- BONNIE S BREITMAN
- BRADEN G & MARIA E MILLER
- BRADLEY R BERRING
- BRET D & REBECCA HOEKEMA
- BRETT D & KAREN L CAMPBELL
- BRIAN ELLIS
- BRUCE BARLEAN
- BRUCE CARTWRIGHT
- BRUCE H & CAROL L MINER
- BRUCE LOOMER
- BRUCE V ELLIOTT
- BRYAN YOO & KI YOUNG
- BUCK MELOY
- CAANAN M & DARBY K COWLES
- CALVIN & BERNETTA K LEENSTRA &
- CANUTA SALAZAR
- CARL & BELVA TYSKA
- CARL E JUSSEL
- CARL F FRANZ &
- CAROL A DONOVAN
- CAROL J KLANDER
- CAROL LASKOWSKI
- CAROL PEARSON
- CAROL SPANO
- CAROLINE T BALZER
- CAROLYN A ROBINSON
- CAROLYN L HADLEY
- CATHARINE BLUE-EDEN
- CATHARINE BLUE-EDEN
- CATHY MARIE CAMERON
- CECILIA J MEADOWS
- CESCO NEW CONCEPT PRODUCTS INC
- CHANG SOON & KYOUNG WON LEE
- CHAR LLC
- CHARLES BERTHIAUME
- CHARLES D & JENNIFER A HARDIN
- CHARLES RACINE
- CHARLOTTE L REDDELL

## TYPE
- SN
- SN
- SN
- SN
- MTX
- SN
- SN
- COR
- SA
- SN
- MSQ
- SN
- DPA
- SN
- DPD
- SN
- SN
- SN
- SN
- SN
- MSQ
- DPD
- SN
- SN
- SN
- SN
- SN
- SN
- SN
- SN
- SEG-SEPARATOR
- SN
- SN
- SN
- SN
- SL
- SN
- SN
- SN
- SN
- SN
- SN
- SN
- SA
- PDA
- SN
- BEOR
- SN
- SN
- SN
- SN

## REFUND REASON
- Senior New
- Senior New
- Senior New
- Senior New
- Taxable to Exempt-NEC
- Senior New
- Senior New
- On-Site Sewage Fee Removed
- Senior Admin Change
- Senior New
- Measurement Correction
- Senior New
- Destroyed Property Abated
- Senior New
- Destroyed-Demolished
- Senior New
- Senior New
- Senior New
- Senior New
- Senior New
- Measurement Correction
- Destroyed-Demolished
- Senior New
- Measurement Correction
- Senior New
- Senior New
- Senior New
- Senior New
- Senior New
- Segregation-Split
- Senior New
- Senior New
- Senior New
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- Senior New
- Senior New
- Senior New
- Senior New
- Senior New
- Senior New
- Senior New
- Senior Level Change
- Senior New
- Senior New
- Senior New
- Senior New

## DATE
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- 12/5/2016
- 6/20/2016
- 5/5/2016
- 8/16/2016
- 1/20/2016
- 5/5/2016
- 4/7/2016
- 12/5/2016
- 3/8/2016
- 7/5/2016
- 4/14/2016
- 8/16/2016
- 3/8/2016
- 8/2/2016
- 8/9/2016
- 9/14/2016
- 12/28/2016
- 7/5/2016
- 3/31/2016
- 4/14/2016
- 7/5/2016
- 10/7/2016
- 10/7/2016
- 1/20/2016
- 3/31/2016
- 7/5/2016
- 8/9/2016
- 7/21/2016
- 8/23/2016
- 6/16/2016
- 1/20/2016
- 7/21/2016
- 12/28/2016
- 10/4/2016
- 5/23/2016
- 6/16/2016
- 3/8/2016
- 1/5/2016
- 8/25/2016
- 10/4/2016
- 8/25/2016

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- $562.30
- $3,807.63
- $448.43
- $403.51
- $1,491.99
- $1,203.50
- $19.00
- $163.78
- $1,669.61
- $700.38
- $2,999.72
- $3,259.22
- $531.65
- $900.54
- $4,211.10
- $1,123.70
- $1,351.89
- $1,006.97
- $280.49
- $28.21
- $3,426.61
- $719.96
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COUNCIL REFUND REPORT 2016.xlsx

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# PROPERTY TAX REFUNDS

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# PROPERTY TAX REFUNDS

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**$1,016,189.68**

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**$1,016,189.68**

BEOR = Board of Equalization Ordered Change (Hearing order)
BECE = Board of Equalization Corrective Evaluation (Assessor Stipulation)
BTA Stipulation = Assessor’s Stipulation to Value with State Board of Tax Appeals
DPA & DPD = Destroyed/Abated Property = Value removed from tax rolls due to
Destroyed/Abated Property Claim filed with Assessor’s Office
MSQ = Measurement Correction
OC = Overpayment Credit
MTD = Taxable to Exempt per DOR determination/order
MTR = Taxable to Exempt per transfer for Road right-of-way
MTX = Taxable to Exempt for other than MTD or MTR (gov’t. purchase, etc.)
SL & SN & ST & SB = Senior/Disabled = Changes to existing senior/disabled exemptions
(qualifying for greater exemption) or new qualifying application processed
**TITLE OF DOCUMENT:**

Amendment to the 2017 Unrepresented Resolution.

**ATTACHMENTS:**

Amendment to 2017 Unrepresented Resolution

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<th>( ) Yes</th>
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<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
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<td>( X ) NO</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.)

Amendment to the 2017 Unrepresented Resolution to revise Article 4.12 regarding compensation to Prosecuting Attorneys for attending Probable Cause Hearings on weekends and holidays.

**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.
TO: County Council Members
FROM: Jack Louws, County Executive
DATE: January 27, 2017
SUBJECT: 2017 UNPRESENTED RESOLUTION – FIRST AMENDMENT

At this time, I am putting before you my recommendation to amend the 2017 Unrepresented Resolution related to the compensation for Prosecuting Attorneys who are required to attend Probable Cause Hearings on Saturday, Sunday or holidays.

Recommendation

The 2017-2018 Whatcom County budget adopted by Council provides compensation in the amount of $250 for Prosecuting Attorneys that attend Probable Cause Hearings on weekends or holidays.

There are thirteen Deputy Prosecutors assigned felony caseloads. In 2016, $9,625 was budgeted in Cost Center 2600 to compensate for these hearings. In the 2017-2018 budget, the amount was increased to $13,700 for each year. This change in compensation was inadvertently overlooked and not included in Section 4.12 of the 2017 Unrepresented Resolution.

It is my recommendation to amend the 2017 Unrepresented Resolution to reflect the compensation that was approved through the budget process.

Summary of Changes

Amend Section 4.12 to adjust the flat rate compensation from $175 to $250 for Prosecuting Attorneys attending Probable Cause Hearings that are scheduled on weekends or holidays.

Background

Within 48 hours after a person’s arrest, the Courts must determine whether or not there is reason to believe the person committed a crime. This means if a person is arrested Friday, the probable cause hearing must be held on Sunday. For the Thanksgiving holiday, if a person is arrested on Wednesday, the hearing is on Friday. The budget includes funding for 53 Sundays and one holiday. Prosecuting Attorneys rotate their schedules to be available on weekends and holidays.

A provision was added to the Unrepresented Resolution in 2000 to compensate Prosecuting Attorneys $175 for attending probable cause hearings on weekends. With a much higher number of offenders and longer hearings, the Prosecutor’s Office made a request to increase the compensation to $250. The request was approved and subsequently adopted by Council. This amendment will provide the authority to compensate Prosecuting Attorneys the amount set forth in the budget.
RESOLUTION NO. 2017 –

AMENDING RESOLUTION NO. 2016-51 IN THE MATTER OF ADOPTING A SALARY SCHEDULE AND POLICIES FOR UNREPRESENTED WHATCOM COUNTY EMPLOYEES EFFECTIVE JANUARY 1, 2017 through DECEMBER 31, 2017

WHEREAS, the Council adopted the 2017-2018 Whatcom County budget on December 6, 2016, which was intended to and did provide budget authority to increase compensation for Deputy Prosecuting Attorneys required to appear on a Saturday or Sunday for Probable Cause Hearings; and

WHEREAS, a Resolution in the Matter of Adopting a Salary Schedule and Policies for Unrepresented County Employees was adopted at that same meeting on December 6, 2016, but through clerical oversight had not been updated to reflect the budget authority granted for this compensation; and

WHEREAS, the duty to appear for probable cause hearings extends not only to Saturday or Sunday, but on rare occasion also entails an appearance on a holiday that encompasses two weekdays, such as the Thanksgiving holiday, and the language of the resolution should cover that occasional duty as well; and

WHEREAS, the County desires to amend the particular section of the Unrepresented Resolution that addresses compensation to Prosecuting Attorneys who are required to appear on a Saturday or Sunday for Probable Cause hearings to reflect and be consistent with the amount of compensation provided within the 2017-2018 Whatcom County budget adopted by Council on December 6, 2016, and to reflect the occasional holiday duty, for all of which adequate provision has already been made in the adopted budget;

NOW, THEREFORE, BE IT RESOLVED that the pertinent section of Resolution No. 2016-51 in the Matter of Adopting a Salary Schedule and Policies for Unrepresented County Employees be amended as follows:

4.12 Probable Cause Compensation. Any attorney in the Prosecuting Attorney's Office required to appear on a weekend or holiday at a scheduled Probable Cause hearing shall receive $250 for his/her appearance.
AND BE IT FURTHER RESOLVED, that the Council intends that the Administration will apply the above amendments to the 2017 Unrepresented Resolution effective January 1, 2017.

APPROVED this _____ day of __________ 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

APPROVED as to form:

[Signature]

Chief Civil Deputy Prosecuting Attorney
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<td>#1</td>
<td>1/25/17</td>
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<td>3/01/17</td>
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**TITLE OF DOCUMENT:**

Water Quality Analytical Testing Services

**ATTACHMENTS:**

1. Memo
2. Contract Information Sheet
3. Contract and Exhibits

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

**Should Clerk schedule a hearing?** ( ) Yes ( X ) 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.)

Public Works conducts routine water quality monitoring at approximately 90 sites throughout Whatcom County coastal drainages. Additionally, water samples are collected at approximately 60 focus area sites. The data is used to track patterns in water quality, identify high priority areas for water quality improvement projects, and work with community members to identify solutions.

Edge Analytical Labs was selected through a competitive bid process and will provide laboratory analysis of surface water samples for bacteria analysis as described in the attached exhibit.

**COMMITTEE ACTION:**

<table>
<thead>
<tr>
<th>COUNCIL ACTION:</th>
</tr>
</thead>
</table>

**Related County Contract #:**

<table>
<thead>
<tr>
<th>Related File Numbers:</th>
</tr>
</thead>
</table>

**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 Jack Louws, Whatcom County Executive, and Honorable Members of the Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager
       Erika Douglas, Senior Planner

RE: Contract with Edge Analytical Labs for Water Quality Analytical Testing Services

DATE: January 23, 2017

Please find attached for your review and approval two (2) originals of a contract for services between Whatcom County Flood Control Zone District and Edge Analytical Labs for water quality analytical testing services.

Requested Action
Public Works respectfully requests that the Flood Control Zone District Board of Supervisors authorize the County Executive to sign the attached contract for laboratory services.

Background and Purpose
Public Works conducts routine water quality monitoring at approximately 90 sites throughout Whatcom County coastal drainages. Additionally, water samples are collected at approximately 60 focus area sites. The data is used to track patterns in water quality, identify high priority areas for water quality improvement projects, and work with community members to identify solutions.

Edge Analytical Labs was selected through a competitive bid process and will provide laboratory analysis of surface water samples for fecal coliform and E. coli, as specified in the attached exhibit.

Funding Amount and Source
This contract is not to exceed $85,600.00 and will be funded through the Public Works Natural Resources approved 2017 budget (Fund 169).

Please contact Erika Douglas at extension 6294 if you have any questions or concerns regarding the terms of this agreement.

Enclosure
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Natural Resources</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Erika Douglas</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Edge Analytical, Inc.</td>
</tr>
</tbody>
</table>

**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 #:**

**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): 16-73 Contract Cost Center: 813002

**Is this agreement excluded from E-Verify?**

No ☐ Yes ☑

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):**

$ 85,600.00

**This Amendment Amount:**

$ __________________

**Total Amended Amount:**

$ __________________

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:** Public Works conducts routine water quality monitoring at approximately 90 sites throughout Whatcom County coastal drainages. Additionally, water samples are collected at approximately 60 focus area sites. The data is used to track patterns in water quality, identify high priority areas for water quality improvement projects, and work with community members to identify solutions.

Edge Analytical Labs was selected through a competitive bid process and will provide laboratory analysis of surface water samples for fecal coliform and E. coli, as specified in the attached exhibit.

**Term of Contract:** 02/08/17-12/31/17

**Expiration Date:** 12/31/17

**Contract Routing:**

1. Prepared by: E. Douglas
2. Attorney signoff: Daniel L. Gibson 1/26/17
3. AS Finance reviewed: M Caldwell
4. IT reviewed (if IT related):
5. Contractor signed: __________________________
6. Submitted to Exec.: _________________________
7. Council approved (if necessary): _________________________
8. Executive signed: __________________________
9. Original to Council: _________________________

**Last edited:** 08/16
CONTRACT FOR SERVICES
WATER QUALITY ANALYTICAL TESTING SERVICES

EDGE ANALYTICAL LABS, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 9,
Exhibit A (Scope of Work), pp. 10 to 11,
Exhibit B (Compensation), pp. 12 to 13,
Exhibit C (Certificate of Insurance), pp. 13 to 13.

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 8TH day of FEBRUARY, 2017, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31ST day of DECEMBER, 2017.

The general purpose or objective of this Agreement is to provide analytical testing services, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed EIGHTY-FIVE THOUSAND, SIX HUNDRED AND NO/100 DOLLARS ($85,600.00). The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 23rd day of JANUARY, 2017.

CONTRACTOR:

EDGE ANALYTICAL LABS

[Signature]

Benjamin Miller, VP of Support Services

STATE OF WASHINGTON

COUNTY OF SHEPHERD

On this 23rd day of JANUARY, 2017, before me personally appeared BENJAMIN MILLER to me known to be the VP of SUPPORT SERVICES of EDGE ANALYTICAL, INC. and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

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

My commission expires

[Signature]

06-28-2020

B R A D L E Y  S L O A N

C O M M I S S I O N E X P I R E S

P U B L I C

N O T A R Y

P U B L I C

S T A T E  O F  W A S H I N G T O N

Contract for Services-Edge Analytical Labs
Analytical Testing Services

Page 1 of 13
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 1-26-17
Jon Hutchings  Date
Public Works Director

Approved as to form:
[Signature] 01/26/17
Daniel L. Gibson  Date
Whatcom County Prosecuting Attorney

Approved:
Accepted for Whatcom County:

By:_________________________
Jack Louws, Whatcom County Executive for the Flood Control Zone District

STATE OF WASHINGTON )
COUNTY OF WHATCOM )

On this _____ day of __________, 20__, 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
________________________________________________________________________.

CONTRACTOR INFORMATION:

EDGE ANALYTICAL LABS

Benjamin Miller, VP of Support Services

Address:
1620 S. Walnut Street
Burlington, WA 98233

Contact Name: Ben Miller
Phone: 800.755.9295
Contact Email: bmill@edgeanalytical.com

Contract for Services-Edge Analytical Labs
Analytical Testing Services
GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:
The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:
Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:
The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

11.1 Termination for Default:
If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:
In the event that 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, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience: Not Applicable

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:
Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the...
Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:
The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:
In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to the Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:
The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:
The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.
Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:
The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:
The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:
The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:
The Contractor shall carry for the duration of this Agreement insurance with the following minimums:
Commercial general liability coverage

   a) Property Damage - $500,000.00 per occurrence;

   b) General Liability & 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 non-contributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

34.3 Defense & Indemnity Agreement:
The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment:
The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 **Conflict of Interest:**
If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County’s interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 **Administration of Contract:**
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County’s representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County’s right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Gary Stoyka, Natural Resources Manager
Whatcom County Public Works
322 N. Commercial Street, Suite 110
Bellingham, WA 98225
360-778-6218

37.2 **Notice:**
Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County’s Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the “Contractor Information” section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 **Certification of Public Works Contractor’s Status under State Law:**
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 **Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:**
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

Contract for Services-Edge Analytical Labs
Analytical Testing Services
38.3 E-Verify: Not Applicable

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.
d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 38.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
Contractor shall maintain Washington State Department of Ecology laboratory accreditation throughout the term of this agreement.

Surface water samples will be analyzed for fecal coliform bacteria and E. coli (in some circumstances) between February and December 2017. Approximately 170 routine samples per month will be delivered to Contractor for fecal coliform analysis. Samples will be delivered in eight groupings, described below, and will be scheduled on a monthly basis. During the dry season, the number of samples will be reduced based upon stream flow.

Sample Groupings:
- Drayton - 34 samples
- Portage - 19 samples
- Terrell+Coastal - 38 samples
- Terrell - 18 samples
- Chuckanut-9 freshwater, 6 marine
- Tenmile - 10 samples

Between 30 and 60 focus area samples per week or every two weeks will be delivered to Contractor for fecal coliform analysis. The number of samples will fluctuate with the season and stream flow. A subset of samples may be analyzed for both fecal coliform and E. coli and will be clearly labeled on the chain of custody (COC). Sampling runs will be scheduled on a monthly basis and the schedule will be shared with Contractor at least one week prior to the first sample run of the month. During the dry season, the number of samples will be reduced based upon stream flow.

Additionally, follow-up samples may be collected in response to elevated bacteria results observed during routine sampling run or in focus areas. The Contractor will be contacted prior to collecting follow-up samples to determine if extra samples can be accepted.

Fecal coliform bacteria samples will be analyzed by the Contractor in accordance with the Whatcom County Water Quality Monitoring: Fecal Coliform Quality Assurance Project Plan. Fecal coliform bacteria will be enumerated using the membrane filtration method, Standard Method (SM) 9222D for freshwater samples, SM9222E for marine samples, and for E. coli using SM9222G (APHA et al. 2005). Analytical methods are summarized in Table 1. Other analytical methods for bacteria analysis can be considered and approved through written documentation. Contractor will provide reusable, sterile bottles for sampling and a larger bottle will be provided for lab duplicate samples.

Sample bottles will be packed tightly with ice in the cooler immediately upon collection and hand delivered to the laboratory. All sample containers will be labeled with a self-adhesive label including sample identifiers. Samples will be accepted for analysis only if the temperature control is measured below 10°C at the time of sample submittal, unless the samples have been collected within two hours of submittal and were immediately placed on ice. A COC provided by Contractor will accompany all samples to the laboratory. Samples may be delivered to Contractor between 8:30am to 5:30pm Monday through Thursday and 8:30am to 4:30pm on
Friday. Sample delivery outside of these hours will need to be pre-arranged with the Contractor.

Contractor will follow their quality assurance/quality control (QAQC) plan. This includes analysis of reagent blanks pre, mid, and post batch of 20 samples and a lab duplicate for approximately 10% of samples analyzed. Fecal coliform results will be flagged when the number of colonies grown on a plate falls outside limits for the method.

Table 1. Summary of sample handling and analytical methods.

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Description</th>
<th>Method</th>
<th>Sample Container</th>
<th>Preserve</th>
<th>Max Holding Time</th>
<th>Precision/Quantitation Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fecal coliform bacteria</td>
<td>Membrane filtration method</td>
<td>SM 9222D</td>
<td>PE, 125 - 250 mL, sterile</td>
<td>10 °C, dark</td>
<td>8 hours (delivered to lab within 6hrs)</td>
<td>2 cfu/100mL</td>
</tr>
<tr>
<td>Fecal coliform bacteria</td>
<td>Multiple tube fermentation method (MPN)</td>
<td>SM 9221E</td>
<td>125 or 250mL sterile bottle</td>
<td>10 °C, dark</td>
<td>8 hrs (deliver to lab within 6 hrs)</td>
<td>2 FC/100ML</td>
</tr>
<tr>
<td>E. coli bacteria</td>
<td>MF partition method following MF for fecal coliform</td>
<td>SM 9222G</td>
<td>125 or 250mL sterile bottle</td>
<td>10 °C, dark</td>
<td>8 hrs (deliver to lab within 6 hrs)</td>
<td>2 cfu/100mL</td>
</tr>
</tbody>
</table>


Preliminary results exceeding 200 cfu/100mL will be sent via e-mail to edouglas@co.whatcom.wa.us within 24 hours of processing of samples. Results will be posted to the Whatcom County on-line account at the Edge website. Final reports will be available within 5 days. Final reports and monthly invoices will be e-mailed to Whatcom County at edouglas@co.whatcom.wa.us and mboswell@co.whatcom.wa.us.
<table>
<thead>
<tr>
<th></th>
<th>Approximate Number of Samples</th>
<th>County Cost Per Sample</th>
<th>Estimated Cost 2017</th>
</tr>
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<tbody>
<tr>
<td>Fecal Coliform-Routine</td>
<td>1,700</td>
<td>$18.00</td>
<td>$30,600.00</td>
</tr>
<tr>
<td>Fecal Coliform-Focus Areas</td>
<td>2,500</td>
<td>$18.00</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>Fecal Coliform-Marine Sites</td>
<td>100</td>
<td>$20.00</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Fecal Coliform &amp; E.coli</td>
<td>100</td>
<td>$30.00</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>Follow Up Sampling</td>
<td></td>
<td>See rates above</td>
<td>$5,000.00</td>
</tr>
<tr>
<td><strong>Total not to exceed</strong></td>
<td></td>
<td></td>
<td><strong>$85,600.00</strong></td>
</tr>
</tbody>
</table>
EXHIBIT "C"
(CERTIFICATE OF INSURANCE)
# CERTIFICATE OF LIABILITY INSURANCE

**DATE (MM/DD/YYYY):** 1/24/2017

**PRODUCER:** Wyckoff Insurance Agency Inc.
501 South 2nd Street
P. O. Box 1010
Mount Vernon WA 98273

**INSURED:** Edge Analytical
1620 S Walnut St
Burlington WA 98233

**CONTACT:** Greta Perales
**PHONE:** (360) 336-2112
**FAX:** (360) 336-5241
**E-MAIL:** greta@wyckoffinsurance.com

**INSURER(S) AFFORDING COVERAGE:**
- **NAIC #**
  - Ohio Security Insurance Co. 24082
  - The Ohio Casualty Insurance Co. 24074

**COVERAGES CERTIFICATE NUMBER:** 16-17

**REVISION NUMBER:**

**INSR. LTR.** | **TYPE OF INSURANCE** | **ADD'L SUB. INS. W/O** | **POLICY NUMBER** | **POLICY EFF. (MM/DD/YYYY)** | **POLICY EXP. (MM/DD/YYYY)** | **LIMITS** |
--- | --- | --- | --- | --- | --- | --- |
A | COMMERCIAL GENERAL LIABILITY | CLAIMS-MADE X OCCUR | BK356439016 | 4/1/2016 | 4/1/2017 | EACH OCCURRENCE $1,000,000 |
| | | | | | DAMAGE TO RENTED PREMISES (EA occurrence) $1,000,000 |
| | | | | | MED EXP (Any one person) $15,000 |
| | | | | | PERSONAL & ADV INJURY $1,000,000 |
| | | | | | GENERAL AGGREGATE $2,000,000 |
| | | | | | PRODUCTS - COMPOV AGG $2,000,000 |
| | | | | | WTROR $ |
AUTOMOBILE LIABILITY:
A | ANY AUTO | SCHEDULED AUTOS | B856439016 | 4/1/2016 | 4/1/2017 | COMBINED SINGLE LIMIT $1,000,000 |
| | | | | | BODILY INJURY (Per person) $ |
| | | | | | BODILY INJURY (Per accident) $ |
| | | | | | PROPERTY DAMAGE (The accident) $ |
| | | | | | BACE $ |
B | UMBRELLA LIABILITY | OCCUR | U8056439016 | 4/1/2016 | 4/1/2017 | EACH OCCURRENCE $2,000,000 |
| | | | | | AGGREGATE $2,000,000 |
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY:
A | | | WASHINGTON STATE GAP ONLY | B856439016 | 4/1/2016 | 4/1/2017 | E.L. EACH ACCIDENT $1,000,000 |
| | | | | | E.L. DISEASE - EA EMPLOYEE $2,000,000 |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101), Additional Remarks Schedule, may be attached if more space is required:**
WHATCOM COUNTY PUBLIC WORKS is named as additional insured to the General Liability Policy as respects to work performed on their behalf by the named insured per the attached Form CG 88 10 04 13. Insurance is primary and non-contributory and includes waiver of subrogation.

**CERTIFICATE HOLDER:** WHATCOM COUNTY PUBLIC WORKS
322 N. COMMERCIAL, SUITE 110
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:**

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COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

(2) A watercraft you do not own that is:

(a) Less than 52 feet long; and

(b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY – ELEVATORS

1. Under Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.

2. The following is added to Section IV – Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:

   a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

   Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

   (i) Premises rented to you for a period of 7 or fewer consecutive days; or

   (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

   Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

   A separate limit of insurance applies to this coverage as described in Section III – Limits of Insurance.
b. The last paragraph of subsection 2. Exclusions is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

2. Paragraph 6. under Section III – Limits Of Insurance is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:

a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage) - Paragraph 8.a. of Definitions is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If Coverage C Medical Payments is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. Insuring Agreement of Section I – Coverage C – Medical Payments, Subparagraph (b) of Paragraph a. is replaced by the following:

(b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. Under Supplementary Payments – Coverages A and B, Paragraph 1.b. is replaced by the following:

b. Up to $3,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

G. ADDITIONAL INSURED – BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under Section II – Who Is An Insured is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your or on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or
b. Premises or facilities rented by you or used by you; or

c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or

d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:

(1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;

(2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".

(3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:

(a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or

(b) The construction, erection, or removal of elevators; or

(c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. Duties In the Event Of Occurrence, Offense, Claim Or Suit under Section IV – Commercial General Liability Conditions.
2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.

b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.

c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

d. "Bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement; or

b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

a. The following is added to Paragraph a. Primary Insurance:

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.
b. The following is added to Paragraph b. Excess Insurance:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

1. ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. Duties In The Event Of Occurrence, Offense, Claim or Suit:

An additional insured under this endorsement will as soon as practicable:

a. Give written notice of an “occurrence” or an offense that may result in a claim or “suit” under this insurance to us;

b. Tender the defense and indemnity of any claim or “suit” to all insurers whom also have insurance available to the additional insured; and

c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a “suit” by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in Section III – Limits of Insurance of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE

WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES

Paragraph 2.a.(1) of Section II - Who Is An Insured is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.
Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J is excess over any other valid and collectible insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3. of Section II - Who Is An Insured is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
   
a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
   
b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
   
c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
   
d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under Section IV – Commercial General Liability Conditions, the following is added to Condition 6.

Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under Section IV – Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II - Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under Section V - Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

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P. EXTENDED PROPERTY DAMAGE

Exclusion a. of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under Section IV – Commercial General Liability Conditions, the following is added to Condition B. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and

2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.
**TITLE OF DOCUMENT:**
Amendment to Contract for Services #201611012 between Whatcom County and Kimberly Geariety, Attorney, for professional labor negotiator services

**ATTACHMENTS:**
1. Memorandum to Jack Louws, County Executive
2. Amendment to Contract for Services #201611012

**SEPA review required?** ( ) Yes (X) 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.)

Following a Request for Qualifications process, the County established a new agreement with Kimberly Geariety to serve as professional labor negotiator pursuant to County Code 2.08 for the period November 10, 2016 through November 9, 2017 with a maximum consideration of $39,999.

This amendment would increase the maximum consideration to allow continued bargaining on the County’s six open labor agreements.

---

**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: Jack Louws, County Executive
FROM: Nan Kallunki, Associate Manager, Human Resources
RE: Amendment to Contract for Professional Labor Negotiator
DATE: January 24, 2017

Enclosed for your review and signature is an amendment to the Contract for Professional Labor Negotiator services between Whatcom County and Kimberly Geariety, Attorney.

Background and Purpose
Whatcom County Code 2.08 authorizes and directs us to retain a professional labor negotiator for the purpose of negotiating collective bargaining agreements. We conducted a Request for Qualifications (RFQ) process last fall and the review committee, while expressing appreciation for the services provided Robert Braun, recommended a new relationship with Kimberly Geariety from Mount Vernon. Ms. Geariety and Mr. Braun transitioned this work for groups with bargaining under way and Ms. Geariety took over as chief spokesperson during mid-November, increasing our capacity for multiple sessions. While we are pleased with the progress, further work is needed to complete negotiations for the six successor agreements. The maximum consideration of $39,999 will be expended at the end of January.

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<td>Deputy Sheriff's Guild</td>
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<td>Ferry (IBU/MMP)</td>
<td>3</td>
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<td>2</td>
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<td>WA State Nurses</td>
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</table>

Funding Amount and Source
Employee and Labor Relations is a key service within Human Resources (HR) funded in Cost Center 507140 within Administrative Services. This amendment extends the maximum consideration up to the full amount authorized in the 2017 budget.

Differences from Previous Contract
This continues the one-year agreement at an hourly rate of $200 per hour with charges for one-way travel but increases the maximum consideration. Previously, negotiator services were provided for a flat monthly retainer over a multi-year period. We will likely propose future services on a retainer basis after we have had an opportunity to evaluate the new arrangement and service model.

Thank you for considering my recommendation. Please call me (extension 5306) with any questions or concerns regarding the terms of this agreement.
WHATCOM COUNTY CONTRACT
INFORMATION SHEET

Originating Department: Administrative Services

Division/Program: (i.e. Dept. Division and Program) Human Resources (HR)

Contract or Grant Administrator: Nanette Kallunki, HR Associate Manager

Contractor's / Agency Name: Kimberly K. Geariety, Attorney

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 #: 201611012-1

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):

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): RFQ #16-54

Is this agreement excluded from E-Verify? No ☐ Yes ☒ 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):

$ 39,999

This Amendment Amount:

$ 46,377

Total Amended Amount:

$ 86,376

Summary of Scope:

Professional labor negotiator services pursuant to County Code 2.08 for collective bargaining under RCW 41.56

Term of Contract: One year Expiration Date: November 9, 2017

Contract Routing:

1. Prepared by: Karen Goens

2. Attorney signoff: Donald Gibson

3. AS Finance reviewed: 

4. IT reviewed (if IT related): N/A

5. Contractor signed: Kimberly Geariety

6. Submitted to Exec.: 

7. Council approved (if necessary): 

8. Executive approved: 

9. Original signed:

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.
Amendment No. 1

CONTRACT BETWEEN WHATCOM COUNTY AND KIMBERLY K. GEARIETY

THIS AMENDMENT to Whatcom County Contract #201611012 is made this ___ day of February, 2017, between Whatcom County and Kimberly K. Geariety, Attorney, for the purpose of proving professional labor negotiator services.

1. COMPENSATION. This amendment amends the maximum consideration for the initial term of the agreement (November 10, 2016 through November 9, 2017) from $39,999 to a total of $86,376

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

IN WITNESS WHEREOF, Whatcom County and Kimberly K. Geariety have executed this Amendment on the date and year written above.

CONTRACTOR:

BY: Kimberly K. Geariety, Attorney

STATE OF WASHINGTON  
COUNTY OF WHATCOM  

On this 25th day of January, 2017, before me personally appeared Kimberly K. Geariety, known to be the sole proprietor of Geariety Law Office and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.


WHATCOM COUNTY:

BY: Jack Louws, County Executive

STATE OF WASHINGTON  
COUNTY OF WHATCOM  

On this _____ day of __________, 2017 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.

APPROVED AS TO FORM:

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

Daniel L. Gibson, Chief Civil Deputy Prosecutor
Resolution to amend GRP No. 916008, Yacht Club Road Railroad Quiet Zone.

ATTACHMENTS:
1. Memo
2. Resolution
3. Project Narrative

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.)

Public Works is requesting the adoption of a resolution granting legislative authority to: 1) proceed with a petition to the Washington Utilities and Transportation Commission (UTC) for the improvements to the Yacht Club Road at-grade railroad crossing; and 2) for authorization to use Public Works “County Forces” to perform the proposed work.

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 Jack Louws, Whatcom County Executive and The Honorable Whatcom County Council

Through: Jon Hutchings, Director

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director
       James P. Karcher, P.E., Engineering Manager

Date: February 7, 2017

Re: Yacht Club Road Railroad Quiet Zone; CRP No. 916008
Resolution for Legislative Authority and use of “County Forces”

Please find attached for your review and approval, a resolution for the amendment of CRP No. 916008 associated with the Yacht Club Road Railroad Quiet Zone.

Requested Action
Public Works is requesting the adoption of a resolution granting legislative authority to: 1) proceed with a petition to the Washington Utilities and Transportation Commission (UTC) for the improvements to the Yacht Club Road at-grade railroad crossing; and 2) for authorization to use Public Works “County Forces” to perform the proposed work.

Project Background
Following a presentation to the County Council Finance Committee on January 24, 2017, the Whatcom County Council directed Public Works to move forward with the process to establish a quiet zone railroad crossing at Yacht Club Road. The next step of the process in establishing the aforementioned quiet zone is to petition the UTC to construct the Federal Railroad Administration’s approved Supplemental Safety Measure (SSM) and Additional Safety Measure (ASM) design.

The Yacht Club Road Railroad Quiet Zone appears as Item #15 on the 2017 Annual Construction Program.

Funding Amount and Source
The construction cost estimate for the installation of the Additional Safety Measures is approximately $42,615 for the current design. Only preliminary engineering funds, in the amount of $5,000, exist in the project budget; therefore, Public Works’ Accounting Division will prepare a supplemental budget request. An amount of $50,000 will be used for the budget supplement due to unforeseen contingencies or minor changes to the current design.

It is likely that the Chuckanut Bay Community Association will be asked by the Whatcom County Council to fund the construction of the “Additional Safety Measures (ASM)” required for a Quiet Zone.

Please contact Joe Rutan or Roland Middleton at extensions 6219 and 6212, respectively, if you have any questions or concerns regarding this topic.
SPONSORED BY: ______________
PROPOSED BY: ____________
INTRODUCTION DATE: ________

RESOLUTION NO. ________

AMENDING CRP No. 916008, AND AUTHORIZING PUBLIC WORKS TO: 1) PROCEED WITH PETITIONING THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION FOR IMPROVEMENTS TO THE YACHT CLUB ROAD AT-GRADE RAILROAD CROSSING; AND 2) CONSTRUCT IMPROVEMENTS USING PUBLIC WORKS DEPARTMENT’S “COUNTY FORCES”.

WHEREAS, it is the recommendation of the Whatcom County Public Works Department that alteration in the method and manner of the existing Yacht Club Road at-grade crossing and its approaches is required by public safety and should occur in the form of additional safety measure improvements; and

WHEREAS, Washington Utilities and Transportation Commission requires a petition for such alteration of the Yacht Club Road at-grade railroad crossing, per Revised Code of Washington (RCW) 81.53.060; and,

WHEREAS, said RCW 81.53.060 requires legislative authority be invoked as a condition of the petition process, and the Whatcom County Council is said legislative authority; and,

WHEREAS, the Whatcom County Council unanimously adopts the position that the alteration in the method and manner of the existing crossing and its approaches is required by public safety, supports the plans for the proposed improvements at the said crossing, and desires that the Whatcom County Public Works Department submit the required petition on its behalf to the Washington Utilities and Transportation Commission; and

WHEREAS, the Whatcom County Public Works Department is required to inform and receive approval from the Whatcom County Council before utilizing “County Forces” in capital construction project; and,

WHEREAS, the Whatcom County Public Works Department desires to have the option to utilize “County forces” in the construction of additional safety measures at the Yacht Club Road at-grade crossing; and,

WHEREAS, upon the request of the Whatcom County Public Works Department and the recommendation of the County Executive, the Whatcom County Council, in a separate Council Action, will also be supplementing the project budget for the additional funds needed for construction of the proposed improvements;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council as the legislative authority of the County to request that Public Works submit a petition on its behalf to the Utilities and Transportation Commission for the Yacht Club Road at-grade railroad crossing improvements; and,
BE IT FURTHER RESOLVED that Whatcom County Public Works Department’s forces are authorized to perform the proposed railroad crossing improvements.

APPROVED this ___ day of _______________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, County Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Chief Civil Deputy Prosecutor
Yacht Club Rd RR Quiet Zone
CRP # 915008

Construction Funding Year(s): 2017 / 2018

Project Narrative:
This project is located in Section 30, T37N, R3E. This project proposes to upgrade the BNSF crossing to “Quiet Zone” standards. This project is listed #R30 on the 2017-2022 Six-Year Transportation Improvement Program.

Project Status: Federal Application is submitted to the Federal Railroad Administration for approval; construction date pending approval and funding source.

| Total Estimated Project Cost: | $50,000 |
| Expenditures to Date: | $5,000 |

Funding Sources:

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<td>State</td>
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Environmental Permitting: TBD
Right-of-Way Acquisition (Estimate): TBD
County Forces (Estimate): $50,000
**TITLE OF DOCUMENT:**
Marine Drive/Marietta Area traffic patterns and speed limit presentation

**ATTACHMENTS:**

**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.)

Public Works Department requests that a Public Works, Health and Safety Subcommittee worksession be scheduled for a presentation and discussion regarding traffic patterns and posted speed limits in the Marine Drive/Marietta Area.

**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](http://www.co.whatcom.wa.us/council).
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**EXECUTIVE:** 1/17/17

**WHATCOM COUNTY COUNCIL**

**DATE RECEIVED:** JAN 17 2017

**TITLE OF DOCUMENT:**
Amendment to WCC 24.05 On-site Sewage System Regulations, Section 160 – Operation and Maintenance.

**ATTACHMENTS:**
Staff Memorandum
Draft Ordinance
Exhibit A: Proposed WCC 24.05 amendment

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

**Should Clerk schedule a hearing?** (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.)

Whatcom County Code 24.05 On-site Sewage System Regulations require an amendment to section .160 – Operation and maintenance. The amendment requires evaluations be completed by a licensed operation and maintenance specialist. WCC 24.05 is adopted by reference in the County Comprehensive Plan; therefore an amendment to WCC 24.05 is also an amendment to the Comprehensive Plan.

**COMMITTEE ACTION:**
1/24/2017: Held in Committee

**COUNCIL ACTION:**
1/24/2017: Held in Committee

**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](http://www.co.whatcom.wa.us/council).
Memorandum

TO: Jack Louws, County Executive

FROM: Regina Delahunt, Director
Health Department

SUBJECT: Amendment to WCC 24.05 On-Site Sewage Regulations

DATE: January 10, 2017

Whatcom County Health Department (WCHD) is proposing an amendment to WCC 24.05. The proposed amendment will require on-site sewage system operation and maintenance evaluations to be performed only by operation and maintenance professionals licensed by the Health Department. The current regulations allow homeowners the ability to become certified and perform their own evaluations.

On October 6, 2016 the Washington State Supreme Court issued a ruling in the case of Whatcom County, Hirst vs. Western Washington Growth Management Hearings Board. The Court ruled that the “County’s comprehensive plan does not satisfy GMA requirements to protect water availability or water quality”. Elements of the County’s Comprehensive Plan are implemented through WCC 24.05. WCC 24.05 allows homeowners in rural areas to inspect their own septic system. The Court found the “County’s current inspection system policies were flawed and that continuing to rely on this flawed system would not protect water quality in the future”, and further ruled that “the County’s rural element fails to comply with the requirement to protect water quality”.

The proposed amendment is in response to the Supreme Court’s decision in order to comply with GMA requirements. WCC 24.05 is adopted by reference in the County’s Comprehensive Plan; therefore this change would also be a Comprehensive Plan amendment.

If you have any questions, please call Mike Kim, Environmental Health Supervisor, at extension 6032.

Attachments:
Draft Ordinance
Exhibit A: Proposed WCC 24.05 Amendment
ORDINANCE NO. __________

AMENDMENT TO WHATCOM COUNTY CODE 24.05 ON-SITE SEWAGE SYSTEM REGULATIONS

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 to protect water quality; 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, on March 25, 2008, the Whatcom County Board of Health adopted amendments to WCC 24.05 providing the ability for homeowners to perform their own on-site sewage system evaluations; and

WHEREAS, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing regulations to protect critical areas and surface water and groundwater resources, adding Policy 2DD-2.C.2, which adopts by reference WCC 24.05; and

WHEREAS, because Comprehensive Plan Policy 2DD-2.C.2 adopts by reference WCC 24.05, any amendment to WCC 24.05 is also an amendment to the Comprehensive Plan; and

WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect surface and groundwater quality (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 quality, and stated, “In essence, the Board ruled that the County’s current inspection system policies were flawed and that continuing to rely on this flawed system would not protect water quality in the future. ...We therefore reverse the Court of Appeals and hold that the Board applied proper legal standard and analysis in concluding that the County’s rural element policy does not comply with the GMA.”; and

WHEREAS, in response to the Court’s decision, on-site sewage system evaluations will only be performed by operation and maintenance professionals licensed by the Health Department; and
WHEREAS, the proposed amendment to WCC 24.05.160 as outlined in exhibit A of this ordinance, provide necessary language to implement this; and

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Board of Health, that the WCC 24.05 and the Whatcom County Comprehensive Plan are hereby amended as outlined in Exhibit A.

ADOPTED this ____ day of __________, 20__.

ATTEST:

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY EXECUTIVE

APPROVED AS TO FORM:

Royce Buckingham, Civil Deputy Prosecutor

WHATCOM BOARD OF HEALTH

WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Chair

WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

( ) Approved ( ) Denied

Date Signed: ____________________
EXHIBIT A

TITLE 24 HEALTH CODE

Chapter 24.05
On-Site Sewage System Regulations

24.05.160 Operation and maintenance.
A. The OSS owner is responsible for properly operating, monitoring and maintaining the OSS to minimize the risk of failure, and to accomplish this purpose shall:

1. Obtain approval from the health officer before repairing, altering or expanding an OSS;
   a. All systems which were legally permitted at time of installation and which are not currently functional due to failing and/or broken component parts will be allowed to be repaired to functionality. Also see WCC 24.05.090(C);

2. Secure and renew contracts for periodic maintenance where required by the WCHD;

3. Obtain and renew operation permits if required by the WCHD;

4. Assure a complete evaluation of the system components and/or property by a licensed operation and maintenance specialist to determine functionality, maintenance needs and compliance with this chapter and any permits. A report of system status shall be completed at the time of the evaluation and submitted to the WCHD in a timely manner;

5. Assure subsequent evaluations of the system components and/or property are completed as follows:
   a. At least once every three years for all systems consisting solely of a septic tank and gravity SSAS;
   b. Annually for all other systems unless more frequent inspections are specified by the health officer;

6. Employ an approved pumper to remove the septage from the tank when the level of solids and scum indicates that removal is necessary;

7. Provide maintenance and needed repairs to promptly return the system to a proper operating condition. A maintenance report shall be completed and submitted to the WCHD in a timely manner;

8. Protect the OSS area and the reserve area from:
   a. Cover by structures or impervious material;
   b. Surface drainage and direct drains, such as footing or roof drains. The drainage must be directed away from the area where the OSS is located;
   c. Soil compaction, for example by vehicular traffic or livestock; and
   d. Damage by soil removal and grade alteration;
9. Keep the flow of sewage to the OSS at or below the approved operating capacity and sewage quality;

10. Operate and maintain systems as directed by the health officer;

11. Request assistance from the health officer upon occurrence of a system failure or suspected system failure;

12. Ensure that a current report of system status by a licensed O&M specialist is on file with WCHD when a property with an OSS is offered for sale;

13. At the time of property transfer, provide to the buyer a copy of the current report of system status on file with the Whatcom County health department, and any available maintenance records, in addition to the completed seller disclosure statement in accordance with Chapter 64.06 RCW for residential real property transfers.

B. OSS owners may perform their own OSS evaluation in accordance with subsection C of this section except for the following:

1. OSS technologies that are listed as proprietary on the Washington State DOH list of registered on-site treatment and distribution products where the contract with the private proprietary manufacturer prohibits homeowner evaluations;

2. Community drainfields;

3. Nonconforming replacement systems that do not meet vertical and horizontal separation installed as a result of a system failure;

4. OSS serving food service establishments.

C. OSS owners who choose to perform their own evaluations shall complete O&M homeowner training as approved by the health officer. Upon completion of training, OSS owners may perform their own evaluations until property transfer. In cases of hardship, the health officer may approve the homeowner's selection of a designee who has completed the appropriate class to perform the evaluation. If OSS owners are discovered to be noncompliant with this section, the health officer may proceed with legal remedies in accordance with Chapter 24.07 WCC.

DB. Persons shall not:

1. Use or introduce strong bases, acids or chlorinated organic solvents into an OSS for the purpose of system cleaning;

2. Use a sewage system additive unless it is specifically approved by WDOH; or

3. Use an OSS to dispose of waste components atypical of residential wastewater.

EC. The health officer shall require annual inspections of OSS serving food service establishments and may require pumping as needed. (Ord. 2010-009 Exh. A; Ord. 2008-015 Exh. A; Ord. 2006-056 Exh. A).

D. Reports submitted by licensed O&M specialists will be verified by the health officer for timeliness, accuracy, and completeness in accordance with administrative policies.
Proposed Amendment to WCC 24.05
On-Site Sewage System Regulations

County Council
January 24, 2016

Outline

• Legal Background
• Regulatory Background
• Proposed Amendment to WCC 24.05.160
Supreme Court ("Hirst") Decision

CONCLUSION

"We reverse the Court of Appeals and hold that the County's comprehensive plan does not satisfy the GMA requirements to protect water availability or quality"

---

Supreme Court ("Hirst") Decision

- "The Board noted significant disparity in reported failure rates and compliance rates between homeowners who self-inspect versus professional inspections, as well as studies showing water quality contamination from faulty septic systems."
- "In essence, the Board ruled that the County's current inspection system policies were flawed and that continuing to rely on this flawed system would not protect water quality in the future."
Supreme Court ("Hirst") Decision

- "Therefore, we reverse the Court of Appeals' holding that the Board’s decision improperly imposed a duty on the County to "enhance" water quality rather than merely "protect" water quality and affirm the Board’s ruling that the County's rural element fails to comply with the requirement to protect water quality."

Regulatory Background

- November 21, 2006: Adopted Chapter 246-272A WAC by reference
- March 25, 2008: Amendment to WCC 24.05.160 to allow periodic homeowner evaluation. O&M Specialist required for initial evaluation and every 6 years
- March 25, 2008: OSS Local Management Plan approved
- February 23, 2010: Amendment to allow homeowner evaluations at all times (current form)
- February 2, 2016: OSS Local Management Plan Update approved
Regulatory Background

RCW 36.70A.070(5)(c)(iv)  
"The rural element 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, as provided in RCW 36.70A.060, and surface and ground water resources;"

Regulatory Background

Ordinance 2012-032 added:  
Policy 2DD-2.C.2 Minimize the adverse effects of discharges from on-site sewage systems on ground and surface waters through WCC 24.05, adopted herein by reference.
Proposed Amendment

WCC 24.05.160 A

4. Assure a complete evaluation of the system components and/or property by a licensed operation and maintenance specialist to determine functionality, maintenance needs and compliance with this chapter and any permits. A report of system status shall be completed at the time of the evaluation and submitted to the WCHD in a timely manner;

Proposed Amendment

WCC 24.05.160 A

7. Provide maintenance and needed repairs to promptly return the system to a proper operating condition. A maintenance report shall be completed and submitted to the WCHD in a timely manner;
Proposed Amendment

Remove section WCC 24.05.160 B and C:

B. OSS owners may perform their own OSS evaluation in accordance with subsection C of this section except for the following:
   1. OSS technologies that are listed as proprietary on the Washington State DOH list of registered on-site treatment and distribution products where the contract with the private proprietary manufacturer prohibits homeowner evaluations;
   2. Community drainfields;
   3. Nonconforming replacement systems that do not meet vertical and horizontal separation installed as a result of a system failure;
   4. OSS serving food service establishments.

C. OSS owners who choose to perform their own evaluations shall complete O&M homeowner training as approved by the health officer. Upon completion of training, OSS owners may perform their own evaluations until property transfer. In cases of hardship, the health officer may approve the homeowner’s selection of a designee who has completed the appropriate class to perform the evaluation. If OSS owners are discovered to be noncompliant with this section, the health officer may proceed with legal remedies in accordance with Chapter 24.07 WCC.

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Proposed Amendment

WCC 24.05.160

D. Reports submitted by licensed O&M Specialists will be verified by the health officer for timeliness, accuracy, and completeness in accordance with administrative policies.
Proposed Amendment

- Amendment to WCC 24.05.160 is also an amendment to the Comprehensive Plan

- Implement Comprehensive Plan policy 2DD-2.C.2 in a manner that is in compliance with the GMA requirement to protect water quality
Comprehensive Plan amendments relating to the Cherry Point Urban Growth Area.

ATTACHMENTS:

1. Cover letter
2. Council Proposal
3. Alternative #1
4. Alternative #2 (No Action Alternative)
5. Planning Commission Findings of Fact and Reasons for Action
6. Planning Commission Recommended Cherry Point Amendments
7. Planning Commission Minutes

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

Should Clerk schedule a hearing? ( ) Yes (X) NO

Note: A public hearing will be scheduled at a later date in accordance with the Public Participation Plan (Sec. 4.4.1).

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 Whatcom County Council approved Resolution 2016-027 initiating amendments to the Cherry Point Urban Growth Area section of the Whatcom County Comprehensive Plan on July 26, 2016. In accordance with this Resolution, the County is reviewing proposed amendments to Whatcom County Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Council File #'s:
- AB2016-232 (Res 2016-027)
- AB2016-047B (Comp Plan Chapter 2 Land Use)

Related File Numbers:
- County Planning File #
- PLN2016-00012

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 Jack Louws, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Assistant Director

DATE: January 24, 2017

SUBJECT: Cherry Point Amendments (File # PLN2016-00012)

As you know, the Whatcom County Council approved Resolution 2016-027 initiating amendments to the Cherry Point Urban Growth Area section of the Whatcom County Comprehensive Plan on July 26, 2016. In accordance with this Resolution, the County is reviewing proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. Alternatives are also being reviewed.

The Whatcom County Planning Commission took public comments at a combined Town Hall meeting & SEPA public hearing on October 13, 2016, held work sessions on October 27 & November 10, 2016, and held a public hearing on December 8, 2016 on the proposed Cherry Point Amendments and alternatives. The Planning Commission held another work session, and issued final recommendations, on January 12, 2017. The Council Proposal, alternatives, and Planning Commission’s recommended amendments, shown below, are attached for further consideration by the County Council:

- **Council Proposal** – Council Resolution (initiated by Council under Resolution 2016-027);

- **Alternative # 1** – Council Member Alternative (proposed by an individual Council Member);

- **Alternative # 2** – No Action Alternative (maintain existing Comprehensive Plan); and

- **Planning Commission Amendments** (January 12, 2017).
We would also note that, on December 16, 2016, the Whatcom Business Alliance appealed the Determination of Non-significance (DNS) that was issued for the Cherry Point amendments under the State Environmental Policy Act (SEPA). The SEPA appeal will go to the Hearing Examiner for consideration. A representative of the County’s Prosecuting Attorney’s Office advised that the appeal of the County’s DNS does not prevent the County Council from moving forward with deliberations on the proposed Cherry Point Amendments.

Thank you for considering this information. We look forward to discussing it with you.
Proposal

(Council Resolution)
Major Industrial Urban Growth Area / Port Industrial

Cherry Point

The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of industrial land. The land has long been planned and designated by Whatcom County for industrial development and is currently the site of three major industrial facilities including two oil refineries and an aluminum smelter. Together, these three existing industries own about 4,400 acres of the total Cherry Point industrial lands.

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has long had regional significance for the siting of large industrial or related facilities. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971.

Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliott of 1855. The Lummi Nation and Western Washington University have identified an ancestral village dating back over 3,000 years ago in this area. The Cherry Point UGA contains sites of primary archeological and cultural significance.

Since the designation of this area for industrial development years ago, newer scientific study of the shoreline ecology has identified Cherry Point’s unique function as part of the Fraser River/Salish Sea ecosystem and the associated Cherry Point Aquatic Reserve has been designated by the state Department of Natural Resources to recognize the ecological importance of the aquatic lands in this area.

Since adoption of earlier versions of this Comprehensive Plan there has been an increasing recognition of the impacts that fossil fuel use and transportation has on human health, and both the local and global environment. The Cherry Point UGA contains the second-largest emitter of carbon air pollution in Washington State (Ecology, June 2016) and scientific findings show that the use of refined or unrefined fossil fuels overseas contribute up to 16% of the mercury in the soil in the Northwest from return air from Asian burning of those fossil fuels, and that carbon deposition in water from air emissions are the major contributor to ocean acidification. Recent studies by NOAA have found that very small amounts of hydrocarbons lead to congenital heart failure in juvenile herring and salmon, and

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may have contributed to the crash of the Cherry Point Herring stock.\(^2\) Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20-year planning period.

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington State. This herring stock has supported important commercial fisheries in the past and provides forage for salmonids and other important marine species. In August 2000 and again in November 2010, the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program, except for existing leases, and designated them as the “Cherry Point Aquatic Reserve.” In December 2010, the DNR recognized the need to “protect the significant environmental resource of aquatic lands at Cherry Point” (CPAR Management Plan p. 1), and completed the Cherry Point Environmental Aquatic Reserve Management Plan and designated the Cherry Point Aquatic Reserve to ensure long-term environmental protection of the area Aquatic Reserve. The Reserve extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.

The overall purpose of the Cherry Point Aquatic Reserve (AR) is to ensure long-term environmental protection for local habitats and species (CPAR MP p. 1). Specific goals include protection and recovery (as applicable) of Cherry Point herring, Nooksack Chinook salmon, ground fish, marine mammals, seabird/duck and shorebird communities, Dungeness crab, and submerged native aquatic vegetation (CPAR MP p. 2). Another goal is to cooperate with other stakeholders “to minimize and reduce identified impacts of human activities on the species and habitats within the Reserve” (CPAR MP p. 2).

The Aquatic Reserve Management Plan acknowledges that so long as the existing industries, complying with all federal, state and local laws and regulations, they may be allowed to conflict with the Aquatic Reserve although their activities may pose risks for the recovery of species and other goals of the Aquatic Reserve. Indeed, the industries’ need for buffer space and their compliance with shoreline management requirements means that much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing shoreline and upland stream and wetland functions and values are of continuing importance to the recovery and protection of species identified in the Aquatic Reserve Management Plan. The area includes one of the last undeveloped intertidal wetlands of any size in Northern Puget Sound, with importance to juvenile salmon and other species. Existing industries may continue to serve the Aquatic

Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees comply with applicable legal requirements and actively work to further the goals for the Reserve (CPAR MP p. 2).

The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major existing industrial developments. While deep water access made future shipping facilities desirable in the past, recent actions by federal and state regulators denying a proposed fourth pier at Cherry Point have underscored the fact that any future industrial development will undergo scrutiny for compliance with federal and state laws, including treaty rights. Based on the public record developed during this plan review and best available science in the record, the County no longer supports construction of additional export docks or piers at Cherry Point due to environmental and treaty right concerns related to: (a) physical interference with shoreline functions and values; (b) physical interference with traditional, historic and commercial fishing and shellfish harvesting at the Cherry Point shoreline; and (c) the increased risk of catastrophic and cumulative small oil and fuel spills from increased large vessel traffic, potential collisions with tankers and other vessels serving the existing three piers at Cherry Point, and related barge traffic and support vessels.

-especially where deep water access for shipping is a critical locational factor.

These characteristics were articulated in the Overall Economic Development Plan (OEDP) for Whatcom County adopted by the Whatcom County Council of Governments in May, 1993, in the 1997 Property Counselors Report on supply and demand for industrial land in Whatcom County and at Cherry Point, the 2002 Greater Whatcom Comprehensive Economic Development Strategy, the 2003 Whatcom County Industrial Land Study, and the 2015 Whatcom County Comprehensive Economic Development Strategy.

The characteristics that make Cherry Point unique as a site for the existing major industrial developments include the following:

Port Access – The marine waters off Cherry Point provide deep water access for shipping. Deep water access for shipping was a major siting consideration for the three major industries currently located at Cherry Point—and for the industrial/shipping facilities currently being proposed.

Rail Access – Cherry Point is served by a branch line of the Burlington Northern mainline serving western Washington from Blaine to Portland. Rail service is considered to be vital to statewide as well as local interests for the competitive movement of freight. Rail service is particularly important in relation to water borne commerce of the existing users. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. The BP refinery at Cherry Point uses the railroad to ship calcined coke to U.S. markets and to other port facilities for transshipment to foreign markets. Both the BP and Phillips 66 refineries receive crude oil shipments by rail.
Proximity to Canada, Alaska and Foreign Ports - Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to and from Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major sustainable, clean-energy manufacturing or production of other commercial or industrial products. The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.

Presence of Necessary Utilities and Infrastructure

Cherry Point is a major industrial area in Whatcom County. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971. The infrastructure to support these industries and future industrial users at Cherry Point is in place and includes the following:

Electric Power: Electric Power is available from three providers in the Cherry Point area: Puget Sound Energy, Public Utility District #1 (PUD #1), and Bonneville Power Administration.

Puget Sound Energy owns two electrical generating facilities at Cherry Point. The electricity generated by these two facilities can be transmitted outside the region into the grid for supply to Puget’s customers or some of it can be consumed by Cherry Point customers through interties with the PUD #1. Puget Sound Energy also acquires power from outside the region and transmits it via their transmission grid into Cherry Point. The BP Cherry Point Refinery purchases electrical supply on the market and pays Puget Sound Energy to transmit the power and operate distribution systems to provide that power to the refinery.

PUD #1 purchases electricity from the Bonneville Power Administration and takes ownership of that power at the Bonneville substation in Bellingham and then transmits it over its transmission line to Cherry Point to serve the Phillips 66 Ferndale Refinery.
PUD #1 and Puget Sound Energy have interties at Cherry Point allowing the
transmission of power in and out of Cherry Point depending on the amount of power
generated and consumed at Cherry Point.

The Bonneville Power Administration supplies power directly to the Alcoa Intalco
Works aluminum production facility.

**Water:** Whatcom County Public Utility District #1 currently provides industrial
process water to all major industrial facilities at Cherry Point and has additional
water available contracts in place to provide process water to properties that are
currently undeveloped. PUD #1 also operates a small system to provide potable
water to one industry (Praxair). Birch Bay Water and Sewer District provides
potable water to the BP Cherry Point Refinery. The other industries operate their
own water treatment facilities to provide potable water for their facilities. Existing
industries consume large quantities of water, in many cases drawn from the
Nooksack River. It is the County’s policy to support renewed efforts to reduce both
water consumption levels and the quantity of discharges, in favor of recycled water
use.

**Sewer:** Sewer service is not typically required for large industrial developments.
Most of the existing industrial users provide their own on-site sewage treatment
and waste water treatment. Sewer service for domestic wastewater is provided to
the BP Refinery by the Birch Bay Water and Sewer District. If and when sewer
service should become necessary for other industries, service could be provided on
a contractual basis with the Birch Bay Water and Sewer District, which borders the
Cherry Point industrial area on the north.

**Natural Gas:** Natural gas is currently available at Cherry Point.

**All-weather Roads:** Grandview and Slater roads, the major east-west connectors
between Cherry Point and Interstate-5, provide all-weather road access to Cherry
Point.

The industries currently located at Cherry Point are a substantial part of the
economic base of Whatcom County and the region and the economic welfare of the
county is strongly tied to the health of these industries and their ability to flourish
and expand appropriately as opportunities present themselves. While these
existing industries need to be protected from the inappropriate encroachment of
incompatible uses; particularly residential uses that could affect their ability to
expand, at the same time, the expansion of these industries needs to be done in
ways that do not significantly impact the ecology of the Salish Sea or encourage
expanded export of unrefined fossil fuels. The best means for protecting these
industries from incompatible adjoining residential uses and to assure their
continued regulatory conformity is to maintain the industrial land use designation of
these lands and adjoining properties currently designated for industrial
development. The Cherry Point industrial lands have been designated for industrial
development and as a direct result of the industrial designation, incompatible and inappropriate residential development has been curtailed.

**Goal 2CC:** Maintain Cherry Point as an unincorporated urban growth area based on its unique location and characteristics and its significant contribution to the overall industrial land supply and Whatcom County's tax base.

**Policy 2CC-1:** Designate Cherry Point as a major industrial Urban Growth Area to accommodate major users that need to be located away from concentrated urban residential areas and that can manage their activities in such a way that they do not conflict with the goals of the Aquatic Reserve Management Plan.

**Policy 2CC-2:** Ensure that existing developments in the Cherry Point UGA maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan. Ensure that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean-energy and low-carbon emitting industries are favored;

- Strict avoidance of estuaries and near-shore wetlands, as they play not only an important role in protecting habitat, but also serve as flood storage areas in the absorption of future sea level rise;

- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;

- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;

- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

**Policy 2CC-3:** Assure that Cherry Point's unique features of large parcelization, existing port access, and rail transportation availability are maintained and protected from incompatible development.

**Policy 2CC-4:** Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

**Policy 2CC-5:** Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or
supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

Policy: 2CC-6: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

Policy: 2CC-7: Permit support activities, warehousing, rail shipments, shipping, machine repair and service, educational services; food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-8: Exclude Cherry Point as part of any future incorporation of Birch Bay.
- to protect interests of the property owner in terms of taxation and urban regulations;
- to preclude urbanism near "smokestack" industries;
- to preserve county government tax base.

Policy 2CC-9: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential, consistent with other County policies mandating and supporting energy and water conservation.

Policy 2CC-10: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three approved leases identified in the Lands Commissioner’s Order No. 201037 designating the Cherry Point Aquatic Reserve (BP, Intalco, and Phillips 66) to:
- Support and remain consistent with the state Department of Natural Resources’ withdrawal of Cherry Point tidelands and bedlands from the general leasing program and species recovery goals of the Cherry Point Aquatic Reserve designation and CPAR MP;
- Further public health and safety;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing;
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills; and
- Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the
likelyhood of reaching the recovery goals of the CPAR and the Puget Sound Partnership's recovery goals for Year 2035.

by establishing a development moratorium. Notwithstanding the above, this moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.

Policy 2CC-11: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-12: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.

Policy 2CC-13: Cooperate with the DNR and existing industries to monitor the effects of industrial activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.

Policy 2CC-14: In recognition and support of the existing federal law protecting the unique ecosystem of Puget Sound/the Salish Sea, as reflected in the Magnuson Amendment to the Marine Mammal Protection Act, 33 USC Sec. 476, and to protect human and environmental health, the County shall adopt County regulations and rules such that:

No officer, employee, or other official of Whatcom County shall issue, amend, renew, grant, or otherwise approve any easement, vacation of right-of-way, permit, license, or any authorization or entitlement of any kind under County authority that could be in conflict with the 33 USC Sec. 476.

The Whatcom County zoning code, development regulations, and SEPA policies shall reflect and implement this policy directive.

Policy 2CC-15: Without delaying implementation of the foregoing policy (2CC-14), the County shall undertake a study to be completed by December of 2017 to examine existing County laws, including those related to public health, safety, development, building,
zoning, permitting, electrical, nuisance, and fire codes, and
develop recommendations for legal ways the County can work to
limit unrefined fossil fuel exports from the Cherry Point UGA
above levels in existence as of July 5, 2016. The study shall
review and analyze any legal advice freely submitted to the
County by legal experts on behalf of a variety of stakeholder
interests, and make that advice public as part of the study
report.

• Based on the above study, develop proposed Comprehensive
Plan amendments and associated code and rule amendments
for Council consideration as soon as possible.

• Until the above mentioned amendments are implemented,
the Prosecuting Attorney and/or the County Administration
shall as soon as is practicable, and before any permissions
are granted by the County, provide the County Council
written notice of all known pre-application correspondence or
permit application submittals and notices, federal, state, or
local, that involve activity with the potential to expand the
export of fossil fuels from Cherry Point.
Alternative # 1

(Council Member Alternative)
Major Industrial Urban Growth Area / Port Industrial

Cherry Point

The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of industrial land. The land has long been planned and designated by Whatcom County for industrial development and is currently the site of three major industrial facilities, including two oil refineries and an aluminum smelter. Together, these three existing industries own about 4,400 acres of the total Cherry Point industrial lands.

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has long had regional significance for the siting of large industrial or related facilities. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971.

Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. The Lummi Nation and Western Washington University have identified an ancestral village dating back over 3,000 years ago in this area. The Cherry Point UGA contains sites of primary archeological and cultural significance.

Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20 year planning period.

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington State. This herring stock has supported important commercial fisheries in the past and provides forage for salmonids and other important marine species. In August 2000 and again in November 2010, the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program, except for existing leases, and designated them as the “Cherry Point Aquatic Reserve.” In December 2010, the DNR recognized the need to “protect the significant environmental resource of aquatic lands at Cherry Point” (CPAR Management Plan p. 1), and completed the Cherry Point Environmental Aquatic Reserve Management Plan and designated the Cherry Point Aquatic Reserve to ensure long-term environmental protection of the area Aquatic Reserve. The Reserve extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.
The overall purpose of the Cherry Point Aquatic Reserve (AR) is to ensure long-term environmental protection for local habitats and species (CPAR MP p. 1). Specific goals include protection and recovery (as applicable) of Cherry Point herring, Nooksack Chinook salmon, ground fish, marine mammals, seabird/duck and shorebird communities, Dungeness crab, and submerged native aquatic vegetation (CPAR MP p. 2). Another goal is to cooperate with other stakeholders, “to minimize and reduce identified impacts of human activities on the species and habitats within the Reserve” (CPAR MP p. 2).

The Management Plan acknowledges that the existing industries, complying with laws and regulations, do not conflict with the Aquatic Reserve although their activities may pose risks for the Aquatic Reserve. Indeed, the industries’ need for buffer space and their compliance with shoreline management requirements means that much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing industries can serve the Aquatic Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees actively work to further goals for the Reserve (CPAR MP p. 2).

The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major industrial developments especially where deep water access for shipping is a critical locational factor. These characteristics were articulated in the Overall Economic Development Plan (OEDP) for Whatcom County adopted by the Whatcom County Council of Governments in May, 1993, in the 1997 Property Counselors Report on supply and demand for industrial land in Whatcom County, and at Cherry Point, the 2002 Greater Whatcom Comprehensive Economic Development Strategy, the 2003 Whatcom County Industrial Land Study, and the 2015 Whatcom County Comprehensive Economic Development Strategy.

The characteristics that make Cherry Point unique as a site major industrial development include the following:

Port Access – The marine waters off Cherry Point provide deep water access for shipping. Deep water access for shipping was a major siting consideration for the three major industries currently located at Cherry Point—and for the industrial/shipping facilities currently being proposed.

Rail Access – Cherry Point is served by a branch line of the Burlington Northern mainline serving western Washington from Blaine to Portland. Rail service is considered to be vital to statewide as well as local interests for the competitive movement of freight. Rail service is particularly important in relation to water borne commerce. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. The BP refinery at Cherry Point uses the railroad to ship calcined coke to U.S. markets and to other port facilities for transshipment to
foreign markets. Both the BP and Phillips 66 refineries receive crude oil shipments by rail.

Proximity to Canada, Alaska and Foreign Ports - Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to and from Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major manufacturing, commercial or industrial uses. The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.

Presence of Necessary Utilities and Infrastructure

Cherry Point is a major industrial area in Whatcom County. The Phillips 66 Ferndale Refinery was constructed in 1954; the Alcoa Intalco Works Aluminum Smelter in 1966; and the BP Cherry Point Refinery in 1971. The infrastructure to support these industries and future industrial users at Cherry Point is in place and includes the following:

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Puget Sound Energy owns two electrical generating facilities at Cherry Point. The electricity generated by these two facilities can be transmitted outside the region into the grid for supply to Puget’s customers or some of it can be consumed by Cherry Point customers through interties with the PUD #1. Puget Sound Energy also acquires power from outside the region and transmits it via their—its transmission grid into Cherry Point. The BP Cherry Point Refinery purchases electrical supply on the market and pays Puget Sound Energy to transmit the power and operate distribution systems to provide that power to the refinery.

PUD #1 purchases electricity from the Bonneville Power Administration and takes ownership of that power at the Bonneville substation in Bellingham and then transmits it over its transmission line to Cherry Point to serve the Phillips 66 Ferndale Refinery.
PUD #1 and Puget Sound Energy have interties at Cherry Point, allowing the transmission of power in and out of Cherry Point, depending on the amount of power generated and consumed at Cherry Point.

The Bonneville Power Administration supplies power directly to the Alcoa Intalco Works aluminum production facility.

**Water:** Whatcom County Public Utility District #1 currently provides industrial process water to all major industrial facilities at Cherry Point and has additional water available contracts in place to provide process water to properties that are currently undeveloped. PUD # 1 also operates a small system to provide potable water to one industry (Praxair). Birch Bay Water and Sewer District provides potable water to the BP Cherry Point Refinery. The other industries operate their own water treatment facilities to provide potable water for their facilities. It is the County's policy to work cooperatively with all businesses to support all efforts to reduce water consumption and quantity of discharges.

**Sewer:** Sewer service is not typically required for large industrial developments. Most of the existing industrial users provide their own on-site sewage treatment and waste water treatment. Sewer service for domestic wastewater is provided to the BP Refinery by the Birch Bay Water and Sewer District. If and when sewer service should become necessary for other industries, service could be provided on a contractual basis with the Birch Bay Water and Sewer District, which borders the Cherry Point industrial area on the north.

**Natural Gas:** Natural gas is currently available at Cherry Point.

**All-weather Roads:** Grandview and Slater roads, the major east-west connectors between Cherry Point and Interstate-5, provide all-weather road access to Cherry Point.

The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom County and the region and the economic welfare of the county is strongly tied to the health of these industries and their ability to flourish and expand appropriately as opportunities present themselves. These existing industries need to be protected from the inappropriate encroachment of incompatible uses; particularly residential uses that could affect their ability to expand. At the same time, the expansion of these industries needs to be done in ways that do not significantly impact the ecology of the Salish Sea or encourage expanded export of unrefined fossil fuels. The best means for protecting these industries from incompatible adjoining residential uses and to assure their continued regulatory conformity is to maintain the industrial land use designation of these lands and adjoining properties currently designated for industrial development. The Cherry Point industrial lands have been designated for industrial development, and as a direct result of the industrial designation, incompatible and inappropriate residential development has been curtailed.
Goal 2CC: Maintain Cherry Point as an unincorporated urban growth area based on its unique location and characteristics, and its significant contribution to the overall industrial land supply and Whatcom County’s tax base.

Policy 2CC-1: Designate Cherry Point as a major industrial Urban Growth Area to accommodate major users that need to be located away from concentrated urban residential areas and that can manage their activities in such a way that they do not conflict with the goals of the Aquatic Reserve Management Plan.

Policy 2CC-2: Ensure that developments in the Cherry Point UGA maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan. Work cooperatively with all businesses to increase environmental protection as they expand and/or upgrade refining operations at Cherry Point.

Policy 2CC-3: Assure that Cherry Point’s unique features of large parcelization, port access, and rail transportation availability are maintained and protected from incompatible development.

Policy 2CC-4: Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

Policy 2CC-5: Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

Policy 2CC-6: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

Policy 2CC-7: Permit support activities, warehousing, rail shipments, shipping, machine repair and service, educational services, food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-8: Exclude Cherry Point as part of any future incorporation of Birch Bay:
- to protect interests of the property owner in terms of taxation and urban regulations;
- to preclude urbanism near "smokestack" industries;
- to preserve county government tax base.
Policy 2CC-9: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential, consistent with County policies supporting energy and water conservation.

Policy 2CC-10: It is the policy of Whatcom County to limit the number of piers at Cherry Point. Any moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium. It is also the policy of Whatcom County to:

- Further public health and safety;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing;
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills;
- Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the likelihood of reaching the recovery goals of the CPAR and the Puget Sound Partnership’s recovery goals for Year 2035; and
- Support environmental upgrades when expanding refining operations.

by establishing a development moratorium. Notwithstanding the above, this moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.

Policy 2CC-11: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite, who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year, are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-12: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.
Policy 2CC-13: Cooperate with the DNR and existing industries to monitor the effects of industrial activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.

Policy 2CC-14: The County shall undertake a study to be completed by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County can work to limit unrefined fossil fuel exports from the Cherry Point UGA above levels in existence as of July 5, 2016. The study shall review and analyze any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice public as part of the study report.

- Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.
- Cherry Point Urban Growth Area

Major Port/Industrial UGA
Alternative # 2

(No Action Alternative)
Major Industrial Urban Growth Area / Port Industrial

Cherry Point

The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of industrial land. The land has long been planned and designated by Whatcom County for industrial development and is currently the site of three major industrial facilities including two oil refineries and an aluminum smelter. Together, these three existing industries own about 4,400 acres of the total Cherry Point industrial lands.

Because of the special characteristics of Cherry Point, this area has regional significance for the siting of large industrial or related facilities. Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20 year planning period.

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington State. This herring stock has supported important commercial fisheries in the past and provides forage for salmonids and other important marine species. In 2010, the DNR recognized the need to “protect the significant environmental resource of aquatic lands at Cherry Point” (CPAR Management Plan p. 1), completed the Cherry Point Environmental Aquatic Reserve Management Plan, and designated the Cherry Point Aquatic Reserve to ensure long-term environmental protection of the area. The reserve extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.

The overall purpose of the Cherry Point Aquatic Reserve (AR) is to ensure long-term environmental protection for local habitats and species (CPAR MP p. 1). Specific goals include protection and recovery (as applicable) of Cherry Point herring, Nooksack Chinook salmon, ground fish, marine mammals, seabird/duck and shorebird communities, Dungeness crab, and submerged native aquatic vegetation (CPAR MP p. 2). Another goal is to cooperate with other stakeholders “to minimize and reduce identified impacts of human activities on the species and habitats within the Reserve” (CPAR MP p. 2).

The Management Plan acknowledges that the existing industries, complying with laws and regulations, do not conflict with the Aquatic Reserve although their activities may pose risks for the Aquatic Reserve. Indeed, the industries’ need for buffer space and their compliance with shoreline management requirements means that much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing industries can serve the Aquatic Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees actively work to further goals for the Reserve (CPAR MP p. 2).
The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major industrial developments especially where deep water access for shipping is a critical locational factor. These characteristics were articulated in the Overall Economic Development Plan (OEDP) for Whatcom County adopted by the Whatcom County Council of Governments in May, 1993, in the 1997 Property Counselors Report on supply and demand for industrial land in Whatcom County and at Cherry Point, the 2002 Greater Whatcom Comprehensive Economic Development Strategy, the 2003 Whatcom County Industrial Land Study, and the 2015 Whatcom County Comprehensive Economic Development Strategy.

The characteristics that make Cherry Point unique as a site for major industrial development include the following:

Port Access – The marine waters off Cherry Point provide deep water access for shipping. Deep water access for shipping was a major siting consideration for the three major industries currently located at Cherry Point and for the industrial/shipping facilities currently being proposed.

Rail Access – Cherry Point is served by a branch line of the Burlington Northern mainline serving western Washington from Blaine to Portland. Rail service is considered to be vital to statewide as well as local interests for the competitive movement of freight. Rail service is particularly important in relation to water borne commerce. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. The BP refinery at Cherry Point uses the railroad to ship calcined coke to U.S. markets and to other port facilities for transshipment to foreign markets. Both the BP and Phillips 66 refineries receive crude oil shipments by rail.

Proximity to Canada, Alaska and Foreign Ports - Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to Alaska and to other Pacific Rim locations. The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.
Presence of Necessary Utilities and Infrastructure

Cherry Point is a major industrial area in Whatcom County. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971. The infrastructure to support these industries and future industrial users at Cherry Point is in place and includes the following:

Electric Power: Electric Power is available from three providers in the Cherry Point area: Puget Sound Energy, Public Utility District #1 (PUD #1), and Bonneville Power Administration.

Puget Sound Energy owns two electrical generating facilities at Cherry Point. The electricity generated by these two facilities can be transmitted outside the region into the grid for supply to Puget’s customers or some of it can be consumed by Cherry Point customers through interties with the PUD #1. Puget Sound Energy also acquires power from outside the region and transmits it via their transmission grid into Cherry Point. The BP Cherry Point Refinery purchases electrical supply on the market and pays Puget Sound Energy to transmit the power and operate distribution systems to provide that power to the refinery.

PUD #1 purchases electricity from the Bonneville Power Administration and takes ownership of that power at the Bonneville substation in Bellingham and then transmits it over its transmission line to Cherry Point to serve the Phillips 66 Ferndale Refinery.

PUD #1 and Puget Sound Energy have interties at Cherry Point allowing the transmission of power in and out of Cherry Point depending on the amount of power generated and consumed at Cherry Point.

The Bonneville Power Administration supplies power directly to the Alcoa Intalco Works aluminum production facility.

Water: Whatcom County Public Utility District #1 currently provides industrial process water to all major industrial facilities at Cherry Point and has contracts in place to provide process water to properties that are currently undeveloped. PUD #1 also operates a small system to provide potable water to one industry (Praxair). Birch Bay Water and Sewer District provides potable water to the BP Cherry Point Refinery. The other industries operate their own water treatment facilities to provide potable water for their facilities.

Sewer: Sewer service is not typically required for large industrial developments. Most of the existing industrial users provide their own on-site sewage treatment and waste water treatment. Sewer service for domestic wastewater is provided to the BP Refinery by the Birch Bay Water and Sewer District. If and when sewer service should become necessary for other industries, service could be provided on a contractual basis with the Birch Bay Water and Sewer District, which borders the Cherry Point industrial area on the north.
Natural Gas: Natural gas is currently available at Cherry Point.

All-weather Roads: Grandview and Slater roads, the major east-west connectors between Cherry Point and Interstate-5, provide all-weather road access to Cherry Point.

The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom County and the region and the economic welfare of the county is strongly tied to the health of these industries and their ability to flourish and expand as opportunities present themselves. These industries need to be protected from the inappropriate encroachment of incompatible uses; particularly residential uses that could affect their ability to expand. The best means for protecting these industries from incompatible adjoining uses and to assure their continued regulatory conformity is to maintain the industrial land use designation of these lands and adjoining properties currently designated for industrial development. The Cherry Point industrial lands have been designated for industrial development and as a direct result of the industrial designation, incompatible and inappropriate residential development has been curtailed.

Goal 2CC: Maintain Cherry Point as an unincorporated urban growth area based on its unique location and characteristics and its significant contribution to the overall industrial land supply and Whatcom County's tax base.

Policy 2CC-1: Designate Cherry Point as a major industrial Urban Growth Area to accommodate major users that need to be located away from concentrated urban residential areas and that can manage their activities in such a way that they do not conflict with the goals of the Aquatic Reserve Management Plan.

Policy 2CC-2: Ensure that developments in the Cherry Point UGA maintain management plans to accomplish the goals of the Aquatic Reserve Management Plan.

Policy 2CC-3: Assure that Cherry Point's unique features of large parcelization, port access, and transportation availability are maintained and protected from incompatible development.

Policy: 2CC-4: Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

Policy: 2CC-5: Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

Policy: 2CC-6: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

Policy: 2CC-7: Permit support activities, warehousing, shipping, machine repair and service, educational services, food service and
conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-8: Exclude Cherry Point as part of any future incorporation of Birch Bay.
- to protect interests of the property owner in terms of taxation and urban regulations;
- to preclude urbanism near "smokestack" industries;
- to preserve county government tax base.

Policy 2CC-9: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential.

Policy 2CC-10: It is the policy of Whatcom County to limit the number of piers at Cherry Point by establishing a development moratorium. Notwithstanding the above, this moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.

Policy 2CC-11: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-12: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.

Policy 2CC-13: Cooperate with the DNR and existing industries to monitor the effects of industrial activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.
- Cherry Point Urban Growth Area

Major Port/Industrial UGA
WHATCOM COUNTY
PLANNING COMMISSION

Amendments to the Cherry Point UGA section
of the Whatcom County Comprehensive Plan

FINDINGS OF FACT AND REASONS FOR ACTION

1. The Cherry Point Major/Port Industrial Urban Growth Area (UGA), and
associated goals & policies, were established in 1997 when the
Whatcom Comprehensive Plan was adopted. The Cherry Point UGA
boundaries did not change in the 2009 UGA review or the 2016 UGA
review.

2. The Cherry Point UGA is currently zoned for Heavy Impact Industrial
and Light Impact Industrial land uses. The Cherry Point UGA zoning
generally does not allow residential development.

3. The Whatcom County Council approved Resolution 2016-027 initiating
amendments to the Cherry Point UGA section of the Whatcom County
Comprehensive Plan on July 26, 2016. In accordance with this
Resolution, the County is reviewing proposed amendments to the
Cherry Point section of Chapter Two – Land Use of the Comprehensive
Plan including provisions relating to environmental protection, water
usage, fossil fuel exports, and the number of piers allowed.

4. Growth Management Act (GMA) Planning Goal 11, relating to citizen
participation and coordination, is to "Encourage the involvement of
citizens in the planning process and ensure coordination between
communities and jurisdictions to reconcile conflicts" (RCW
36.70A.020(11)).

5. The GMA requires the County to establish and broadly disseminate a
public participation program identifying procedures providing for early
and continuous public participation in the development and
amendment of comprehensive land use plans (RCW 36.70A.140).
Whatcom County developed a Public Participation Plan to guide the
planning process and has followed that Plan.
6. The County Council's Proposal and two alternatives were posted on the County website on September 14, 2016.

7. The Whatcom County Planning Commission and Whatcom County Planning & Development Services Department held a combined town hall meeting/SEPA public hearing regarding the County Council Proposal and alternatives on October 13, 2016.

8. The Whatcom County Planning Commission conducted a work session, which allowed public comment, on October 27, 2016.

9. The Whatcom County Planning Commission conducted a work session, which allowed public comment, on November 10, 2016.

10. The Whatcom County Planning Commission held a public hearing on December 8, 2016.

11. The Whatcom County Planning Commission conducted a work session, which allowed public comment, on January 12, 2017.

12. Notices of these public meetings were sent to citizens, media, cities, Skagit County, Tribal governments, and other groups on the County's e-mail list on September 14, 2016, October 20, 2016, November 2, 2016, November 16, 2016, and December 9, 2016.


14. Notice of proposed amendments was submitted to the Washington State Department of Commerce on November 16, 2016 pursuant to RCW 36.70A.106.

15. A Determination of Non-Significance was issued under the State Environmental Policy Act on November 22, 2016.

**Whatcom County Code - Approval Criteria**

16. Pursuant to Whatcom County Code 2.160.080, in order to approve comprehensive plan amendments, the County must find the following:
a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.

c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.

d. The amendment does not include or facilitate spot zoning.

e. Amendments that propose the expansion of an urban growth area boundary are required to acquire development rights from a designated Transfer of Development Rights sending area, with certain exceptions including UGA expansions initiated by a government agency.

**Growth Management Act**

17. The GMA establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plans.
18. GMA Planning Goal 1, relating to urban growth, is to “Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner” (RCW 36.70A.020(1)).

19. GMA Planning Goal 5, relating to economic development, is to:

Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state’s natural resources, public services, and public facilities (RCW 36.70A.020(5)).

20. GMA Planning Goal 7, relating to permits, states “Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability” (RCW 36.70A.020(7)).

21. GMA Planning Goal 9, relating to open space and recreation, is to “Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities” (RCW 36.70A.020(9)).

22. GMA Planning Goal 10, relating to the environment, is to “Protect the environment and enhance the state’s high quality of life, including air and water quality, and the availability of water” (RCW 36.70A.020(10)).

23. GMA Planning Goal 13, relating to historic preservation, is to “Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance” (RCW 36.70A.020(13)).

24. The GMA requires that a comprehensive plan must be an internally consistent document (RCW 36.70A.070). Shoreline management program goals and policies are considered part of the County’s Comprehensive Plan (RCW 36.70A.480(1)).
25. The GMA requires consistency between the comprehensive plan and development regulations (RCW 36.70A.040(3)). Development regulations include shoreline management program regulations and zoning ordinances (RCW 36.70A.030(7)).

**Policy 2CC-2**

26. Existing Whatcom County Comprehensive Plan Policy 2CC-2 is to "Ensure that developments in the Cherry Point UGA maintain management plans to accomplish the goals of the Aquatic Reserve Management Plan."

27. The County Council Proposal would change Policy 2CC-2 to require that *existing* developments in the Cherry Point UGA maintain *and operate under* management plans that accomplish the goals of the Cherry Point Environmental Aquatic Reserve.

28. The Washington State Department of Natural Resources (DNR) originally issued the *Cherry Point Environmental Aquatic Reserve Management Plan* in November 2010, and amended the Plan in January 2017. The goals of this Plan (p. 2) are set forth below:

   Goal One: Identify, protect, restore and enhance the functions and natural processes of aquatic nearshore and subtidal ecosystems that support endangered, threatened and sensitive species and aquatic resources identified for conservation in the Reserve.

   Goal Two: Improve and protect water quality to maintain public health, support fish and wildlife species and healthy functioning habitats.

   Goal Three: Protect and help recover indicator fish and wildlife species and habitats, with primary focus on Cherry Point herring, Nooksack Chinook salmon, groundfish, marine mammals, seabird/duck and shorebird communities, Dungeness crab, and submerged native aquatic vegetation.

   Goal Four: Facilitate stewardship of habitats and species by working in cooperation with lessees, recreational users and federal, state and tribal resource agencies to minimize and reduce identified impacts of human activities on the species and habitats within the Reserve.
Goal Five: Identify, respect, and protect archaeological, cultural, and historical resources within the Reserve. Continue to respect the right of Washington’s tribes to use their own natural and cultural resources as recognized by treaties, statutes, executive orders, and court decisions.

29. The Cherry Point Environmental Aquatic Reserve Management Plan (DNR, amended January 2017) states:

... there are no existing use authorizations on state-owned aquatic lands within the Cherry Point Aquatic Reserve. The existing use authorizations are located in the “cutouts” directly adjacent to or abutting the reserve. DNR cannot alter the terms and conditions of an existing lease, easement, or other use authorization without consent of the tenant or grantee.

This management plan does not alter existing contractual rights and obligations. Existing tenants or grantees may continue to conduct their activities in conformance with their current use authorization and in compliance with other local, state and federal regulations. DNR will encourage voluntary and cooperative efforts of existing lessees to implement the elements of this plan (p. 50).

30. The Washington State DNR encourages voluntary/cooperative efforts of existing aquatic lease-holders to meet the goals of the Cherry Point Environmental Aquatic Reserve Management Plan. Consistent with this approach, the Whatcom County Planning Commission recommends retaining existing Policy 2CC-2 with no changes.

31. The County Council Proposal would also change Policy 2CC-2 to ensure that future developments or expansions within the Cherry Point UGA are consistent with the following:

a. Clean-energy and low-carbon emitting industries are favored;

b. Strict avoidance of estuaries and near-shore wetlands, as they play not only an important role in protecting habitat, but also serve as flood storage areas in the absorption of future sea level rise;

c. Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
d. Any proposed new development is consistent with an archaeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;

e. Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

*Clean Energy / Low Carbon Industries*

32. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016, which reviewed the County Council Proposal. In relation to favoring clean energy and low carbon industries, this memo states that “The word ‘favored’ operates as a general guideline and is an appropriate statement of policy. The manner in which such industries would be favored is left to subsequently enacted regulations” (p. 3).

*Near Shore Wetlands*

33. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. In relation to near shore wetlands, this memo states that “‘Strict avoidance’ appears to be a specific regulation and likely would not be enforceable through the Comprehensive Plan. Regulations would be required to implement this rule” (p. 3).

*Shoreline Hardening/Bulkheads*

34. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. In relation to shoreline hardening and bulkheads, this memo states that “The absolute prohibition here is a clear regulation and likely would not be enforceable through the Comprehensive Plan. Regulations would be required to implement this rule” (p. 3).

35. Whatcom County Comprehensive Plan Policy 10L-6 is to:

Discourage shoreline armoring. Instead, encourage natural or bio-engineering solutions such as planting native vegetation, engineered log jams/LWD, and beach nourishment along eroding banks to address stream and shoreline bank erosion problems. Riparian buffers should be replanted with suitable native vegetation as a part of all bank stabilization projects.
36. Whatcom County Shoreline Management Program policy 23.100.130.A.3 states:

New or expanded structural shore stabilization should only be permitted where demonstrated to be necessary to protect an existing primary structure that is in danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.

37. Whatcom County Shoreline Management Program regulation 23.100.130.B.1.a states:

New or expanded structural shore stabilization for existing primary structures, including roads, railroads, public facilities, etc., is prohibited unless there is conclusive evidence documented by a geotechnical analysis that there is a significant possibility that the structure will be damaged within three years as a result of shoreline erosion caused by stream processes, tidal action or waves, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes. . .

38. Whatcom County Shoreline Management Program regulation 23.100.130.B.1.d states:

Where shore stabilization is allowed, it shall consist of “soft,” flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are infeasible.

39. Whatcom County Shoreline Management Program regulation 23.100.130.B.2.b states:

Bulkheads and other similar hard structures are prohibited on marine feeder bluff and estuarine shores, and on wetland and rock shores; provided, that such structures may be permitted as a conditional use where valuable primary structure(s) are at risk and no feasible alternatives exist and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.

40. The Whatcom County Shoreline Management Program already contains a set of policies and regulations relating to shoreline stabilization. These policies and regulations only allow shoreline hardening if specific conditions are satisfied. However, they do not
create an absolute prohibition on shoreline hardening in the Cherry Point Management Unit or other shorelines in the County. Because the Whatcom County Comprehensive Plan (Chapter 10) and the Shoreline Management Program already address shoreline hardening, an additional policy in the Comprehensive Plan (Chapter 2) is not necessary.

Archaeological Study

41. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. In relation to archaeological study, this memo states that:

This bullet point requires that development be “consistent with” the standards of a particular study. It also requires a specific procedure—review of the study by the Lummi Nation. These rules appear to be more regulation than policy, and possibly more appropriate for specific regulations than the Comprehensive Plan. . . (p. 3)

42. Archaeological resources are currently addressed in Whatcom County Comprehensive Plan Goal 2AAA and associated policies, Whatcom County Shoreline Management Program section 23.90.070, Whatcom County Building Codes section 15.040.020.B.3, and the SEPA review process.

43. Whatcom County Comprehensive Plan Goal 2AAA is to:

Recognize Whatcom County’s historical and archeological attributes and identify and encourage the preservation of lands, sites, and structures that have historic or archeological significance.

44. Whatcom County Shoreline Management Program regulation 23.90.070.B.1.a states:

Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural or archaeological resource(s), the county shall require a cultural resource site assessment; provided, that the provisions of this section may be waived if the administrator determines that the proposed development activities do not include any ground disturbing activities and will not impact a known historic, cultural or archaeological site. . .
45. The Whatcom County Building Codes section 15.040.020.B.3 states:

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 project’s location is within an archaeologically sensitive area and Federal, State and Tribal Laws and Regulations pertaining to cultural resources may apply.

*Water Recycling*

46. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. In relation to water recycling, this memo states:

The requirement that development ‘shall’ utilize particular technology is clearly a specific regulation. This requirement likely is not enforceable through the Comprehensive Plan. Regulations would be required to implement this rule (p. 3).

47. Whatcom County Comprehensive Plan Goal 10-1 is to “Support water conservation, reclamation, reuse measures, and education as a means to ensure sufficient water supplies in the future.” Additionally, Comprehensive Plan Policy 10I-1 is to “Support and assist water users in the development of cost-effective means of improving efficiency of water use.”

*New Policy 2CC-3*

48. In response to the Civil Deputy Prosecuting Attorney’s advice, and the fact that some of the above issues are already addressed by existing policies and/or regulations, the Planning Commission recommends a new Policy 2CC-3 (severed from Policy 2CC-2, as proposed by the County Council) to:

Encourage that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean and low carbon emitting technology;
- Avoidance of estuaries and near shore wetlands;
- Archeological review; and
- Water recycling technology to minimize water use.
49. This policy language is not regulatory in nature. Additionally, it does not conflict with existing policies or regulations.

**Policy 2CC-11**

50. Whatcom County Comprehensive Plan Policy 2CC-10 currently states:

   It is the policy of Whatcom County to limit the number of piers at Cherry Point by establishing a development moratorium. Notwithstanding the above, this moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.

51. The County Council Proposal would change this policy to prohibit additional industrial piers in the Cherry Point area.

52. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. This memo states:

   This policy purports to limit the number of piers in the area to the three existing piers. Regulations should be developed to implement this policy. It should be noted that this policy would be subject to any vested projects or settlement agreements already in place.

53. The GMA requires internal consistency between the Comprehensive Plan and Shoreline Management Program.

54. Whatcom County Shoreline Management Program policy 23.100.170.A.1.c states:

   ... water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.

55. Whatcom County Shoreline Management Program regulation 23.100.170.B.4.a, which also relates to the Cherry Point Management Area, states:

   ... Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to one pier, in addition to those in operation as of January 1, 1998.
56. The Planning Commission recommends amending Policy 2CC-11 (formerly 2CC-10) to indicated that it is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point, consistent with "...existing vested rights, approvals or agreements granted under Whatcom County's Shoreline Master Program..." and other factors including local laws, state laws, federal laws, and treaties. This approach maintains consistency between the Comprehensive Plan and Shoreline Management Program policies and regulations.

**Policy 2CC-15**

57. The County Council's proposed new Policy 2CC-14 (re-numbered 2CC-15 in the Planning Commission version) states:

In recognition and support of the existing federal law protecting the unique ecosystem of Puget Sound/the Salish Sea, as reflected in the Magnuson Amendment to the Marine Mammal Protection Act, 33 USC Sec. 476, and to protect human and environmental health, the County shall adopt County regulations and rules such that:

No officer, employee, or other official of Whatcom County shall issue, amend, renew, grant, or otherwise approve any easement, vacation of right-of-way, permit, license, or any authorization or entitlement of any kind under County authority that could be in conflict with the 33 USC Sec. 476.

The Whatcom County zoning code, development regulations, and SEPA policies shall reflect and implement this policy directive.

58. The Magnuson Amendment (33 USC Sec. 476) states:

...no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of October 18, 1977), other than oil to be refined for consumption in the State of Washington.
59. The United States Court of Appeals for the Ninth Circuit interpreted the Magnuson Amendment in the case of *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846 (9th Cir. 2005) stating:

... When analyzing capacity, courts should therefore not look to the capacity of the refinery, but rather to the capacity of the terminal. Such an understanding is supported by the legislative history of the amendment; just before passage of the amendment, Senator Magnuson remarked: “In fact, the amendment only applies to construction or alteration of dock facilities in the Puget Sound region, not to refineries as such”...  

60. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016 stating:

... the federal Magnuson Amendment restricts the flow of interstate commerce by erecting a barrier against the movement of interstate trade (“domestic and international traffic of tankers” 33 U.S.C.A. § 476). This is the legitimate province of federal regulation. Interstate commerce is not the province of State or County regulation. Put simply, Whatcom County... has very limited power to erect barriers to interstate trade. If Whatcom County were to mirror the Magnuson Amendment and thereby erect a similar local barrier against the movement of interstate trade, it would risk violating the Commerce Clause of the United States Constitution... (p. 4).  

61. The Civil Deputy Prosecuting Attorney’s memorandum dated October 14, 2016 also stated:

... if a Whatcom County version of the law was applied differently from the federal version on the same facts, the resulting discrepancy could subject Whatcom County to a potential lawsuit in which the County would have a tenuous position. Note that the Magnuson Amendment is enforceable whether or not Whatcom County introduces redundant local legislation. Thus, Whatcom County can already enforce the Magnuson Amendment through the federal law without the risk of embroiling itself in a lawsuit over whether a County can enforce federal law via its own version.... (p. 5).  

62. Whatcom County Comprehensive Plan Policy 2D-1 is to “Eliminate unnecessary regulations.”
63. The Federal government already regulates permits for increased handling of crude oil at marine terminals in the Puget Sound region. It is not necessary to duplicate federal regulation at the local level, especially in light of the legal risks outlined above.

64. The Planning Commission recommends text and policy language that the County will encourage federal agencies to enforce the provisions of the Magnuson Amendment and that, if necessary, Whatcom County may initiate legal action to enforce the provisions of the Magnuson Amendment. This approach avoids the legal risks associated with creating a new County law that parallels federal law. Rather, it would seek enforcement of existing federal law.

Policy 2CC-16

65. The County Council’s proposed new Policy 2CC-15 (re-numbered 2CC-16 in the Planning Commission version) states:

   . . . the County shall undertake a study to be completed by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County can work to limit unrefined fossil fuel exports from the Cherry Point UGA above levels in existence as of July 5, 2016. The study shall review and analyze any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice public as part of the study report.

   - Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.

   - Until the above mentioned amendments are implemented, the Prosecuting Attorney and/or the County Administration shall as soon as is practicable, and before any permissions are granted by the County, provide the County Council written notice of all known pre-application correspondence or permit application submittals and notices, federal, state, or local, that involve activity with the potential to expand the export of fossil fuels from Cherry Point.

66. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016 stating that “This section directs that a specific study be completed by a date certain. Though
very directory, this language is likely acceptable, as the study is not itself a regulation . . . " (p. 5). However, he also indicates that bullet point # 2 " . . . contains specific administrative direction, which is clearly not policy. It might not be enforceable through the Comprehensive Plan. Regulations would be required to implement this rule."

67. It is noted that the Cherry Point Environmental Aquatic Reserve Management Plan (DNR, amended January 2017) states, under the heading "Prohibited Uses," that "DNR will not authorize cross-channel cable or pipeline installations within or directly adjacent to the reserve" (p. 54).

68. The Planning Commission recommends several changes to the Council Proposal (now re-numbered as Policy 2CC-16). First, the Commission recommends that the study be completed by December 2018, rather than December 2017. Second, the Commission recommends study of crude oil, coal, and natural gas exports (as "unrefined fossil fuel" is not defined). Third, the Commission recommends that notice "should" be provided to the County Council, in order to make the language more policy oriented (rather than regulatory).

**County-wide Planning Policies**

69. The GMA requires counties to adopt county-wide planning policies in cooperation with cities. County-wide planning policies provide a framework from which county and city comprehensive plans are developed and facilitate consistency between comprehensive plans (RCW 36.70A.210). County-wide Planning Policies are contained in Appendix C of the Whatcom County Comprehensive Plan.

70. County-wide Planning Policy E-3 states:

Cherry Point shall be designated as an unincorporated industrial urban growth area in recognition of existing large scale industrial land uses. Additional large scale development shall be encouraged consistent with the ability to provide needed services and consistent with protecting critical areas along with other environmental protection considerations. The Cherry Point industrial area is an important and appropriate area for industry due to its access to deep water shipping, rail, all-weather roads, its location near the Canadian border, and its contribution to the County's goal of providing family wage jobs.
71. **County-wide Planning Policy I-2 states:**

New business development and expansion of existing businesses are key factors in providing "family wage" jobs and a strong tax base. Economic development that pays family wage rates should be encouraged. Industrial land designations must be sufficient to permit the concentration of industry in appropriate locations beyond 20 years. In order to attract new industry and provide for expansion of existing industries, the county and the cities will designate land supply of sufficient size and diversity to provide a range of suitable locations for industrial development. The designation of this land shall be established in a way that preserves natural resource based industries and critical areas.

72. **County-wide Planning Policy I-5 states** "... Economic development shall be coordinated with environmental concerns to protect the quality of life. . . ."

73. **County-wide Planning Policy I-8 states:**

   Economic development should be encouraged that:
   a. Does not adversely impact the environment;
   b. Is consistent with community values stated in local comprehensive plans;
   c. Encourages development that provides jobs to county residents;
   d. Addresses unemployment problems in the county and seeks innovative techniques to attract different industries for a more diversified economic base;
   e. Promotes reinvestment in the local economy;
   f. Supports retention and expansion of existing businesses.

74. **County-wide Planning Policy I-11 states:**

Whatcom County encourages siting of industrial uses in proximity to and to further utilization of our access to deep water and port facilities for shipping, rail, airports, roadways, utility corridors and the international border.

75. **County-wide Planning Policy N-1 states:**

The cities, and the county, in cooperation with other municipal corporations, tribal governments, federal and state agencies, and public and private utilities shall cooperate in the protection of water resources and in drawing upon said water to support growth.
76. The Cherry Point UGA goals and policies, including the subject amendments, recognize the importance of both industrial development and the environmental assets of the area. The Comprehensive Plan amendments are consistent with the County-wide Planning Policies.

**Interlocal Agreements**

77. Inter-local agreements between Whatcom County and the cities were approved in 2012. These agreements, which are valid through 2022, address a number of growth management planning issues including inter-jurisdictional coordination, urban growth area review, land capacity analysis, population and employment projections, and capital facility planning. These inter-local agreements do not specifically address Cherry Point.

**Further Studies/Changed Conditions**


79. The primary focus of the *Cherry Point Environmental Aquatic Reserve Management Plan* is to:

   ... protect, enhance and restore habitats used by Cherry Point herring stock, salmon, migratory and resident birds, Dungeness crab, groundfish rearing areas and marine mammals, as well as the protection of submerged aquatic vegetation and water quality... (p. 4).

80. The *Cherry Point Environmental Aquatic Reserve Management Plan* states:

   ... the aquatic environment of Cherry Point: provides essential habitat and irreplaceable biological and ecological functions; is a portion of Treaty-protected usual and accustomed (U&A) grounds and stations of local Native American Indians; and provides significant economic benefits, recreational opportunities and other social values... (pp. 4 and 5).

81. The *Cherry Point Environmental Aquatic Reserve Management Plan* recognizes that:

   ... A number of species and habitats addressed in this plan have experienced declines over the past 40 years, such as the
Cherry Point herring stock, which has shrunk from approximately 15,000 tons to between 800 and 2,100 tons over the last ten years. . . (p. 1).

82. Additionally, Puget Sound Partnership’s 2015 *State of the Sound – Report on the Puget Sound Vital Signs* indicates that “The Cherry Point herring stock in North Puget Sound, once the largest stock in the Sound, has declined by more than 90 percent since the earliest sampling date in 1973” (p. 45).

83. The *Cherry Point Environmental Aquatic Reserve Management Plan* specifically excludes certain areas, including the three existing industrial piers, from the Reserve (p. 11).

84. The Washington State Commissioner of Public Lands, who leads the DNR, issued an order on January 3, 2017 expanding the Cherry Point Environmental Aquatic Reserve to include an additional 45 acres, the site of a proposed fourth pier.

**Public Interest**


86. The Cherry Point UGA is a unique location, with important attributes, for industry. Existing industries provide high wage jobs and a substantial tax base (*Employment at Cherry Point*, Hodges and Beyers, 2014).

87. The Cherry Point UGA goals and policies, including the subject amendments, recognize the value of industrial uses and the importance of marine waters, fish and wildlife habitat, air quality, and archeological sites.

88. The amendments should not adversely affect the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

89. The amendments should not adversely affect ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
90. The subject amendments will not adversely impact designated agricultural, forest and mineral resource lands.

91. Whatcom County Charter Section 1.11 states, “The rights of the individual citizen shall be guaranteed under the Constitutions of the United States and the State of Washington. No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened.” The subject policy amendments do not unduly burden a property owner by leaving him or her without a reasonable use of his or her property, or otherwise deprive him or her of legally recognized rights.

92. GMA Planning Goal 6, relating to property rights, states “Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions” (RCW 36.70A.020(6)). The subject policy amendments do not take private property for public use.

93. The Cherry Point UGA goals and policies, including subject amendments, continue to allow industrial uses in the Cherry Point UGA, which provide family wage jobs and contribute to the tax base of the County and special purpose districts, while seeking to protect the environment of the area. Such planning is in the public interest.

Spot Zoning

94. “Illegal spot zoning” means a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole (WCC 20.97.186).

95. The subject proposal does not involve nor facilitate illegal spot zoning.
U.S. Constitution – Commerce Clause

96. The U.S. Constitution, Article I, Section 8 (the “Commerce Clause”) states “The Congress shall have power... To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

97. The Whatcom Planning Commission has been briefed by legal counsel from the Whatcom County Prosecuting Attorney’s Office on the Commerce Clause.

98. The Whatcom County Planning Commission has made changes to the proposal, and finds that the recommended amendments are not inconsistent with the Commerce Clause.

CONCLUSIONS

1. The Planning Commission’s recommended amendments are consistent with the GMA planning goals.

2. The Planning Commission’s recommended amendments satisfy the approval criteria of WCC 2.160.080.

RECOMMENDATION

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends:

1. Approval of Exhibit A, amendments to the Whatcom County Comprehensive Plan.
WHATCOM COUNTY PLANNING COMMISSION

Natalie McClendon, Acting Chair

Becky Boxx, Secretary

Date 1/19/17

Date 1/19/17

Commissioners present at the January 12, 2017 meeting when the vote was taken: Atul Deshmane, Gary Honecoop, David Hunter, Natalie McClendon, Andy Rowlson, and Gerald Vekved.

Vote: Ayes: 5, Nays: 1, Abstain: 0, Absent: 3. Motion carried to adopt the above amendments.
EXHIBIT A

Planning Commission
Recommended
Cherry Point Amendments

January 12, 2017
Major Industrial Urban Growth Area / Port Industrial

Cherry Point

The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of industrial land. The land has long been planned and designated by Whatcom County for industrial development and is currently the site of three major industrial facilities including two oil refineries and an aluminum smelter. Together, these three existing industries own about 4,400 acres of the total Cherry Point industrial lands. A fourth large tract of undeveloped land constituting approximately 1,500 acres is designated for industrial development.

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has regional significance for the siting of large industrial or related facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point Refinery in 1971.

Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. The Lummi Nation and Western Washington University have identified an ancestral village dating back over 3,000 years ago in this area. The Cherry Point UGA contains sites of primary archeological and cultural significance.

Since the designation of this area for industrial development years ago, newer scientific study of the shoreline ecology has identified Cherry Point's unique function as part of the Fraser River/Georgia Strait and greater Salish Sea ecosystem and the associated Cherry Point Aquatic Reserve has been designated by the state Department of Natural Resources to recognize the ecological importance of the aquatic lands in this area.

Since adoption of earlier versions of this Comprehensive Plan, governments have increased their recognition of the observed and projected effects that fossil fuel extraction, transportation and use have on human health and the environment. The Cherry Point UGA contains the second-largest emitter of carbon pollutants (primarily CO₂, which was ruled air pollution by the US Supreme Court in 2007) in Washington State (Ecology, June 2016). Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20-year planning period.
Environmental

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington State. This herring stock has supported important commercial fisheries in the past and provides forage for salmonids and other important marine species. In 2000, 2010, and 2017 the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program and designated them as the “Cherry Point Aquatic Reserve.” The following DNR Use Authorizations are exempted from withdrawal: Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66), 20-A08488 (Intalco Aluminum Corporation), and 20-010521 (Birch Bay Water and Sewer District). In December 2010, the DNR recognized the need to “protect the significant environmental resource of aquatic lands at Cherry Point” (CPAR Management Plan p. 1), and completed the Cherry Point Environmental Aquatic Reserve Management Plan and designated the Cherry Point Aquatic Reserve to ensure long-term environmental protection of the area Aquatic Reserve. The Reserve extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.

The overall purpose of the Cherry Point Aquatic Reserve (CPAR) is to ensure long-term environmental protection for local habitats and species (CPAR MP p. 1). Specific goals include protection and recovery (as applicable) of Cherry Point herring, Nooksack Chinook salmon, ground fish, marine mammals, seabird/duck and shorebird communities, Dungeness crab, and submerged native aquatic vegetation (CPAR MP p. 2). Another goal is to cooperate with other stakeholders “to minimize and reduce identified impacts of human activities on the species and habitats within the Reserve” (CPAR MP p. 2).

The Management Plan acknowledges that the existing industries, complying with laws and regulations, do not conflict with the Aquatic Reserve although their activities may pose risks for the Aquatic Reserve. Indeed, the industries’ need for buffer space and their compliance with shoreline management requirements means that much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing shoreline and upland stream and wetland functions and values are of continuing importance to the recovery and protection of species identified in the Aquatic Reserve Management Plan. The area includes undeveloped intertidal wetlands with importance to juvenile salmon and other species. Existing industries can serve the Aquatic Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees actively work to further goals for the Reserve (CPAR MP p. 2).
The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major industrial developments. Based on the public record developed during this plan review and best available science in the record, the County supports a limit on the construction of additional export docks or piers at Cherry Point due to environmental and treaty right concerns related to: (a) physical interference with shoreline functions and values; (b) physical interference with traditional, historic and commercial fishing and shellfish harvesting at the Cherry Point shoreline; and (c) the increased risk of catastrophic and cumulative small oil and fuel spills from increased large vessel traffic, potential collisions with tankers and other vessels serving the existing three piers at Cherry Point, and related barge traffic and support vessels (see Policy 2CC-11).

These characteristics were articulated in the Overall Economic Development Plan (OEDP) for Whatcom County adopted by the Whatcom County Council of Governments in May, 1993, in the 1997 Property Counselors Report on supply and demand for industrial land in Whatcom County and at Cherry Point, the 2002 Greater Whatcom Comprehensive Economic Development Strategy, the 2003 Whatcom County Industrial Land Study, and the 2015 Whatcom County Comprehensive Economic Development Strategy.

The United States Congress approved the "Magnuson Amendment" in 1977 in order to restrict tankers carrying crude oil in the Puget Sound area. Congress found that Puget Sound and the adjacent shorelines were threatened by the increased possibility of vessel collisions and oil spills. Therefore, Congress restricted federal agencies from issuing federal permits as follows:

. . . no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of October 18, 1977), other than oil to be refined for consumption in the State of Washington.

Whatcom County does not enforce the Magnuson Amendment through the local permitting process. However, the County can encourage federal agencies to enforce the Magnuson Amendment and may, if necessary, seek to enforce the Magnuson Amendment through the court system (see Policy 2CC-15).

Cherry Point UGA Features

The characteristics that make Cherry Point unique as a site for major industrial developments include the following:
Port Access—

The marine waters off Cherry Point provide deep water access for shipping. Deep water access for shipping was a major siting consideration for the three major industries currently located at Cherry Point and for the industrial/shipping facilities currently being proposed.

Rail Access—

Cherry Point is served by a branch line of the BNSF Railway’s Burlington Northern mainline serving western Washington—from Blaine to Portland. Rail service is considered to be vital to statewide as well as local interests for the competitive movement of freight. Rail service is particularly important in relation to waterborne commerce. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. Cherry Point industries use rail to ship and receive multiple feedstocks and products. The BP refinery at Cherry Point uses the railroad to ship calcined coke to U.S. markets and to other port facilities for transshipment to foreign markets. Both the Cherry Point Refinery and the Ferndale Refinery BP and Phillips 66 refineries receive crude oil shipments by rail.

Proximity to Canada, Alaska and Foreign Ports—

Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to and from Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for commercial or industrial production with emphasis on major sustainable clean energy manufacturing or production (see Policy 2CC-3). The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Compared to other port facilities in Washington and Canada, Cherry Point is not constrained by extensive upland development or vessel draft limitations. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.

Presence of Necessary Utilities and Infrastructure

Cherry Point is a major industrial area in Whatcom County. The Phillips 66-Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works-Aluminum Smelter in
1966, and the BP-Cherry Point Refinery in 1971. The infrastructure to support these
industries and future industrial users at Cherry Point is in place and includes the
following:

**Electric Power:**

Electric Power is available from three providers in the Cherry Point area: Puget
Sound Energy, Public Utility District #1 (PUD #1), and Bonneville Power
Administration.

Puget Sound Energy owns two electrical generating facilities at Cherry Point. The
electricity generated by these two facilities can be transmitted outside the region
into the grid for supply to Puget's customers or some of it can be consumed by
Cherry Point customers through interties with the PUD #1. Puget Sound Energy
also acquires power from outside the region and transmits it via their transmission
grid into Cherry Point. The BP-Cherry Point Refinery purchases electrical supply on
the market and pays Puget Sound Energy to transmit the power and operate
distribution systems to provide that power to the refinery.

PUD #1 purchases electricity from the Bonneville Power Administration and takes
ownership of that power at the Bonneville substation in Bellingham and then
transmits it over its transmission line to Cherry Point to serve the Phillips 66
Ferndale Refinery.

PUD #1 and Puget Sound Energy have interties at Cherry Point allowing the
transmission of power in and out of Cherry Point depending on the amount of power
generated and consumed at Cherry Point.

The Bonneville Power Administration supplies power directly to the Alcoa Intalco
Works aluminum production facility.

**Water:**

Whatcom County Public Utility District #1 currently provides industrial process
water to all major industrial facilities at Cherry Point and has additional water
available contracts in place to provide process water to properties that are currently
undeveloped. PUD # 1 also operates a small system to provide potable water to
one industry (Praxair). Birch Bay Water and Sewer District provides potable water
to the BP-Cherry Point Refinery. The other industries operate their own water
treatment facilities to provide potable water for their facilities. Existing industries
consume large quantities of water, in many cases drawn from the Nooksack River.
It is the County's policy to support renewed efforts to reduce both water
consumption levels and the quantity of discharges, in favor of recycled water use
(see Policy 2CC-3 and Policy 2CC-10).
Sewer:

Sewer service is not typically required for large industrial developments. Most of the existing industrial users provide their own on-site sewage treatment and waste water treatment. Sewer service for domestic wastewater is provided to the BP Cherry Point Refinery by the Birch Bay Water and Sewer District. If and when sewer service should become necessary for other industries, service could be provided on a contractual basis with the Birch Bay Water and Sewer District, which borders the Cherry Point industrial area on the north.

Natural Gas:

Natural gas is currently available at Cherry Point.

All-weather Roads:

Grandview and Slater roads, the major east-west connectors between Cherry Point and Interstate-5, provide all-weather road access to Cherry Point.

Use Compatibility and Land Use Designation

The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom County and the region and the economic welfare of the county is strongly tied to the health of these industries and their ability to flourish and expand as opportunities present themselves. These industries need to be protected from the inappropriate encroachment of incompatible uses; particularly residential uses that could affect their ability to expand, at the same time, the expansion of these industries needs to be done in ways that do not significantly impact the ecology of the Salish Sea. The best means for protecting these industries from incompatible adjoining uses and to assure their continued regulatory conformity is to maintain the industrial land use designation of these lands and adjoining properties currently designated for industrial development. The Cherry Point industrial lands have been designated for industrial development and as a direct result of the industrial designation, incompatible and inappropriate residential development has been curtailed.

Goal 2CC: Maintain Cherry Point as an unincorporated urban growth area based on its unique location, and characteristics and its significant contribution to the overall industrial land supply and Whatcom County’s tax base.

Policy 2CC-1: Designate Cherry Point as a major industrial Urban Growth Area to accommodate major users that need to be located away from concentrated urban residential areas and that can manage their activities in such a way that they do not conflict with the goals of the Aquatic Reserve Management Plan.
Policy 2CC-2: Ensure that developments in the Cherry Point UGA maintain management plans to accomplish the goals of the Aquatic Reserve Management Plan.

Policy 2CC-3: Encourage that future developments or expansions within the Cherry Point UGA are consistent with the following:
- Clean and low carbon emitting technology;
- Avoidance of estuaries and near shore wetlands;
- Archeological review; and
- Water recycling technology to minimize water use.

Policy 2CC-43: Assure that Cherry Point's unique features of large parcelization, port access, and pipeline, vehicular and rail transportation availability are maintained and protected from incompatible development.

Policy 2CC-54: Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

Policy 2CC-65: Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

Policy 2CC-76: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

Policy 2CC-87: Permit support activities, warehousing, shipping, machine repair and service, educational services, food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-98: Exclude Cherry Point as part of any future incorporation of Birch Bay.
- to protect interests of the property owner in terms of taxation and urban regulations;
- to preclude urbanism near "smokestack" industries;
- to preserve county government tax base.
Policy 2CC-109: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential, consistent with other County policies supporting energy and water conservation.

Policy 2CC-111: It is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point, consistent with:

- existing vested rights, approvals or agreements granted under Whatcom County's Shoreline Master Program;

- continued agency use of best available science;

- Whatcom County's application of the Shoreline Management Act, the Whatcom County Shoreline Master Program, Whatcom County Comprehensive Plan, Whatcom County Critical Areas Ordinance and other applicable local plans, laws and regulations including, without limit, the fire, mechanical and electrical codes adopted by Whatcom County;

- state agencies' application of state laws and regulations including without limit the State Environmental Policy Act, Washington Indian Graves and Records Act, the Washington Archaeological Sites and Resources Act, the state Energy Facility Site Location Act, limitations imposed by the Cherry Point Aquatic Reserve Management Plan; and the federal Clean Water Act as delegated to the State of Washington; and

- federal agencies' application of federal laws, regulations, and treaties including without limit the National Historic Preservation Act, Clean Water Act, Clean Air Act, Endangered Species Act, U.S. Coast Guard regulations regarding vessel operations, and the Magnuson Amendment to the Marine Mammal Protection Act.

by establishing a development moratorium. Notwithstanding the above, this moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.

Policy 2CC-121: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major
Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-1342: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.

Policy 2CC-1443: Cooperate with the DNR and existing industries to monitor the effects of industrial activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.

Policy 2CC-15: Whatcom County will encourage federal agencies, including the U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson Amendment (33 USC Sec. 476). If necessary, Whatcom County may initiate legal action to enforce the provisions of the Magnuson Amendment.

Policy 2CC-16: The County shall undertake a study to be completed by December of 2018 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County can work to limit crude oil, coal, and natural gas exports from the Cherry Point UGA above levels in existence as of July 5, 2016, and attract and support clean and low carbon industry. The study shall review and analyze any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice public as part of the study report.

- Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.

- Until the above mentioned amendments are implemented, the Prosecuting Attorney and/or the County Administration should provide the County Council written notice of all known pre-application correspondence or permit application submittals and notices, federal, state, or local, that involve activity with the potential to expand the export of fossil fuels from Cherry Point.
- Cherry Point Urban Growth Area

Major Port/Industrial UGA
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 at 6:30 p.m.

Roll Call
Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowison, Atul Deshmane

Staff Present: Mark Personius, Matt Aamot, Jessie Roberts

Department Update

Mark Personius updated the commission on the following:

The Supreme Court decision regarding water.

Open Session for Public Comment

Carole Perry, Whatcom County: Stated that on most occasions the Planning Commission has very few people attending. She was pleased to see the large crowd. At a previous meeting one of the commissioners said that the Pledge of Allegiance should not be said at the meetings. She felt that was wrong.

Chet Dow, Whatcom County: Addressed a letter he had sent to the Planning Commission regarding the changes to the Council districts and how it affects the members of the Planning Commission. The letter originated from the non-profit group Common Threads. The legitimacy of the commission’s deliberations was called into question.

Royce Buckingham-Whatcom County Prosecuting Attorney’s Office addressed Mr. Dow’s concerns. He stated the county will not be removing all of the current members and replacing them. The transition is complicated and is being worked through.

Commissioner Comments

Commissioner McClendon asked the members of the public that have comments be very specific what their concerns are.

Commissioner Hunter addressed his previous comments regarding the Pledge of Allegiance. He asked the commission to think about what it means to be an American and what it means to be patriotic. There are lots of different ways to demonstrate patriotism. Saying the Pledge of Allegiance is a very easy way to appear to be patriotic. There are hard day to day jobs which embody patriotism.

Commissioner Rowison asked that boarding of horses be added to the list of pending business items. The commission agreed.
Approval of Minutes

September 8, 2016: Commissioner Rowlson amended page 7, line 1 to add:
Commissioner Rowlson asked Mr. Personius if the Planning Department supported the proposed amendment. Mr. Personius stated the Planning Department does not.

Commissioner Knapp moved to approve as amended. Commission Vekved seconded. The motion carried.

Town Hall Meeting/SEPA Review

File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

Matt Aamot presented the staff report and background of the proposal.

In 1997 Whatcom County designated Cherry Point as an urban growth area (UGA) under the Growth Management Act (GMA). The Cherry Point boundaries did not change in the 2009 or 2016 UGA review.

The Cherry Point UGA is approximately 7,035 acres in size. There are about 6,565 acres of Heavy Impact Industrial zoning and about 470 acres of Light Impact Industrial zoning.

On August 9, 2016 the Whatcom County Council approved an ordinance updating the Whatcom County Comprehensive Plan as required by the GMA. The Cherry Point section had some policy changes, including changes relating to the Department of Natural Resources Cherry Point Environmental Aquatic Reserve Management Plan, public access and monitoring water quality and habitat. These changes have been approved. Also that night, the Council approved an emergency ordinance that prohibited permits that would facilitate exports of unrefined fossil fuels through Cherry Point. That moratorium was good for 60 days. On September 27, 2016 the Council approved an interim ordinance which basically did the same thing as the emergency ordinance. This ordinance was good for six months. The interim ordinance also includes a definition of unrefined fossil fuels. The Council may want the Planning Commission to take a closer look at that definition.

On July 26, 2016 the Council approved a resolution requesting the Planning Commission review some additional proposed policies in the Cherry Point UGA. These policies are the subject of tonight's meeting. They include provisions relating to environmental protection, prohibiting additional industrial piers, prohibiting permits that would allow increased crude oil exports by ship and studying legal ways to limit unrefined fossil fuel exports. The Council would like the Planning Commission to develop recommendations on these issues by mid January 2017.
On September 13, 2016 the Council approved the Public Participation Plan for the Comprehensive Plan amendments. These Cherry Point amendments were classified as Level 3, which means that we are to consider and develop alternatives. Alternative 1 was proposed by an individual Council member. It includes: Encouraging environmental protection, no additional piers, except one already permitted in the 1990’s, and study legal ways to limit unrefined fossil fuel exports. Alternative 2 is the no action alternative and would retain the exiting Comprehensive Plan language with no changes.

The purpose of the meeting was to have the town hall meeting, as required by the Public Participation Plan and to seek public input on the proposal and alternatives. Another purpose of the meeting was to seek public comments under the State Environmental Policy Act (SEPA) requirement. It requires the county to make a threshold determination on the proposed amendments. This could be a determination of non-significance; a mitigated determination of non-significance or a determination of significance, which would require an Environmental Impact Statement (EIS). The county is seeking information from the public, agencies and tribes prior to making the threshold determination.

The Commission will hold meetings October 27, November 10, December 8 and January 2017 (if needed). The Council will review the Planning Commission proposal in 2017.

The hearing was opened to the public.

Sandy Lawrance, Whatcom County: Spoke in favor of the proposal by Council. Several weeks ago, at another public meeting, he heard someone comment that the planet has been changing for millions of years, which he agrees with. The implication of that sort of statement is that it is hyper-variable, it is chaotic, and is totally unpredictable. That is far from the truth. There is lots that is known about climate science. There are two basic pitfalls regarding Earth’s climate. One is greenhouse gases and the other is variations in the planet’s orbit. Fossil fuels use have led to an increase in carbon dioxide, methane and nitrous oxide. We have known about the effect of greenhouse gases since the 1800’s. If we were not changing the Earth’s atmosphere what would be going on right now is a very gradual cooling. Instead we are going in the opposite direction at a rapid pace. We now have the highest surface temperatures in over 100,000 years. If we stop burning fossil fuels now we would still get to the highest temperature in over two million years. Anything that will hinder the continued use of fossil fuels is something that should be supported.

Dena Jensen, Whatcom County: This meeting is being held on land that was the traditional territory of the Lummi and Nooksack peoples. They nurture a relationship with the Coast Salish neighbors. She supported the Council resolution. She asked the commission to consult with the Lummi Nation in a comprehensive and meaningful way to understand and support the protections that they are seeking regarding their historic, cultural and spiritual resources at Cherry Point. The Lummi Nation was not
consulted when the proposal before you was originally drafted even though the
proposal seeks to take into consideration requests the Lummi Indian Business Council
made in letters to Whatcom County during the Comprehensive Plan process. At this
time we are fortunate to have some new studies done in areas close to ours that have
come forward. She asked the commission to review these studies in order to gain more
insights into ways to protect the valuable resources at Cherry Point. Take action to
offer the strongest investment possible for the wellbeing of our land, air, water and
landforms for these things keep our human community alive on Earth. It takes a great
deal of effort to do this. The necessary effort to enhance and protect the resources
creates jobs and will enhance and strengthen our existing lands. These are the types of
jobs that will truly support us as a strong and vibrant community.

Warren Sheay, Whatcom County: Supported the Council proposal. One reason to do
this is for homeland security. By preventing crude oil from being shipped overseas
from Cherry Point we will protect our land and our citizens from oil train derailments
and explosions which have occurred all over the country and which have resulted in
death and destruction of property and significant damage to the environment. Think
about denying this proposal. By allowing more train traffic how would you feel if we
suffered a deadly crude oil train accident, an accident that you could have helped
prevent. He would not want that on his conscious. Another very important reason to
pass the Council proposal is that by preventing crude oil from going to overseas
refineries it actually protects the existing refinery jobs at Cherry Point. There has been
a lot of hysteria and misinformation about this. He was suspicious that much of it
comes from the oil company management that is misleading workers into believing
their job security is being threatened. In fact, thanks to the Council proposal, it is
being protected. Many are on the side of the refinery workers.

Matt Krough, Whatcom County: Supported the Council proposal. Regarding Policy 2CC-
2 the statement: Clean energy and low carbon emitting industries are favored; there
should be a definition of what favored means. The final bullet refers to water. We have
heard about the lawsuit against the county regarding water. Any water restrictions or
any issues having to do with water should address that. He does support the language
in Alternative 1 regarding existing development which states: Work cooperatively with
all businesses to increase environmental protection. He does not agree with the
expansion but does agree making improvements to refineries to make them safer for
workers and the environment. Being allowed to export crude overseas could be the
route to outsourcing jobs. He supports the proposed Council language in 2CC-10.
Policy 2CC-14 is a statement of federal law. It is not taking federal authority from the
county. It simply states county regulations should be consistent with federal law.
Regarding Policy 2CC-15, in Alternative 1 the final bullet point is removed. It should
remain in the Council proposal.

Eddy Ury, Whatcom County: Representing Resources for Sustainable Communities. In
looking at these policies let’s stay with the details. What are the issues and goals? Is
there anything in them where we don’t achieve the goals in the best way that we can?
Write development regulations that are consistent with the County’s due authority
consistent with overriding state and federal law. That’s what these policies are about.
The people that are here need to take a hard look at what is in the policies. He would like to hear from the representatives from the industries, if they are going to speak against them, what specifically is wrong. What in these policies is a threat to anything they are planning to do? You think these policies are a big threat and somehow this is going to threaten the jobs at Cherry Point. We know these industries are a huge part of our economy and are really in no danger of going away anytime soon as long as we continue to use fossil fuels. There is no way that the county could preemptively shut down refineries. Nothing the county can do will regulate out industries at Cherry Point. These policies bring the county into compliance with what the state and feds have already decided in regards to respecting the Lummi Nation’s treaty rights. It has been determined that there will not be a fourth pier at Cherry Point. That would have to be overruled in a federal court of appeals. There are people who do want to overturn that decision. The fact that they want to change the law is not an argument for the county. They do not have that authority so should the Comprehensive Plan be inconsistent with the law? When we talk about jobs being threatened what actually is being threatened. BP is saying we are threatening to shut down the refineries and send off-shore jobs overseas by exporting crude oil, skipping the refining process and doing it somewhere that is cheaper.

Ron Colson, Whatcom County: Speaking on behalf of the Sierra Club. The Sierra Club fully endorses the inclusion of all aspects of the Weimer amendments. They issued this endorsement for two reasons. First, the Sierra Club is dedicated to protecting our environment and second, they want to protect the existing jobs at Cherry Point. You will hear comments from hardworking citizens who have been told that their jobs are threatened by these amendments. However, the exact opposite is true. Fossil fuel companies are claiming that if they are not allowed to export crude oil they will no longer be profitable and will be forced to close the refineries. If they are so unprofitable, without exporting unrefined fossil fuels, how are they able to afford to make such large philanthropic contributions to so many local non-profits? If crude oil exports are allowed it will be the fossil fuel companies themselves that will close the refineries and lay off most workers because it is cheaper to refine crude oil overseas and reimport the refined products back here. Remember that the primary obligation of all corporations is to increase shareholder value. In this case this would be best accomplished by laying off highly paid Whatcom County workers and shipping jobs to low paid foreign workers where environmental restrictions are virtually nonexistent. From an environmental perspective the Sierra Club recognizes that environmental damage would be inevitable if we allow the export of unrefined fossil fuels from Cherry Point. The damage will include the inability of emergency vehicles to cross railroad tracks due to the huge increase in oil train traffic through the county. There is the noise and air pollution caused by diesel locomotives. The constant danger of train derailment and damaging spills. The cumulative damage from unavoidable small spills and the risk of immediate damage due to large spills while moving unrefined fossil fuels from train cars into the transfer facilities. There is huge risk to the environmentally sensitive Cherry Point Aquatic Reserve. It is not a question of if it will happen, but when. The Sierra Club recognizes the hard working refinery workers by stating they are on their side. Don’t believe the wealthy and powerful fossil fuel
companies that want to fool you into believing that this is a choice between well paying jobs or a clean environment. We can have both.

Dirk Vermeren, Whatcom County: Supported the Weimer proposal. He recently retired from the oil drilling industry. Upon retiring he chose to live in Bellingham for the quality of life and what it has to offer. His professional background includes 35 years of industry experience in refinery operations, environmental safety, marketing, sales, and business development. He empathized with the refinery workers. He had been impacted with downsizing and has been involved in downsizing studies. From his experience marketing helps drive decisions in global industries. The regional market is study and strong and oil will continue to be in demand. Do we want to build an export refinery? Is that what we want in Whatcom County? What is the overall risk and the cost benefit? Increasing exports does not require more man power. Increasing the risk on land by rail and water is a major issue. He urged the Comprehensive Plan to take into account holistic long term goals of life in the county and consider the impacts on all stakeholders. There should be consideration of the integration with the Washington State Shoreline Management Act of 1971 which states: Shoreline use for all, environmental protection-increased risk from shipping and rail along the shore, and public access. How will increased rail traffic impact the economic viability of the Port of Bellingham development? People will not be able to access the facilities along the rail corridor.

Tony Larson, Whatcom County: President of the Whatcom Business Alliance. They have a Cherry Point coalition which is made up of industry workers, land owners, contractors and their employees, non-profits, school districts, fire districts, etc. Recently Carl Weimer invited the Cherry Point stakeholders to attend a meeting in order to better look at the issues. This was encouraging. They asked the commission to establish a period in which the public may submit alternative proposals for 2016 Comprehensive Plan amendments. They would like to work collaboratively to create a compromise. They asked that a SEPA threshold of significance be issued. There needs to be a supplemental EIS.

Michael Wolf, Senior Vice President of Asia Energy Services: They provide turnaround services to the oil and gas industries. They employ more than 2,000 workers on the west coast, many of which are Whatcom County residents. Oil is a commodity that many hate. He realized there have been incidents that have caused concern. The oil industry is highly regulated. There are many agencies and authorities overseeing the safe and reliable use of it. Given the strong economic benefits and responsible use of oil he supports the industry and encouraged the commission to do the same. We should focus our attention on safe, reliable and responsible use of oil that has proven to enhance the quality of life. We should not support unreasonable destruction of the industry.

Jessica Spiegel, Representing the Western States Petroleum Association: They are a paid group comprised of 25 companies that explore development transport of petroleum in five states. She addressed Councilmember Weimer’s proposal. Page 2, line 34 states: The Cherry Point UGA contains the second largest emitter of carbon air
persistence of Washington State. This section has a lot of environmental references that
require more study before being put in the Comprehensive Plan. The Cherry Point area
is unique in that it supports industry. Export of crude retains jobs...(inaudible).

Pete Romero, Whatcom County: His company employees 80 to 100 people at Cherry
Point and over 500 during turnarounds. A lot of people here rely on the industrial work
at Cherry Point. To say that the jobs will still be there if this proposal happens is a
farce. There is no way to maintain these quality jobs if you limit production and export.

Jill Macintyre-Witt, Whatcom County: Representing 7 billion people, the animals and
plants. She was happy to see the BP workers present so they could hear the
messages. It is true their jobs are threatened by climate changes. Worldwide
renewable energy has employed over eight million people.

Jeff TenPas, BAI Environmental Services: He encouraged the commission to continue
to promote the original language submitted earlier this year and remove all language
proposed by the council in recent months that negatively impacts the economic vitality
of the Cherry Point region. When the businesses of Cherry Point are affected the rest
of the local and regional economy are impacted. These businesses help provide the
quality of life we enjoy in Whatcom County and ultimately here in the United States.
They support the transportation network linking family and friends. They provide heat
for homes in Custer or on Alabama Hill and electricity to keep St. Joe’s operating
rooms lit. They continue to provide a stable source of energy for the West Coast
limiting the need for imports from other unstable global regions. The recent proposed
ban will devastate local jobs and the economy. Employees of the businesses located on
Cherry Point as well as contract companies like ours will be impacted. Cherry Point
refineries are the catalyst to this community’s economy. Let me remind you of the
jobs multiplier computed by the study done by staff from Western Washington
University and the University of Washington, published in October of 2014, that shows
that for one job in the Cherry Point area 3-5 others are supported. The study also
showed that the wages paid in the Cherry Point area supports directly or indirectly
15% of the wages paid in Whatcom County. The economic decision to limit or restrict
future expansion could be devastating to the local economy and the region. A few
examples of the “ripple effect” when contemplating restricting or prohibiting activities
on Cherry Point - the industrial base at Cherry Point contributes to increased
occupancy rates at the numerous Bellingham hotels, it brings diners to the local
restaurants and establishments, the businesses buy millions of dollars’ worth of goods
made or sold by local manufacturers and distributors. They seek loans from local
banks, the employees purchase and build new homes to keep the real estate sector
vibrant, and they buy food from local farm stands and grocery stores. I have
personally worked inside all the industrial sites at Cherry Point over the years. I have
also run, biked, hiked, mowed, planted and fished in this area for the past two
decades. These businesses are good neighbors to have in Whatcom County. They
operate world-class operations and continue to abide by high environmental standards.
I ask that you flat out reject this extreme proposal of the fuel export ban and eliminate
all negative language in the comprehensive plan.
Mike Levine, Whatcom County: Works for AirGas. There are a lot of people on both sides of the issue but remember those stuck in the middle. There are thousands of people who work at businesses that support the refineries. These people help build our community. Everyone in the room has benefited from these industries. This issue is not about right or wrong or all or nothing. This issue is about the importance of working together as a community to find an agreeable stance that allows people to maintain their employment which is vital to our economy and community. Our children hope to remain in this community and earn a family wage with good benefits. By keeping these industries here the county will have the tax resources necessary to support so much of what they do.

Pete Sim, Whatcom County: Employee of BP. Supports Alternative 2. The Weimer proposal does not analyze, under the current EIS that was done for the Comprehensive Plan, accordingly. The county should issue a determination of significance and should prepare a supplemental EIS. There is a good relationship between BP and Whatcom County and was built as a result of transparent cooperation. BP works very hard to maintain trust with county staff and the community. BP is looking forward to working in cooperation with the Planning Commission to develop Chapter 2 language that addresses their concerns and limits adverse impacts on their ability to do business in Whatcom County today and in the future.

Pat Simons, Whatcom County: Employee of BP. He was not in favor of the Weimer proposal. He could be in favor of a mutually agreed upon collaboration that has yet to be printed. Collaboration is essential. Industry has a lot to offer and should be a full part of the collaboration. Is the County Council interested in collaboration? He hoped so. Do not discourage local investment. The refinery has spent over 750 million dollars over the past decade to modernize the refinery.

Todd Taylor, Whatcom County: Speaking on behalf of the NW Building and Constructions Trades Council. They are the workers that do not work full time for the refinery. They are the ones that perform routine maintenance, etc. These jobs pay good wages and are essential to the members being able to provide for their families and help support the community. If the commission were not to adopt the Comprehensive Plan updates as originally written it would harm future opportunity and prosperity in Whatcom County and interfere with the legal property rights of Cherry Point land owners. Please support Alternative 2.

Kent Murray, Whatcom County: Since 1998 he has worked at four refineries and different engineering firms. Georgia Pacific has been closed, Intalco has been reduced and CH2M-Hill has closed their doors. A lot of this is due to regulations, crude prices, etc. Most of the work he has done has been projects to reduce emissions and OSHA issues. The 1,000 living-wage jobs from Georgia Pacific have not been replaced. The proposed language that intends to stop all export of unrefined crude products is very confusing. The list contains butanes, propane and other refined products. This language needs to be cleaned up. The Council has said they can replace the refinery jobs with high-tech clean industry jobs. Put your money where your mouth is. Show that those jobs have been invited to site here.
Ann Serwold, Whatcom County: Executive Director of the Ferndale Chamber of Commerce. Their organization’s mission is to encourage and support economic development in their community by supporting their businesses and creating a means to help them grow. She spoke in support of these businesses. Take into consideration allowing the input from the land owners at Cherry Point. Without their input and the chance to come to an agreement that works for everyone it forces these companies to conduct business in a way that inhibits their ability to grow and prosper. One of the council members had stated they had no idea if this moratorium was legal. That is a problem. We need to bring all investors to the table in making a decision of this magnitude. If we don’t what are we saying to all businesses who may want to come here in the future?

Alyssa Willis, Whatcom County: If this proposal goes through it will not allow for growth. She has an issue with what is listed as unrefined fuels. Refined fuels are listed which they should not be. This does not allow export of refined fuels which is a problem. If these businesses can’t export their product then they won’t stay here. If the businesses aren’t here the people who are employed there will also leave. She supports Alternative 2.

Tom Robins, King County: His company works at the refineries. The refineries trust his judgment in regards to environmental issues. The proposal affects what he does. It will make it difficult for him to get permits to do the work that needs done. This will kill these businesses.

Tyson Green, Whatcom County: Representing Williams and Northwest Pipelines. Williams Pipeline has been part of the community for over 60 years. They transport natural gas. Encouraged the commission to work with the land owners at Cherry Point to develop a plan that will support future opportunities and prosperity for the county. All of their pipelines meet or exceed safety requirements. They operate in a way that makes their company an asset to the community. They try to do this in a way that will not affect the environment. A healthy environment and healthy economy are not mutually exclusive. Economic ability and prosperity are the best tool in the community to ensure a healthy environment. When county government and businesses have a good relationship we can achieve wonderful things for the county.

Rick Stumph, Whatcom County: Works for JH Kelly, a contractor for the refineries. The businesses at Cherry Point are critical to the economic health of our community. They make numerous charitable donations to the county. Work should be done to come up with language that would allow them to stay competitive in a highly competitive global market. Asked the commission to not adopt any changes to the Comprehensive Plan until an EIS is done. Broad changes should not be made, but rather look at each proposal on a case by case basis. Asked the commission to look into the true impact of oil trains. A lot of those trains are coming here to refine product.

Max Perry, Whatcom County: Worked at Intalco. He spoke against the Weimer amendment. This issue came about because the Executive would not sign the
ordinance relating to the Comprehensive Plan if the Weimer proposal was part of it. So
they waited until the Executive was on vacation. They then passed the emergency
ordinance. There is no emergency. The proposal prevents propane and butane from
being exported. The Council needs to talk with the people that work out there to work
out a good plan.

Nathaniel Maddux, Whatcom County: Representing the local chapter of the
International Association of Machinists. They have over 600 employees in Whatcom
County. Whatcom County is the land of No. We are sending messages to businesses
both here and those potentially coming here that they can’t do what they want here.
We need to let them know that they can do what they are wanting to do here. By
doing this we end up eating the costs of the environmental impacts because we will be
paying for them one way or another.

Daryl Graves, Whatcom County: By limiting the number of train cars that can go
through the county the railroads will just make the cars bigger. Look at the
terminology.

Lee Newgent, Executive Director of Washington Building and Construction Trades. Has
seen a lot of business leave. Other communities have taken industry for granted,
especially paper mills. The regulations make businesses go elsewhere. We need to
support the 200 million dollars in tax revenue here. Bellingham has long been known
as an industrial town and maritime port. We need to get back to that idea and have
local people working in their community. There has been comments that the
environment and businesses at Cherry Point can’t work together. They have worked
together for 60 years. The businesses are the first responders on any incident. They
take safety seriously. They have the highest environmental standards in the U.S. None
of the employers have a problem with any EIS. They know they can mitigate anything
that may come up.

Brad Owen, Whatcom County: President of the Northwest Jobs Alliance. They promote
the growth of family wage jobs in the context of sound environmental practice. Cherry
Point industries have been good neighbors. They have provided thousands of family
wage jobs with health care and pensions. They contribute more than a million dollars
annually to local charitable organizations. Whatcom County Council’s proposed changes
to the Comprehensive Plan significantly threaten these socio-economic benefits that
are so critical to the welfare of Whatcom County. The adverse impacts on jobs,
housing, land use, economy, etc. must be studied. They ask that the county prepare a
supplemental EIS that addresses these matters. The subject of a fourth industrial pier
is not a dead issue. Until the property owners appeal rights have been exhausted there
is still a possibility that a fourth pier may be constructed. The property rights of Cherry
Point land owners must be respected. The Council resolution would de-value property
values by millions of dollars in the Cherry Point UGA. Like it or not fossil fuels provide
the only path to reduce emissions and a cleaner environment. The whole world relies
on fossil fuels for energy. Adding unnecessary regulations to the fossil fuel industry
only impedes the process to a cleaner environment and adds unnecessary costs to the
cost of living to those that can least afford it. The industries, for many years, have
been constantly working to improve our environment. They continually improve the facilities to reduce emissions, they have been involved in restoring over 200 acres of wetlands at Cherry Point, along with many other accomplishments. At this point the Cherry Point landowners are working on alternatives to the options on the table and they must be heard. They support Alternative 2. If, however, additional alternatives are submitted as part of a mission statement they reserve the right to move their support in that direction. The commission should only consider updates to the Comprehensive Plan that balance environmental concerns with economic opportunity.

Dustin Hoffman, Whatcom County: Family wage jobs for unskilled workers are very scarce. He had to work elsewhere to make enough money to afford to buy a home. In order to get a job locally he had to go to school. He got a degree in process technology from Bellingham Technical College in order to get a job at one of the industries at Cherry Point. He supports keeping the processing of hydrocarbons at the local refineries but the new proposal covers more than this and all growth at Cherry Point will be stifled. This is jobs people have been trained for. Those jobs will be affected by the proposal. The oil industry is a very competitive market and if companies can’t expand to meet that demand and build newer, safer and environmentally friendly structures the refining of fossil fuels will have to go elsewhere. There was once a paper processing plant in Bellingham that was a main source of local heavy manufacturing jobs that paid good wages. This company closed its doors in 2001. It appears as though it was becoming the policy not to invest in additional resources. He hopes this scenario isn’t being played out again in Cherry Point by politically ambitious individuals on the County Council who disregard people and families. The businesses at Cherry Point are not some nameless companies. They are made up of people who take pride in what they do and are good stewards to the communities and environment.

Karen Shorten, Whatcom County: She encouraged the commission to listen to the residents of Whatcom County and recognize who their decisions will impact most. She is the manager of Phillips 66 Refinery in Ferndale. She is proud to be providing energy and improving lives for all of their customers. She urged the commission to support the current and future viability of Cherry Point industries, protect the ability of the existing businesses to remain flexible and to adopt their operations to future market conditions. They recognize that the market is slowly changing and in order to remain competitive in the global market all businesses, not just refineries, need the freedom to respond to those changing market conditions, consumer demands as well as environmental regulations and continual improvement opportunities. Their Ferndale refinery has a strong history of safe, reliable and environmentally responsible operations. They have reduced their energy usage by 10 percent over a 10 year period. They have reduced their greenhouse gas emissions by 24 percent between 2011 and 2015. They are recognized by the U.S. EPA as an Energy Star refinery in three of the last four years. Their clean fuels projects will continue to yield benefits to air quality. Phillips 66 has a substantial positive impact on Whatcom County and northwest Washington. They are a proud corporate citizen. They provide jobs for over 400 employees and contractors. These jobs average over $100,000 per year. According to a 2014 study done by the Whatcom Business Alliance and United Way 24 percent of households are below the federal poverty level and struggle to find and
afford basic housing, food costs, etc. They ask that individual projects be evaluated
based on the merit of the specific proposals. Avoid blanket prohibitions that place
unnecessary restrictions on the refineries and limit their future flexibility. Exclude the
Weimer proposal from the Comprehensive Plan.

Gerry Arney, Whatcom County: Has worked at the Cherry Point refinery for almost 30
years. Businesses that are not allowed to expand and grow wither away and go away.
Once they go away they don’t come back and aren’t replaced by something else. He is
in favor of Alternative 2. If you restrict the refineries from expanding the county will
lose major industry. If you lose these industries you won’t have much left.

Todd Mitchell, Whatcom County: We now have middle class jobs in Whatcom County
because of the refineries. A new pier would allow for many of his coworkers to continue
to earn a middle class wage in a county that doesn’t have many other options. Many
workers who work in the construction of ship building, maintenance of ships, pilots,
seafarers, etc. are also are middle class residents of Whatcom County that have
chosen to live here and have come here since the refineries have been built. They
continue to come here because of the great things this county produces. Without the
tax base here we would not have the building they are in and the other amenities that
make it a great county. We have to continue to ensure that we are able to responsibly
steward our county.

Joe Wilson, Vice President of Pederson Brothers: They do heavy industrial steel
fabrication. They do a lot of work at the refineries. They support Alternative 2 mainly
because of the jobs issue. He stated he wanted to address how poorly written the
resolution is. There are unrefined by-products that are in the refining process. His
understanding of the proposal is that they could not get a permit to build a project
related to safety if it had anything to do with the unrefined by-products. His company
also builds equipment for air pollution control and water pollution control but they
could not get a permit for that as stated in the proposal. This resolution needs to be
thrown out.

Mike Culley, Representing Carpenters Local 70 and the workforce at Cherry Point: He
works in the scaffolding industry which is a support industry for the refineries. To have
good family wage jobs in the county is a blessing. A lot of places don’t have that
privilege. When certain industries go away they don’t come back. The contractors and
refineries have a strong bond. They have a safe business and if safety wasn’t involved
they would not be in business. Safety is always a priority. His company has affected
schools, charities, other businesses, etc. How do you calculate the thousands of other
people that have worked there and how they have affected the county? The refineries
give back millions in the form of charities. This has continued only because Cherry
Point has successfully grown safely and efficiently through the decades. Whatcom
County is an environmentally friendly and safe area. They find it egregious that their
local government seems to be putting limits on their livelihood.

Brian Ferguson, Whatcom County: Is in favor of Alternative 2. Is also in favor of
another pier. We need to grow the economy, not restrict it. He compared Cherry Point
and the refineries to the Boeing plant in Everett. They continue to grow even though there is a risk of a plane crashing. Our refineries are some of the cleanest and safest. If we try to push these industries away it will happen.

Matthew Hepner, Executive Director of Certified Electrical Workers of Washington State. Proposals like this drive away economic investment. Investments like this here can lead real solutions in climate change. The definition of unrefined fossil fuels needs to be thrown out. There is a concept called *Just Transition*. It revolves around getting away from fossil fuels and ensuring that workers keep their jobs. He supports Alternative 2.

Jerry James, Whatcom County: Supported the no action alternative. Asked the commission to not forget about the wages the refinery workers are making.

Joe Murphy, Whatcom County: Works at Phillips 66. Supports Alternative 2 because there is not a problem that needs to be solved. If the Council proposal is to go through there needs to be a determination of significance and an EIS done. Someone had stated these industries and jobs are not going away. That is naive. 20 years ago there was a lot of fear mongering in the timber industries and a lot of jobs were lost as the sawmills disappeared. The refineries compete for corporate support in order to keep running. This support helps modernize the plants, make it safer, cleaner and more efficient. They don't do projects that make these things go backwards. There are over two billion people in the world that do not have access to electricity. We can't get rid of fossil fuels because if we do that number will go up. Those people burn wood and charcoal for their energy. What we should be talking about is how do we more responsibly use the fossil fuels that are have. The refineries at Cherry Point are some of the safest in the world. If we restrain those businesses they will end up leaving.

Pam Brady, Whatcom County: Works at BP. Asked the commission to clarify the process by which they will be accepting public input. It is an unusual process to have a town hall meeting to review SEPA. It is unclear what the county's process will be in the future. The county should accept Alternative 2 which has already received a full public process. Absent that the commission should postpone the Cherry Point UGA amendments until 2017 to be in alignment with the GMA requirement that counties update comprehensive plans once a year. Or they could take action to establish a period within this process were the public may submit its own alternatives and proposals. The county should issue a SEPA threshold determination of significance and prepare a supplemental EIS. It is clear the Council did not contemplate the proposal. She stated concern that the process is moving too quickly and the pace will prevent the county from getting meaningful input from effected citizens and the companies and may expose the county to challenges regarding non-compliance of public notice and comment requirements. There is no need to amend the Comprehensive Plan on an emergency basis. She recommended the Planning Commission appoint a technical work group regarding this issue that includes all stakeholders. The proposed language does not reflect the technical aspects of the energy business, its infrastructure or its statutory authorities of the existing regulatory bodies. The jobs supported by these
industries are vitally important to Whatcom County. It if false to say the restricting
exports and expansion of these industries protects jobs.

Bob Allendorfer, Whatcom County: Stated Alternative 2 is superior to Alternative 1.
There is the opportunity to create a better alternative by collaborating with a cross
section of the county. Establish an advisory board to ensure that any potential changes
are inclusive of the diversity and the hopes, concerns and aspirations of all our
citizens. Make a full and transparent cost benefit analysis before any decisions are
made. Make it clear what tradeoffs are being considered. Economic and social justice
go hand in hand. We can’t put extraordinary burdens on the businesses at Cherry
Point. The rules of supply and demand won’t allow it. Our neighbors to the north and
south will gladly fill any void created here. If these businesses disappear who will make
up the lost wages and charitable contributions? 22 percent of our population is earning
less than the basic cost of living. These businesses contribute to charities for those in
need.

June Coover, King County: An environmental engineer who has been working at
Cherry Point for over 25 years. She supports Alternative 2. We need to support the
industries here and let them grow.

Chris Colon, Whatcom County: Employee of BP. The no action alternative is a little
disingenuous because there has been a lot of work done on this issue in the past. The
original language presented includes all of the environmental concerns and regulations.
There is no reason for the Weimer proposal to be adopted. When we start to look at
sustainability it is disingenuous to say that the proposal includes sustainability. A 2012
report regarding the timber industry on the Olympic Peninsula shows good economic
recovery but it is non-sustainable. He stated his concern for that here. People are here
to support their livelihood and freedoms which are being threatened by the Weimer
proposal. Even those not in favor of the industries at Cherry Point have to look at the
way the Council is saying they know best how to run these industries. That could
happen to anyone in the room.

Richard Tewes, Whatcom County: The businesses at Cherry Point make many
charitable contributions to the county. They help a lot of people. A lot of people in this
room use the fuels we make.

Chris McGary, Whatcom County: He works for one of the contractors at the refineries.
The Cherry Point refineries are in the business of refining oil, not shipping it elsewhere
to be refined. If you do not allow businesses to move products, materials and
resources, as needed, you create potentially unsafe and harmful situations. If Cherry
Point industries wish to pursue building export facilities that should be dealt with at
that time through permitting and environmental review. To put a broad ban on refined
fossil fuel exports is impracticable and irresponsible. This ban is not about the
environment, the economy or jobs. This ban is about deindustrializing Cherry Point one
little piece at a time making it harder for current and future industries to operate
there. The future is about green clean energy but we can’t shut our current industries
as they currently fuel the items we use.
Tim Fitz, Jr., Skagit County: Supports Alternative 2.

John Kaller, Whatcom County: Works at Phillips 66. This is not just about the economy and jobs. It is hypocritical for the county to put restraints on the local industry, whereupon your competitors, such as the Asian market, don’t have these restrictions. They don’t care about the economy or environment, they are built to produce jobs. These other markets want us to have additional restrictions and costs they don’t have. What is being proposed is bad business and you are just pushing the problem elsewhere. The refineries overseas are terrible. The refineries here are world class, first rate facilities.

Lindsay Cerise, Whatcom County: Employee at BP. 24 percent of the citizens in Whatcom County have no safety net, no backup income. 18 percent of our community is making less than the federal poverty limit. This is why a strong economy is so important. The industries at Cherry Point are part of that.

Linda Murphy, Whatcom County: They live near the refinery which they chose to do because they wanted a clean environment for their family. They purposely did not look for a house near the berry fields, which get sprayed. She does not have to worry about that near the refineries. She has confidence in that. They are very safe.

Carole Perry, Whatcom County: She has often said that if the people in the county knew what was really going on they would be here and they are finally here. These proposed amendments came in through the back door to the commission. They were brought in the wrong way. This may be our Brexit. There are so many regulations the lawyers can’t even figure them out.

Maureen Cleveland, Whatcom County: She was in support of Carl Weimer’s amendments. She does believe BP has high standards but she was concerned about an increase in coal train or oil train traffic which is a risk. Whatcom County does not have the ability to handle oil train accidents.

Ms. Lewis: Supports Alternative 2.

The meeting was closed to the public.

Commissioner Honcoop asked the managers from the two refineries if they currently export unrefined products, as listed, from Whatcom County to other refineries.

Karen Shorten, Phillips 66: Stated there are circumstances where they need to import or export certain materials. This proposal would restrict what they could do in order to maintain their ongoing operations. They do not bring crude through the refinery for the purposes of export. There are materials, under the proposal, that they do export. The future of the industry may involve importing or exporting different materials. Each individual project needs to be based on its merits.
Regular Meeting

Bob Allendorfer, BP: Stated they are governed by federal law. Butane and propane are not unrefined products. Products travel across the globe, as needed. They bring in crude but they do not export it.

Commissioner Deshmane asked what they are currently allowed to do in regards to bringing in raw material and exporting.

Ms. Shorten stated she could not say what they are able to legally export because that is not their primary business.

Commissioner Hunter asked for clarification regarding unrefined products. He asked if that were a concern.

Mr. Allendorfer stated it is a concern.

Commissioner Hunter asked if we were to have a definition, of unrefined fossil fuels, that works if that would take care of the issue.

Ms. Shorten stated that she was not in a position to negotiate that. What is in the proposal is very unclear and absolutely can't stay as it is. Even if that issue is clarified it still does not resolve her issue which is the long term viability of the facility. That means not encumbering them with restrictions that might impact their future opportunities to utilize the assets they have.

Mr. Allendorfer stated all three proposals have the language allow Cherry Point industries flourish and expand. But do they really have the option to do this? If the county puts in any language that adds additional restrictions, beyond the local, state and federal restrictions you are only hurting Whatcom County. It will only remove investment from this county and put it somewhere else. Who is going to make up that shortfall? 42 percent of the population already can’t afford to live here.

Commissioner Honcoop asked for clarification regard the SEPA process.

Mr. Personius stated the threshold determination will probably be made in November. PDS needs to look at the alternatives more closely along with any other alternatives presented. Anyone can submit an alternative proposal.

Commissioner Knapp stated nothing has been mentioned regarding alternative energy sources. He would like the refineries to take on the challenge of finding alternative energy sources. This would bring more family wage jobs to the county.

Commissioner McClendon urged those with alternatives to get them in before the next commission meeting so they can be discussed. The commission agreed.

Commissioner Honcoop stated the time frame given by the County Council may not be realistic. This is a major issue that may take a while to look at.
Commissioner Vekved stated he had no background or knew what the options were regarding a fourth pier at Cherry Point. He would like information on that. He would also like more information on the Magnuson Amendment.

Commissioner Rowlson wanted direction from the county legal staff if these restrictions are even legal.

Mr. Aamot stated there will be a memo regarding these issues for their next meeting.

The meeting was adjourned at 10:30 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair

Becky Boxx, Secretary
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Council Chambers at 6:30 p.m.

Roll Call
Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowlson, Atul Deshmane. Absent:

Staff Present: Mark Personius, Matt Aamot, Royce Buckingham-Prosecutor’s Office and Becky Boxx

Department Update
Mark Personius updated the commission on:
- Update on the Supreme Court water use issue
- There were two appeals to the 2016 Comprehensive Plan update

Open Session for Public Comment
Kate Blystone, Whatcom County: She teaches the Introduction to Planning class at Western Washington University. 55 of her students were in attendance to observe the Planning Commission process.

Wendy Harris, Whatcom County: Addressed air quality. It is not addressed anywhere even though it is the number one environmental health risk to the residents of the county. The primary risks are coming from the burning of petroleum fuel and wood. It is unfortunate that there is no section on air quality in the recently passed Comprehensive Plan. It is also unfortunate that some of these things are beyond our control. There is a gap in the clean air act in regards to idling trains. Near where she lives is a mile long train that will sit there and idle all night long. It has coal dust in it that will end up in her window sills. We have no way to stop this. Something we do have control over is wood smoke and we don’t do anything about it. She has a problem with outdoor fire pits. It used to be that wood smoke was more of an issue in the winter because people were heating their homes. Now people are burning wood all the time for some of the very worst reasons, which is recreation. We need to look for opportunities where we can do things to control air pollution. She would like to see the county take a more proactive stance on it.

Max Perry, Whatcom County: Stated that 2,200 acres of timberland in the reconveyance that went through. That will be a loss in taxes. The Hirst water case will affect about 20 percent of the building permits. That will be a tax loss. Farms are going to be affected by the wilting of the rivers. That will be a tax loss. Looking at the Cherry Point issue that will affect 9,000 jobs. That will be a tax loss if it goes through.

Commissioner Comments
Commission Oliver reminded the commissioners to speak up so the audio recording can be easily heard.

**Work Session**

File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

The commission took comments from the public.

Brad Owens, President of the Northwest Jobs Alliance: They are going on record as being in full support of the subject matter contained in the letter from Pacific International Terminals, dated October 26, 2016. In so much as Native American treaty rights must be honored, so must the 1999 settlement agreement, section 4 regarding the Whatcom County Plan amendments relating to a fourth pier at Cherry Point. As we have previously stated the property rights of Cherry Point land owners, as well as all land owners in Whatcom County, must be respected and honored. The Cherry Point proposed amendments would devalue property values by millions of dollars in the Cherry Point Urban Growth Area. How does this respect Cherry Point land owners? In regards to the letter from Royce Buckingham, dated October 14, 2016, nearly all of the comments pertaining to the Cherry Point proposed amendments indicate an improper attempt to insert regulation into a policy document, that being the Comprehensive Plan. They understand Cherry Point land owners are working on alternatives. Absent additional alternative options at this time they could only support Alternative 2. If however, additional alternative are submitted that support their Mission Statement they reserve the right to move their support in that direction.

Sandy Robson, Whatcom County: Addressed the issue of collaborating with industry. It is upsetting that she hasn’t heard anything about collaborating with the tribes. She felt they were being ignored by the county government. If they will be reaching out to the industries this also needs to be applied to the tribes. On January 26, 2016, at the County Council meeting, Councilman Barry Buchanan addressed the audience saying that upon the advice of the county’s legal counsel the county would defer any type of action on the proposed Cherry Point amendments. She found that to be egregious because there was some proposed language from the Lummi Nation. This appears unfair. Their suggestions have been ignored.

Tony Larsen, President of the Whatcom Business Alliance: They represent a number of Cherry Point stakeholders. They would like to open up communication to make sure they know they have the Alliance as a resource for information. They will be submitting an alternative for consideration. They are suggesting a collaborative approach that balances economic development and environmental protection. Their approach will also acknowledge existing local, state and federal procedures, processes and jurisdictions. They would like guidance from the commission on communication with the County.
Council. The Council has reached out to their coalition for enhanced communication
with Cherry Point industries. They want to engage but want to make sure they respect
the Planning Commission’s authority and the Comprehensive Plan process.

Wendy Harris, Whatcom County: Stated her concerns regarding how this matter was
handled procedurally. It was done in a way that was agenda driven and inappropriate.
What people need to understand is what we are talking about now is isn’t the
Comprehensive Plan. That is done. What we are talking about is an amendment to the
existing plan. That is a whole different process. There are certain procedures that need
to be followed when making amendments to the Comprehensive Plan. There are legal
standards that need to be met. You have to show there has been a change in facts and
circumstances that justify the change to the Comprehensive Plan. She did not see any
change that would justify this. The way the County Council went into executive session
and deemed that the Weimer amendments were being severed from the
Comprehensive Plan update was not appropriate. When she questioned staff about it
she was told that there was no application or fees needed. She was also told the
Council was not subject to legal standards. She had a problem with that. One of the
big goals of the GMA is to ensure public input. Keeping the public out of this is wrong.
Consider the fact that there is an important marine reserve there. She was not worried
about the voices of industry and those seeking a profit. The voices that aren’t going to
be heard are those of the fish, wildlife and marine ecosystem. That is why we have to
objectively keep that in the forefront of everything we do.

Erin Haverson, Speaking on behalf of the Whatcom Business Alliance and the Coalition
of Industrial Members: She is one of their attorney’s. There are an incredible host of
local, state and federal laws and regulations that already regulate the Cherry Point
industries. It is important for the commission to understand the types of laws that
apply there and the ones that they are being asked to act on. There is the Clean Air
Act which has been in effect for over 40 years. There is an abundance of federal and
state agencies which oversee this act. Congress retains the right to decide what kinds
of products can be exported among states and our relations with foreign countries.
Trying to restrict trade among states and foreign countries is a violation of the U.S.
Constitution. Also, there are a host of state acts, such as the Shoreline Management
Act, the GMA, etc. Consult with the county’s legal staff regarding these proposals.

Eddy Ury, Whatcom County: From Resources for Sustainable Communities. There are
already a lot of existing state and federal laws addressing this issue. He was happy to
hear that new language and alternatives are being asked for. If this is not done
correctly the issue will go to court and cost everyone a lot of time and money. This
time would be better spent working on something more proactive. Let’s not bog down
the county with permits that are going to be embattled for years.

The public comment was closed.

Mr. Buckingham addressed his memo to the commission and staff dated October 14,
2016. When he looked at the council proposal he noticed there were policies being put
in the text section. His recommendation for that was to cite the actually policies or not
put them in the text section. It gets confusing when you bury policies somewhere else.
The next issue he noticed was that there were a number of things that were
regulations masquerading as policies. Policies should be a general guideline not what
the rule is. He pointed out those items in his memo. Some are debatable so he stated
he would leave it up to staff and the commission to figure them out. Regarding Policy
2CC-10 relating to limiting the number of piers; he was concerned about the fact that
there is a vested application and settlement agreement for a fourth pier. It would be
awkward to have a policy that states we can’t have those when there is one pending.
Regarding the Magnuson Amendment, his concern was that the language in the
proposal is not policy, but regulations. That is inappropriate to put in the
Comprehensive Plan. Also the proposal is to adopt a local regulation in parallel with a
federal regulation. The federal regulation is a regulation of import/export, not only
inter-state but internationally. This raises a red flag for the Commerce Clause. The
county and the state don’t have the power to regulate commerce between states or
internationally. There are a number of complicated tests for whether you are doing
that. It is pretty clear that if you limit the amount of a commodity that can move
through your county that you are interfering with commerce. If you adopt a federal law
and try to enforce it locally you are going to run into a lawsuit. We would face a lawsuit
based on the fact that we would adopt a regulation that made our Planning
Department interpret the Magnuson Act locally and try to enforce it. If we try to
enforce something in parallel with the federal government and we have a different
view of it we are then in the awkward position of enforcing the same law a different
way. We can already enforce the Magnuson Act, as a federal law, without subjecting
the county to lawsuits. He asked anyone who may have a different opinion on the
subject to let him know in order to gain more information on the issue.

Commissioner Knapp addressed Policy 2CC-2 in regards to clean energy. There will be
a need for clean energy in the future. Alternative 1 does no address that issue.

Commissioner McClendon stated her opinion was that Councilmember Weimer wrote
the proposal with the intention to make the federal law obvious. She asked Mr.
Buckingham how they should make it obvious in an appropriate way.

Mr. Buckingham stated it was his thought that what the council wanted is that if we
have something happening at a local level we want to notice it and make sure it
complies with the Magnuson Act. If it doesn’t the county could take some action.
Implementing a local regulation to examine every project would be one way to do that.
We could put in a policy that says we are obligated to follow it and file lawsuits if we
see a violation. If something comes through that meets that criteria we would notify
federal agencies and consider a lawsuit. I like that approach because it puts us in the
driver’s seat.

Commissioner Oliver asked for clarification. The county would not deny a permit on the
basis that it violated the Magnuson Act, it would not be able to under this proposal. It
would not be requiring that it obey the Act for a huge permit, but it would have to and
then sue?
Mr. Buckingham agreed and stated the county would have to notify the federal agencies as well. Under his analysis you would not have the right to deny it even if you had your own regulations that said you could. The local regulations would not be any good. For example, if we find a Magnuson Act violation and we have to approve a permit, because we can’t deny it, and we tell federal agencies, environmental concerns, etc. it is very likely we don’t have to sue because then the lawsuit happens without us being involved. We are only involved in so far as we approved the permit.

Commissioner Rowlson stated the environmental proposal has a study in it. What is the value of putting it into the Comprehensive Plan?

Mr. Buckingham stated he did not study the value of it he only stated it was okay to put in if they want. It’s just policy, not regulation.

Commissioner Rowlson stated it is a good way to get studies into the Comprehensive Plan that the County Council needs to address.

Commissioner Rowlson asked for Mr. Buckingham’s opinion on the legal aspects of the Planning Commission reviewing this issue.

Mr. Buckingham stated he was not prepared to answer that and suggested Karen Frakes, the County Council’s attorney, answer that. Mr. Buckingham will follow up on the issue and report back.

Commissioner Deshmune stated guidance regarding the Magnuson Act somewhat overlaps with the guidance relating to the Commerce Clause. He wanted clarification of what the implications of the Magnuson Act are apart from the implications of the Commerce Clause.

Mr. Buckingham stated the Magnuson Amendment is a federal law that restricts certain imports and exports. Can the county restrict state and international trade? His interpretation of the Commerce Clause is that no we can’t.

Commissioner Deshmune noted there are examples of local governments not honoring federal or state laws. People have challenged regulations based on the Commerce Clause.

Mr. Buckingham agreed. His job is to keep the county from risk so he recommends not violating the laws in order to keep the county out of lawsuits. There is a way to enforce this without putting our heads on the chopping block.

Mr. Aamot stated there are four main policy issues which staff needs direction on.

Council’s proposed language in Policy 2CC-2. This refers to favoring clean energy, strict avoidance of wetlands, avoiding and prohibiting bulkheads or shoreline armoring, requiring an archeological study, and requiring water recycling.
Commissioner McClendon stated that at the public hearing they heard a lot of testimony that these regulations are going to harm the industries at Cherry Point. We need to address that. She asked the Planning staff to state where that language is.

Mr. Aamot addressed Policy 2CC-14. The Magnuson Amendment says the Federal government can't approve permits, of any type, that would increase the ability of a facility to handle crude oil; except if refined for use in Washington State. This means refineries can't bring in more crude oil to refine and ship it elsewhere. There was also concern about the study and how it would impact the refineries. In Policy 2CC-2, regarding a plan to address the Cherry Point Aquatic Reserve Management Plan we would need to ask the refineries how they are impacted by that.

Commissioner Honcoop addressed Policy 2CC-10 which refers to the three existing piers. It is important to remember that there is a fourth permitted pier. That should not be ignored. There is no doubt that these proposed regulations will have an impact on the refineries and Whatcom County. The whole proposal has been written in a past-tense position, which is not planning, it is editorializing. It is supposed to be a planning tool not a growth limiting tool. If a business can't grow it will die.

Commissioner Hunter stated policy is about editorializing. It is saying what we care about and these are our issues.

Commissioner Hunter stated the commission should start work on the Council proposal.

Commissioner Honcoop stated he would rather work on Alternative 1.

The commission reviewed the Council proposal.

**Commissioner Hunter moved to change page 2, line 13 to read: Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has long had regional significance for the siting of large industrial or related facilities. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971.**

**Commission Vekved seconded.**

The motion carried (ayes-9, nays-0).

Commissioner Vekved stated every time a particular refinery is mentioned by name or ownership it has the potential to be wrong. The two refineries can be referred to as the Ferndale Refinery and the Cherry Point Refinery. This way the text does not need to be changed every time the ownership changes.

**Commissioner Vekved moved to change page 2, lines 14-16 which reads: The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco**
Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971. The wording should be changed to identify the original constructor and to somehow note that for the rest of the document they will be identified in the general terms as stated above along with the smelter.

Commissioner Deshmane seconded.

Commissioner Hunter asked why the name of who constructed it was needed.

Commissioner Vekved stated they are in close enough proximity that they may be confused. If there is a baseline name from when they were constructed it will delete that confusion.

Commissioner Rowlson asked if it was even necessary to identify them at all. We could just say two refineries and one smelter.

No vote was taken on this motion. Staff will draft language to present at the next meeting.

Commissioner Vekved addressed page 2, lines 18-20 which states: Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. Is Cherry Point more significant Coast Salish people than Pt. Roberts, Birch Bay, Drayton Harbor, etc.?

Commissioner Honcoop stated the context of this is Cherry Point is the major industrial growth area whereas the other areas aren't.

Commissioner Rowlson moved to delete the language on page 2, lines 21-22 which reads: The Lummi Nation and Western Washington University have identified an ancestral village dating back over 3,000 years ago in this area.

Commissioner Honcoop seconded.

Commissioner Rowlson stated the reason being it is just an interesting factoid.

Commissioner Honcoop stated this is what he had been talking about earlier. These types of statements don’t need to be in the Comprehensive Plan.

Commissioner Hunter stated there are lots of factoids which are history and should be in the plan. Nothing is gained by deleting the language.

Commissioner Rowlson stated nothing is gained by adding it.

Commissioner Knapp stated he would not support the motion.

Commissioner McClendon stated she would not support the motion.
The vote on the motion failed (ayes-4, nays-5).

Commissioner Vekved moved to change page 2, lines 25-29 to read: Since the designation of this area for industrial development years ago, newer scientific study of the shoreline ecology has identified Cherry Point’s unique function as part of the Fraser River/Georgia Strait and greater Salish Sea ecosystem and the associated Cherry Point Aquatic Reserve has been designated by the state Department of Natural Resources to recognize the ecological importance of the aquatic lands in this area.

Commissioner Deshmane seconded.

Commissioner Vekved stated he had researched this and found that the Salish Sea is not the correct name for the waters off of Cherry Point.

Commissioner Honcoop asked why this entire paragraph is even necessary. It is editorializing again.

Commissioner Deshmane stated it is introducing what is being done in the document. There are these different factors to take into consideration when creating a planning document.

Commissioner Honcoop stated if that is the case they need to put broad based sentiments on the table that recognize more than one thought. This doesn’t do that.

The vote on the motion carried (ayes-7, nays-0, abstain-2).

Commissioner Honcoop moved to delete page 2, lines 31-40 and page 3, line 1 which reads: Since adoption of earlier versions of this Comprehensive Plan there has been an increasing recognition of the impacts that fossil fuel use and transportation has on human health, and both the local and global environment. The Cherry Point UGA contains the second-largest emitter of carbon air pollution in Washington State (Ecology, June 2016) and scientific findings show that the use of refined or unrefined fossil fuels overseas contribute up to 16% of the mercury in the soil in the Northwest from return air from Asian burning of those fossil fuels, and that carbon deposition in water from air emissions are the major contributor to ocean acidification. Recent studies by NOAA have found that very small amounts of hydrocarbons lead to congenital heart failure in juvenile herring and salmon, and may have contributed to the crash of the Cherry Point Herring stock.

Commissioner Rowlson seconded.

Commissioner Honcoop stated the reason was this was again editorializing and scientific statements don’t belong here.
Commissioner Vekved spoke in favor of the motion.

Commissioner Rowlson stated the language doesn’t make sense with the intent of the policies that come later. The language is making it very clear that we are not shipping fossil fuels overseas to be refined because apparently they do it poorly. We are also limiting the expansion of the facilities here where he would rather have the refining done.

**Commissioner Oliver made an amendment to retain the language which reads: Since adoption of earlier versions of this Comprehensive Plan there has been an increasing recognition of the impacts that fossil fuel use and transportation has on human health, and both the local and global environment. The Cherry Point UGA contains the second-largest emitter of carbon air pollution in Washington State (Ecology, June 2016).**

 Commissioner Deshmane seconded.

Commissioner Oliver stated this language is facts that should be retained.

**The vote on the amendment carried (ayes-5, nays-4).**

**The vote on the main motion, as amended carried (ayes-8, abstain 1).**

Commissioner Honcoop addressed the language on page 3, lines 1-4 which reads: Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20 year planning period. This question is related to designation of UGAs. For the Growth Management Hearings Board you had to have some justification for size of the UGAs. By removing the language (as proposed by Council) does that potentially put the county in jeopardy because we are not showing the need for that size UGA?

Mr. Aamot stated he did not believe so because there were employment and population projections done along with a land capacity analysis for all the UGAs. This statement has been in the plan since 1997. We are showing that demand matches the supply for the next 20 years. The language says this is what we anticipate, based on the studies, but we really don’t know what will happen. His opinion was it is fine to take it out.

Commissioner Vekved addressed page 3, lines 10-13 which states: In August 2000 and again in November 2010, the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program, except for existing leases, and designated them as the “Cherry Point Aquatic Reserve.” As it’s written it is not clear that the statement, except for existing leases, includes not only the leases for the existing piers but for the GPT pier.

**Commissioner Vekved moved to change the language to read: In August 2000 and again in November 2010, the State Lands Commissioner ordered the**
Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program, except for existing leases, and designated them as the “Cherry Point Aquatic Reserve.” The following DNR Use Authorizations were exempted from withdrawal: Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66), 20-A08488 (Intalco Aluminum Corporation), 20-013265 (Gateway Pacific Terminals), and 20-010521 (Birch Bay Water and Sewer District).

Commissioner Knapp seconded.

Commissioner Honcoop asked if they were going beyond policy to regulatory by being that specific.

Mr. Buckingham stated that it is only stating what the situation is, it is not declaring policy.

Commissioner McCledon asked Commissioner Vekved why he felt it was necessary to call out each individual lease.

Commissioner Vekved stated as it is written right now it is not clear if existing leases are an application or lease.

Commissioner Deshmane asked if the leases are reassignable.

Mr. Aamot stated it was his belief that when Intalco sold their pier it included the lease too.

Commissioner Hunter felt the language was excessive and unnecessary.

Commissioner McCledon stated she understood Commissioner Hunter’s point but it is important considering the high interest in what happens at Cherry Point. By naming the leases it makes it very clear to the reader that those are the leases being discussed.

Commissioner Rowlson agreed with the statements made by Commissioner Hunter. The language does not add significant value.

The vote on the motion carried (ayes-7, nays-2).

Commissioner Vekved addressed page 3, lines 32-35 which reads: The Aquatic Reserve Management Plan acknowledges that so long as the existing industries, comply with all federal, state and local laws and regulations, they may not conflict with the Aquatic Reserve although their activities may pose risks for the recovery of species and other goals of the Aquatic Reserve. The language seems to be a little patronizing and conditional. It was fine as is.
Commissioner Honcoop agreed. There are plenty of laws in regards to this so the language isn’t needed.

Commissioner Vekved moved to change the wording to read: The Aquatic Reserve Management Plan acknowledges that so long as the existing industries, complying with all federal, state and local laws and regulations, they may not conflict with the Aquatic Reserve although their activities may pose risks for the recovery of species and other goals of the Aquatic Reserve.

Commissioner Honcoop seconded.

Commissioner Hunter made a friendly amendment to delete the language: The Aquatic Reserve Management Plan acknowledges that so long as the existing industries, comply with all federal, state and local laws and regulations, they may not conflict with the Aquatic Reserve although their activities may pose risks for the recovery of species and other goals of the Aquatic Reserve.

Commissioner Oliver seconded.

The vote on the amendment carried (ayes-6, nays-1, abstain-2).

Commissioner Vekved addressed page 3, lines 41-43 which reads: The area includes one of the last undeveloped intertidal wetlands of any size in Northern Puget Sound, with importance to juvenile salmon and other species. This is more statistics without baselines or comparison. If we are going to keep the language we need to add some sort of baseline or number to compare against. Otherwise delete it.

Commissioner Vekved moved to delete the language. Commissioner Barton seconded.

Commissioner Hunter stated he does not see the need for that. The sentence is self-explanatory. It doesn’t compare with anything it’s just a piece of information that is useful to have. He won’t support the motion.

Commissioner Knapp agreed with Commissioner Hunter’s statements.

Commissioner Barton stated he would rather see a comparison added rather than deleted.

Commissioner Barton withdrew his second.

Commissioner Vekved moved to add some sort of baseline. Commissioner Barton seconded.

Commissioner Rowlson stated he is not sure it’s important to compare it to something else. We could have language that simply says: the area includes an undeveloped
intertidal wetland of importance to juvenile salmon and other species. He didn’t think it was important to note it was one of the last.

Commissioner Hunter stated it is important to note that it is one of the last. It is calling into question whether the Council has accurately reflected what has been said here. Is it a fact that it is one of the last? Does staff or Council know if it is accurate?

Mr. Aamot stated he has not investigated the statement.

Commissioner Deshmane noted that the entire sentence was messy and suggested it be rewritten.

Mr. Aamot suggested staff reword the section and bring it back at the next meeting for review. The commission agreed.

Commissioner Vekved moved to change page 3, line 43 through page 4, line 3 back to the original text to read: Existing industries may continue to can serve the Aquatic Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees comply with applicable legal requirements and actively work to further the goals of for the Reserve (CPAR MP p. 2).

Commissioner Honcoop seconded.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Vekved moved to delete the wording on page 4, lines 8-11 which reads: While deep water access made future shipping facilities desirable in the past, recent actions by federal and state regulators denying a proposed fourth pier at Cherry Point have underscored the fact that any future industrial development will undergo scrutiny for compliance with federal and state laws, including treaty rights.

Commissioner Deshmane seconded.

Commissioner Honcoop agreed with the motion. Anyone should have the right to apply for a permit even if it is challenging. He also stated that the fourth pier has not been denied so that language should be stricken.

The vote on the motion carried (ayes-5, nays-0, abstain-4).

Commissioner Honcoop moved to delete the remainder of the paragraph. Commissioner Vekved seconded.

Commission Honcoop stated the reason being it’s editorializing.
Commissioner Oliver stated it was her understanding of the language that the Army Corps of Engineers and the Department of Natural Resources have now said no to the additional pier and are proposing to get rid of the cutout for that pier. What the county is trying to do is lay the groundwork so that we don’t have to evaluate these at the level we have been if we know that they probably won’t be allowed anymore.

Commissioner Honcoop stated the permit for the pier still exists.

Commissioner McClendon stated she did not know enough about the issue to vote on it. This section was mentioned by Mr. Buckingham in that it should be moved to the policies or referenced to a policy.

Commissioner Hunter stated this is a policy that states the county no longer supports construction. Either way you vote it is editorializing.

Commissioner Rowlson addressed the first sentence which reads: The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the existing industrial developments. The reality is there are only going to be three or four piers, not five. He suggested staff rewrite this section to indicate that the county does not support more piers.

Commissioner Vekved stated that various shoreline functions and values can possibly be mitigated or engineered around so those need to be evaluated on a case by case basis. Regarding fishing access, that will also be addressed on a case by case basis. The percent of loss, related to shell fishing, etc. is not compelling in spite of some and the opinion is ripe for appeal based on the fact we are dealing with a very small footprint related to a very large area of water. The area is very heavily utilized for crab fishing.

The vote on the motion failed (ayes-4, nays-5).

Commissioner Hunter moved to reference the language in Policy 2CC-10. Commissioner Knapp seconded.

Commissioner Rowlson did not like the idea of referencing policies. He would rather have a phrase which leads to the policy.

Commissioner Deshmane made a friendly amendment to read: the county is evolving its position on construction of additional export docks and piers. Commissioner Knapp seconded.

The commission agreed the motion to amend had no relation to the original motion. Commissioner Deshmane withdrew the motion.

The vote on the main motion carried (ayes-6, nays-1, abstain-2).
Commissioner Honcoop moved to change page 4, line 7 back to the original language to read: The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major existing industrial developments.

Commissioner Knapp seconded.

Commissioner Honcoop stated it is important as a site to remain an area for major industrial industry. That doesn’t mean it has to be refineries. It could be wind towers, etc.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Hunter moved to change page 4, lines 30-31 back to the original language to read: The characteristics that make Cherry Point unique as a site for the existing major industrial developments includes the following.

Commissioner Vekved seconded.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change page 4, line 42 to read: Rail service is particularly important in relation to water borne commerce of the existing users.

Commissioner Honcoop seconded.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Barton asked staff to correct page 4, line 38 to read: Rail Access – Cherry Point is served by a branch line of the Burlington Northern/Santa Fe. The commission agreed.

Commissioner Honcoop addressed page 5, lines 4-7 which reads: The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major sustainable, clean-energy manufacturing or production of other commercial or industrial products. His concern was that it seems that one of the tests for siting industry there would be that it has to be sustainable and clean energy.

Mr. Aamot stated it is only text and not a policy. It doesn’t say they have to be one of those.

Commissioner Deshmane moved to change page 5, lines 1-18 back to the original language to read: Proximity to Canada, Alaska and Foreign Ports -
Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to and from Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major sustainable, clean-energy manufacturing or production of other commercial or industrial products. The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.

Commissioner Vekved seconded.

Commissioner Oliver was not in favor of the change because the intention of the council language was to be a little more protective of what we want to happen at Cherry Point.

Commissioner Deshmane stated there is a lot in this preamble discussing concerns and constraints. It is fine, regardless of what the policies say. There are a lot of important issues on the table.

Commissioner Vekved stated the block of text is not needed as proposed. He would support restoring the original language.

Commissioner Rowlson suggested language be added referencing a policy. He also suggested language that reads: The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major commercial or industrial production with sustainable industries preferred. There are two ways to encourage industry. One, is to make it harder on other industries and two, is to make it easier on the preferred industry.

Commissioner Knapp was not in favor of removing the language regarding clean energy.

Commissioner Hunter stated he would not support the motion because he wants the proposed text left in. He was okay with the proposed deleted language being reinstated.
Commissioner Vekved made a friendly amendment to read: Compared to other port facilities in Washington and Canada, Cherry Point is not constrained by extensive upland development or vessel draft limitations. This would replace the delete text which was moved to be restored.

Commissioner Knapp seconded.

Commissioner McClendon addressed comments made by Commissioner Rowlson. She was not in favor of making any of the language policy.

The vote on the amendment carried (ayes-6, nays-2, abstain-1).

The vote on the main motion, as amended, carried (ayes-5, nays-4).

Commissioner Rowlson made a motion to page 5, lines 4-7 to read: The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major commercial or industrial production with an emphasis on clean energy.

Commissioner Hunter seconded.

Commissioner McClendon stated she was not in favor of putting in some language that is actual policy. The old language was not policy but the new language is.

Commissioner Vekved made a friendly amendment to read: The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for commercial or industrial production, with emphasis on major sustainable clean energy manufacturing or production.

Commissioner Knapp seconded.

Commissioner Honcoop stated he would not support the amendment. It is picking winners and losers and picking businesses by emphasizing a type.

Commissioner Hunter stated he favored giving advantages to sustainable energy because that’s what we are concerned about if we go forward with this. We aren’t trying to prevent something from happening only try to create preferences.

The vote on the amendment carried (ayes-6, nays-3).

The commission discussed whether or not this was a policy.

Commissioner McClendon moved to add reference to Policy 2CC-2. Commissioner Deshmane seconded. The motion carried (ayes-7, nays-1, abstain-1).

The meeting was adjourned at 10:00 p.m.
Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair

Becky Boxx, Secretary
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
November 10, 2016

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 at 6:30 p.m.

**Roll Call**
Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowson, Atul Deshmante

**Staff Present:** Mark Personius, Matt Aamot, Royce Buckingham-Prosecutor’s Office, Becky Boxx

**Department Update**

Mark Personius updated the commission on the following:
- County Council schedule
- Planning Commission schedule

Commissioner Rowson reminded Mr. Personius of the pending business items on the agenda.

Mr. Personius thanked Commissioner Rowson for the reminder and stated staff has been putting together the work program for next two years. These can be added to it.

**Open Session for Public Comment**

Carole Perry, Whatcom County: When this process first started she had asked the commission to be sure it was the way it should be. She asked that some of the meetings not be held in the Council chambers. Many people are intimidated to speak in the chambers because they are large and too formal. The Commission works better at the Annex. Make sure the process really reflects the people they represent. We will have a Brexit in this county because the people don’t feel that they are being represented.

Sandy Robson, Whatcom County: She appreciates that the meetings are held at the Council chambers because of the large crowds that sometimes attend.

Brooks Anderson, Whatcom County: Stated Bellingham is part of the county too. She was offended by the idea that people are feeling they are not represented because you are not holding your meetings out at another part of the county. This is part of the county. It is not the space that intimidates her. The intimidation is to do with the guys that show up in their suits representing a particular aspect of Cherry Point. The Commission needs to pay attention to the whole county, not just the rural part. She can’t picture a Brexit in Whatcom County.
John Strong, Whatcom County: Asked the Commission how many members they had. Asked if any of them had ever worked at Resources. Where do they receive their legal advice?

Commissioner Comments
Commissioner Deshmane asked the other commissioners to give a quick description of their associations with the industries at Cherry Point. He wanted a full disclosure from each commissioner.

Commissioner Rowlson stated he was not comfortable with the request. It makes him want to indicate that he has no dealings with them or he will be shamed if he doesn’t. The Commission deals with the entire county on all of their regulations so why is this one different?

Commissioner Deshmane stated it would be beneficial because if there are specific business interests associated with the industries at Cherry Point it could affect the perspective of the Commission members.

Commissioner Oliver stated it should be an individual decision as to whether or not the commissioners want to answer that question. She did not have any dealings at Cherry Point.

Commissioner Honcoop stated the Business Rules require them to disclose to the Commission any conflict and recuse themselves if necessary. The majority of people there have some association with Cherry Point whether they know it or not. To what degree do they have that requirement to disclose something?

Commissioner McClendon stated she was bothered by the discussion because it becomes some type of shadow over them that they are somehow not wanting to tell people something that doesn’t exist.

Approval of Minutes
October 13, 2016: Commissioner Knapp moved to approve as written. Commissioner Rowlson seconded. The motion carried.

Work Session
File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

The Commission took comments from the public.
Regular Meeting

1. Judith Akins, Chairperson of the Mount Baker Sierra Club: The Sierra Club Mount Baker Group fully endorses all provisions of the Weimer Amendment to the Whatcom County Comprehensive Plan. They also acknowledge that these lands are the lands of the Lummi People. They appreciate the non-partisan analysis provided by Matt Aamot, Senior Planner for the Whatcom County Planning & Development Services. In light of his analysis, they believe that nothing in the Weimer Amendments would create conflicts that could cause any reasons for litigation. The Magnuson Amendment already protects our shoreline and waterways. Our Comprehensive Plan should not create conflicts with that existing Federal law. However, the Magnuson Amendment does not address the existing or planned upland facilities at Cherry Point however the County Council Amendments clearly address this issue in Policy 2CC-2 (Addendum 1 attached further delineates these points). As Sierra Club has addressed the power needs of our country in the "Power Past Coal" campaign we believe that the Comprehensive Plan should limit any new construction or expansion of fossil fuel facilities that would require new pipelines and/or increased rail transport either to or from the existing refineries. They encourage these existing businesses to continue their current operations without expanding fossil fuel input or output. Additionally, any growth of their business operations at Cherry Point should be limited to their expansion into new renewable energy industries that are not related to fossil fuels. Any such expansion would require the hiring or retraining of additional workers at those new facilities without any reduction of employees at existing facilities. In closing, the Mount Baker Group of the Sierra Club wishes to encourage continued operations of the existing facilities at Cherry Point. However, any new development at Cherry Point should not result in the ability of the refineries to import crude oil. Further, they believe that there should be no increase in the existing oil-by-rail and pipeline transport of dangerous fossil fuels. Their goal is to keep Whatcom County safe from the risks posed by the processing and transport of dangerous fossil fuels until such time as they can be certain that rail cars will not derail and explode and that pipelines will not rupture. Thank you for your hard work and dedication to making the future of Whatcom County a great place to live, work and recreate.

2. Laura McKinney, representing the Whatcom Business Alliance: They are a broad group of stakeholders that have an interest in promoting economic opportunities, prosperity, community investment and environment stewardship in the county. While they maintain their position that this process should be delayed and re-docketed in 2017 the coalition has worked diligently, with many hours and lots of input, to draft and submit an alternative Comprehensive Plan amendment.

3. Dena Jensen, Whatcom County: Thanked the commissioners for their work. She stated she wanted to acknowledge that the meeting was being held on land that was the traditional territory of the Lummi and Nooksack peoples. May we nurture our relationship with our Coast Salish neighbors and the shared responsibility to their homelands where we all reside today. She voiced her objection to the assertion that has been made by coal terminal proponents, SSA Marine, PIT and the Whatcom Business Alliance, that the Planning Commission should not be reviewing the Council proposal for inclusion in the 2016 Comprehensive Plan update. After months and months of public input on the Cherry Point UGA section of the Comprehensive Plan and
after the GPT permit was denied by the Army Corps because it was found that
construction of the facility would violate Lummi Nation’s treaty fishing rights. In June
2016 County Council members presented their amendments to the Cherry Point
section of chapter 2. That was five months ago that everyone was made aware of the
proposal. In July Council members voted 6-1 to send the proposal to the Planning
Commission for further review and public input. That was four months ago. She favors
public input and participation in order to accomplish the goal of providing additional
time for public input on the proposal that the Council endorsed. The commission should
be evaluating that proposal only and should be considering all the input they are
getting in relation to that proposal. That way there will have been a good additional six
months’ worth of input after the many months of input that went into forming it. This
will help inform and evaluate those aspects of that proposal before it is sent back to
the Council to review and vote on. To her knowledge there is nothing that actually
requires the review of alternatives in a process of making a threshold determination on
a proposal undergoing SEPA review. She believed that alternative proposals, after the
Council submitted their proposal, are the ones that should be held for the 2017 review.

Brad Owens, representing Northwest Jobs Alliance: Spoke in regards to the November
8, 2016 letter from the Whatcom Business Alliance which included the Alternative 3
collaborative draft. The Northwest Jobs Alliance is a local, non-partisan organization
whose growing membership includes business, civic and labor leaders, as well as
elected officials. Collectively they represent thousands of likeminded individuals all of
whom rally around their mission to promote the growth of family wage jobs in the
context of sound environmental practice. The Northwest Jobs Alliance is in full support
of the positions stated in the November 8, 2016 letter and proposed alternative. The
proposed Alternative 3 collaborative alternative draft is a well written, responsible and
positive document. It honors various stakeholder interests in the Cherry Point UGA and
port industrial area of Whatcom County as a whole.

Eddie Ury, representing Resources for Sustainable Communities: Regarding the
proposed Alternative 3, they were happy to see the Commission was considering the
input of the stakeholder industries at Cherry Point. He was puzzled as to why it was
being considered an alternative. If the Commission is going to reopen the process, and
deviate from what they were originally asked to do, then other stakeholders should
also be invited to submit alternatives. The original proposal was just as much a
surprise to them as it was to everyone else when it was released. However, they do
support the original proposal and asked the Commission to do the same. In regards to
the changes made at the Commission’s last work session, they do not have any
substantive problems with them. He did take issue with some of the changes that were
proposed and voted down by a 5-4 margin. They do need to address the suggestion to
strike two lines from the preamble of the document which stated "Cherry Point is also
important historically and culturally to the Coast Salish people, and part of the usual
and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point
Elliot of 1855." The language does not have any effect on policy, however, it is deeply
offensive that they would think it was important to strike that language. It seeks to a
mindset that is in problematic.
Bert Kotres, Whatcom County: Addressed the issue of commissioners recusing
themselves if they had any conflict of interest regarding the proceedings. He stated he
noted no one said they had a conflict. He believed the Weimer proposal was written by
Resources. He lives 3 ½ miles from Cherry Point so he sees what it going on out there.
All the statements that this issue is killing their fishing industry isn’t true because they
don’t fish out there. They are fishing out in the Gulf Islands. People are talking about
the coal industry. What was proposed at Cherry Point was a dry bulk shipping facility.
The first one who stepped up and wanted to ship out of that place was Peabody Coal
but that doesn’t preclude others from shipping there. Everyone is ignoring that
because of the word coal. He had a real problem with that. Everyone needs to step
back and look at what the facility could actually do for Whatcom County. The three
industries at Cherry Point have been good corporate neighbors. They have done a lot
for the county.

Mike Sennett, Whatcom County: Corrected the statements of the previous speaker by
stating that according to GPT’s own documents the only thing that would be shipped
for the first 20 years would be coal. His concern with the proceedings is there seems to
be a false impression of litigation at both the County Council and Planning Commission
meetings. At the previous meeting Mr. Buckingham was asked if there was pending
litigation regarding the Cherry Point fourth pier. He replied in the affirmative.
According to both the Army Corps of Engineers and the Washington State Department
of Natural Resources there is no litigation. Any future reference by the county’s
attorneys that there is currently litigation regarding the GPT terminal should be
ignored and corrected.

Sandy Robson, Whatcom County: At the October 27, 2016 Planning Commission
meeting one of the Commissioners asked Mr. Buckingham if there is currently a pier
that is in litigation. Mr. Buckingham replied yes to that and he referenced the GPT
permit application litigation. She was able to get clarification on that issue. She
contacted Executive Louws seeking clarification. She asked him is PIT’s 2011-2012
shoreline substantial development permit application and/or its major development
permit application, for the GPT project, currently under litigation with Whatcom
County? Executive Louws response was “Not to my or Deputy Executive Schroeder’s
knowledge.” She also informed the Commission that on November 1, 2016 she
checked with the Army Corps of Engineers asking if PIT/SSA Marine had filed an
appeal. According to the email she received from them no appeal has been filed. She
also checked with the Washington State Department of Natural Resources asking if
there was or is a potential for appeal by PIT. The response was “The decision by DNR
to deny the lease application for the GPT proposal is final and no longer subject to
appeal. The application has been canceled.” As such there does not appear to be any
current litigation so Mr. Buckingham’s statements regarding it should be cleared up
because his remarks could potentially influence the Commission. She stated she
continues to support all of the important protections contained in the proposed Cherry
Point amendments of Councilmember Weimer and urged the Commission to
recommend approval.
Regular Meeting

John Strong, Whatcom County: He had attended a County Council meeting and listened to Councilmember Mann share his dream of a world where any fossil fuel would not be allowed to leave the ground ever. Many of the other councilmembers shared his dream. He was sure they already have a plan to replace gasoline, jet fuel, butane, heating oil, etc. and all the other nasty fuels we use. He wondered about the thousands of byproducts made from petroleum. There are over 6,000 common ones. Plastic is one of the items. What will we do without that? There are also organic pharmaceuticals, lubricants, etc. He was baffled why there is discussion of coal terminals. The discussion should be about industries and family wage jobs. If some people kill fossil fuels, as they would like, it would solve our housing problems because we would be living in caves. The discussions are sort sighted and comical.

Amy Glasser, Whatcom County: We need to look at what the planet is going through and if we continue to burn and produce fuels we are warming up the planet and we are going to have floods that take care of Birch Bay and Cherry Point and they won't be around anymore. The point is that land is not ours. It is Lummi Nation territory. If we respect the treaty we won't be doing anything there. It is all very simple. This nonsense of fighting about it needs to end.

Mr. Buckingham spoke in regards to comments about litigation. He asked the Commission if they were under the impression the county was involved in a lawsuit.

The Commission responded they were not under that impression. He had not meant to give that impression.

Commissioner Rowson asked for clarification regarding a fourth pier. Is it appealable or is it a dead issue?

Mr. Buckingham stated the appeal period is for six years so it can be appealed for a long time. This is a problem because we don't want permits sitting around for years and years. The county has sent out letters regarding the wait for the appeal period to end. The decision about the fishing grounds is appealable.

Brooks Anderson, Whatcom County: The testimony being given that evening was not staying on point. It's about the charge they were given which was to look at the Weimer proposal as well as the alternatives. It is not about what is going to happen when we do or don't get rid of fossil fuels. She asked the Commission to limit their attention to what they have been asked to do.

Lynn Murphey, representing Puget Sound Energy: They have two electric generating facilities at Cherry Point. They burn natural gas to create electricity. They are only on demand generation for electricity. They also have wind, solar and hydro power facilities. She invited the Commission to tour their facility.

Commissioner Deshmane asked Ms. Murphey about policy concerns as stated in the comment letter she submitted.
Ms. Murphey stated there are no direct impacts to their facilities but they want to continue to monitor the process to ensure there are no unintended consequences from the amendments. They want to protect their use of natural gas that comes in to their facilities. They did have concerns about the repeated language referring to excessive water usage. They would like clarification and quantification of what that means. They do use a large amount of water that does go through a recycling process. The water goes back up into the atmosphere. It is a very efficient process.

The public comment period was closed.

Mr. Aamot gave a summary of the memo submitted to the Commission.

Policy 2CC-2 has five bullet points. Three of the bullets relate to the protection of wetlands, bulkheads and water recycling. Mr. Buckingham's memo indicated that these are more of a regulatory nature and they should be more policy oriented or have regulations that implement the policies. Staff also put in the memo some of the existing regulations. The Shoreline Management Program (SMP) addresses wetlands and bulkheads. The Critical Areas Ordinance also addresses wetlands. There are no county regulations, that staff could find, relating to water recycling. They also asked the DOE and they were not aware of any such regulations or requirements at the state level.

There is also a bullet point on clean energy. Low carbon emitting industries are favored. From a legal perspective, Mr. Buckingham said that would be an appropriate policy direction. It would need to be implemented with regulations. The Heavy Impact Industrial regulations do not have much regarding the issue. It does have a regulation on thermal power plants up to a certain kilowatt limit. There is no such limit on solar, wind and other types of renewable resources.

There is a bullet referring to archeological study. In the SMP there are some good rules on that already, however, they only apply within 200 feet of the shoreline. Outside of the shoreline jurisdiction two things come into play. One is if a person is filling or grading then the building code requires the applicant be notified they are near an archeological site and that federal and state rules may apply. Also, if a project requires a SEPA review a SEPA notice is sent to the Tribes and the State Department of Archaeology and Historic Preservation. Typically, if the tribes or state wants an archeological study that would be a condition on the mitigated determination of non-significance. The vast majority of the time that recommendation is followed.

Policy 2CC-10 as stated in the existing policy, says there is a moratorium and there will be no more piers, except the one that was approved in the 1990's. The Council proposal will change that to say no more piers. Mr. Buckingham has stated that would be subject to the existing permit and also the settlement agreement. The settlement agreement states the Whatcom County administration agrees to actively support an amendment to the Whatcom County Comprehensive Plan which would prevent further piers, with the exception of the PIT project and existing piers. There is also language
which was adopted into the Whatcom County Shoreline Program in 1999. There is also language that states the parties agree that to carry out the agreement they are operating in a relationship of trust and confidence and, except as provided herein, have neither done, nor will do, any acts that will diminish the value of this settlement agreement, etc. PDS feels that they would support the existing policy.

Policy 2CC-14 relates to the Magnuson Amendment. There are two issues relating to this. One is risk of violating the Commerce Clause. The other is that if we have a local regulation that was parallel to the federal regulation and the county came to a different interpretation of the federal regulations it could open the county up to a lawsuit. Staff has proposed some alternative language. Basically the policy would say Whatcom County would encourage federal agencies to enforce the Magnuson Amendment and if necessary Whatcom County could initiate legal action to enforce the Magnuson Amendment. This would not create a new county law, but it would recognize there was an existing federal law and the county, or any other party, could seek to enforce that through the court system.

Policy 2CC-15 would require the county to do a study to look for legal ways to limit unrefined fossil fuel exports by December 2017. Staff does not have any objections to that. They noted that the study was not funded at this time. The commission may also want to consider if the December 2017 date is appropriate or not. Mr. Buckingham noted in his memo that there is some language that is more regulatory than policy. Commissioner Rowlson asked if the study would be done by staff or a consultant.

Mr. Personius stated it would have to be funded and the county would hire a consultant.

Regarding a definition for Unrefined Fossil Fuel staff had asked the refineries for some assistance. Staff received some information from BP which included a definition from the EPA. It indicates that propane and butane are refined products, so they should not be in the definition. There is also a comment that natural gas may not be a refined product. Instead of a definition there could be language referring to crude oil, coal, natural gas, etc.

Commissioner Deshmane suggested staff use the definitions from the American Society of Testing and Measurement and the American Petroleum Institute.

Commissioner McClendon asked if there is ever an instance when something can be enforceable through the Comprehensive Plan.

Mr. Aamot stated there is language that is more regulatory than policy so staff has tried to identify those and propose alternatives. The Comprehensive Plan has to be internally consistent with the Shoreline Program.

Commissioner Deshmane stated he is frustrated that Washington State is the least clean energy friendly state on the west coast. Whatcom County is one of the least
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Regular Meeting

friendly clean energy counties in the state. There is a moratorium on wind energy that was passed by the County Council. The words he sees about clean energy don’t mean anything. This county has a long way to go in order to do anything significant.

The commission continued their review of the Council proposal (as modified by the Planning Commission on October 27, 2016).

Commissioner Vekved addressed page 5, lines 45-27 and page 6, lines 1-2 which reads: Existing industries consume large quantities of water, in many cases drawn from the Nooksack River. It is the County’s policy to support renewed efforts to reduce both water consumption levels and the quantity of discharges, in favor of recycled water use. He stated there is no attempt made at quantification. He suspected that was deliberate. It could be made very general but was not done.

Commissioner Vekved moved to strike the text. Commission Honcoop seconded.

Commissioner McClendon stated her concern was more with the text that states: it is the County’s policy... There should not be policy language in the narrative.

Commissioner Rowlson stated it should be stated as a policy for the county not just this small area of the county. If it is something that the county wants to pursue it seems like it should be on the work plan to address for a much larger area.

Commissioner Honcoop agreed with Commissioner McClendon that he doesn’t like the policy language. If it is the county’s policy where is it? Don’t just make a broad statement. As far as water, there is a Coordinated Water System Plan the county just passed.

Commissioner Vekved stated he was not trying to make the water issue go away. He was trying to put it in the appropriate place.

Commissioner Barton stated the paragraph does not flow very well with the proposed language.

Commissioner Deshmane stated he was frustrated with the language in the Comprehensive Plan. There is a lot of language regarding environmental objectives but there is no tool to accomplish them.

Commissioner Hunter stated it is easy to take language and tear it apart. This language is not confusing. The intent is very clear and does not create any problems.

The vote on motion failed (ayes-2, nays-7).
Commissioner McClendon moved to amend Policy 2CC-2, bullet 5 to read: Encourage any new water-intensive development shall to utilize state-of-the-art water recycling manufacturing technology to minimize water use.

Commissioner Vekved seconded.

The motion carried (ayes-7, nays-1, abstain-1).

Commissioner Vekved moved to change page 6, lines 21-22 to read: ...and expand appropriately as opportunities present themselves. While these existing industries need to be protected from the inappropriate encroachment of...

Commissioner Knapp seconded.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change page 6, line 25 to read: ... ways that do not significantly impact the ecology of the Salish Sea Georgia Strait or encourage...

Commissioner Deshmane seconded.

Commissioner Hunter stated there is a context for using Salish Sea rather the Strait of Georgia, which has to do with our larger community. Salish Sea is a term that has gained some credibility.

The motion failed (ayes-4, nays-5).

Commissioner Vekved moved to change page 6, line 26 to read: ... expanded export of unrefined fossil fuels crude oil, coal and natural gas.

Commissioner McClendon seconded.

Commissioner Hunter stated he was not sure it was only those three items that should be listed. The definition of unrefined fossil fuels has not been clarified.

The motion carried (ayes-7, nays-1, abstain-1).

Commissioner Vekved addressed page 6, lines 26-27 which reads: The best means for protecting these industries from incompatible adjoining residential uses and to assure their... He stated there is no need to add the word residential because there are other adjoining uses which may be incompatible.

Commissioner Vekved moved to strike the word residential. Commissioner Deshmane seconded.
The motion carried (ayes-9, nays-0).

Commissioner Vekved addressed Policy 2CC-2 which states: Ensure that existing developments in the Cherry Point UGA maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan.

Commissioner Oliver felt it was very important to leave the word in because the policy is differentiating between existing and any new industry.

Commissioner Vekved asked what is preventing management plans being created for the new ones.

Commissioner Oliver stated new development would be held to higher standards.

Commissioner Honcoop stated the existing industries are working quickly to meet current regulations. They have to in order to remain competitive.

Commissioner Vekved moved to change the language to read: Ensure that existing developments in the Cherry Point UGA maintain and operate under management plans that to accomplish the goals of the Aquatic Reserve Management Plan.

Commissioner Honcoop seconded.

Commissioner Vekved stated that inadvertently this has been made less prescriptive. It makes no sense to state on existing development conforms to the regulations. Throughout the document there has been an attempt to draw some dateline of existing and new. It makes no sense in this case.

Commissioner McClendon stated all the industries are grandfathered in and no one is going to have to go back and change things.

Commissioner Hunter asked staff, if this language, regarding development, was found in regulations as well, are they satisfied that it would include any new effort to get a permit of any kind.

Mr. Aamot stated that development is broadly defined in the zoning code so it would be a fair assumption.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Oliver stated she liked the Whatcom Business Alliance proposal to separate this section from the Aquatic Reserve Management Plan.

Commissioner Oliver moved to remove the following, from Policy 2CC-2 and make it a new policy:
Ensure that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean-energy and low-carbon emitting industries are favored;
- Strict avoidance of estuaries and near-shore wetlands, as they play not only an important role in protecting habitat, but also serve as flood storage areas in the absorption of future sea level rise;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

Commissioner Vekved seconded

The motion carried (ayes-9, nays-0).

Commissioner Honcoop stated he had trouble with this policy because it is picking winners and losers. That is not what government should be doing. He also did not like bullet point three regarding hardening of the shorelines. It does not take into consideration repairs, protections, etc. With this policy are we restricting reasonable fixes?

Commissioner Deschane stated he did not see it as picking winners or losers because the language is general enough. His main concern was how is PDS going to respond according to the type of qualitative factors in the Comprehensive Plan?

Commissioner McClendon moved to reword the new policy to read:

Ensure Enact programs that future for developments or expansions within the Cherry Point UGA are consistent with the following that:

- Encourage clean-energy and low-carbon emitting industries are favored;
- Strict avoidance of estuaries and near-shore wetlands, as they play not only an important role in protecting habitat, but also serve as flood storage areas in the absorption of future sea level rise;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

The motion failed for lack of a second.
Commissioner Hunter stated the clean energy and low carbon emitting industries are not only favored but we would not want them to only be limited to regulation. Governments find all types of ways to encourage and favor certain kinds of industries over others. It would be nice if our county and state were in fact really working hard at trying to turn around our reliance on fossil fuels for creating energy. He was not in favor of getting rid of that language or changing it in any way.

Commissioner Vekved moved to read:

Ensure that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean-energy and low-carbon emitting industries are favored;
- Strict avoidance of estuaries and near-shore wetlands, as they play not only an important role in protecting habitat, but also serve as flood storage areas in the absorption of future sea-level rise;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

He also added that staff search the regulations to see if they are addressed elsewhere. If not they are to reword them to be policies not regulations.

Commissioner Honcoop seconded.

Commissioner Oliver stated that the staff memo has a very thorough assessment of exactly where each of those bullets currently exist in regulation.

Commissioner Deshmane made a friendly amendment to read:

Ensure Encourage that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean-energy and low-carbon emitting industries technology are favored;
- Strict avoidance of estuaries and near-shore wetlands, as they play not only an important role in protecting habitat, but also serve as flood storage areas in the absorption of future sea-level rise;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study review designed in cooperation with by the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water manufacturing recycling technology to minimize water use.
Commissioner Rowson seconded.

Commissioner Knapp stated all of this is very confusing. Staff should have rewritten this in a policy context rather than trying to do this here.

Mr. Aamot stated staff will make the changes and bring it back to the next meeting so the commission can review them.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change 2CC-3 to read: Assure that Cherry Point's unique features of large parcelization, existing port access, and rail transportation availability are maintained and protected from incompatible development.

Commissioner Honcoop seconded.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change 2CC-7 to read: Permit support activities, warehousing, rail shipments, shipping, machine repair and service, educational services, food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Commissioner Knapp seconded.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change 2CC-10 to read:

It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three approved leases identified in the Lands Commissioner's Order No. 201037 designating the Cherry Point Aquatic Reserve (BP, Intalco, and Phillips 66) to:

- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and species recovery goals of the Cherry Point Aquatic Reserve designation and CPAR MP;
- Further public health and safety;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing;
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills; and
- Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the likelihood of reaching the recovery
goals of the CPAR and the Puget Sound Partnership’s recovery goals for Year 2035: by establishing a development moratorium. Notwithstanding the above, this moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.

Commissioner Honcoop seconded.

Commissioner Oliver stated she opposed the motion because it is an important part of the proposal. The collaborative alternative Policy 2CC-10 reiterates the existing regulations that are consistent with what staff has also articulated, including best available science and the Magnuson Act. The one thing that is missing is the recognition of treaty rights.

Commissioner Vekved stated that regarding the federal actions and treaty rights, they are what they are and they are part of whatever county approval process that might be in place anyway. Regarding the Magnuson Act, are we at risk of putting ourselves, with the language as it is, in some sort of legal quandary?

Commissioner Oliver stated she did not think so. There are regulations that exist right now and they were able to apply them to be consistent with the regulations, without imposing the authority to regulate on a federal level, on the county regulations.

Commissioner McClendon stated she would support the motion. The concern about treaty rights can be addressed elsewhere.

Commissioner Oliver made a friendly amendment to read as presented in the proposal from the Whatcom Business Alliance:

It is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point, consistent with:

- existing vested rights, approvals or agreements granted under Whatcom County’s Shoreline Master Program;
- continued agency use of best available science;
- Whatcom County’s application of the Shoreline Management Act, the Whatcom County Shoreline Master Program, Whatcom County Comprehensive Plan, Whatcom County Critical Areas Ordinance and other applicable local plans, laws and regulations including, without limit, the fire, mechanical and electrical codes adopted by Whatcom County;
- state agencies’ application of state laws and regulations including without limit the State Environmental Policy Act, Washington Indian Graves and Records Act, the Washington Archaeological Sites and Resources Act, the state Energy Facility Site Location Act, limitations imposed by the Cherry Point Aquatic Reserve Management Plan; and the federal Clean Water Act as delegated to the State of Washington; and
• federal agencies' application of federal laws, regulations, and treaties including without limit the National Historic Preservation Act, Clean Water Act, Clean Air Act, Endangered Species Act, U.S. Coast Guard regulations regarding vessel operations, and the Magnuson Amendment to the Marine Mammal Protection Act.

Commissioner Barton seconded.

The motion carried (ayes-9, nays-0).

Commissioner Honcoop moved to change Policy 2CC-9 to read: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential, consistent with other County policies mandating and supporting energy and water conservation.

Commissioner Vekved seconded.

Commissioner Hunter stated it is not mandating anything. It is just saying it is consistent with other policies that mandate and support these things.

The motion carried (ayes-7, nays-2).

Commissioner McClendon moved to change Policy 2CC-14 and add the preamble to read as presented in the proposal from the PDS staff:

The United States Congress approved the “Magnuson Amendment” in 1977 in order to restrict tankers carrying crude oil in the Puget Sound area. Congress found that Puget Sound and the adjacent shorelines were threatened by the increased possibility of vessel collisions and oil spills. Therefore, Congress restricted federal agencies from issuing federal permits as follows:

. . . no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of October 18, 1977), other than oil to be refined for consumption in the State of Washington.

Whatcom County does not enforce the Magnuson Amendment through the local permitting process. However, the County can encourage federal agencies to enforce the Magnuson Amendment and may, if necessary, seek to enforce the Magnuson Amendment through the court system.
Policy 2CC-14: Whatcom County will encourage federal agencies, including
the U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson
Amendment (33 USC Sec. 476). If necessary, Whatcom County may initiate
legal action to enforce the provisions of the Magnuson Amendment.

Commissioner Rowlson seconded.

The motion carried (ayes-9, nays-0).

Commissioner Deshmane addressed Policy 2CC-15. It should be a standalone item, not
part of the Comprehensive Plan.

Commissioner Rowlson agreed with the comments of Commissioner Deshmane. Why
doesn’t the County Council just order a study? Why does it need to go through this
group?

Commissioner Honcoop stated it needs to be a docketed item. It doesn’t belong in the
Comprehensive Plan. The date of December 2017 is most likely not realistic.

Commissioner Oliver stated there are policies such as this in the Comprehensive Plan.
We don’t want this to get lost and not get done.

Commissioner Hunter stated this is the main issue and the commission should not
change it. All the rest of the language doesn’t change anything.

Commissioner Hunter move to change the language in Policy 2CC-15 to read:

Without delaying implementation of the foregoing policy (2CC-14), the County shall undertake a study to be completed by December of 2017 to
examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County can work to limit
unrefined fossil fuel crude oil, coal and natural gas exports from the Cherry Point UGA above levels in existence as of July 5, 2016. The study shall review and analyze any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice public as part of the study report.

• Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council
consideration as soon as possible.

• Until the above mentioned amendments are implemented, the
Prosecuting Attorney and/or the County Administration shall as soon as is practicable, and before any permissions are granted by the County, provide
the County Council written notice of all known pre-application
correspondence or permit application submittals and notices, federal, state, or local, that involve activity with the potential to expand the export of fossil fuels from Cherry Point.

Commissioner Knapp seconded.

Mr. Personius suggest the Commission remove the date of December 2017 because of the limitation it puts on getting the work done.

Commissioner Hunter stated he saw no reason to change the date. If Council wants to change it later they can.

Commissioner Honcoop made a friendly amendment to read: The County shall undertake a study to be completed by December of 2017 to examine existing County laws, including those related to public health...

Commissioner Barton seconded.

The motion carried (ayes-6, nays-3).

Commissioner Hunter made a friendly amendment to read: The County shall undertake a study to be completed by December of 2017 to examine existing County laws, including those related to public health...

Commissioner Oliver seconded.

The motion carried (ayes-6, nays-3).

The vote on the original motion, as amended, carried (ayes-7, nays-1, abstain-1)

Commissioner Honcoop stated that the staff memo states that the second bullet is clearly not policy and may not be enforceable thorough the Comprehensive Plan. Regulations would need to be added to implement this language.

Commissioner Honcoop moved to strike the second bullet.

Commissioner Vekved seconded.

Commissioner McClendon asked staff what the impact of the language is.

Mr. Aamot stated it would be an additional workload for staff. Staff has no issues with it.

Commissioner Oliver stated it is unusual for staff direction to be put in the Comprehensive Plan. Can’t they just direct staff to do it without if being in the plan?
Mr. Aamot stated they are the Executive Branch so Council could request that, but staff takes direction for the Executive.

Mr. Buckingham stated it would not be enforceable through the Comprehensive Plan. It is awkward to have here. If shall was replaced with should it would be okay.

**Commissioner Deshmane made a friendly amendment to read:** Until the above mentioned amendments are implemented, the Prosecuting Attorney and/or the County Administration shall should provide the County Council written notice of all known pre-application correspondence or permit application submittals and notices, federal, state, or local, that involve activity with the potential to expand the export of fossil fuels from Cherry Point.

**Commissioner Oliver seconded.**

**The motion carried (ayes-8, nays-1).**

The meeting was adjourned at 9:45 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair                                    Becky Boxx, Secretary
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
December 8, 2016

Regular Meeting

Call To Order: The meeting was called to order, by Whatcom County Planning
Commission Vice-Chair, Kelvin Barton, in the Whatcom County Council Chambers at
6:30 p.m.

Roll Call
Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Michael Knapp, David
Hunter, Kelvin Barton, Andy Rowlson, Atul Deshmane
Absent: Nicole Oliver

Staff Present: Mark Personius, Matt Aamot, Royce Buckingham-Prosecutor’s Office,
Becky Boxx

Department Update
Mark Personius updated the commission on water issues.

Open Session for Public Comment
Max Perry, Whatcom County: Cautioned the commissioners to keep an open mind. The
moratorium on the wells is really impacting people. At the County Council meeting the
entire room was filled with people this has impacted. He noted the Planning
Commission meeting was full of people that will be impacted by the Cherry Point
decisions.

Commissioner Comments
Commissioner Barton stated that earlier this year the commission had added small lots
to the Birch Bay UGA through the Comprehensive Plan update.

Commissioner Barton moved to add development of regulations for small lots in Birch
Bay to the Pending Business Items.

Commissioner Vekved seconded.

The motion carried.

Approval of Minutes
October 27, 2016: Commissioner McClendon moved to approve as written.
Commissioner Honcoop seconded. The motion carried.

November 10, 2016: Commissioner Rowlson moved to approve as written.
Commissioner Vekved seconded. The motion carried.

Public Hearing
File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

Matt Aamot gave an overview of the proposal.

In 1997 Whatcom County designated Cherry Point as an Urban Growth Area (UGA) under the Growth Management Act (GMA). The Cherry Point boundaries did not change in the 2009 or 2016 UGA reviews. The Cherry Point UGA is approximately 7,035 acres. There are about 6,565 acres of Heavy Impact Industrial (HII) and approximately 470 acres of Light Impact Industrial (LII). On August 9, 2016 the County Council approved an ordinance updating the Comprehensive Plan as required by the GMA. The Cherry Point section had some policy changes, including changes relating to the Department of Natural Resources (DNR) Cherry Point Aquatic Reserve Management Plan, public access and monitoring water quality and habitat. On July 26, 2016 the County Council passed a resolution requesting the Planning Commission review additional proposed policies for the Cherry Point UGA. These policies included provisions relating to environmental protection, prohibiting additional piers, prohibiting county permits that would allow increased crude oil export by ship and studying legal ways to limit unrefined fossil fuel exports in the future. Council requested Planning Commission recommendations by January 2017. On September 13, 2016 the County Council approved the Public Participation Plan. The Cherry Point amendments are classified as Level 3 which means alternatives are to be considered. Alternative 1 utilizes amendments that were put forward by an individual County Council member. This alternative encourages environmental protection; does not allow additional piers, except one that was already permitted in the 1990’s; and provides for studying legal ways to limit unrefined fossil fuel exports in the future. Alternative 2 was the no action alternative which retains the existing Comprehensive Plan language. Prior to this meeting the Planning Commission held three meetings on this issue. These meetings included a combined town hall meeting and SEPA public hearing and two work sessions. After listening to public testimony the Planning Commission has formulated preliminary draft changes. The commission’s draft policies encourage environmental protection, support a limit on the number of proposed industrial piers (the Shoreline Management Plan currently allows only one additional pier), encourage federal agencies to enforce the Magnuson Amendment and state that the county may, if necessary, initiate legal action to enforce the Magnuson Amendment. The Magnuson Amendment is a federal law that does not allow federal permits for handling more crude oil except if refined for use in Washington State. The Planning Commission draft also includes studying legal ways to limit crude oil, coal and natural gas exports in the future. After approval of a proposal by the Planning Commission County Council review would commence in the first quarter of 2017.

Staff had some suggested amendments.
Modify the text on p. 3 as follows:
Existing shoreline and upland stream and wetland functions and values are of
continuing importance to the recovery and protection of species identified in the
Aquatic Reserve Management Plan. The area includes one of the last undeveloped
intertidal wetlands of any size in Northern Puget Sound, with importance to juvenile
salmon and other species.

Staff contacted the Department of Ecology (DOE) who stated that this proposed
deletion better reflects reality as there are other important intertidal wetlands.

Modify the text on pp. 3-4, for consistency with Policy 2CC-11, as follows:
Based on the public record developed during this plan review and best available
science in the record, the County no longer supports a limit on the construction of
additional export docks or piers at Cherry Point due to environmental and treaty right
concerns related to: (a) physical interference with shoreline functions and values; (b)
physical interference with traditional, historic and commercial fishing and shellfish
harvesting at the Cherry Point shoreline; and (c) the increased risk of catastrophic and
cumulative small oil and fuel spills from increased large vessel traffic, potential
collisions with tankers and other vessels serving the existing three piers at Cherry
Point, and related barge traffic and support vessels (see Policy 2CC-1110).

This language was discussed at two different meetings which resulted in conflicting
text and policies. This proposed language corrects this.

Modify the text on p. 4 as follows:
Whatcom County does not enforce the Magnuson Amendment through the local
permitting process. However, the County can encourage federal agencies to enforce
the Magnuson Amendment and may, if necessary, seek to enforce the Magnuson
Amendment through the court system (see Policy 2CC-15).

Modify the text on p. 5 as follows:
The large acreage, good rail access and proximity to Washington State and Canadian
ports makes the remaining upland area at Cherry Point suitable for commercial or
industrial production with emphasis on major sustainable clean energy manufacturing
or production (see Policy 2CC-32).

Modify the text on p. 6 as follows:
Existing industries consume large quantities of water, in many cases drawn from the
Nooksack River. It is the County’s policy to support renewed efforts to reduce both
water consumption levels and the quantity of discharges, in favor of recycled water use
(see Policy 2CC-3 and Policy 2CC-10).

These last three relate to citing policies that support the text.

The hearing was opened to the public.
WARREN SHEAY, WHATCOM COUNTY: Stated he wants all of the children in Whatcom County to grow up in a clean and safe environment. The time has come. We can no longer sweep genuine environmental threats under the rug by pretending they don’t exist or by simply deferring action to future generations. Our planet is dying. Now, more than ever, it is up to local governments to lead the battle against climate change. We need to prevent Cherry Point from becoming an international export highway for unrefined fossil fuels. It bears repeating that by preventing crude oil from being exported we are protecting existing refinery jobs and ensuring that the refining process meets high environmental standards. Most of the people he talks to, in the environmental community, want to protect existing refinery jobs. Do not be fooled by claims to the contrary. To keep Cherry Point clean, safe, healthy and economically viable he requested the following improvements to the draft recommendations: Policy 2CC-2: Please consult with the Lummi Nation, especially for review of archeologically significant sites at Cherry Point. Please respect the 1855 treaty. Policy 2CC-11: Please indicate that we want no new piers in the aquatic reserve. Policy 2CC-15: This needs to be strengthened so there is no piecemealing of expansions for crude export. Please keep the original 2017 completion date for the study to discourage more unrefined fossil fuel exports. He supported the Weimer amendments.

JEAN CARMAN, WHATCOM COUNTY: Representing the Bellingham/Whatcom County League of Women Voters. They support the Weimer amendment. The League of Women Voters has long been involved in advocating for the protection of the ecology in Cherry Point. They joined in a successful lawsuit by the DOE, Washington State Department of Fish and Wildlife and several environmental groups, in 1997, to gain federal protection for the area. Their position on deep water ports is that Cherry Point’s ecosystem should not be altered or destroyed, that numbers of vessels plying the Salish Sea should be limited and that cargo with high risk to harm the environment or health should not be allowed. Several arguments against the Weimer amendments focus on jobs. Certainly the League is supportive of family wage jobs. In point of fact, however, these amendments do not affect current Cherry Point industries shipping finished products. They may even protect jobs, since there is precedent for the elimination or reduction of refinery jobs in other locations after they have established bulk shipping ports. Some claim that the amendments are anti-industry, but is should be noted that the amendments actually commit to the development of Cherry Point via clean industries which use state of the art water recycling manufacturing technology to minimize water use. They assume that these would provide long term family wage jobs as opposed to the short term jobs that would be created during the construction phase of any fossil fuel project. Since they would minimize the number of additional fossil fuel tankers and barges navigating the narrow passages and sharp turns in the Salish Sea the risk of destroying an ecosystem is reduced. The more vessels, the more likely it is that a large spill or even several small ones, could destroy our four billion dollar native and other commercial fishing and shellfish industries and our two billion dollar tourist industry which depends on activities like fishing, orca watching and beach combing. The amendments also recognize the treaty rights of Native Americans to protect their sacred sites and fishing rights. It has been argued by some that wording to urge enforcements of the Magnuson Amendment by federal agencies would have the same effect as these amendments. The law against the export of fossil fuels, which Senator
Magnuson championed to protect the jobs of American refinery workers, was recently repealed after intense lobbying by big oil. The chances of the Magnuson Amendment surviving in the current climate are nil. Finally, since fossil fuel resources are finite we need to think about preserving them for future generations to manufacture clothing, hospital plastics and other necessary products rather than extract them for short term profits for export to Asia. Fossil fuel burning in Asia comes back to us as air pollution and ocean acidification and pushes us toward the tipping point on climate change. Fossil fuel burning is a serious threat to all of us.

Virginia Malmquist, Whatcom County: One thing constantly going on is this concept of a problem between jobs versus the environment. She suggested we protect our local jobs by not allowing the export of fossil fuels in their raw form. It provides no guarantee that we will have a safe environment or the current jobs will stay here. She recently spent time with a young girl who felt her future had no hope. Part of the reason she thought that was because our world is dying. We have an obligation to our youth, to our Earth, our life forms and ourselves to do everything in our power to keep this world safe. We have not been doing that which needs to be turned around. We need to honor the Lummi Tribe and their treaty. We need to enforce the Magnuson Amendment. We need to prevent Cherry Point from becoming just an opportunity to dump raw fossil fuels into Puget Sound. Please help keep our community and world safe.

Elizabeth Hines, Whatcom County: This is not an us and them situation. This is an all of us situation. Everybody wants a win and can win. The first thing we have to do is protect our environment. She supports the Lummi People and their sacred site. She supports their ancestral burial grounds. They were here long before the rest of us. She wants her grandchildren to have a beautiful world. She doesn’t want to see their world destroyed by greed and lust for oil, coal and foolish decisions. She would like to see oil jobs replaced by clean energy jobs. Water catchment is done is many parts of the world. We have lots of water here so let’s do this.

Seth Owens, Whatcom County: He worked in the oil fields for many years, the solar energy field and now the commercial fishing industry. He supports the Weimer amendment. The fishing industry is huge to Whatcom County. When a treaty is made with the Lummi People it should be honored.

Dena Jensen, Whatcom County: Stated this meeting was being held on land that is the traditional territory of the Lummi and Nooksack People. May we nurture our relationship with our Coast Salish neighbors. She supports the Weimer proposal because it offers the strongest language for our county taking responsibility to protect our land, waters and lifeforms. It indicates that we will adopt protective regulations and enforce them. If we want air to breathe, water to drink and land to exist on we have to start taking responsibility and not leave it to corporations and business advocates that put money first. Workers try hard to protect us and themselves, but accidents happen. She was disappointed to hear members of the County Council try to shake off some forms of responsibility for the compromised flow of water in our rivers resulting in what ultimately amounts to the theft of water from our wildlife, senior
water rights holders and our community has a whole. The county is responsible, as is she. We need to be role models for each other. We all have to work with coming up with solutions and stop relying or insisting on or passively waiting for other entities to fix things for us. If we all work together we will have truly reliable prosperity for future generations.

Sandy Robson, Whatcom County: Supports the Weimer proposal. Regarding the Planning Commission draft, page 3: In 2000 and again in 2010, the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program and designated them as the Cherry Point Aquatic Reserve. The following DNR Use Authorizations were exempted from withdrawal:

Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66), 20-A08488 (Intalco Aluminum Corporation), 20-013265 (Gateway Pacific Terminals), and 20-010521 (Birch Bay Water and Sewer District). She urged the commission to make an edit, actually more of a correction, in the excerpt just cited. Lines eight and nine of the draft specifically reference lease application 20-013265 (Gateway Pacific Terminals). There is no reason to make that reference unless it is acknowledged by the fact that the lease application, which once had been exempted from withdrawal, is no longer a viable or active lease application with DNR. According the DNR Commissioner Peter Goldmark’s July 11, 2016 letter sent to Skip Sahlin, of Pacific International Holdings, and her email communications with DNR the language stated in the Planning Commissioner draft does not accurately reflect the current status of lease application 20-013265 (Gateway Pacific Terminals) with DNR. Commissioner Goldmarks’ letter states the DNR has denied the lease application for the Gateway Terminal Project. Pacific International Holding or its affiliated entities no longer have an application with DNR and there will be no further consideration of the past application. So, due to the fact that DNR has officially stated that the lease application for the Gateway Pacific Terminal project has been denied and that there will be no further consideration of the past lease application, coupled with the fact that DNR’s lease denial cannot be appealed by applicant PH/PIT, the language inserted by you commissioners in your 11/10/2016 Draft document on lines # 8 and # 9, specifically referencing lease application number ”20-013265 (Gateway Pacific Terminals),” then does not appear to be completely accurate or adequate. She asked the language to be removed from the draft.

Paula Rotondi, Whatcom County: Like everyone there she depends on the fuel that the people at the refineries make. Refinery jobs are good jobs, but they are dangerous and they are done to take care of families which is everyone’s first obligation. Whatever else you give your family doesn’t matter if they can’t drink the water or the air isn’t safe to breath. It is an obligation to provide our families with clean water and air. The first obligation of corporations is not providing jobs it is maximizing profits. Corporations can and will increase profits, when they have the opportunity, by sending crude oil and refining jobs overseas. If we allow new pipelines, trains and ships to export unrefined fuels to Asia we increase the risk to our families health and safety and to our air and water. Pipelines are going to keep rupturing, trains are going to keep derailing and ships are going to keep capsizing. We accept these risks for the fuel we need here ourselves. It is unacceptable to risk our health, safety, air and water to
export unrefined fuel to foreign nations. She supports the Weimer proposal. It best protects Cherry Points and its good jobs.

Mike Sennett, Whatcom County: Stated the Division Manager of the Aquatic Resources has written the decision by DNR to deny the lease application for the GPT proposal is final and no longer subject to appeal. The application has been canceled. As such, there should be no mention of GPT in the Comprehensive Plan. In connection to this request he asked the commission to state that the county opposes any additional piers at Cherry Point in Policy 2CC-11. This brings the Comprehensive Plan into line with the DNR’s closing of the fourth pier cut-out and to protect the Aquatic Reserve from any future shoreline disruption. As we all know Pacific International Terminal committed illegal destruction and desecration at Cherry Point. To prevent any such outrage again he asked the commission to strengthen Policy 2CC-3 by adding language supporting collaboration with the Lummi Nation in any future development at Cherry Point.

David Kershner, Whatcom County: Used to work as a commercial fisherman near Cherry Point alongside members of the Lummi Nation. He values salmon as a significant contributor to our economy and the way of life of his Lummi neighbors. The Lummi People are the original stewards of the land we call Cherry Point. He urged the commission to recommend specific language in the Comprehensive Plan that recognizes the Lummi Nation’s rights as expressed in the Treaty of 1855. He also urged them to recommend collaboration with the Lummi Nation in reviewing archeological sites at Cherry Point. He urged them to state in the revised Comprehensive Plan that an additional pier is inconsistent with honoring the Lummi Nation’s treaty fishing rights. It is critical that the county make sure that new developments at Cherry Point are reviewed in the context of the Marine Mammal Protection Act and the Magnuson Amendment. The county can’t afford to have these projects avoid thorough review because they are represented as serious but minor projects. He supports the county studying its legal powers with respect to the restrictions on fossil fuel exports. He urged them to recommend that the study be completed before the end of 2017.

Charles Bailey, Whatcom County: He is opposed to the county becoming an open highway for the shipment of unrefined fossil fuels. The risk of spillage, even in small amounts, add up to a devastating impact on our environment, our destination for tourism, our fishing industry and the general wellbeing of people here. He recommended a strong planning policy that includes no piecemealing; a number of small developments that have a cumulative effect; no new piers; collaboration with the Lummi Nation—recognizing their treaty rights as well as their participation in the archeological reviews and the legal study should be completed by December 2017.

Dirk Vermeeren, Whatcom County: He is a retired refinery industry executive. His wife and he have been Whatcom County residents since 2014. He supports the Weimer proposal. Recognize the Lummi Nation and consult with the aquatic reserve group. Approve Policy 2CC-11 and restrict the current number of piers to three. Approve Policy 2CC-15 and strengthen the language to ensure the county does not allow developments to violate the Marine Mammal Protection Act and Magnuson
Amendment. Retain the study completion date of 2017. The main issue we need to address is what do we want to be in 10 years? Do we want to become like Texas, who is heavily dependent on the petrochemical industry or do we want to start diversifying our economic base? How well prepared are the Cherry Point industries for an earthquake? Does the permit process require a plan for mitigating this catastrophe? Whatcom County natural resources are finite. Our land, rivers and coastal waters sustain numerous industries, including commercial and sport salmon fisheries and related businesses. Our quality of life has become a key attractor and driver for growth. Unfortunately some people are using scare tactics to achieve their agendas. Our goal is to balance growth for clean energies. Please prepare a plan that will represent all Whatcom County stakeholders.

Ron Colson, Whatcom County: He asked the commission to adopt the Weimer proposal. If we allow crude oil to be exported from Cherry Point our Whatcom County refinery jobs will end. U.S. labor costs are among the highest in the world. That is why we have watched so many well-paying U.S. jobs outsourced overseas. It costs over 25 dollars to refine one barrel of crude oil at U.S. refineries. It costs about one half that to refine the same amount in India. Exporting American crude oil does not help the U.S. achieve energy independence. The most recent data shows that the U.S. is importing foreign oil at the rate of about 242 million barrels of oil per month. Meanwhile, we are exporting American oil at the rate of about 158,000 barrels per month. As long as we are still importing so much foreign crude oil there is absolutely no reason to export American crude oil, or is there? The average U.S. refiners acquisition costs, for domestic crude, recently rose 36 cents to $44.54 per barrel. Meanwhile, the average cost of imported crude declined 39 cents to $40.82 per barrel. Therefore, it is $3.72 less, per barrel, for U.S. refineries to purchase foreign oil than to purchase domestic oil. Excerpts from a recent Bloomberg report state: The recent solar power generation will increasingly dominate. It is a technology, not a fuel. As such, the efficiency increases and prices fall as time goes on. What’s more, the price of batteries, to store solar power when the sun isn’t shining, is falling in a similarly stunning arc. U.S. oil and gas groups are falling into the insolvency zone. Oil and gas woes are driven less by competition from renewables than by a mismatch of too much supply and too little demand. With renewable energy expanding at record rates and more efficient cars, including all electric vehicles that are syphoning off oil profits, the insolvency zone of fossil fuel companies is only going to get more crowded. Natural gas will still be needed for when the sun isn’t shining and the wind isn’t blowing. Whatcom County must not allow the dying fossil fuel industry to place a long term strangle hold on our economy for the short term profits of a few wealthy corporations. Allowing crude oil exports at Cherry Point would only hasten the loss of refinery jobs and we will be saddled with filthy rusting infrastructure that will have to be cleaned up with our tax dollars. Do not allow that to happen. Adopt the Weimer proposal then let’s begin the important job of enticing new clean industries to build their businesses at Cherry Point.

Steve Garey, Skagit County: A recently retired refinery worker. He is a the Executive Board Member of the Washington State Blue Green Alliance which is a national organization that seeks to build understanding, common cause and shared goals between labor and environmental organizations. He encouraged the commission to
support Comprehensive Plan language that will effectively prohibit the export of crude oil or other feed stocks that are necessary to produce transportation fuels or any other finished products that can be produced in the refineries with the Cherry Point industrial area. Prohibiting crude oil export supports refinery workers as well as the economy of Whatcom County. We know this because we have seen oil companies, in other times and places, react to regulations, market restraints or other concerns, by shutting refinery process units down in order to turn the facility into an export terminal. They do this by laying off the great majority of production and maintenance workers while continuing to run just the tank farm, shipping pumps and the wharf with a much smaller work force. This places most workers in local unemployment lines and tends to increase the volumes of crude and other feed stocks that pass through the community and the facility without processing. It also tends to increase the price of crude oil, effecting the viability of local refiners and increases the likelihood that finished fossil fuel products are imported into our communities from off shore producers that often recognize no protections for workers or the environment. It is important to note that a local ban on crude export would be consistent with a federal ban that was in place for decades until it was overturned just recently. The federal ban, for many years, was seen as supportive of both our country’s national security as well as manufacturing industries and the nation’s economy. The federal ban was supported for good reason by both labor organizations, environmental groups and many others. You have an opportunity now in considering Comprehensive Plan language to support local workers, our local economy, as well as our environment for the same reasons that supported the federal ban for so long. He also pointed out an important flaw in the current moratorium language that is not supportive of our best interests. The current moratorium language defines unrefined fossil fuels by listing several forms of crude oil and other raw materials, but also lists inaccurately several finished products. Propane, butane and natural gas are finished products. Without going too deeply into organic chemistry you should know that those products do not come out of the ground all by themselves. Those products should not be listed. Those molecules must be processed in order to isolate them from each other and all the other hydro carbons, as well as many impurities, in order to be suitable for markets. While he is a person who has supported working people in some form for most all of his life he knows, the international union knows, as the Washington State Labor Council knows, that global warming and the consequences that result must be stopped. We know that in order to do that we must reduce demand for fossil fuels. We also know, however, and many of our friends in the environmental community know as well, that while the transition is underway it is our responsibility to insure that it is a fair, just and equitable transition. To be just it must, in addition to many other things, recognize and protect as much as possible those workers and communities that are most exposed to disproportional costs.

Eddy Ury, Whatcom County: Everyone in the room should find some satisfaction with the draft in that it balances so many stakeholder concerns in both the economic and industrial issues at Cherry Point as are the various laws and policies that need to be outlined in our planning document. We need these in order to be fair to business so they know what to expect during the permitting process. There are some proposals forthcoming that are not consistent with state law, federal law or county policies and

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yet seem to be moving forward anyway. There is a Canadian gas pipeline that is
proposed to route through rural Whatcom County farmland, through the Cherry Point
Aquatic Reserve and on to Vancouver Island. This does nothing for the U.S. economy
but does pose some risks. It also violates state law in terms of the Aquatic
Management Plan. This shows disregard for the policies in place. At some point the
county could be sued merely for enforcing the law. That is all the more reason why we
need this legal study so the county can be best prepared for these types of things. He
would like to see the deadline for the study be changed back to December 2017. He
would like to see Policy 2CC-11 be consistent with other parts of the chapter to state
we don’t encourage new piers. He submitted a petition with signatures of those who
support a ban on unrefined fossil fuel exports.

Tate Garret, Whatcom County: He has friends and family who have been supported by
the jobs and businesses at Cherry Point. He has seen how the opportunity to hold a
family wage job so close to home provided not only a stable income but a larger
amount of time to spend together with family. About a year ago, as he was starting his
sophomore year in high school, he started considering what these jobs could have to
offer and ended up deciding to take classes at Bellingham technical College through
Running Start. After earning an Associate’s Degree in 2018 he hopes to get a job at
Cherry Point so he can stay local with family and friends while earning a good living.
You may already know that the jobs at Cherry Point provide a large chunk of the
county’s income, both directly through the employees that work there and indirectly by
bringing in contractors and paying for utilities. What you might not know however, is
that the industries at Cherry Point are constantly searching for ways to increase their
efficiency and decrease their environmental footprint. They are also actively developing
green energy solutions and more sophisticated methods to detect and contain any
leaks or emissions in the atmosphere and ground. Because of this the environmental
impact of the Cherry Point businesses has been reduced to an almost imperceptible
level and will remain in retreat with the continued vigilance and innovation of the
industries and public. The current plan for the Cherry Point Industrial Zone is often
ambiguous and vague, sometimes to the point that it can be easily and perhaps
unintentionally used to inhibit and restrict the industries it’s designed to help. It also
makes it nearly impossible for the industries located there to upgrade their facilities
and equipment to more efficient and environmentally friendly modern designs. These
difficulties, along with the moratorium currently in effect, are part of why he believes
the current plan for the Cherry Point Urban Growth Area should be amended in favor of
the Whatcom Business Alliance’s Alternative 3, or canceled as Alternative 2 suggests.
Diminishing the number of family wage jobs will drive people to seek employment
elsewhere and will cause Whatcom County’s average income, which is currently 25%
below the state average, to decrease even more. He hopes that he and hundreds of
other students, along with thousands of current employees and their families will be
able to continue counting on Cherry Point to provide this county with a reliable and
sustainable source of jobs that will benefit both its people and environment.

Ricky Goss, Whatcom County: He is currently working on obtaining his Associates
Science Degree from Bellingham Technical College. He currently works for Bellingham
Technical College as a math, chemistry and process technology program tutor. He is
also Vice President for two Students for Local Industry clubs at the college. He lives in
Snohomish County but hopes to soon become a contributing member of this
community. He is enrolled in the Process Tech program to achieve a goal. That goal is
to have the opportunity to work for and retire from one of these great industries. He
has concerns about the Weimer proposal. These proposals will not only affect the
companies that do business in the Cherry Point area but it will reach out and touch
employees, contractors, sub-contractors, schools and businesses. This decision affects
families. Because of the families that this decision affects the two choices he can
support are Alternative 2 and Alternative 3. We need to keep these companies in
Whatcom County and help them grow so they can continue to support our friends and
families that live here.

James Hendrix, Skagit County: A student at Bellingham Technical College in the
Process Technology Program. He had previously made a living doing turn arounds and
shut downs for refineries across the U.S. but this has always been home. The
regulations being considered are already enforced by different agencies. It seems like
an overreach to consider enforcing them again. If you overregulate an industry it will
die. We can’t afford to lose the industries that are here. With the average income in
Whatcom County already 25% below the state average we can’t afford to let these
jobs go. We can’t regulate them to death by putting on regulations that are already in
place. There are several major cities in the country that have lost their industries.
Detroit has a 39% poverty rate. Chicago has a 1.3 million people living in poverty and
is one of the most dangerous places to live. This can be directly attributed to a loss of
their industries. If you have no hope and no future you act out in desperation and
dangerous environments happen. Living in poverty is not something we should accept.
We have industries we need to support and help grow.

Joe Wilson, Whatcom County: Vice President of Pederson Brothers who are a heavy
industrial steel fabricating company. They work at the refineries as well as other
industrial facilities. They are a small business. They have a lot of sub-contractors who
work for them. The refineries are very good neighbors in this community. They
contribute a lot to the tax base. They provide very many family wage jobs. They also
spend millions of dollars on air and water pollution control and safety for their
employees. He was against the Weimer proposal because it is so poorly written. Right
now there is a moratorium on permits. These permits may be needed for air and water
pollution control. If the Weimer proposal is instituted the county will be spending a lot
of tax dollars in a legal battle because it will be found unconstitutional. We all know
that. This county can’t decide for the U.S. what is in our constitution.

Eileen McCracken, Whatcom County: She is employed as an engineer at Phillips 66.
The collaborative proposal from the Cherry Point industries provides a lot of helpful
guidance to the community in planning for the future of Cherry Point. Please reconsider
proposed Policy 2CC-3, specifically requiring water recycling technology to reduce
water use. Consideration should be given first to reducing overall water use. Jumping
right to recycling may or may not have the same impact. Remove Policy 2CC-15. The
refineries are committed in their operations here. They show it every day in the high
standards they have and their support of the community. Exporting crude could be a
pathway to future viability for these facilities.

Karen Shorten, Whatcom County: Whatcom County can have both economic growth
and a healthy environment and we deserve and support both of those things. Cherry
Point industries have contributed by creating thousands of jobs and contributing
millions in tax revenue to our community. In addition they have spent millions to
improve environmental and safety performance at the facilities. Along the way they
have been cleaning up their fuels. The industries support and encourage green energy
businesses and responsible industry that may want to locate in Whatcom County. Their
presence would further build out our community. Likewise, opponents want us to
believe that exporting crude oil will add to climate change are not correct. It will not
because demand would merely result in the supply, from alternate sources, providing
jobs elsewhere. We need energy and it is most responsible from an economic, safety
and environmental standpoint to have that refined locally. There is also a
misunderstanding, among some, that allowing companies to export crude would drive
jobs overseas. That is not true. The way to ensure long term viability of the existing
industry is to support their future potential. We have to remain competitive. She urged
the commission to remove obstacles and allow the existing state and federal laws to
govern. Do not add extra layers of regulations. It is important to include the local
community in this process and to listen to what is said. It is important to act in the
communities best interests. Approve Alternative #2 or #3.

Tony Larson, Whatcom County: President of the Whatcom Business Alliance (WBA).
The WBA represents businesses from every industry in Whatcom County, both large
and small. They agree that the narrative of Whatcom County needs to be changed that
the county is a difficult place to do business. Currently Whatcom County is seen as a
difficult place to get new projects and expansion projects permitted. They have
identified several examples of companies, including manufacturers, who wanted to
locate in Whatcom County but found it too difficult. Those jobs went elsewhere. Cherry
Point industries and the contractors who work there are good partners in every
respect. We need them and we need to support them. The language in the document
the commission sends back to the council is important, not only to the 10,000 plus
family wage jobs that are impacted, the 200 million dollar tax base, the 1 million dollar
plus philanthropy provided and the environmental organizations they assist, but also to
the thousands of stakeholders. You have an opportunity with this amendment to send
a message that Whatcom County is a great place to bring jobs. By working with the
Cherry Point stakeholders we can find a balanced solution. The current draft simply
falls short of that. Slow down and take them up on the offer for a day of education.
They will bring in experts that can provide all of the information needed to address
some of the very complicated questions that are before them. Consider the
compromise language their members have provided. It was a good faith effort to
protect the environment, provide economic opportunity and job growth and avoid
lawsuits and legal fees that would burden Whatcom County taxpayers. The community
is looking to the commission to submit language to the council that reflects the values
and economic needs of the entire community.
Jessica Spiegel, Thurston County: Representing the Washington State Petroleum Association. They are a non-profit trade group that is comprised of 25 companies that explore, develop, transport, refine and market petroleum products in five states. She felt the process was rushed and not following the GMA. It requires a public process. Alternative #3 should be included as an alternative and recommended as the proposal to the council.

Erin Anderson, Whatcom County: Legal counsel for the Whatcom Business Alliance. There is no statutory mandate that the commission rush their decisions. She urged the commission to take up the offer from the WBA for a public open and transparent training session regarding the entire framework of regulations of all of the businesses at Cherry Point. Address the constitutionality of any county trying to ban the export of commercial products. Commerce has this jurisdiction. In regards to meeting the haste of the January deadline she had an email from staff dated November 8, 2016. The email states the WBA could submit an alternative if they did so by November 10, 2016. The Planning Commission will consider WBA’s proposed language. This is not being done at this meeting. It would be the appropriate that to do to slow down and respect what staff said to a significant stakeholder. This process won’t even come to the council until the entire docketing process is completed. That package of docketing items then come to the commission, SEPA gets done and only then does this issue get delivered to the County Council for action. That is law. There is no rush. Undertake the training session they have been invited to. She concurs with the County Prosecutor’s analysis that it is Commerce’s role to decide who gets to export and receive products.

Dustin Hoffman, Whatcom County: He is a student at Bellingham Technical College and President of Students for Local Industry. He recently attended one of the commission’s work sessions and some members openly admitted to not knowing who the Planning Commission serves. Mr. Deshmane even asked if it was Carl Weimer himself who the commission answers to. Nicole Oliver stated she had no knowledge of how these industries operate. He witnessed the commission’s legal representation, Royce Buckingham, explain how there are already many existing regulations and agencies that take care of these matters, such as the Interstate Commerce Commission, the EPA and the Magnuson Act and to implement the Alternative 1 policies would open Whatcom County up to expensive litigation and lawsuits which we the people would be forced to pay. After observing this he realized that not only does this seem confusing to him but also to many on the commission. Is this how we want to conduct business here in Whatcom County? As Planning Commissioners and public servants do you feel it is necessary to drive a wedge between your fellow neighbors, the industries that provide so much support for our community and the environment? Is it necessary or even good policy to ignore your own legal advice at the public’s expense? For him the answer is no, we shouldn’t. We don’t have to continue to polarize our communities with divisive issues. We can choose to be better than that and proactively seek comprehensive policy changes that brings harmony to the environment, local industry and our community that we can all agree on. Our local industries are our friends, neighbors and families. They are not out to cause us harm, they just want to be able to operate safely, efficiently and in peace. A few example of how just one company, BP, has helped our local environment and economy are: BP purchased and donated
180 acres of land to the Whatcom Land Trust to maintain the third largest blue heron
colony in the region and has actively worked to restore salmon habitat in Terrell Creek.
It is the largest contributor to the United Way of Whatcom County and has also
donated $250,000 to help rebuild the Boys and Girls Club in Ferndale after in burned
down in 2007. BP contributes more than $47 million dollars to our state and local taxes
each year. These examples are not the actions of industry that needs to be over-
regulated because of political over reach. They deserve our attention and appreciation,
for those industries are made up of the men and women of our community. For the
good of Whatcom County and its citizens please stop taking an adversarial role
between you and Cherry Point industries. Please look past the loud voices of Carl
Weimer and David Hunter. We are not their loyal subjects and neither are you. Find
your own individual voices and with research and due diligence each one of you will
find that Alternative #3 will enable our community, environment and this industry to
coexist for many more years to come.

Cary Clemenson, Whatcom County: In 1991 he went to work at Cherry Point. At the
refinery where he works it was pay day. There are 297 employees. The payroll amount
was $440,484. This is what really matters. He was opposed to the Welmer proposal. It
will kill jobs and economic growth at Cherry Point. If industry can't adapt to the
changing market conditions they will cease to exist. The Welmer proposal will
absolutely place the Cherry Point industries at a disadvantage to their competitors.
There are 2,100 full time jobs at Cherry Point with an average annual income of
$144,000 per year. How will those jobs be replaced? Cherry Point companies pay over
$200 million in tax base in the State of Washington per year. Calculate for yourselves
how many retail cannabis businesses is it going to take to replace that. How do you
plan to pay teachers, police officers, firefighters, etc. without these industries? He
supported Alternative #3. This approach balances economic growth with environmental
stewardship.

Tyler Ryan, Whatcom County: Board member of the Western States Petroleum
Association and employee of a financial management firm. The Welmer proposal is
entirely politically motivated. The commission should take into account what the true
intentions of the proposal are. Is the goal of the Planning Commission to help plan for
responsible growth in our community or is it just to shut things down? The Welmer
proposal is designed to shut things down. The WBA proposal, which was done with
care and intent to do what is best for Whatcom County, is something the commission
should consider. We hear people talk about the refinery jobs and the services that are
provided but the commission also needs to realize that his company’s source of income
relies on the employees that work at the refineries. There are lots of other businesses
that rely on the employees of the Cherry Point industries. The demand for fossil fuels is
a constant. What we do here has no bearing on that. If we don’t do it here it will go
somewhere else. The demand isn’t going to disappear. The refineries take great care of
the environment.

Tom Robins, Whatcom County: He is a project manager at BP. He was opposed to the
Welmer proposal. Many people would look at him as a dupe of the oil companies or an
evil polluter. That is a cute debate trick. It will always bring into question the
opponents motives. There are many families that work and make their living at Cherry Point. They talk a lot about supporting people and they don’t want to chase jobs out of the areas, but the net effect of what they are doing is going to put those businesses out of business. They also say they care about the workers and they have some special insight as to the working of the industries that enables them to see how this works. They miss the point that this is a very complex industry and they don’t understand anything regarding what they are talking about. What he finds difficult to put up with in the proposed language is the talk about clean industries. What are clean industries? He is an engineer and knows that activities by humans have impacts on the environment and the systems. How are these clean industries going to get through the process these people are putting in place for them to be successful here? Will they even want to come here? It is more of a cartoon than reality.

Spencer Palmer, Whatcom County: In support of Alternative #3 from WBA. A lot of people are talking about the strong backbone that the industries at Cherry Point provide for this community. The Cherry Point Reachout Community, comprised of employees, contractors and retirees from Cherry Point, is working very hard to provide Christmas for 225 families in the county. The Christmas they will provide is not only presents but also includes food. The employees at the Cherry Point industries give a lot of money to United Way, the new soccer field, etc. The point is the community needs people like these and people like these need jobs like these.

Eric Emsky, Whatcom County: He believes in ethical and sustainable business for the future. A large overseas tanker uses 1,688,000 pounds of fuel to ship product overseas. This equates to 17,000,000 pounds of CO2 released by one tanker ship. The fuel used by these ships has a lot higher sulfur content which results in a lot higher sulfur dioxide emissions. On the economic side a dollar is not dollar. We must look at our resource usage for the future. He would like to see his children and grandchildren have a safe and healthy place to live. It is supportive of business and our economy. The refineries can create cleaner alternatives. Do not allow crude oil exports. Keep our limited resources here in North America. Employees of the refineries should urge their employers to develop and institute renewable energy sources that will provide jobs for the future. There will not always be oil in the ground to use.

Hamilton Dutcher, Whatcom County: Was worried about terminology. Trains used to come through the county and we had to wait for them at the crossings. We said we were going to limit the size of the train. The limit was 100 cars. The corporations immediately doubled the size of the cars. Now we are looking at another pier at Cherry Point. How big is it going to be? He is scared of the size of the boats coming in and where they are coming from. What are they going to bring with them? Corporations are after profits. They want to increase them. Trains coming here from other areas had been leaking all the way for three years and the companies did not have to clean it up. This leaking oil is going into the ground and water. We don’t want this.

Bill Chambers, Whatcom County: A licensed professional engineer. Was attracted here by the natural beauty balanced by the opportunity to work for and earn a living wage. The forward thinking people who offered the original Shoreline Management Plan in
1976 recognized that balance by preserving a small area around Cherry Point for heavy industrial development. They realized the value of that unique physical feature of having developable uplands in close proximity to water deep enough to accommodate ocean-going ships. The idea was that the industries that built there would be the engine that would drive efficient economic development within the county. That is exactly what has happened. The last significant amendment, to the original document, was adopted in 1987 after 18 months of study and public input. It resulted in the Cherry Point Management Unit. The language supported the existing facilities and encouraged new development. The proposed amendments neither support existing facilities or encourage new development. Instead they seek to limit the existing industries ability to adapt to the changing dynamics of a complex global industry. He asked that the Weimer language be rejected.

Brad Owens, Whatcom County: Representing the Northwest Jobs Alliance (NWJA). The NWJA is a local, non-artisan organization whose growing membership includes business, civic and labor leaders as well as elected officials. Collectively they represent thousands of likeminded individuals all of whom rally around our mission to promote the growth of family wage jobs in the context of sound environmental practice. The NWJA is in full support of the legal opinions and comments contained with the December 7, 2016 letter from the WBA. Additionally, the NWJA is in full support of and recommends collaborative Alternate #3 for adoption. In the instance that the Planning Commission does not adopt Alternative #3 and for reasons set forth in the referenced document we reiterate the WBA recommendation to urge the commission to suspend the current breakneck schedule for consideration of amendments to the Cherry Point UGA section of the county Comprehensive Plan; Docket the three alternatives noticed for hearing on December 8, 2016 for consideration in January, together with Alternative #3 submitted by the WBA and any additional proposals received from interested citizens; Take advantage of the process required by Chapter 2.160 of the county code to learn more about the marine terminals operating in the Cherry Point UGA and the regulatory programs that new or modified terminal projects would need to satisfy. Focus on whether the amendments are necessary, whether they would have unintended consequence and whether they would undermine a pillar of the county’s economy.

Cliff Freeman, Whatcom County: He opposes the Weimer proposal. Its intent is to specifically restrict the existing fossil fuel industry and limit future industrial development at Cherry Point. He opposed most of the language changes the commission made. He appreciated the language in Policy 2CC-11, bullet one which recognizes the fourth dock granted under the current Shoreline Master Plan. Thank you for recognizing the importance of a fourth dock. It is absolutely critical to the future of this industrial zone. Regarding Policy 2CC-16, he opposed the use of his tax dollars for the study. Death by 1,000 cuts was a comment made by Commissioner Honcoop. He couldn’t agree more. Enough with more layers of policy leading to additional regulation. The last 40 years has seen no new industry at Cherry Point, just expansion of existing operations. It is not without lack of trying. In 1976 a company started a project on about 300 acres on Gulf Road. They soon realized that they did not have deep enough pockets to run the permit gauntlet. In 1977 Chicago Bridge and Iron
spent several million dollars, produced a draft EIS and then walked away. In 1983
another company entered the picture and spent several millions and walked away. In
1992 the Cherry Point Industrial Park was proposed with a multi-use dock. After
several years and several millions spent no permit was issued.

Barbara Lewis, Whatcom County: A Lummi Tribal member. This area has such a high
literacy rate and has so many natural resources that it makes us rich. What would
happen if the economy collapsed and we are left to fend for ourselves? Is oil going to
be the first thing we are going to grab? No, we are going rely on our natural resources
and we are one of the few places in the country and world that is left where we can
still live off of the land. That is changing both here and nationally. She grew up living
off of the land, gathering plants and medicines. She felt for the people at the meeting
who wanted to protect their families and wanting to protect what they hold dear to
them. The Comprehensive Plan is going to live on longer than four years. She wants to
see us doing the best we can for the environment that we are going to be relying on
forever. We need to stop relying on oil and rely on healthy alternatives. Our economic
future relies on having more green jobs. Respect the Lummi Treaty.

Chuck LaTavec, Whatcom County: Works at Cherry Point. The Cherry Point refinery is
the largest and newest refinery in the Pacific Northwest. Without the refineries at
Cherry Point we would be relying on older refineries, in Skagit County, to import their
products to the Pacific Northwest. This is not efficient. Today the energy industry is
moving much faster than ever before. Cherry Point was built to run Alaskan crude.
Today it sources crude from all over the world. Where is our crude source going to
come from in the future? It is a very challenging problem to try and figure out. This
issue is the same for the components they use. Their products have much different
components from what they used to have. This continues to evolve and change. The
energy industry is no different from any other industry. All industries today are
moving, changing and rapidly adapting to what is going to be in front of them in the
future. Revisit collaborative Alternative #3. Slow down and work with all stakeholders
to find a balanced position.

Bob McCarthy, Whatcom: Director of Safety and Risk at the Cherry Point refinery. The
emphasis of his job is to identify risk. The common source of risk in his and any other
business is moving too fast. This issue is happening too fast. People don't really
understand all of the details and the unintended consequences are not being fully
seen. He encouraged members of the commission to visit the industries at Cherry
Point. In order to operate safely and provide living wage jobs requires the flexibility to
respond to changing conditions in a changing world. Many may not fully understand
what the impacts of the proposals are. There does not need to be a tradeoff between
economic development and a healthy environment. The Cherry Point businesses
support the collaborative draft because it provides the right balance of economic
opportunity and environmental stewardship. The Cherry Point workers will provide food
for over 225 families. The magnitude of this effort is immense. It is the economic
power of these industries that make this possible. The wages of the employees are
shared with the community.
Lucas Burdick, Whatcom County: Existing laws are important for any government. The Magnuson Amendment was created in the 1970s and has been a safeguard for the state. It is not a new detriment to the industry. Making sure that law is not undermined by piecemeal progress would be keeping with federal law and the law of the constitution. The Lummi Treaty is also law. There are a lot of ways for counties to regulate industry that is within constitutional boundaries. Commissions throughout the country make regulations regarding trucking, rail, etc. in the name in tourism, zoning, etc. and including climate change and energy policy. The idea that it would be unconstitutional to regulate industry because it affects imports is a generalization of U.S. law.

June Coover, Whatcom County: Supported Alternative #3 and the comments made by WBA.

Pete Romero, Whatcom County: A contractor who works at the refineries. He opposed the Weimer proposal. If the industries at Cherry Point can’t make decisions to adapt to the changing market conditions they will eventually cease to exist. The Weimer proposal may not even be legal. To spend taxpayer’s money to get legal counsel seems ridiculous. Supported Alternative #3. A lot of clean fuel projects have been built at the facilities. All of this federally mandated. These refineries are super clean. He has worked at other refineries, in other states, that aren’t as clean.

Alyssa Willis, Whatcom County: Secretary for the Students for Local Industry club at Bellingham Technical College. It is not known what will happen with passing of the proposed Weimer amendments but significant evidence has already been presented which suggests it will not positively impact Whatcom County. This proposal is redundant. There has been some confusion regarding the Magnuson Amendments. The Amendment states “no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of October 18, 1977), other than oil to be refined for consumption in the State of Washington.” This bill has already been enacted. She does not want to see the industries at Cherry Point be subject to excessive red tape and ambiguous language. Supported Alternative #3 or #2 and urged the commission to work with the WBA because they are more impartial.

Randy Ambuehl, Whatcom County: Supported Alternative #3. The industrial base at Cherry Point provides a disappearing commodity in this country, which is jobs with family wages and disposable income which supports the local economy. Undermining the ability to maintain businesses that can provide these kinds of jobs will undermine the ability to have a good quality of life for Whatcom County citizens. Supported having a fourth dock. It is important to preserve the industrial base there.
Robert Larson, Whatcom County: Supported Alternative #2 or #3 by the WBA. Asked the commission to take the time to make resolutions that will benefit the county as a whole, not only special interest groups or political agendas. Do not make regulations that are beyond the federal regulations already in place. They would handicap the industries from being able to improve their facilities and remain competitive. They need to be viable and safe in their operations. They are environmental stewards. They take the local communities needs seriously, make charitable donations and pay hundreds of thousands of taxes and payrolls.

Erica Charbonneau, Whatcom County: Works for a non-profit agency in the county. Asked the commission to consider the impacts of the proposals to the non-profit agencies in the county. The businesses and employees at Cherry Point donate over one million dollars to the community every year. That does not take into consideration all of the volunteer hours of the employees and their families.

Christopher Grannis, Whatcom County: Supported the Weimer proposal. It would not have a negative impact on the jobs that are here now. It may help to preserve them. If you can export crude you can the export jobs that refine the crude. There is a disconnect between people that believe that preventing crude export is going to hurt the jobs that we have here and the very likely reality that the opposite would happen. Recognize the Lummi Nation and their treaty rights. Protect Whatcom County's aquatic ecology by preventing any additional piers at Cherry Point. When the first refinery was being built the herring fisheries were thriving. The three piers that went in coincided with the demise of the herring fisheries. Another pier would very likely wipe it out. In the Salish Sea there is the risk of oil spills. Just one spill would do tremendous damage. He supported the study with a completion date of 2017. Do not allow anything that would violate the Magnuson Amendment.

Pam Brady, Whatcom County: Works at BP. She supported the amendments from WBA. There needs to be land use policies that support a robust industrial sector in the county. These policies should support investment by existing and future companies so that these companies may grow, expand and flex to meet future business needs. If Cherry Point companies, or other businesses, are restricted so they do not have the flexibility to adapt to changing market conditions they will not remain competitive and eventually cease to exist. The loss of Cherry Point businesses is not confined to the oil industry. The economic loss would be felt throughout the community and the county will suffer severe setbacks in its job growth and tax revenue. The companies at Cherry Point have offered to meet and educate the commission. Anyone is welcome to tour the refinery to learn more. It is important to understand the complex industry as policies are contemplated. Reconsider Policy 2CC-16 requiring a study of the legal ways the county can work to limit fossil fuels. This reference has no place in a land use planning document. The county can ask for a study any time they want. Encouraged adoption of Alternative #3. It recognizes a middle of the road approach.

Amy Glasser, Whatcom County: Supported the Weimer proposal. Allowing any shipment of unrefined fuels overseas will no doubt result in corporations moving refinery jobs overseas where labor is cheaper and environmental safeguards are not in
place. The jobs here are less stable if unrefined fossil fuels are shipped overseas. The land we are talking about is Lummi Nation Treaty land and they have made it very clear they will not support any projects that will result in increased risk in environmental accidents. Treaty rights need to be respected. Our planet is warming faster than we actually imagined and the increased fossil fuel projects ignore the facts that we must move away from fossil fuels, not increase them. Jobs in the industry will remain but they won’t last forever. She felt the people in the asbestos manufacturing industry were anxious about losing their jobs also. However, they moved on and got new jobs. They realized the future should be safer. We don’t need to be dealing with dangerous materials in order to be a successful economy. Humans are imperfect and accidents happen. The environment is never the same after they do. Corporations fight cleanup, we know that. They always have and always will. They don’t want to pay for it. They are not invested in anything that is going to cost them more money. They are invested in making profit. We can’t afford to pay for the spills, lose our tourists and the reason why many of us came to live in this area.

Darrell Johnson, Whatcom County: Years ago he had taken a tour of a chemical plant. When they put new lines in they did not remove the old ones because they did not have the money, resources or motivation to do so. The chemical plant could get away with that because there was only a little something still in the ground. In the refineries you find very few abandoned lines because they realize that putting something new in, without taking out the old, leads to confusion, dangerous situations and other unintended consequences. The same thing happens with laws. If a law is already in place and another law comes along and tries to enforce a law that is already not being enforced people start getting confused. What happens is you are always wrong and you are never wrong because of the conflicting laws. The Weimer proposal was put together quickly as are the new proposals. Step back and take time to look at these. What is driving the new proposals? There are already a lot of laws already in place that are not being enforced.

Chris McGary, Whatcom County: Contractor at the refineries. Those supporting the Weimer amendment are either those nearing retirement or young people with no children. These people have no young families they are supporting. Bellingham is an industrial town with lots of good paying jobs to go around. He is not a fan of having a true export facility but the current industries need to be allowed to adjust to the changing demands. He is tired of needless regulations chipping away at the future possibilities for jobs at Cherry Point especially when it is more economically viable, via the Magnuson Amendment, to build an export facility outside of Puget Sound where supertankers are allowed should anyone choose to build one there. We still import crude for domestic use. He refuses to stand idly by and let Weimer destroy the possibility for future industrial jobs at Cherry Point. Each individual issue should be looked at and given proper environmental review and permitting process. A broad ban is inappropriate and irresponsible.

Andrew Eckels, Whatcom County: Part of the reason there are good paying jobs in the oil industry is because the oil industries are organized, have unions and they force the oil companies to give them wages and benefits that they deserve. If the oil companies
had the opportunity to pay less they would shift refining somewhere else, out of the
U.S. if they were able to export to unrefined oil. While we need an economy that
supports people. Oil is not the only industry here that provides good paying jobs. The
fishing industry, tourist industry, etc. are massive parts of our economy. Fishing is the
livelihood and cultural way of life for the Lummi and Nooksack Nations. Their entire
way of life could be destroyed with a single oil spill from any of these new projects.
How many people are really looking at the analysis of climate change? The federal
government will not do anything in line with what climate scientists say. They say we
need to dramatically cut emissions or we will experience runaway warming. Climate
change is happening much faster than anyone thought it would. There will be dramatic
changes in his lifetime. If we are really serious about our future we have to look at
things honestly and move away from dependence on fossil fuels.

Ann Douglas, Whatcom County: Supports the Weimer proposal. Overregulation does
cause problems, especially when there are conflicting laws. BP was not clean until
there were lawsuits that forced them to be clean. They are clean because they are
highly regulated. She has leukemia which is associated with high levels of benzene in
the water. She lived in an area in California where she was probably exposed to the
benzene. There needs to be intelligent regulation on industry. Although BP is a
relatively recently built refinery, if they are allowed to export oil you will find their next
newest refinery in a foreign land. The jobs will leave here. This country isn’t just about
money but also about taking care of human beings. We need to look at regulations
that will help jobs stay here and keep the country clean.

Rich Stump, Whatcom County: Refinery worker. Supports the WBA proposal or the
option to do nothing. He did not see what the problem was with the original language
in the Comprehensive Plan. The refineries are not currently exporting oil and he does
not see that happening. If they have to do that in order to keep their doors open that
should be allowed to happen. If these businesses go away they will never come back.
The more regulations we add will make things harder. Think carefully about what they
do and what regulations we add to these businesses. Someday there will be another
source of cheap heat and they won’t have their jobs.

Bob Burr, Whatcom County: He has heard about preserving jobs for his grandkids but
he is concerned about preserving life for his grandkids. Planning is about the future.
You have to read the future in order to make decisions. His reading of the future, along
with many scientists, is mass extinction. In considering the future you have to consider
that we now have a new administration for this country that is going to put in charge
of the EPA a person who does not believe in climate change. It is very possible that the
regulations that exist now are going to be taken away. The effort to preserve our
planet now has to shift to the local level since we will not have support at the federal
level. Therefore, the Weimer proposal is very important.

Carole Perry, Whatcom County: All politics are local. She and her husband were in
attendance when Councilmember Weimer proposed his amendments. When he
proposed them there were no other public around. The entire Comprehensive Plan had
been gone through and then he did this at the very end. Even other members of the
council said it was not proper procedure. Days later PDS put out a statement asking for
input. The process is not going right. Did the commission notice at the meeting who
the first 10 people were that testified? There was some manipulation there too. This
was brought in through the back door at the last minute. The commission had already
done their work.

Jeff Hallender, Whatcom County: Encouraged the commission to do more research.
Tour the refineries to get more information. He commented about testimony he heard
regarding cleanup of spills. He stated that the industry has made tremendous strides in
terms of reliability and safety. They have extensive drills to try and be prepared to
respond to accidents. There is a state law that taxes the refineries and takes that
money to put in a fund that the state can then use to help pay for spills.

Chris Johnson, Whatcom County: Representing the NW Washington Central Labor
Council. They oppose the Weimer proposal. They could support Alternative #1 if
language was changed to simply refer to export of unrefined crude oil. He personally
supported the WBA proposal. He supported his family on wages he earned at the
refinery. With this hurried process to push this through it feels like the people that
make their living at the Cherry Point refineries are getting the bum’s rush. They
deserve a fair and open hearing and the ability to have back and forth with their
government.

Natalie Chavez, Whatcom County: Encouraged the commission to watch
documentaries. *March Point* is a documentary that investigates the impact of the two
oil refineries. The two refineries were built in the late 1950’s on land that was once
part of the Swinomish Tribal lands. *Wasted Waters* is a far reaching investigation into
the U.S. great water ways. There is a portion that explains how the water pollution has
affected our orcas as well. Dead zones are a local problem. Every 10 years the dead
zones double in size and number around the world. In the Gulf of Mexico there is a
dead zone that is as large as the state of Massachusetts. Some of our worst pollution is
invisible. The water may look okay but science tells us that it’s not. There are over 100
chemicals on scientists watch lists. Many of these chemicals include “endocrine
disrupters”. These kill fish, cause mutations, threaten human health, raise the risk of
breast cancer, lower sperm count, etc. Approving a Comprehensive Plan with the
Weimer amendments does not put people at risk in the county. This is not about
shutting down anyone. This is not about people losing their local jobs, volunteers not
being involved anymore or donations not being donated. This about using common
sense, integrity, creating space to reach our highest potential, protecting our health,
our children’s health and the health of our environment. This needs to be about
balance and having a harmonious transition into healthier industries and a healthier
way of life. Many people may not be aware that ?? swimming pools have been in
regular use for over 50 years in European countries. People there would not even
conceive of swimming in toxic chlorinated swimming pools. It is time for us to evolve.

Rick Poitress, Whatcom County: Lives on Point Whitehorn about three miles from
Cherry Point. The Weimer amendment was not well thought out. He supports the
proposal from the WBA or Alternative #2. There has been a lot of comments about the
refineries leaving. There is nothing to stop BP from going other places. They are an
international company. They can go where they want. He addressed the fourth pier.
This is the last deep water port on the west coast where there is an opportunity to
make that an economic driver in Whatcom County.

Max Perry, Whatcom County: Encouraged the Cherry Point workers to keep paying
attention. Go to the County Council meetings. That is where the Weimer amendment
came up out of the blue. They bring these types of things up when no one is there. The
process at the commission meeting was manipulated. The signup sheets were
manipulated. The first 10 to 15 speakers were the environmentalists. He has seen that
happen at the County Council meetings. Be aware of these people doing this.

Mike Kimmick, Whatcom County: Takes exception to the statements of the previous
speaker regarding the manipulation of the signup sheets. For the business association
to say they have a collaborative proposal is not true. It was a special interest business
group that put it together. He supports the Weimer amendment because the export of
crude oil is wrong. It will also export jobs and resources.

Anastacia Lancombe, Whatcom County: In support of the Weimer amendments.
Planners need to do the planning that is consistent with the best interest in the county.
Not just for the next 5, 10 or 20 years but also for the next 50 to 75 years. She
supported the Weimer amendments because right now there is a balance of industry,
agriculture, fishing and tourism. If we build a fourth pier we might approach a tipping
point in the bay where we eradicate the herring. If we eradicate the herring we will kill
the salmon and then the orcas. The refineries are a very clean, but that is not usually
where the really big problems are. It is getting the oil and the crude to and from the
refineries. Look to the future to figure out what will be the best balance for the county.
Limiting the fourth pier would force them to become agile by moving into the next
century and cultivating wind farms, solar farms, etc. which is going to be more needed
as time goes by. Expanding the uses at Cherry Point would diversify the economic base
in the county.

Terry Montonye, Whatcom County: All indications show that the herring depletion is
not due to the piers but to herring seining in the early 1980's which was authorized by
the state. The key issue the commission needs to find is someone who has intimate
knowledge of what has happened to the herring over the last 30 years. It is a mistake
to presume that a fourth pier will have any impact on the herring.

Tyler Headman, Whatcom County: Works at the refinery. The refineries have been
very mischaracterized. They have proven themselves to be good neighbors. They take
care of their spills. Accidents do happen, but they are taken care of. This is no more
than a property rights issue. The companies have legally purchased the land and
legally permitted everything they have done. They have the right to do what they can
with their business. It is not the right of the county to stop that while the other
agencies, that actually regulate, do not stop it. They are great neighbors and great
employers. This does not need to be made an issue.
Lindsay McDonald, Whatcom County: Stated that as she spoke the artic was melting, which is changing the global atmospheric patterns and global ocean patterns. The ocean is becoming acidified because of carbon dioxide emissions which is affecting our ability to raise oysters in our region. Coastal cities are in risk of swamping. We have to see the big picture. We are on the front lines of a huge bubble. The old companies have assets in the ground which need to be removed. The forests of the west are burning, Pacific islands are becoming inundated and the country is in a huge drought. She would like to see who can connect the dots, including the workers at Cherry Point who need to face the fact that the oil industry has to leave their product in the ground for us to stay under two degrees. We need to go through a transition that addresses the needs of everyone, including the workers at Cherry Point. We are on the front lines of the planet’s struggle. Isn’t BP the one that had the Deepwater Horizon issue? How did they fix it? With a bunch of dispersements that caused more problems. Is that what they will do here if one of their tankers collides?

Alex Bergsma, Whatcom County: Is a refinery worker. Through his work he has learned how to do a lot of unsafe things. He does not feel unsafe in his work at the refinery. There is no lack of safety. He urged the commission to visit the refineries. They do the best they can with the environment.

Jeff Hedrick, Whatcom County: Everyone agrees this is a beautiful place and no one wants to make it go away. The businesses at Cherry Point have been very responsible. There are federal mandates and regulations that they often go above and beyond because that is good business. If they export things that cause damage it will cost them money which is not good business. If these amendments are allowed who is going to be next? These businesses are a great asset to the community. How are we repaying them by changing the rules? That is not fair or good business practices. Supported Alternative #2 or to communicate with the businesses to find a good solution.

The hearing was closed to the public.

Commissioner McClendon asked Mr. Buckingham if the county has a legal right to ban exports.

Mr. Buckingham stated no.

Commissioner McClendon stated there seems to be some confusion that is what the county is trying to do, which is incorrect. She then asked Mr. Buckingham if there are instances, in what they have recommended, which ignored his legal advice.

Mr. Buckingham stated yes. The commission continues to put policy in the text, which is bad form but does not cause any problems.

Commissioner McClendon asked staff if there is anything in the proposal that restricts upgrades to existing industrial facilities.
Mr. Aamot stated that Policy 2CC-3 relates to future development or expansions. Policy 2CC-11 supports a limit on the number of industrial piers. 2CC-15 encourages enforcement of the Magnuson Amendment, which is already federal law. 2CC-16 would study legal ways to limit exports. In summary the existing proposal does not have anything that would restrict upgrades. He stated he did not know where the study may lead.

Commissioner McClendon asked if any of the language makes the regulations stronger than the federal language.

Mr. Aamot stated they are only policies, not regulations. The study may lead to potential regulations.

Commissioner McClendon stated a number of people commented on the moratorium, which is temporary. When does that go away?

Mr. Aamot stated he did not know what the council will do but the moratorium will expire about April 2017.

Commissioner Deshmane asked what would happen if the council passes what the Planning Commission has currently drafted and then the Magnuson Amendment was repealed.

Mr. Aamot stated that in 2015 congress lifted the general ban on crude oil exports but that did not change the Magnuson Amendment so the Puget Sound has different rules. If congress repealed the Magnuson Amendment there would not be any prohibitions on export of crude oil exports.

Commissioner Honcoop asked for clarification on expansion. Right now they can’t apply because of the moratorium. Does the proposal allow for future expansion or just maintenance?

Mr. Aamot stated after the moratorium expires, if a refinery wants to expand it is encouraged in Policy 2CC-3 consistent with the 4 point in the policy but that is not regulatory.

Commissioner Honcoop stated that is true but regulations could be developed based on policies.

Commission Knapp asked why the proposal from the WBA, stated as Alternative #3, wasn’t part of the other alternatives presented and considered.

Mr. Aamot stated the process is that proposals get docketed early in the year. There is a Public Participation Plan that classifies projects at different levels. Level 3 has the greatest amount of review which this proposal is. Level 3 states the county is to come up with alternatives that are reviewed. The WBA was invited to submit a proposal which Mr. Personius said would be reviewed like any other comment received from the
public. The commission decided to incorporate some of that language which they can
do along with comments from others.

Commissioner Knapp addressed the suggested conspiracy regarding the way people
signed up to speak. He stated he did not think it was really a conspiracy.

Mr. Aamot stated the signup sheet to speak was put in the back of the room and
people sign up when they come in. He was not aware of any issues with it.

Commissioner Vekved stated it would be useful to get some understanding of how
many barrels of oil are shipped and if they are stuck at a certain amount.

Commissioner McClendon asked where in the policy does it matter if we know whether
they can export or import more crude.

Commissioner Vekved stated he is concerned because it has been stated by the public
that there is a great deal of concern regarding the notion of exporting in general so it
would be useful to know.

Commissioner Honcooop addressed the proposal by the WBA. He took issue with the
staff’s statement that it was just another public comment. The Planning Commission
requested alternatives which they would then consider. Their alternative should have a
fair hearing which is no different than any of the other alternatives. If it needs to be
doctested it should be. They had not really had any time to review it.

Commission Honcooop moved to give the WBA proposal, Alternative #3, fair
presentation by staff to the commission and that it be given fair consideration
as the other alternatives were.

Commissioner Knapp seconded.

Commissioner McClendon agreed with staff that it should be considered as public
comment. To hold a public hearing on this one alternative does not make sense. The
commission agreed from the beginning of the process to work from the Weimer
proposal which could have items pulled into it.

Commissioner Hunter stated the commission did not request it. The commission simply
said that any public comment was welcome until November 10th. It is only public
comment, it is not special. Public comment from some people is not entitled to special
attention. It clearly got attention since the commission adopted some of it.

Commissioner Rowlson agreed that the WBA proposal is only public comment like all of
the rest they have received. It is worthy of thorough review.

The vote on the motion failed (ayes-4, nays-4).
Commissioner Deshmane referred to a previous comment regarding data collection. He stressed that it be done in a way that holds the presenter of the data accountable. It should be done in a forum that is very transparent because data can be skewed and controlled in a certain way.

Commissioner Hunter stated he was opposed to collecting that type of data. It does not contribute anything.

Commissioner Rowson would like staff to restructure the commission proposal to reflect the structure of the WBA proposal because he likes that structure better. There would not be any word changes, structure only.

Commissioner Hunter was not in favor of that. If the commission is not happy with the organization that needs to be addressed at the next meeting.

The meeting was adjourned at 10:15 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Kelvin Barton, Vice-Chair

Becky Boxx, Secretary
### TITLE OF DOCUMENT:

Appointing County Council member to TDR/PDR multi-stakeholder work group.

### ATTACHMENTS:

1. Staff Memo

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
</tr>
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<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( X ) NO</td>
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| Should Clerk schedule a hearing? | ( ) Yes | ( X ) 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.)

The Whatcom County Council adopted the Comprehensive Plan update in August 2016. Comprehensive Plan Policy 2A-14 includes convening a multi-stakeholder workgroup to complete a number of tasks relating to the transfer of development rights (TDR) and purchase of development rights (PDR) programs. The County Executive will soon be appointing this workgroup. The County Council is requested to appoint one of its members to serve on this workgroup.

### COMMITTEE 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).
TO: The Honorable Jack Louws, Whatcom County Executive  
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Assistant Director

DATE: January 23, 2017

SUBJECT: Appointing County Council member to TDR/PDR work group

As you know, the County Council adopted the Comprehensive Plan update in August 2016 (Ordinance 2016-034). Comprehensive Plan Policy 2A-14 states:

Strive to establish by December 2017 a clear, predictable, and fair process for allowing expansion of urban growth areas that considers reasonable measures to mitigate the impacts of residential development in rural lands, agricultural areas (broadly defined), and sensitive watersheds...  

This Policy includes convening a multi-stakeholder workgroup tasked with:

- Reviewing the current TDR and PDR programs.
- Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.
- Identifying opportunities and solutions for creating a workable TDR program.
- Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.
- Recommending policy and regulatory amendments necessary to implement the above policy.
- Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.
• Identifying receiving areas.

• Identifying other factors and/or growth management tools.

• Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.

• Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.

The County Executive will soon be appointing this workgroup. We would like to include a County Council member on the workgroup. Therefore, we are requesting the Council to appoint one of its members to serve on this workgroup. Thank you for considering this request.
WHATCOM COUNTY COUNCIL  
Special Committee of the Whole  

September 13, 2016  

CALL TO ORDER  
Council Chair Barry Buchanan called the meeting to order at 1:37 p.m. in the Council  
Chambers, 311 Grand Avenue, Bellingham, Washington.  

ROLL CALL  
Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd  
Donovan, Rud Browne and Barry Buchanan.  
Absent: None.  

COMMITTEE DISCUSSION  
1. DISCUSSION OF A PROPOSED INTERIM ORDINANCE IMPOSING A  
MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS  
AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE CHERRY POINT  
URBAN GROWTH AREA, THE PRIMARY PURPOSE OF WHICH WOULD BE THE  
SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE PROCESSED AT  
CHERRY POINT (AB2016-256A)  

Brenner moved to amend the fifth whereas statement, “Whereas, during the  
Comprehensive Plan review process, the Whatcom County Council received hundreds of  
many individual public comments requesting the regarding this issue. In response, the  
interim Comprehensive Plan is be amended to discourage unrefined fossil fuel  
transshipment, transport, and transfer from Cherry Point and off the North American  
continent to protect the health of Whatcom County’s environment and residents, and;”  
Hundreds of comments were also received in support. Many of the statements received  
were from outside Whatcom County.  

The motion was seconded.  

Browne suggested a friendly amendment, “Whereas, during the Comprehensive  
Plan review process, the Whatcom County Council received hundreds of individual  
comments on fossil fuel transport and transfer from Cherry Point.”  

Brenner accepted the friendly amendment for the first sentence only.  

Buchanan bifurcated the amendment to vote on each sentence in the statement  
separately. The first vote is on Browne’s friendly amendment to Brenner’s motion,  
“Whereas, during the Comprehensive Plan review process, the Whatcom County Council  
received hundreds of individual comments on fossil fuel transport and transfer from Cherry  
Point.”
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.
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The motion carried by the following vote:
Ayes:
Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays:
None (0)
Brenner restated her motion to amend to create a second sentence in the
statement, “Whereas, during the Comprehensive Plan review process…from Cherry Point.
In response, the interim Comprehensive Plan is be amended to discourage unrefined fossil
fuel transshipment, transport, and transfer from Cherry Point and off the North American
continent to protect the health of Whatcom County’s environment and residents, and;”
The motion was seconded.
Councilmembers discussed whether the County has authority to do anything outside
of Whatcom County and the purpose of Whereas statements.
Brenner withdrew the motion.
Brenner moved to amend Council packet page 319, the last Be It Further Ordained
statement, “Be it further ordained that for the purpose of this ordinance, the definition of
“unrefined fossil fuel” includes but is not limited to all forms of crude oil whether stabilized
or not; raw bitumen, diluted bitumen, or syncrude and coal; methane, propane, butane, and
other “natural gas” in liquid or gaseous formats,; and condensate;” Some of these products
are byproducts of refining. They’re not unrefined. Natural gas is much cleaner than coal.
The motion was seconded.
The councilmembers discussed the natural gas that is exported versus natural gas
used within the county; bringing natural gas to Cherry Point to build a liquefaction plant,
which would then export liquid natural gas; the health and safety risks to the ocean, and;
prohibiting exports versus local restrictions in Whatcom County.
Lynn Murphy, Puget Sound Energy, answered questions about their plans for using
natural gas that comes to their facilities to replace the coal source currently used and how
to amend the language to allow their use.
Andrew Gamble, Petrogas, stated he supports the changes in the proposed motion
from Councilmember Brenner. He explained the differences between liquefied petroleum
gas (LPG) and natural gas and how much LPG is shipped historically and planned for the
future. Allow all companies to shift from the use of coal to natural gas, which is cleaner.
The councilmembers discussed the difference in definitions of what is considered
“refined” and the volume of LPG train traffic to and through Whatcom County.
The motion failed by the following vote:
Ayes:
Brenner and Sidhu (2)
Nays:
Mann, Browne, Buchanan, Weimer and Donovan (5)
Browne moved to amend “Be It Further Ordained by the Whatcom County Council
that an interim moratorium…fossil fuels not be processed or consumed at Cherry Point,

Special Committee of the Whole, 9/13/2016, Page 2

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unless the applications: ...2. Are for building permits for remodels...not to be processed or consumed at Cherry Point will result; or."

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

**Donovan moved** to amend the last Be It Further Ordained statement on Council packet page 319, "Be it further ordained that for the purpose of this ordinance the definition of...in liquid or gaseous formats excluding those that are the byproduct of refinery processes in the Cherry Point UGA; and condensate....” Make it clear that they're not saying that gasses coming out of the refinery process are covered by this ordinance.

Councilmembers discussed avoiding impacts to existing operations, applying the moratorium only to new permits for new facilities, and how this ordinance goes beyond just crude oil.

The motion was seconded.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

**Browne moved** to amend the fifth Whereas statement, “Whereas, during the Comprehensive Plan review process...to protect the health of Whatcom County’s environment, economy, and residents.”

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

**Brenner moved** to amend the last Whereas statement on Council packet page 317, “Whereas, multiple trains carrying crude oil from the Bakken formation...fatalities, which is the reason it warrants improved regulation; and.”

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Brenner referenced the second Whereas statement on Council packet page 318, “Whereas, in the last two years, two trains carrying diluted bitumen (oil products derived from tar sands and diluent) derailed and exploded en route to refineries in the United States.” This statement should be more specific about the accidents that occurred.

**Brenner moved** to add a new Whereas statement, “Whereas this moratorium applies to shipments off the North American continent.”
The motion was seconded.

The councilmembers discussed whether they should prohibit shipping destinations and how to avoid restrictions to interstate commerce.

The motion failed by the following vote:
Ayes: Brenner and Sidhu (2)
Nays: Mann, Browne, Buchanan, Weimer and Donovan (5)

* Browne moved to recommend introduction as amended to the full Council. *

The motion was seconded.

* Brenner moved to amend: *
  - The ninth Whereas statement on Council packet page 318, “Whereas expansion of existing facilities...fuels not be processed or consumed at Cherry Point.”
  - The eighth Whereas statement on page 317, “Whereas the Whatcom County Council has requested...not to be processed or consumed at Cherry Point.”
  - The seventh Whereas statement on page 318, “Whereas Title 20 currently does not...not to be processed or consumed at Cherry Point.”

The motion to amend was seconded.

The motion to amend carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

* Donovan moved to delete the second whereas statements on page 318, “ Whereas in the last two years, two trains carrying diluted bitumen (oil products derived from tar sands and diluent) derailed and exploded en route to refineries in the United States, and. “ *

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

* Browne restated his motion to recommend Introduction as amended. *

The motion to recommend Introduction as amended carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

* OTHER BUSINESS *

There was no other business.
ADJOURN

The meeting adjourned at 2:53 p.m.

The Council approved these minutes on ______________, 2017.

ATTEST:  WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL  
Regular County Council Meeting  

September 13, 2016

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, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

PUBLIC HEARINGS

1. RESOLUTION APPROVING THE WHATCOM COUNTY SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM FOR THE YEARS 2017 THROUGH 2022 (AB2016-251)

Buchanan opened the public hearing, and the following people spoke:

Wendy Harris stated address health impact concerns through the plan if possible, such as level of service.

David Strich stated he has reviewed and approves of the plan.

Hearing no one else, Buchanan closed the public hearing.

Browne moved to approve the resolution except for project R-4. He must abstain from voting on that project.

Joe Rutan, Public Works Department, stated amend project Y-6 regarding fish passage, to add $10,000 in year one, in the professional engineering (PE) category.

The motion was seconded.

Browne withdrew his motion to approve.

Sidhu moved to approve the resolution as presented. The motion was seconded.
Mann moved to amend project Y-6 regarding fish passage, to add $10,000 in year one, in the PE category. The motion was seconded.

The motion to amend carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Browne moved to amend to remove project R-4. He prefers to recuse himself from approving that item because he owns property at the location. The motion was seconded.

Councilmembers discussed the process for removing one item for a separate vote and the problems with the intersection in project R-4.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Rutan answered questions on how to amend the six-year transportation improvement plan (STIP) and the annual plan.

Browne moved to approve the resolution without project R-4. The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Donovan moved to approve project R-4 in the resolution. The motion was seconded.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Buchanan, Weimer and Donovan (5)
Nays: Brenner (1)
Abstains: Browne (1)

OPEN SESSION

The following people spoke:
- Wendy Harris spoke about health problems due to wood smoke and agricultural burns.
- David Strich spoke about the speed limit on Marine Drive.
- Amy Glasser spoke about reimbursement for costs associated with the Trump Rally, focusing on renewable energy sources, and the contract between Whatcom County and CH2M Hill Engineers (AB2016-260).
- Karlee Deatherage, ReSources for Sustainable Communities, spoke about the contract between Whatcom County and CH2M Hill Engineers (AB2016-260) and the proposed ordinance imposing an interim moratorium regarding the Cherry Point urban growth area (AB2016-256A).
• Dena Jenson spoke about protecting Tribal Treaty Rights and the contract between Whatcom County and CH2M Hill Engineers (AB2016-260).
• Mike Sennat spoke about the contract between Whatcom County and CH2M Hill Engineers (AB2016-260).
• Paula Rotundi spoke about and the contract between Whatcom County and CH2M Hill Engineers (AB2016-260) and the contract between Whatcom County, Pacific International Terminals, Inc., and BNSF Railway Company (AB2016-261).
• Charles Law spoke about health hazards from burning material and the contract between Whatcom County and CH2M Hill Engineers (AB2016-260).
• John Strong spoke about the Alaska oil pipeline and the balance between the environment and economic impacts.
• Christopher Bruce Deile spoke about wildlife suffering from oil spills and introduction of grizzly bears to the Cascade mountains.
• Sandy Robson spoke about letters she sent to councilmembers, putting documents received regarding the Gateway Pacific Terminal (GPT) on the County website, and the contract between Whatcom County and CH2M Hill Engineers (AB2016-260).
• Victoria Savage spoke about the contract between Whatcom County and CH2M Hill Engineers (AB2016-260).
• Gwen Hunters spoke about the contract between Whatcom County and CH2M Hill Engineers (AB2016-260).
• Ellen Howard spoke about corporations’ use of fossil fuels.
• Max Perry spoke about the contract between Whatcom County and CH2M Hill Engineers (AB2016-260).
• Carole Perry spoke about important decisions regarding water and the contract between Whatcom County and Geneva Consulting (AB2016-264).

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through eight.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND FERNDALE SCHOOL DISTRICT FOR EMERGENCY MANAGEMENT SERVICES, IN THE AMOUNT OF $40,000 ANNUALLY FOR THREE YEARS (AB2016-262)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND CITY OF BELLINGHAM FOR MANAGEMENT AND OPERATION OF THE JOINT CITY-COUNTY AQUATIC INVASIVE SPECIES BOAT INSPECTION PROGRAM AT LAKE WHATCOM AND LAKE SAMISH, IN THE AMOUNT OF $95,000 (AB2016-263)
3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND GENEVA CONSULTING FOR WRIA1 WATERSHED MANAGEMENT PLAN IMPLEMENTATION STATUS UPDATE AND WEBSITE MODIFICATIONS, IN THE AMOUNT OF $20,475 (AB2016-264)

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND TRANTECH ENGINEERING LLC FOR PRELIMINARY ENGINEERING WORK AND A TYPE, SIZE AND LOCATION (TS&L) REPORT TO AID IN SELECTING A PERMANENT REPLACEMENT OPTION OF THE EXISTING NORTH LAKE SAMISH ROAD BRIDGE, IN THE AMOUNT OF $131,803 (AB2016-265)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN AGREEMENT BETWEEN WHATCOM COUNTY AND THE NON-GOVERNMENTAL WATER SYSTEM CAUCUS ON BEHALF OF THE WRIA1 PLANNING UNIT FOR CAUCUS SUPPORT FUNDING, IN THE AMOUNT OF $2,500 (AB2016-266)

6. REQUEST APPROVAL TO AWARD BID #16-39 AND AUTHORIZE THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT WITH SOLE BIDDER, CCI, INC. FOR CARPET REPLACEMENT IN COURTHOUSE OFFICES, IN AN AMOUNT NOT TO EXCEED $53,751.39 (AB2016-267)

7. REQUEST APPROVAL TO AWARD BID #16-46 AND AUTHORIZE THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT WITH LOW BIDDER, HYTECH ROOFING INC. FOR ROOF REPLACEMENT AT THE FERNDALE SENIOR ACTIVITY CENTER, IN THE AMOUNT OF $119,119.33 (AB2016-268)

8. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND ALVAREZ & MARSEL VALUATION SERVICES, LLC FOR CONSULTATION AND TESTIMONY REGARDING THE VALUATION OF BP WEST PRODUCTS, LLC, IN THE AMOUNT OF $12,000, FOR A TOTAL CONTRACT AMOUNT OF $40,000 (AB2016-269)

OTHER ITEMS

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY, LUMMI NATION, NOOKSACK INDIAN TRIBE, WASHINGTON STATE DEPARTMENT OF FISH & WILDLIFE, THE CITIES OF BELLINGHAM, BLAINE, EVerson, FERNDALE, LYNDEN, NOOKSACK, AND SUMAS AND PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY REGARDING COORDINATED WATER AND NATURAL RESOURCES MANAGEMENT (AB2016-258)

This item was withdrawn from the agenda.

2. ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, FOURTEENTH REQUEST, IN THE AMOUNT OF $295,000 (AB2016-252)
Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

3. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AMEND THE CONTRACT BETWEEN WHATCOM COUNTY AND CH2M HILL ENGINEERS, INC. TO ACCOMPLISH THE RAMP DOWN WORK PLAN FOR CONTRACT COMPLETION ASSOCIATED WITH THE DEVELOPMENT OF AN ENVIRONMENTAL IMPACT STATEMENT TO COMPLY WITH NEPA AND SEPA REGARDING THE PROPOSED GATEWAY PACIFIC TERMINAL AND BNSF CUSTER SPUR MODIFICATION PROJECT TO ENSURE THE WORK AND CONTRACTS ARE CLOSED OUT IN AN ORDERLY FASHION, IN THE AMOUNT OF $51,085 (AB2016-260)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

Councilmembers discussed whether they are still prohibited from talking about the Gateway Pacific Terminal (GPT) project, a need to review how permits are vested, the intent to close out this permit, and the deliverables of this contract.

Tyler Schroeder, Executive’s Office, answered questions about recent public disclosure requests and posting documents on the County website.

Weimer moved to amend the contract to remove section 10.2 on Council packet page 141 regarding extensions.

The motion was seconded.

Tyler Schroeder, Executive’s Office, answered questions on the process for amending a contract that’s already been signed.

Councilmembers discussed legal language that is unclear and should be removed, whether a contract can be terminated for convenience, making these documents available to the public as soon as possible, and the County’s ownership of the documents.

The motion to amend the contract carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Weimer moved to amend section 10.1 to remove the second sentence, “...such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties: provided, however, that the Agreement is in writing and signed by both parties. The term shall be....”

The motion was seconded.
The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

Weimer moved to amend the term of the Amendment on Council packet page 138, “March 13, 2017 December 31, 2016.”

The motion was seconded.

The following staff answered questions:
- Jack Louws, County Executive
- Tyler Schroeder, Executive’s Office
- Karen Frakes, Prosecutor’s Office

Councilmembers and staff discussed the appropriate amount of time for concluding the contract and receiving the deliverables.

The motion failed by the following vote:

Ayes: Buchanan and Weimer (2)

Nays: Brenner, Mann, Sidhu, Browne, and Donovan (5)


The motion was seconded.

The councilmembers continued to discuss the appropriate amount of time for concluding the contract and receiving the deliverables.

Donovan withdrew his amendment and moved to amend the contract on Council packet page 138, “The general purpose or objective of this Agreement is to provide preparation of ramp down consultant’s work on the Environmental Impact Statement to comply with NEPA and SEPA regarding the Gateway Pacific Terminal and BNSF Custer Spur Improvements Project, as more fully and definitively described in Exhibit A hereto. This project will be contracted in a phased approach because the depth of the studies, and therefore time & costs, cannot be foreseen until Phase 2 is completed by the Consultant and accepted by the County.”

Mann suggested a friendly amendment to amend 138, “The general purpose or objective of this Agreement is to provide preparation orderly conclusion of the Environmental Impact Statement process to comply with NEPA and SEPA regarding the Gateway Pacific Terminal and BNSF Custer Spur Improvements Project, as more fully and definitively described in Exhibit A hereto. This project will be contracted in a phased approach because the depth of the studies, and therefore time & costs, cannot be foreseen until Phase 2 is completed by the Consultant and accepted by the County.”

Donovan accepted the friendly amendment.
The amended motion was seconded.

**Browne suggested a friendly amendment** to amend Council packet page 138, “The general purpose or objective of this Agreement is to provide preparation of ensure that the consultant’s work on the Environmental Impact Statement is closed out in an orderly fashion to comply with NEPA and SEPA regarding the Gateway Pacific Terminal and BNSF Custer Spur Improvements Project, as more fully and definitively described in Exhibit A hereto. This project will be contracted in a phased approach because the depth of the studies, and therefore time & costs, cannot be foreseen until Phase 2 is completed by the Consultant and accepted by the County.”

**Donovan accepted** the friendly amendment.

The motion carried by the following vote:
**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
**Nays:** None (0)

The councilmembers discussed phase two of the project and whether the last sentence in the general purpose statement is relevant; access to the Sharepoint website, and; whether work can be effectively resumed at a future date, as language indicates in Exhibit A of the ramp down plan.

The motion to approve as amended carried by the following vote:
**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
**Nays:** None (0)

4. **REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AMEND THE CONTRACT BETWEEN WHATCOM COUNTY, PACIFIC INTERNATIONAL TERMINALS, INC., AND BNSF RAILWAY COMPANY FOR REIMBURSEMENT OF ALL COSTS AND FEES OF THE SCOPE OF WORK AND BUDGET OF PHASE 2, IN THE AMOUNT OF $51,085 (AB2016-261)**

**Browne** reported for the Finance and Administrative Services Committee and moved to approve the request.

Tyler Schroeder, Executive’s Office, stated this contract adopts the language changes to the previous agenda item. No specific language needs to be changed in this contract to be consistent with the previous contract.

Mann stated the language in this contract includes the language the Council just amended.

**Browne moved** to amend the language on Council packet page 162, “Attachment A, as approved by the County Council on September 13, 2016.”

The motion was seconded.

The motion to amend carried by the following vote:
**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
**Nays:** None (0)
The motion to approve as amended carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

5. RESOLUTION AMENDING RESOLUTION 2015-025 AND ORDER VACATING A PORTION OF DELTA LINE ROAD (AB2016-115A)

Brenner reported for the Public Works, Health, and Safety Committee and moved to approve the resolution.

The motion to approve carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

6. ACCEPTANCE OF THE DRAFT PUBLIC PARTICIPATION PLAN (AB2016-271)

Weimer reported for the Planning and Development Services Committee and moved to accept the substitute with amendments made during committee.

The motion to approve carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

7. 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 moved to adopt the ordinance. The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF AMY ELLSWORTH TO THE WHATCOM COUNTY BICYCLE/PEDESTRIAN ADVISORY COMMITTEE (AB2016-273)

Brenner moved to confirm the request. The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

INTRODUCTION ITEMS
5. ORDINANCE IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE CHERRY POINT URBAN GROWTH AREA, THE PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT (AB2016-256A)

Buchanan reported for the Committee of the Whole and referenced the substitute ordinance that reflects amendments from Committee, including the following changes and clarifications to the substitute:

- The title of the ordinance does not change from the original
- Delete “unrefined” in the fifth Whereas statement
- Amend the fifth Whereas statement, “…transfer from Cherry Point to protect related to the protection of the health....”

Browne moved to correct the language in the draft ordinance as the Chair just stated.

The motion was seconded.

The motion to amend carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

Browne moved to accept Introduction Items one through five, including a substitute ordinance for item one and an amended substitute ordinance for item five. The motion was seconded.

The motion to Introduce carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

1. ORDINANCE ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING, RELATING TO COMMERCIAL AND INDUSTRIAL LAND USES IN LIMITED AREAS OF MORE INTENSIVE RURAL DEVELOPMENT (AB2016-272)

2. ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, FOURTEENTH REQUEST, IN THE AMOUNT OF $307,428 (AB2016-274)

3. ORDINANCE AMENDING ORDINANCE 2014-083 (AMENDMENT NO. 2) TO ESTABLISH THE CEDAR HILLS/EUCLID STORMWATER IMPROVEMENTS FUND AND ESTABLISH A PROJECT BASED BUDGET FOR CEDAR HILLS/EUCLID STORMWATER IMPROVEMENTS IN THE AMOUNT OF $260,000 (AB2016-275)

4. ORDINANCE REPEALING WHATCOM COUNTY CODE CHAPTER 8.06, SMOKING IN THE WORKPLACE, AND ESTABLISHING WHATCOM COUNTY CODE CHAPTER 24.14, SMOKING AND VAPING IN PUBLIC PLACES (AB2016-253)

5. ORDINANCE IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR
EXPANDED FACILITIES IN THE CHERRY POINT URBAN GROWTH AREA, THE PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT (AB2016-256A)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Weimer reported for the Planning and Development Committee and the Natural Resources Committee.

Browne reported for the Finance and Administrative Services Committee.

Councilmembers discussed the budget review schedule.

Mann moved to schedule a departmental budget discussion and work session, but not departmental presentations, on October 27, and receive the presentations in writing instead. The motion was seconded.

Sidhu stated it would be helpful for new councilmembers to schedule independent meetings of about one hour with each department head to learn about the departments.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Councilmembers discussed removal of Gateway Pacific Terminal (GPT) language from the Open Session section of the agenda.

Brenner moved to remove the language.

The motion was seconded.

Councilmembers discussed the possibility of limiting open session comments to topics relevant to the Council.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 9:37 p.m.

The County Council approved these minutes on ______, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY COUNCIL
Special Committee of the Whole

September 20, 2016

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:30 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

1. INITIAL PRESENTATION OF THE WHATCOM COUNTY CRITICAL AREAS ORDINANCE 2016 UPDATE (AB2016-276)

Cliff Strong, Planning and Development Services Department, submitted and read from the background section of a presentation (on file). He answered councilmembers’ questions about how best available science is peer-reviewed, whether any jurisdiction has made decisions that deviated from best available science, how they will achieve certainty that the County is protecting the functions and values of critical areas, economic considerations when amending the critical areas ordinance, making sure failing septic systems are repaired in the most economical way possible, reviewing the buffer and land disturbance requirements for replacing a septic system, and whether the technical advisory committee reviewed the most up-to-date best available science for all the chapters they reviewed.

The following staff answered questions:
- Ryan Erickson, Planning and Development Services Department
- Erin Page, Planning and Development Services Department
- John Thompson, Public Works Department
- Mark Personius, Planning and Development Services Department
- Andy Wiser, Planning and Development Services Department

Strong continued the presentation on the overview of the global changes to the Code and the more substantive changes. He answered questions on the Department of Ecology wetland delineation manual and the minimum size of a regulated Class IV wetland of 1,000 square feet, the current buffer of a Class IV wetland, how to resolve problems on County roads or on another person’s property that are caused by beaver dams, and whether the conditions imposed by the critical areas ordinance (CAO) apply also to the shoreline management program (SMP).

Strong concluded the presentation on an overview of follow-up items. He answered questions on disclaimer language for lahar areas, the new LiDAR data and other better mapping systems, when the next LiDAR flyover is scheduled, whether there is a specific
budget for these potential follow-up actions, whether a lahar disclaimer on the title of a property would allow people to develop their lot as they wish and exempt the County from any liability, whether they need a wetland baseline and continuous monitoring in the context of offset mitigation, the value of offsite mitigation, the impact on land capacity of buffers on class IV wetlands in urban areas, considering a transfer of the right to reduce the buffer in exchange for purchasing extra buffer land in another area, why the appendices were deleted, the history of the channel migration zones, and the documentation showing how well wetland protection measures have done in the past 25 years.

Linda Twitchell, Building Industry Association, spoke about reduction in the minimum size for Class IV wetlands, which isn’t mandatory. Get the best available science (BAS) that the Department of Ecology used to show the value of the new minimum wetland size. Also, consider mitigation in addition to protection. Folks in the Deming community are concerned about the lahar language.

Wendy Harris stated wetlands and streams that seem unconnected are connected and are important for habitat and water quality. Be clear on current best available science and legal standards.

Ronna Loerch spoke about the difference between nonregulated ditches and regulated streams.

Carole Perry spoke about the purpose of government and the decisions of the Critical Areas Committee.

Council members discussed the subjectivity of and prioritizing best available science; prioritizing values and beliefs over best available science; setting up a meeting to discuss in depth the issue of septic system replacement in buffer areas; how the CAO is applied to existing development through public education; a hazard tree ordinance; supporting the recommendations of the technical advisory committee, which included experts in those fields, and; the schedule for moving forward with the update process.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 3:41 p.m.

The Council approved these minutes on ______________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
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, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

The Council took a moment of silence in remembrance of the victims of the Cascade Mall shooting in Burlington on Friday, September 23, 2016.

ANNOUNCEMENTS

PUBLIC HEARINGS

(Clerk’s Note: Public comment will apply to both public hearing items scheduled on the agenda.)

Buchanan opened the public hearing, and the following people spoke on the two public hearing items:

Dena Jensen stated she supports the moratorium for protection of Cherry Point and the safety of refinery workers.

Sandy Robson stated she supports the interim and emergency ordinances. Comprehensive Plan amendments regarding Cherry Point should be incorporated into the Comprehensive Plan right now, so a moratorium isn’t necessary.

Pam Brady, BP Cherry Point Refinery, stated they support comments of the Whatcom Business Alliance and do not support a moratorium, which threatens employment in Whatcom County.

Pat Simons, BP Cherry Point Refinery, stated the refinery provides employment to the community, operates safely using modern techniques, provides jobs to contractors, supports companies, and pays high wages. He opposes a moratorium, which will harm the Cherry Point companies and their vendors and suppliers.
Pete Sim stated he is an environmental regulator at Cherry Point refinery, which operates safely and hosts several environmental programs. He does not support a moratorium. Work with the industry on language to address all concerns.

Dustin Hoffman stated he and other technology students at Whatcom Community College oppose the moratorium. The Cherry Point jobs provide rare higher paying jobs, and the company needs to grow.

Mike Culley stated he is opposed to the moratorium. The refinery is a safe place and needs to grow.

Joe Wilson, Peterson Brothers Vice-President, stated he is opposed to the moratorium. Protect the thousands of jobs that the refinery supports with high wages.

Eileen McCracken stated she is opposed to a moratorium. The refinery pays taxes and contributes to nonprofits in the community. The ordinance will not allow the refinery to be competitive and grow.

Mike Levine stated the Cherry Point refinery is important to the community. Find a compromise. He does not support the moratorium. Business and the environment can work together to find a solution.

Brad Owens, Northwest Jobs Alliance President, stated he does not support the ordinance. The refinery is a good neighbor in the community and contributes to local charity organizations.

Gwen Hunter submitted a handout (on file) and stated she supports the moratorium to protect against potential oil spills and to protect the wildlife and aquatic resources. The trend is away from the use of oil and petroleum products.

Jerry Schuster stated he supports the refinery companies and is opposed to the ordinances. The companies operate cleanly and supply a lot of money to the community.

Skip Sahlin, SSA Marine Vice-President, stated he is opposed to the ordinances, which would harm the companies at Cherry Point and the county’s economy.

Bob Jones stated this ordinance isn’t about protecting the environment. Keep industry local so it can be regulated properly. Don’t send pollution and carbon products to other countries. The companies operating regulations are stricter than government regulations. He does not support the ordinances.

Chuck Donaghy stated the Cherry Point refinery contributes to the community, creates buffers around the company, is the safest in the world, and provides good-paying jobs. He is opposed to the moratorium.

Lane McIlvoy stated he is opposed to the ordinance because it will hurt the companies at Cherry Point, deter other industries from locating here, and stunt economic growth. Keep jobs local. Reject the moratorium.
Jill MacIntyre-Witt stated climate change science is agreed upon globally. She supports the ordinances. They must transition away from the use and exportation of fossil fuels immediately.

Bill Hinely stated he agrees with the previous speaker. They must address greenhouse gas emissions released into the atmosphere. Protect the continued existence of life on earth.

Ronald Colson stated climate change is increasing at an unprecedented rate, species are going extinct, and burning fossil fuels is a driver of climate change. Conserve, don’t export, American oil. He supports the moratorium.

Clara Jean Carmean submitted a handout (on file) and stated she supports the moratorium ordinances and the Cherry Point amendments proposed for the Comprehensive Plan. Don’t ship crude oil overseas or create new fossil fuel projects.

Andronetta Douglass stated she supports the moratorium until the Planning Commission has reviewed the Cherry Point amendments proposed for the Comprehensive Plan. Don’t export crude oil products.

Jayne Freudenberger stated she supports the moratorium ordinances. Protect against climate change by changing to renewable resources. Don’t export oil. Create clean energy jobs.

Nan Monk submitted a handout (on file) and stated she supports the moratorium ordinances to preserve the aquatic habitat and species at this site.

Judy Hopkinson, League of Women Voters, stated she supports the moratorium. The industry is concerned about its profit. The use of coal and gas will decline, as will their industries.

Jan Catrell stated she supports the moratorium ordinances. Prevent against climate degradation. Don’t export fossil fuels overseas.

Cliff Freeman stated he objects to any moratorium. The science is unknown on fossil fuel pollution and climate change.

Jeff Fletcher, Phillips 66 Refinery Production Manager, submitted and read from a letter (on file) and stated he opposes the moratorium ordinances, because they are not business-friendly. The industry must remain flexible in a competitive industry. His company provides high-paying jobs to regular employees and contractors, contributes to public safety and education, and operates safely and cleanly.

Evan Haskell, Haskell Corporation, stated he is opposed to the ordinances because of the lack of good-paying jobs in Whatcom County.

Kris Halterman submitted and read from a letter (on file) and stated she supports the industries at Cherry Point because of the family-wage jobs, large taxes paid to the local community, generous contributions to local charities, and good stewardship of their property. She does not support the moratorium ordinances.
Lorraine Newman submitted and read from a letter (on file) and spoke about problems with the County jail and the County economy. She does not support the moratorium ordinances.

Edward Ury, ReSources for Sustainable Communities, stated he supports the moratorium ordinances. Exporting unrefined fossil fuel products is dangerous for the community. Transition to a clean energy economy. Healthy industries can thrive.

Brooks Anderson stated she supports the moratorium ordinance. Protect Cherry Point for safety and health.

Beth Brownfield submitted a handout (on file) and stated they can’t reverse climate change damage to the earth. Don’t export fossil fuels. She supports the moratorium ordinances.

Tony Larson, Whatcom Business Alliance, submitted information (on file) and stated protect job growth and family-wage jobs in Cherry Point. Cherry Point companies contribute to local nonprofits and volunteer in the community. He questions the Council’s authority in banning the export of goods. He is opposed to the moratorium ordinances.

Ken Kaliher stated he supports the moratorium ordinances. New businesses will be drawn to Whatcom County because it plans for the future.

John Holstein stated he supports the moratorium ordinances. Current employees won’t lose their jobs. It prohibits future expansion, it does not impact existing business activity.

Amy Glasser stated she supports the moratorium ordinances. Build renewable energy industries.

Ronna Loerch submitted and read a letter (on file) and stated she supports the moratorium ordinances due to climate change. Find new ways to create jobs and healthy families.

Anna Kemper stated she supports the moratorium ordinances. Ban the export of unrefined fossil fuels. Consider all environmental, social, and economic components to protect the Salish Sea and fishing rights of the Treaty tribes. Don’t compromise future generations.

Marty Weber stated he supports the moratorium ordinances. Scientists agree humans are causing global climate change as a result of burning fossil fuels. The planet will no longer be able to sustain life in 50 years if they don’t change. Attract green jobs to Whatcom County.

Miranda Hewlett, Western Washington University student, stated she supports the moratorium ordinances and protection of the environment. Make the decision that is most beneficial to all life on earth.
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Izzi Lavallee, Western Washington University student, stated she supports the moratorium ordinances for protection of sea habitat and species. Extra carbon dioxide in the ocean is killing sea life. Create affordable renewable energy.

Gary Johnson stated he does not support the moratorium ordinances because the refineries provide good jobs. Everyone depends on fossil fuels. Support and encourage business and job creation.

Christopher Bruce Diele described his history of observing the impact of oil spills on wildlife. It has a devastating effect.

Mary Peete stated she supports the moratorium ordinances. Stop climate change. Her concerns include derailments and oil spills from ships.

Rick Stump, JH Kelly, stated his company works for the Cherry Point Refinery, and he is opposed to the moratorium ordinances, which are harmful to the industries. Work with the industries on these decisions.

Paul McEbee stated he is opposed to the moratorium ordinances, which include the cleanest burning fossil fuels in the industry. Everyone uses petroleum-based products. They need a viable solution prior to hurting their economy.

David Kershner stated he supports the moratorium ordinances due to risks to the environment, trail derailments and oil spills, lost jobs in the fishing industry, and tribal fishing rights. Everyone needs to take responsibility for reducing carbon emissions and climate change.

Barry Hullett, Intalco Works, stated he supports information from the Whatcom Business Alliance and does not support the moratorium ordinances. His company provides family-wage jobs, pays taxes, partners with nonprofit charities, and volunteers in the community. They are also environmental stewards. Continue to work together for the benefit of the entire community. Allow responsible operators to continue doing business here.

Robert Bystrom stated everyone is an environmentalist and recognizes the importance of the systems. Implement economic alternatives and create green occupations. Compromise so everyone agrees. Create new opportunities for everyone.

Chris Colon, BP Refinery, stated engage in productive discussion that considers all perspectives and community partners. Define the problem this moratorium is meant to solve. These businesses are recognized for their environmental stewardship, and they invest in technology to reduce emissions. He does not support the moratorium ordinances.

Marian Beddill, submitted a letter (on file) and stated she supports the moratorium ordinances. Find alternative ways to support the community. Replace the use of fossil fuels with alternative energy sources.

Barry Wenger stated he supports the moratorium ordinances. The moratorium is on a change of use from refining to export facilities. Don’t allow the export of domestic crude oil.
Nathaniel Maddux, Local Lodge and Italco employee, stated he does not support the moratorium ordinances. Don’t inhibit business growth. They don’t need to abandon environmental responsibilities, but don’t inhibit economic opportunities.

Christopher Grannis stated he supports the moratorium ordinances. He doesn’t trust the fossil fuel industry corporate decision-makers. The moratorium will save refining jobs. Environmental protection is more important than the threat to jobs.

Jeff Hedrick, Safeway Services, stated he does not support the moratorium ordinances. BP Cherry Point is a refinery that protects the environment. Any company that isn’t allowed to grow and compete will become crippled by competitors. Don’t disrespect the company that has given so much to the community.

Glen Farmrund, Machinist Union, stated he does not support the moratorium ordinances, which will hurt jobs at Cherry Point.

Paula Rotundi submitted information (on file) and stated she is opposed to the export of unrefined fossil fuel. She supports the moratorium ordinances, which will protect and keep local refinery jobs.

Dylan Cartwright stated he supports the moratorium ordinances, although he appreciates the industries’ good practices. They must protect the environment. Attract renewable green energy jobs to the community.

Chiara Rose D’Angelo described her experiences studying biodiversity and stated they must protect water.

Patrick Alesse stated he supports the moratorium ordinances and also supports protecting jobs.

Natalie Chavez referenced a documentary on March Point and other areas around the country that are very polluted. Consider green renewable energy. She supports the moratorium ordinances.

Adam Schaefer stated he supports the moratorium ordinances and is opposed to the export of unrefined fossil fuels. The science of climate change is valid. The moratorium will not cause job loss. Continue to protect the environment.

Chris McGarry, BP Cherry Point Refinery, stated green energy companies aren’t showing an interest in locating here. The moratorium on industry further dis-incentivizes industries to locate here.

Gwen Hunters stated consider the next seven generations when making decisions.

Karlee Deatherage stated she supports the moratorium ordinances. Many refineries are in favor of a crude oil export ban. Current jobs won’t be impacted.

Hearing no one else, Buchanan closed the public hearing.
1. ORDINANCE IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE CHERRY POINT URBAN GROWTH AREA, THE PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT (AB2016-256A)

Weimer moved to adopt the ordinance.

The motion was seconded.

Brenner stated most people want the same thing. She supports the environment, but is opposed to the ordinance, because it is about more than the export of unrefined fossil fuel. She supports the expansion of refining fossil fuels locally.

Donovan stated byproducts from the refining process are excluded. This is about protecting the local environment, not global climate change. They are not the only jurisdiction calling for a moratorium until they can figure out appropriate protections.

Browne stated there are concerns about an oil transport disaster and increased rail traffic. Ensure refining of American crude is done to American standards by American workers. Existing jobs will not be impacted.

Weimer stated this action is temporary until they figure out where their authority lies and it goes through the Planning Commission. Both sides need to talk to each other. He described the proposed changes to the Cherry Point section of the Comprehensive Plan.

Sidhu stated exporting unrefined crude oil or any natural resource is not in the best interest of the American citizens. They are not trying to destroy any jobs in the community. Congress lifted the ban on crude oil exports recently. It hasn’t even been done in the past 25 years. He supports the ordinance while they go through the process at the Planning Commission.

Mann stated councilmembers are aware of and appreciate all that the industries at Cherry Point provide to the community. There are concerns about the export of unrefined fossil fuels. He approves of the ordinance while they review the issues at the Planning Commission over the next six months.

The motion carried by the following vote:

Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

2. EMERGENCY ORDINANCE 2016-031 IMPOSING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE CHERRY POINT URBAN GROWTH AREA, THE PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT (AB2016-256) (PROCEDURAL HEARING – ORDINANCE WAS ADOPTED AUGUST 9, 2016)

The Council received public testimony (see above).
(Clerk’s Note: The Council took a break from 10:36 to 10:49 p.m.)

OPEN SESSION

The following people spoke:

- Carole Perry spoke about the interlocal regarding coordinated water and natural resources management (AB2016-258)
- Christopher Bruce Diele spoke about reintroduction of grizzly bears into the Cascade Mountains.

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items two and three. Item one comes forward with no recommendation from committee.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND HATFIELD DAWSON CONSULTING ENGINEERS, LLC TO CONDUCT A COMMUNICATION NEEDS ANALYSIS OF THE WHATCOM UNIFIED EMERGENCY COORDINATION CENTER AND UPDATE/REVIEW OF THE WHATCOM COUNTY PUBLIC SAFETY RADIO SYSTEM DESIGN STUDY, IN THE AMOUNT OF $44,235 (AB2016-281)

Browne reported for the Finance and Administrative Services Committee and stated the item comes forward with no recommendation pending additional information. He moved to approve the request. The motion was seconded.

Questions from committee regarded the mutual aid agreement with other jurisdictions and interoperability among all the jurisdictions and coordination with agencies such as the Civil Air Patrol, the impact from falling behind on technology, challenges in the East County, infrastructure needs at the unified emergency coordination center, technology challenges between County departments, coordinating with Puget Sound Energy (PSE) architecture, using open architecture, sharing a system planner full-time equivalent (FTE) employee with another jurisdiction, and funding from the Northwest Regional Council for repeaters.

The following staff answered questions:

- Jeff Parks, Sheriff’s Office
- Art Edge, Sheriff’s Office

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE THE PURCHASE, USING WASHINGTON STATE CONTRACT # 06913, RADIOS AND RELATED ACCESSORIES ON AN AS-NEEDED BASIS FROM VENDOR MOTOROLA, INC., IN AN AMOUNT NOT TO EXCEED $150,000 (AB2016-282)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND VERA INSTITUTE OF JUSTICE FOR TECHNICAL ASSISTANCE TO SUPPORT TO THE INCARCERATION PREVENTION AND REDUCTION TASK FORCE IN DEVELOPING WELL-RESEARCHED, DATA-BASED RECOMMENDATIONS, IN THE AMOUNT OF $146,371 (AB2016-283)

OTHER ITEMS

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY, LUMMI NATION, NOOKSACK INDIAN TRIBE, WASHINGTON STATE DEPARTMENT OF FISH & WILDLIFE, THE CITIES OF BELLINGHAM, BLAINE, EVerson, Ferndale, Lynden, Nooksack, and Sumas and Public Utility District No. 1 of Whatcom County Regarding Coordinated Water and Natural Resources Management (AB2016-258)

Weimer reported for the Natural Resources Committee and moved to approve the substitute version of the request.

Brenner stated she is opposed to the agreement because it excludes many water users. She moved to hold in Council for one month. The motion was seconded.

Councilmembers discussed including the water improvement districts (WIDs) and water districts and associations, private well users, creating a way to comprehensively solve water issues, and the reason for tabling for a month.

Jack Louws, County Executive, stated they’ve worked on this document for two years. Discussions have included the WID representatives and Tribal interests. The County Council will have the decision on every dollar being spent. The Lummi Nation is interested in working with the other jurisdiction, but doesn’t feel that including the WID representatives is appropriate. The WID representatives understand that and are satisfied with being an ad hoc member of the government caucus. He will listen to the well owners as their elected representative. He encourages Council approval of the interlocal agreement.

Browne moved to call for the question. The motion was seconded.

The motion to call the question carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)
The motion to hold in Council failed by the following vote:

**Ayes:** Brenner and Sidhu (2)

**Nays:** Mann, Browne, Buchanan, Donovan and Weimer (5)

Jon Hutchings, Public Works Department Director, answered questions about the status of the Planning Unit under the new agreement.

The motion to approve the substitute agreement carried by the following vote:

**Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

**Nays:** Brenner (1)

2. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERAGENCY AGREEMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND THE WASHINGTON DEPARTMENT OF ECOLOGY FOR THE 2016-2017 WASHINGTON CONSERVATION CORPS CREW TO IMPLEMENT AND MAINTAIN WATERSHED RESTORATION AND STORMWATER PROJECTS AND ASSIST WITH WATER QUALITY MONITORING, IN AN AMOUNT NOT TO EXCEED $60,000 (AB2016-278)**

(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, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

3. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A JOINT FUNDING AGREEMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND THE US DEPARTMENT OF INTERIOR, U.S. GEOLOGICAL SURVEY FOR STREAM GAGING AND DATA ANALYSIS AND PUBLICATION AT SEVEN STATIONS IN THE NOOKSACK WATERSHED, IN AN AMOUNT NOT TO EXCEED $77,650 (AB2016-279)**

(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, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

4. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A JOINT FUNDING AGREEMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND THE US DEPARTMENT OF INTERIOR, U.S. GEOLOGICAL SURVEY, FOR ONGOING OPERATION AND MAINTENANCE OF**
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County Council.

THE COUNTY’S SIX STREAM GAGES WITHIN THE NOOKSACK RIVER EARLY
FLOOD WARNING SYSTEM, A STREAM GAGE AT THE NOOKSACK RIVER
EVERSON OVERFLOW, A STREAM GAGE ON JONES CREEK IN ACME, AND A
NEW GAGE ON JORDAN CREEK IN FERNDALE FOR EARLY FLOOD WARNING
AND FLOOD RESPONSE, IN THE AMOUNT OF $127,150 (AB2016-280)

(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, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

5. ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, FIFTEENTH
REQUEST, IN THE AMOUNT OF $307,428 (AB2016-274)

Browne reported for the Finance and Administrative Services Committee and
moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

6. ORDINANCE AMENDING ORDINANCE 2014-083 (AMENDMENT NO. 2) TO
ESTABLISH THE CEDAR HILLS/EUCLID STORMWATER IMPROVEMENTS FUND
AND ESTABLISH A PROJECT BASED BUDGET FOR CEDAR HILLS/EUCLID
STORMWATER IMPROVEMENTS IN THE AMOUNT OF $260,000 (AB2016-275)

Browne reported for the Finance and Administrative Services Committee and
moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

7. RESOLUTION REQUESTING REIMBURSEMENT FOR PUBLIC SAFETY COSTS
DIRECTLY ASSOCIATED WITH THE MAY 7, 2016, DONALD J. TRUMP
CAMPAIGN VISIT TO WHATCOM COUNTY (AB2016-292)

Brenner reported for the Public Works, Health, and Safety Committee and moved to
approve the substitute resolution. Taxpayers shouldn’t have to pay campaign costs.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)
8. **RESOLUTION ESTABLISHING THE COUNCIL’S REGULAR MEETING DATES FOR 2017 (AB2016-293)**

Donovan moved to approve the resolution. The motion was seconded.

Councilmembers discussed scheduling the 2017 National Association of County Officials (NaCO) conference in Washington D.C. and scheduling meetings on the same Tuesdays each month.

The motion carried by the following vote:

- **Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
- **Nays:** Brenner (1)

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. **REQUEST FOR CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF STEPHEN JACKSON TO THE NORTH SOUND MENTAL HEALTH BEHAVIORAL HEALTH ADVISORY BOARD (AB2016-285)**

Browne moved to confirm the appointment. The motion was seconded.

The motion carried by the following vote:

- **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
- **Nays:** None (0)

2. **REQUEST FOR CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF BARRY MACHALE TO THE DEVELOPMENTAL DISABILITIES BOARD (AB2016-286)**

Brenner moved to confirm the appointment. The motion was seconded.

The motion carried by the following vote:

- **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
- **Nays:** None (0)

3. **REQUEST FOR CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENTS TO THE WHATCOM COUNTY COMMISSION ON SALARIES FOR ELECTED OFFICIALS (AB2016-287)**

Brenner moved to confirm the appointment. The motion was seconded.

Jack Louws, County Executive, answered questions about how the appointees were selected.

The motion carried by the following vote:

- **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
- **Nays:** None (0)
COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Jack Louws, County Executive, answered councilmember questions about doing background checks on citizen board/commission appointees.

Forrest Longman, Council Legislative Analyst, answered questions about the citizenship of board/commission members.

INTRODUCTION ITEMS

**Mann moved** to accept the Introduction Items. The motion was seconded.


Tyler Schroeder, Executive’s Office, answered questions about whether the Council will discuss this item in committee.

**Mann withdrew** item four and **moved** to schedule it in the Public Works Committee. The motion was seconded.

The motion carried by the following vote:

**Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

**Nays:** Brenner (1)

Dana Brown-Davis, Clerk of the Council, stated this item is scheduled to be discussed in the Planning and Development Committee in two weeks. Introduce it tonight.

Mann moved to reconsider the motion to withdraw from Introduction and schedule in the Public Works Committee. The motion to reconsider was seconded.

The motion to reconsider carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

The motion to accept all seven Introduction Items carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

1. **RECEIPT OF APPLICATION FOR THE ACME/VAN ZANDT FLOOD SUBZONE ADVISORY COMMITTEE, APPLICANT: GALEN SMITH (AB2016-277)**

(application deadline for any other applicants to this vacancy is 10 A.M. on October 4, 2016)

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)
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.

2. RESOLUTION APPROVING THE WHATCOM COUNTY 2017 ANNUAL CONSTRUCTION PROGRAM (ACP) (AB2016-284)

3. ORDINANCE CLOSING THE SUPERIOR COURT FOURTH JUDGE COURTROOM RENOVATION PROJECT FUND (AB2016-288)

5. RESOLUTION FORWARDING DRAFT SHORELINE MASTER PROGRAM AMENDMENTS TO THE DEPARTMENT OF ECOLOGY FOR REVIEW (AB2016-270A)

6. ORDINANCE AMENDING WHATCOM COUNTY CODE 1.14, ELECTORAL PRECINCTS, AND REPLACING THE BOOK OF ELECTION PRECINCT MAPS (AB2016-291)


COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Weimer reported for the Natural Resources Committee.

Browne reported for the Finance and Administrative Services Committee.


Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 12:14 a.m. on Wednesday, September 28, 2016.

The County Council approved these minutes on ______, 2017.

ATTEST:
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair
WHATCOM COUNTY COUNCIL
Special Committee of the Whole

October 11, 2016

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 4:17 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan. Absent: None.

COMMITTEE DISCUSSION

1. DISCUSSION WITH COUNTY ADMINISTRATION REGARDING A POTENTIAL PROPERTY ACQUISITION FOR PARK PURPOSES (AB2016-018)

2. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING PENDING LITIGATION, HIRST ET AL V. WHATCOM COUNTY, GMHB CASE NO. 12-2-0013 (AB2014-018)

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW 42.30.110(1)(B), and discussion of agenda item two may take place in executive session pursuant to RCW 42.30.110(1)(i). Executive session will conclude no later than 4:45 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Weimer moved to go into executive session until no later than 4:45 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:
Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)
Nays: None (0)

Buchanan announced at 4:45 p.m. that executive session was extended to 5:15 p.m.
Buchanan announced at 5:15 p.m. that executive session was extended to 5:30 p.m.

OTHER BUSINESS

ADJOURN

The meeting adjourned at 5:30 p.m.
The Council approved these minutes on ______________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:30 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, Todd Donovan and Carl Weimer

Absent: None

COMMITTEE DISCUSSION

1. STRATEGY PLANNING DISCUSSION AND POSITIONS TO BE TAKEN REGARDING COLLECTIVE BARGAINING (AB2016-018)

   Attorney Present: None

   Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.140(4)(a). Executive session will conclude no later than 7:00 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

   Donovan moved to go into executive session until no later than 7:00 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

   The motion carried by the following vote:

   Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
   Nays: None (0)
   Absent: Sidhu (out of the room) (1)

OTHER BUSINESS

ADJOURN

The meeting adjourned at approximately 7:00 p.m.

The Council approved these minutes on ______ 2017.

ATTEST: WHATCOM COUNTY COUNCIL
          WHATCOM COUNTY, WASHINGTON
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, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.
Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

Buchanan reported for the Special Committee of the Whole and Committee of the Whole meetings on the following items:

• Discussion with County Administration regarding a potential property acquisition for Park purposes (AB2016-018). No action was taken.
• Discussion with Senior Deputy Prosecutor Karen Frakes regarding pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2014-018). No action was taken.
• Strategy planning discussion and positions to be taken regarding collective bargaining (AB2016-018). No action was taken.

PUBLIC HEARINGS

1. ORDINANCE REPEALING WHATCOM COUNTY CODE CHAPTER 8.06, SMOKING IN THE WORKPLACE, AND ESTABLISHING WHATCOM COUNTY CODE CHAPTER 24.14, SMOKING AND VAPING IN PUBLIC PLACES (AB2016-253)

(Council acting as the Whatcom County Board of Health.)

Joe Fuller, Health Department, gave a staff report.

Buchanan opened the public hearing, and the following people spoke:

Marjorie Bell stated she supports the ordinance. It’s an unhealthy norm that doesn’t belong in public places.
Kathie Peterson stated she and her students support the ordinance.

Yolanda Nunez-Hernandez, Squalicum Health Alliance, stated she supports the ordinance. E-cigarette products don’t have to disclose their ingredients.

Corina Lindsay, Squalicum Health Alliance, stated she supports the ordinance.

Haillee Martin, Squalicum Health Alliance, stated she supports the ordinance. They have a right to not be exposed to the unhealthy activity. Use in public could promote the use.

Riley O’Leary stated he supports the ordinance. It’s irritating, it has potential secondhand health risks, and it is an unhealthy social activity.

Kasandra Church, Whatcom Prevention Coalition, stated she supports the ordinance. Limit youth exposure to vaping and e-cigarette devices in public.

Wendy Harris stated she supports the ordinance. E-cigarettes and vaping products expose people to volatile organic compounds (VOCs).

Hearing no one else, Buchanan closed the public hearing.

Browne moved to adopt the ordinance.

The motion was seconded.

Councilmembers spoke in support of the ordinance.

Mann thanked the Public Health Advisory Board and Health Department staff for bringing this to the Council.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. RESOLUTION APPROVING THE WHATCOM COUNTY 2017 ANNUAL CONSTRUCTION PROGRAM (ACP) (AB2016-284)

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Mann moved to adopt the ordinance.

The motion was seconded.

Browne moved to amend to remove project R4 regarding the project on Horton Road, Northwest Drive to Aldrich Road.

Brenner stated she’s opposed to the project.
The motion was seconded.

The motion to amend carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

**Donovan moved** to approve all the items except R4 regarding the project on Horton Road, Northwest Drive to Aldrich Road.

The motion was seconded.

The motion to approve the resolution except R4 carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

**Sidhu moved** to approve project R4 regarding the project on Horton Road, Northwest Drive to Aldrich Road.

The motion to approve project R4 items carried by the following vote:

**Ayes:** Mann, Sidhu, Buchanan, Weimer and Donovan (5)

**Nays:** Brenner (1)

**Abstains:** Browne (1)

3. **ORDINANCE ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING, RELATING TO COMMERCIAL AND INDUSTRIAL LAND USES IN LIMITED AREAS OF MORE INTENSIVE RURAL DEVELOPMENT (AB2016-272)**

Buchanan opened the public hearing, and the following people spoke:

Tim Kaptein, Innotech Process Equipment Owner, described his company. It's difficult to find suitable land to serve his customers and meet fire flow access requirements.

Gary Honcoop stated he supports the zoning text amendment in item seven. His business has become nonconforming. The text amendment restores his business use. He also supports the clarity of other text amendments.

Wendy Harris stated she is opposed to the ordinance. It should have been done through the Comprehensive Plan process. She read a letter of opposition from Tim Trohimovich. She has concerns about abuse of administrative discretion.

Hearing no one else, Buchanan closed the public hearing.

**Brenner moved** to adopt the ordinance.

The motion was seconded.

Brenner stated it’s time to make regulations more flexible.

Donovan stated these are very narrow changes to what is permitted.
The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

4. **ORDINANCE AMENDING CERTAIN ELECTION PRECINCT BOUNDARIES AND APPROVING NEW PRECINCT BOUNDARIES AS NECESSARY TO THE BOOK OF ELECTION PRECINCT MAPS (AB2016-291)**

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

*Brenner moved* to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)


Buchanan opened the public hearing, and the following people spoke:

David McLain stated the ordinance doesn’t protect the watershed in Lake Whatcom. Trees are frequently removed without review or permits. The ordinance must address tree removal that is not associated with development. Create a penalty for ignoring the ordinance.

Wendy Harris stated the ordinance is only focused on trees. Also consider soil quality, site hydrology, under-shrubs, and the forest floor, not just tree canopy.

Hearing no one else, Buchanan closed the public hearing.

*Browne moved* to adopt the ordinance.

The motion was seconded.

Mark Personius, Planning and Development Services Department, answered questions on the Council’s ability to amend the regulations at any time; considering penalties against or outreach to tree removal companies, who should know the regulations; treeless buffers to protect against fires; making sure rules are enforced; and whether staff has the time to monitor the amount of tree canopy.

The motion carried by the following vote:

**Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

OPEN SESSION

The following people spoke:

- Larry McCarter, Recycling and Disposal Services (RDS), spoke about the resolution adopting an update to the Whatcom County Comprehensive Solid and Hazardous Waste Management Plan (AB2016-302).
- Chet Dow, Common Threads Northwest, submitted a handout *(on file)* and spoke about the Planning Commission transition to five Council districts.
- Ron Bronsema spoke about the resolution regarding a stakeholder group to review the requirements related to the replacement of residential septic systems (AB2016-306).
- Carole Perry spoke about over-regulation and the cost of the proposed new jail.
- Lurline Hammer spoke about the Supreme Court decision on Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2014-018).
- Wendy Harris spoke about the need for more environmental regulations to protect the future of humans.
- Jerry Peterson spoke about the Supreme Court decision on Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2014-018).
- Roger Hawley spoke about the Supreme Court decision on Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2014-018).

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one, four, and five. Item two was withdrawn from the agenda.

The motion to approve Consent Agenda items one, four, and five carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

1. RESOLUTION APPROVING THE 2017 RECOMMENDED CONVENTION CENTER ALLOCATIONS FOR TOURISM RELATED FACILITIES AND ACTIVITIES AS DEFINED THROUGH RCW 67.28.1816 (AB2016-297)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A COOPERATIVE AGREEMENT BETWEEN WHATCOM COUNTY AND THE COMMODITY CREDIT CORPORATION FOR THE AGRICULTURAL CONSERVATION EASEMENT PROGRAM, IN THE AMOUNT OF $543,020 (AB2016-298)
3. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #16-50
   AND ENTER INTO A CONTRACT FOR THE 2016 SWIFT CREEK REMOVAL
   PROJECT TO LOW BIDDER STRIDER CONSTRUCTION, IN THE AMOUNT OF
   $357,724.50 (AB2016-299)

   (Clerk's Note: 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, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
   Nays: None (0)

4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #16-52
   AND ENTER INTO A CONTRACT FOR THE MARINE DRIVE/BNSF BRIDGE #172
   BICYCLE WARNING SYSTEM TO LOW BIDDER SAIL ELECTRIC, INC., IN THE
   AMOUNT OF $101,420 (AB2016-300)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A
   CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND EDGE
   ANALYTICAL LABORATORIES TO PROVIDE LABORATORY ANALYSIS OF
   WATER SAMPLES TO SUPPORT THE COUNTY'S POLLUTION IDENTIFICATION
   AND CORRECTION PROGRAM AND SHELLFISH PROTECTION DISTRICTS, IN
   THE AMOUNT OF $30,000 (AB2016-301)

OTHER ITEMS

1. ORDINANCE CLOSING THE SUPERIOR COURT FOURTH JUDGE COURTROOM
   RENOVATION PROJECT FUND (AB2016-288)

   Browne reported for the Finance and Administrative Services Committee and
   moved to adopt the ordinance.

   The motion carried by the following vote:
   Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
   Nays: None (0)

2. RESOLUTION ORDERING THE CANCELLATION OF UNCLAIMED CHECKS MORE
   THAN TWO YEARS OLD (AB2016-296)

   Browne reported for the Finance and Administrative Services Committee and
   moved to approve the resolution.

   The motion carried by the following vote:
   Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
   Nays: None (0)
3. RESOLUTION ADOPTING AN UPDATE TO THE WHATCOM COUNTY COMPREHENSIVE SOLID AND HAZARDOUS WASTE MANAGEMENT PLAN (AB2016-302)

Brenner reported for the Public Works, Health, and Safety Committee and stated this item is held in committee.

4. RESOLUTION REQUESTING THE COUNTY EXECUTIVE INSTRUCT THE PLANNING AND DEVELOPMENT SERVICES DEPARTMENT TO CONVENE A STAKEHOLDER GROUP TO REVIEW THE CURRENT AND PROPOSED MITIGATION REQUIREMENTS RELATED TO THE REPLACEMENT OF RESIDENTIAL SEPTIC SYSTEMS (AB2016-306)

Brenner reported for the Public Works, Health, and Safety Committee and stated this item is held in committee.

5. ORDINANCE ADOPTING THE CURRENT STATE BUILDING CODE AND REPEALING THE EXISTING TITLE 15 OF THE WHATCOM COUNTY CODE (AB2016-289)

Weimer reported for the Planning and Development Committee and stated this item was withdrawn from the agenda and will be scheduled for a public hearing.

6. RESOLUTION FORWARDING DRAFT SHORELINE MASTER PROGRAM AMENDMENTS TO THE DEPARTMENT OF ECOLOGY FOR REVIEW (AB2016-270A)

Weimer reported for the Planning and Development Committee and moved to schedule a public hearing. He is opposed to the motion. There has already been a public hearing at the Planning Commission, and it already has to have a public hearing at the ordinance phase.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, and Donovan (4)

Nays: Weimer, Browne, and Buchanan (3)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. NOMINATION AND APPOINTMENT TO FILL TWO VACANCIES ON THE ACME/VAN ZANDT FLOOD SUBZONE ADVISORY COMMITTEE - APPLICANT(S): GALEN SMITH AND JOHN STEPHENS (AB2016-277)

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Brenner moved to appoint Galen Smith and John Stephens by acclamation.

The motion was seconded.
The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

**EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**

1. **REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF LONI RAHM TO THE LODGING TAX ADVISORY COMMITTEE (AB2016-303)**

   *moved* to confirm the appointment.

   The motion was seconded.

   The motion carried by the following vote:

   **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

   **Nays:** None (0)

**INTRODUCTION ITEMS**

Brenner *moved* to accept the Introduction Items.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

1. **REQUEST FOR A MAJOR MODIFICATION AND A ONE YEAR EXTENSION TO THE LINCOLN ROAD LONG SUBDIVISION AND PLANNED UNIT DEVELOPMENT (AB2015-172A)**

2. **RESOLUTION EXTENDING THE CURRENT WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT FUNDING MECHANISM AND LEVEL FOR THE SAMISH WATERSHED SUBZONE (AB2016-304)**

   (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

3. **ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, SIXTEENTH REQUEST, IN THE AMOUNT OF $14,370 (AB2016-305)**

**COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**
Weimer reported for the Natural Resources Committee on the discussion regarding ways to increase and improve communication with Cherry Point industries to better understand the benefits and impacts of current and future operations (AB2016-290).

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 8:30 p.m.

The County Council approved these minutes on ______, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL  
Special Committee of the Whole  

November 9, 2016

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 9:32 a.m. in the Council Committee Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Rud Browne and Barry Buchanan.
Absent: Todd Donovan.

COMMITTEE DISCUSSION

1. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING PENDING LITIGATION, HIRST ET AL V. WHATCOM COUNTY, GMHB CASE NO. 12-2-0013 (AB2016-018)
   Attorney Present: Karen Frakes

2. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR JEFFREY SAWYER REGARDING PENDING LITIGATION, RINGE V. WHATCOM COUNTY, FILED IN SKAGIT COUNTY SUPERIOR COURT (AB2016-018)
   Attorney Present: Jeffrey Sawyer

Buchanan stated that discussion of agenda items one and two may take place in executive session pursuant to RCW42.30.110 (1)(i). Executive session will conclude no later than 10:15 a.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Browne moved to go into executive session until no later than 10:15 a.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:
Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, and Weimer (6)
Nays: None (0)
Absent: Donovan (1)

At 10:15 a.m., Buchanan announced that executive session will continue and conclude no later than 10:30 a.m.

OTHER BUSINESS

ADJOURN
The meeting adjourned at 10:30 a.m.

The Council approved these minutes on ______________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
       WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL
Special Committee of the Whole

November 9, 2016

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 10:30 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Rud Browne and Barry Buchanan
Absent: Todd Donovan

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL

1. RESOLUTION ORDERING THE CANCELLATION OF ACCOUNTS RECEIVABLE MORE THAN ONE YEAR OLD (AB2016-322)

Sidhu moved to approve the resolution.

Brad Bennett, Administrative Services Department, answered questions about amounts that have been turned over to a collections agency, which was not able to collect the amounts owed.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, and Weimer (5)
Nays: None (0)
Absent: Mann (out of the room) and Donovan (2)

2. RESOLUTION ORDERING THE CANCELLATION OF CHECKS (WARRANTS) MORE THAN ONE YEAR OLD (AB2016-323)

Weimer moved to approve the resolution.

The motion was seconded.

Brad Bennett, Administrative Services Department, answered questions about uncashed checks issued from the fire districts to individuals and check recipients who can still collect their money.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: None (0)
Absent: Donovan (1)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE WHATCOM CONSERVATION DISTRICT FOR THE LAKE WHATCOM HOMEOWNER INCENTIVE PROGRAM, IN THE AMOUNT OF $50,000 (AB2016-324)

Brenner moved to approve the request.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Buchanan, and Weimer (5)
Nays: None (0)
Abstains: Browne (1)
Absent: Donovan (1)

4. RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE TO MAKE APPLICATION AND ENTER INTO A GRANT AGREEMENT WITH THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE FOR FUNDING THROUGH THE NONHIGHWAY AND OFF-ROAD VEHICLE ACTIVITIES PROGRAM, IN THE AMOUNT OF $200,000 FOR THE DEVELOPMENT OF NON-MOTORIZED RECREATIONAL TRAILS AT LOOKOUT MOUNTAIN FOREST PRESERVE AND LAKE WHATCOM PARK, AND $200,000 FOR THE DEVELOPMENT OF NON-MOTORIZED RECREATIONAL TRAILS AT SOUTH FORK PARK (AB2016-091C)

Mann moved to approve the request.

The motion was seconded.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, and Weimer (5)
Nays: Brenner (1)
Absent: Donovan (1)

SPECIAL ORDER OF BUSINESS

1. DISCUSSION AND FORMULATION OF RECOMMENDATIONS RELATED TO A PROPOSED ORDINANCE ADOPTING THE 2017-2018 WHATCOM COUNTY BUDGET (AB2016-198C)

Forrest Longman, County Council Office, submitted a handout of proposed Council changes (on file) and gave a staff report.

Councilmembers referenced the handout for the following motions.
**Buchanan moved** to increase funding for the Domestic Violence Commission by $15,000. The motion was seconded.

Jack Louws, County Executive, gave a staff report on the larger request by the Commission of the County in the amount of $30,000. He is concerned with the potential challenges from integrating the faith community. Also, there are many organizations in need in the community.

**Browne moved** to hold the motion to get more information from the Commission on their connection with the faith community.

Councilmembers discussed the benefit of the Commission in working with the faith community and funding the Commission in developing a program of outreach to those community.

The motion failed by the following vote:

**Ayes:** Browne (1)

**Nays:** Brenner, Mann, Sidhu, Buchanan, and Weimer (5)

**Absent:** Donovan (1)

The motion to increase funding carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)

**Nays:** None (0)

**Absent:** Donovan (1)

**Brenner moved** to eliminate the Parks and Recreation Department and described the services overlap with other departments, as shown in the handout.

The motion was seconded.

Councilmembers discussed what the actual savings and cost would be, feedback from the departments about the impact of eliminating the Parks Department and moving programs into other departments, and keeping parks services consolidated for the benefit of the public.

The motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Sidhu, Browne, Buchanan, and Weimer (5)

**Absent:** Donovan (1)

**Brenner moved** to add funding to the senior centers in the amount of $80,000 per year and described the intent and impact to eight centers operated by Whatcom County to increase programming.

The motion was seconded.

The following staff commented and answered questions:

- Mike McFarlane, Parks and Recreation Department Director, gave a staff report on other municipalities and donors to the senior centers and specifying
which programs toward which additional funding would go. Staff is planning a
roundtable discussion with the senior centers in December or January.

- Jack Louws, County Executive

Councilmembers discussed inviting the senior centers to the Council to discuss their
needs, the increasing senior population, and not having a specific request from the centers.

Sidhu moved to amend to allocate $40,000 as a placeholder for senior center
programs and services, and allow the senior centers to present their needs to the Parks
Department. The Council and Parks Department will then be able to allocate that money
appropriately.

The motion was seconded.

Councilmembers and Executive Louws discussed encouraging the senior centers to
make specific proposals and requests to the County, how the Executive receives requests
from nonprofit agencies, how to fund an increase for the senior centers and other
nonprofits, having presentations from nonprofits to the Council throughout the year, and
creating an annual process to allow people to submit requests for funding.

The motion to amend failed by the following vote:

Ayes: Brenner and Sidhu (2)
Nays: Weimer, Mann, Browne, and Buchanan (4)
Absent: Donovan (1)

The motion to add funding failed by the following vote:

Ayes: Brenner (1)
Nays: Sidhu, Weimer, Mann, Browne, and Buchanan (5)
Absent: Donovan (1)

Brenner moved to not approve full-time equivalent (FTE) positions for a proposed
facilities project and operations manager and an assistant, as shown in the Executive’s
proposed budget for 2017 and 2018. The positions are new and very expensive.

Councilmembers discussed the pending capital facilities projects and ensuring the
County receives competitive bids.

The motion failed by the following vote:

Ayes: Brenner (1)
Nays: Sidhu, Weimer, Mann, Browne, and Buchanan (5)
Absent: Donovan (1)

Browne moved to transfer funds from the public utilities improvement fund, known
as the rural sales tax or economic development investment (EDI) fund, to a dedicated
economic development fund to be used for economic development activities, pending
consultation with rural sales tax stakeholders, per RCW 82.14.370.

The motion was seconded.
Louws stated the County must engage and consult with the Cities and tax contributors. He invited councilmembers to attend an EDI Board meeting.

Councilmembers discussed the funding amount per population, whether the public utilities improvement fund can be used for this purpose, having a discussion with the EDI Board to review the allocation process, consulting with the business community that contributes most to the economic development funds, creating a sunset date, the efforts of Team Whatcom, taking a business approach to encourage businesses to open up in the community and create higher wage jobs.

**Browne withdrew his motion** pending the outcome of the next motion.

Louws suggested the Council send a letter to the EDI Board to have a discussion with the Cities and EDI Board about developing a new method for allocating funds and look at ways to augment economic development in Whatcom County.

**Weimer moved** to proviso the public utilities improvement fund, known as the rural sales tax or economic development investment (EDI) fund, until a new approach to allocating these funds can be identified.

The motion was seconded.

Councilmembers discussed undergoing a process to fix the EDI process and sending a letter per the Executive’s suggestion.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)

**Nays:** None (0)

**Absent:** Donovan (1)

**Mann moved** to allow a sliding scale for electronic home monitoring.

Bill Elfo, Sheriff, gave a staff report on waiving the application fee and/or the per day charge for electronic home detention for indigent inmates. He answered questions on developing a sliding scale, providing funding for renting equipment, changing the appropriation versus providing funding, creating the program as a pilot for the first year, and the amount charged for inmate phone calls.

Louws stated the Council needs to amend the unified fee schedule to allow for a sliding scale.

**Mann restated the motion** to create a sliding fee scale for inmates, not cities, and amend the unified fee schedule.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)

**Nays:** None (0)

**Absent:** Donovan (1)

(The Committee took a lunch break from 12:15 to 1:20 p.m.)
Weimer moved to add funding for water management revenue planning in the amount of $40,000 in 2017. He submitted a resolution requesting that the Executive prepare alternative financing options for selected water resources services (on file).

The motion was seconded.

Jon Hutchings, Public Works Department Director, stated the amount is appropriate to get outside analysis of different revenue streams. He answered questions about the type of analysis needed, the possibility of using road funds, programs funded from the flood fund, the declining flood fund, the amount of the flood fund paying for the national pollution discharge elimination system (NPDES).

Brenner stated amend the description of action for the motion to allow for a new or changed revenue system.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: None (0)
Absent: Donovan (1)

Sidhu moved to create and fund a facilitator for an Economic Development Summit in the amount of $5,000 for the year 2017.

The motion was seconded.

Louws stated the $5,000 can be added to the Council's budget.

Councilmembers discussed including Team Whatcom and other stakeholders.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: None (0)
Absent: Donovan (1)

Mann moved to raise general fund revenue by one percent each year for the years 2017 and 2018.

The motion was seconded.

Councilmembers discussed competing increases for emergency medical services (EMS) and funding for the jail and whether sales taxes or property taxes are better for residents.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Buchanan, and Weimer (4)
Nays: Brenner and Browne (2)
Absent: Donovan (1)
Mann moved to create a reserve to fund Incarceration Prevention and Reduction Task Force recommendations in the amount of $250,000 of ongoing funding beginning in the year 2018.

The motion was seconded.

Councilmembers discussed whether the Task Force recommendations will save the County money and whether this placeholder money will come from general fund reserves or a different source.

Louws stated he will make a political commitment to support the Task Force, but it is unnecessary to set aside funds at this time.

Mann withdrew the motion and stated Executive Louws, Mr. Schroeder, and the administration have been very good at supporting the Task Force’s efforts.

Mann moved to expand the Nurse-Family Partnership in the amount of $251,045 per year for the years 2017 and 2018.

The motion was seconded.

Regina Delahunt, Health Department Director, answered questions about how quickly they can expand the program and gave a staff report on the source of funding; sustainability of the program if they use general fund dollars; and the timing of State legislative funding foundational services, such as communicable disease prevention, which generally receives minimal funding. Wait to see if they receive State funds from the legislature for the foundational services, and consider using grant funds to expand the Nurse-Family Partnership.

Councilmembers discussed increasing the program incrementally.

Louws stated he suggests that the Council adds $80,000 in 2017 to hire one FTE late in 2017, and add $125,000 in 2018 for one FTE. In 2017, the FTE would be hired after the legislature has made its budget decisions for the biennium, and the County will know the impact to the Health Department. If the County can get additional funding for more, the administration will request an additional FTE request. Don’t hire these people, and then run into a supplanting issue with the State.

Mann amended his motion and moved to hold this item to allow staff to develop options to expand the program. The amended motion was seconded.

The motion to hold carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: None (0)
Absent: Donovan (1)

Mann moved to increase the budget for County Council staff in the amount of $100,000 per year for the years 2017 and 2018.

The motion was seconded.
Councilmembers discussed ensuring the wage changes happen, whether the administration has a process and procedure for funding reclassifications in other departments, and impacts to the rest of the organization.

**Mann withdrew** his motion.

**Buchanan moved** to provide funding for the Whatcom Dispute Resolution Center in the amount of $25,000 per year for the years 2017 and 2018.

The motion was seconded.

Louws gave a staff report and answered questions on identifying a service the County will receive in return for additional funding.

Forrest Longman, Council Office, stated he will look further into options for revenue sources and whether they can justify public funding through diverting conflict from the court system.

Councilmembers and staff discussed the current funding structure for the Dispute Resolution Center.

**Buchanan moved** to hold until more information is available.

The motion to hold was seconded.

The motion to hold carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)

**Nays:** None (0)

**Absent:** Donovan (1)

Sidhu described Councilmember Donovan’s proposal to create a ferry replacement fund.

Jon Hutchings, Public Works Department Director, gave a staff report on having a discussion about saving money for a future replacement ferry and discussions with the Lummi Island Ferry Advisory Committee. He recommends continuing the discussion rather than creating a fund at this time.

**Sidhu moved** to create a ferry replacement fund.

Councilmembers discussed not depending on user fares to pay for a replacement ferry.

**Brenner moved** to refer this item to the Public Works, Health, and Safety Committee.

The motion was seconded.

The motion to refer to committee carried by the following vote:
Weimer moved to fund an assessment of current critical areas in 2017 in an amount to be determined.

Mark Personius, Planning and Development Services Department, answered questions and stated this item and Adjustment No. 18 regarding a forest resource lands assessment and tracking program are in the work program currently.

Weimer amended his motion and moved to withdraw this item and Adjustment No. 18 from Council consideration.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: None (0)
Absent: Donovan (1)

Weimer moved to fund legal review of the County Council’s authority and options for limiting fossil fuel exports in the amount of $150,000 for the year 2017.

The motion was seconded.

Councilmembers discussed the appropriate funding amount, determining how much authority the County has for regulating exports in the context of protecting public safety, regulating safety and environmental impacts in the transshipment of hazardous materials, requiring applicants for transportation-intensive projects to fully mitigate the impacts on the existing business and transportation infrastructure, and requiring applicants to fully fund all rail overpasses required to mitigate such impacts.

Browne suggested a friendly amendment to approve legal review of the Council’s authority to enact or enforce language of the moratoria the Council adopted.

Weimer suggested, “limiting fossil fuel export safety.”

Councilmembers continued to discuss how to make all types of transport safe versus limiting what materials can be transported, conferring with Deputy Prosecutor Karen Frakes, whether or not a legal review of the Council’s authority should be done openly in the context of the Comprehensive Plan or through litigation.

Weimer amended his motion and moved to hold to allow time to make the language match the Comprehensive Plan and work with the Prosecutor’s Office to come up with the right expenditure amount.

The motion to hold in committee was seconded.

The motion to hold carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: None (0)
Absent: Donovan (1)

Weimer moved to fund a review of land use and development rules regarding enforcement in the amount of $200,000 in the year 2017.

The motion was seconded.

Mark Personius, Planning and Development Services Department, gave a staff report on Planning Department enforcement efforts.

Councilmembers discussed getting input from the existing enforcement officers about the challenges of enforcement and if the staff are looking at how other counties do enforcement.

Weimer withdrew his motion.

Brenner moved to fund Council Chamber improvements in the amount of $40,000 for the year 2017.

The motion was seconded.

Councilmembers discussed whether the cost to install two monitors is accurate and whether the monitors can wirelessly project from a computer.

Longman submitted a handout on the estimate for a new audio and control system in the Council Chambers (on file).

Louws stated he encourages the Council to put $40,000 in the budget. The administration will follow purchasing, labor, installation and all other policies to do the installation.

Perry Rice, Administrative Services Department, answered questions about the display costs for commercial grade displays, creating a wired solution, and having multiple locations to plug into the screens.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: None (0)
Absent: Donovan (1)

Councilmembers and staff discussed revising the unified fee schedule before it’s adopted.

OTHER BUSINESS

There was no other business.

ADJOURN
The meeting adjourned at 3:35 p.m.

The Council approved these minutes on ______________, 2017.

ATTEST:           WHATCOM COUNTY COUNCIL
                  WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk           Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription
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, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

Buchanan reported for the Special Committee of the Whole in executive session regarding the discussion with Senior Deputy Prosecutor Jeffrey Sawyer regarding pending litigation, Ringe v. Whatcom County, filed in Skagit County Superior Court (AB2016-018) and stated the County Council met in executive session concerning the lawsuit: Leslie Sherri Ringe v. Whatcom County, et al. Pursuant to Whatcom County Code 2.56, the Council hereby finds the following:

A. the employee was acting in a matter in which the county had an interest;
B. the employee was acting in the discharge of a duty imposed or authorized by law;
C. The employee acted in good faith.

The officers, officials, agents, or employees will be defended and indemnified pursuant to and consistent with the provisions of Whatcom County Code (WCC) 2.56.

Mann moved to approve the above findings.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

OPEN SESSION

The following people spoke:
Mary Kay Robinson, Whatcom County Association of Realtors, submitted a handout *(on file)* and spoke about pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2016-018).

Laura Sanderson spoke about pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2016-018) and not being able to drill a well on her lot.

Eric Joneson spoke about pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2016-018) and not being able to drill a well on his lot.

David Strich spoke about a speed limit on Marine Drive.

Bud Breakey spoke about pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2016-018) and not being able to drill a well on his lot.

Tim Vanderman (SP) spoke about pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2016-018) and not being able to drill a well on his lot.

Roger *(no last name given)* spoke about pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2016-018) and not being able to drill a well on his lot.

Buck Breakey spoke about pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2016-018) and developing a short-plat on his lot.

**OTHER ITEMS**

1. **RESOLUTION ORDERING THE CANCELLATION OF ACCOUNTS RECEIVABLE MORE THAN ONE YEAR OLD (AB2016-322)**

   *Mann moved* to approve the resolution.

   The motion was seconded.

   The motion carried by the following vote:

   **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
   
   **Nays:** None (0)

2. **RESOLUTION ORDERING THE CANCELLATION OF CHECKS (WARRANTS) MORE THAN ONE YEAR OLD AB2016-323)**

   *Mann moved* to approve the resolution.

   The motion was seconded.

   The motion carried by the following vote:

   **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
   
   **Nays:** None (0)

3. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE WHATCOM**
CONSERVATION DISTRICT FOR THE LAKE WHATCOM HOMEOWNER INCENTIVE PROGRAM, IN THE AMOUNT OF $50,000 (AB2016-324)

Brenner moved to approve the resolution.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Donovan, Mann, Sidhu, Buchanan, and Weimer (6)
Nays: None (0)
Abstains: Browne (1)

4. RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE TO MAKE APPLICATION AND ENTER INTO A GRANT AGREEMENT WITH THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE FOR FUNDING THROUGH THE NONHIGHWAY AND OFF-ROAD VEHICLE ACTIVITIES PROGRAM, IN THE AMOUNT OF $200,000 FOR THE DEVELOPMENT OF NON-MOTORIZED RECREATIONAL TRAILS AT LOOKOUT MOUNTAIN FOREST PRESERVE AND LAKE WHATCOM PARK, AND $200,000 FOR THE DEVELOPMENT OF NON-MOTORIZED RECREATIONAL TRAILS AT SOUTH FORK PARK (AB2016-091C)

Mann moved to approve the resolution.

The motion was seconded.

Brenner moved to amend to remove the money for development of non-motorized recreational trails at South Fork Park.

The motion was seconded.

Councilmembers discussed the concerns of nearby citizens who don’t want more trails in the area and the history of the South Fork Park development.

The motion to amend failed by the following vote:
Ayes: Brenner (1)
Nays: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

The motion to approve the resolution as presented carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT TO FOUR VACANCIES ON THE HORTICULTURE PEST AND DISEASE BOARD, APPLICANTS: MELISSA BEDLINGTON, ALLEN BROWN, MIKE HAWLEY, MATTHEW MCDERMOTT (AB2016-319) (THE HORTICULTURE PEST AND DISEASE BOARD ASSISTS WHATCOM COUNTY IN ITS EFFORTS TO
MORE EFFECTIVELY CONTROL AND PREVENT THE SPREAD OF HORTICULTURAL PESTS AND DISEASES)

Mann moved to nominate and appoint all four applicants by acclamation.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF ROBERT SEAMAN TO THE WHATCOM MARINE RESOURCES COMMITTEE (AB2016-325) (THE MARINE RESOURCES COMMITTEE ASSISTS WHATCOM COUNTY IN ITS EFFORTS TO ADDRESS LOCAL MARINE ISSUES AND RECOMMENDS REMEDIAL ACTION TO LOCAL AUTHORITIES)

Mann moved to confirm the appointment.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

INTRODUCTION ITEMS

Brenner moved to accept Introduction Items one through seven, nine through 13, 15 through 20, and 22 through 25.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

1. ORDINANCE ESTABLISHING THE SUDDEN VALLEY STORMWATER IMPROVEMENTS FUND AND ESTABLISHING A PROJECT-BASED BUDGET FOR THE SUDDEN VALLEY STORMWATER IMPROVEMENTS PROJECT (AB2016-326)

2. ORDINANCE ESTABLISHING THE HOVANDER PARK BUILDING IMPROVEMENTS FUND AND ESTABLISHING A PROJECT-BASED BUDGET FOR THE HOVANDER PARK BUILDING IMPROVEMENTS PROJECT (AB2016-327)
3. ORDINANCE ESTABLISHING THE LAKE WHATCOM TRAIL DEVELOPMENT FUND AND ESTABLISHING A PROJECT-BASED BUDGET FOR THE LAKE WHATCOM PARK TRAIL DEVELOPMENT PROJECT (AB2016-328)

4. ORDINANCE AMENDING ORDINANCE 2014-080 (ESTABLISHMENT OF THE ACADEMY ROAD STORMWATER IMPROVEMENTS FUND AND ACADEMY ROAD STORMWATER IMPROVEMENTS PROJECT-BASED BUDGET) TO REQUEST ADDITIONAL APPROPRIATION AUTHORITY, IN THE AMOUNT OF $98,000 (AB2016-329)

5. ORDINANCE AMENDING ORDINANCE 2014-081 (ESTABLISHMENT OF THE AGATE HEIGHTS/ESTATE BAY LINE STORMWATER IMPROVEMENTS FUND AND AGATE HEIGHTS ESTATE/BAY LANE STORMWATER IMPROVEMENTS PROJECT-BASED BUDGET) TO REQUEST ADDITIONAL APPROPRIATION AUTHORITY, IN THE AMOUNT OF $170,000 (AB2016-330)

6. ORDINANCE AMENDING ORDINANCE 2014-083 (ESTABLISHMENT OF THE CEDAR HILLS/EUCLID STORMWATER IMPROVEMENTS FUND AND CEDAR HILLS/EUCLID STORMWATER IMPROVEMENTS PROJECT BASED BUDGET) TO REQUEST ADDITIONAL APPROPRIATION AUTHORITY, IN THE AMOUNT OF $200,000 (AB2016-275A)

7. ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, SEVENTEENTH REQUEST, IN THE AMOUNT OF $2,336,646 (AB2016-331)

8. ORDINANCE CLOSING THE SUPERIOR COURT FOURTH JUDGE COURTROOM RENOVATION PROJECT FUND 346 (AB2016-332)

This item was withdrawn from the agenda.

9. ORDINANCE CLOSING THE RURAL ROAD SAFETY PROGRAM FUND 343 (AB2016-333)

10. ORDINANCE CLOSING THE LAKE WHATCOM BOULEVARD RE-SURFACING FUND 352 (AB2016-334)

11. ORDINANCE CLOSING THE SLATER RD/NOOKSACK RIVER BRIDGE FUND 354 (AB2016-335)

12. ORDINANCE CLOSING THE HANNEGAN RD STRUCTURAL OVERLAY PROJECT FUND 356 (AB2016-336)

13. ORDINANCE CLOSING THE BEAVER CREEK STORMWATER IMPROVEMENTS FUND 366 (AB2016-337)

14. ORDINANCE ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20, ZONING, RELATED TO PERMITTING KENNELS IN THE AGRICULTURAL ZONE AS A CONDITIONAL USE (AB2016-338)

This item was withdrawn from the agenda.
15. ORDINANCE AUTHORIZING THE 2017 WHATCOM COUNTY UNIFIED FEE SCHEDULE (AB2016-339)

16. ORDINANCE ADOPTING THE FINAL BUDGET OF WHATCOM COUNTY FOR THE BIENNIAL 2017-2018 (AB2016-198C)

17. ORDINANCE LIMITING THE 2017 GENERAL FUND PROPERTY TAX LEVY (AB2016-340)

18. ORDINANCE AUTHORIZING THE LEVY OF TAXES FOR CONSERVATION FUTURES PURPOSES FOR 2017 (AB2016-341)

19. ORDINANCE AUTHORIZING THE LEVY OF 2017 PROPERTY TAXES FOR COUNTY ROAD PURPOSES (AB2016-342)

20. ORDINANCE AUTHORIZING THE LEVY OF TAXES FOR COUNTY AND STATE PURPOSES IN WHATCOM COUNTY, WASHINGTON, FOR THE YEAR OF 2017 (AB2016-343)

21. RESOLUTION VACATING AN UNNAMED ALLEY WITHIN THE WHISPERING PINES PLAT (AB2016-210A)

   This item was withdrawn from the agenda.

22. RESOLUTION ADOPTING THE FINAL 2017 BUDGET OF THE POINT ROBERTS TRANSPORTATION BENEFIT DISTRICT (AB2016-344)

   (Council acting as the Point Roberts Transportation Benefit District Governing Body.)

23. RESOLUTION ADOPTING THE 2017 BUDGET FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND SUBZONES (AB2016-345)

   (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

24. RESOLUTION OF THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT SIX-YEAR WATER RESOURCES IMPROVEMENT PROGRAM FOR THE YEARS 2017 THROUGH 2022 (AB2016-346)

   (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

25. RESOLUTION AUTHORIZING THE LEVY OF TAXES FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT FOR 2017 (AB2016-347)

   (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)
26. RESOLUTION OF THE WHATCOM COUNTY COUNCIL REQUESTING THAT THE EXECUTIVE PREPARE ALTERNATIVE FINANCING OPTIONS FOR SELECTED WATER RESOURCES SERVICES (AB2016-AB2016-351)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers discussed a recent court ruling in Spokane, the Hirst court ruling, creating a frequently asked question and answer guide for citizens regarding the Hirst court ruling, the process for making amendments to the proposed 2017-2018 budget, and gave updates on recent activities and upcoming events.

Tyler Schroeder, Executive’s Office, gave a staff report on plans for the exempt well moratorium and resolving the problems with State legislation in Olympia, Washington.

ADJOURN

The meeting adjourned at 8:02 p.m.

The County Council approved these minutes on ______, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________  
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 9:30 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.
Absent: None.

SPECIAL ORDER OF BUSINESS

1. DISCUSSION AND FORMULATION OF RECOMMENDATIONS RELATED TO THE PROPOSED ORDINANCE ADOPTING THE 2017-2018 WHATCOM COUNTY BUDGET (AB2016-198C)

Forrest Longman, Council Office, referenced the Council budget actions beginning on Council packet page 25 and gave a staff report. There are changes to the descriptions of action on adjustments 06 and 07.

Weimer moved to approve Adjustment 8 to expand the Nurse-Family Partnership in the amount of $108,419 in 2017 and $112,752 in 2018 as shown on Council packet page 29.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Browne, Buchanan, Weimer and Donovan (6)
Nays: None (0)
Absent: Sidhu (out of the room) (1)

Longman reported on the correct revenue amounts for the one percent increase in the general fund.

Brenner moved to correct the numbers for Adjustment 10 to a total of $285,313 for 2017 and $581,092 for 2018.

The motion was seconded.

Browne stated it’s unclear what this revenue will go toward and if it will be necessary if the emergency medical services (EMS) levy passes.
The motion carried by the following vote:

**Ayes:** Mann, Sidhu, Buchanan, Weimer and Donovan (5)

**Nays:** Brenner and Browne (2)

Brenner stated she’s opposed to a property tax increase because it’s regressive.

**Mann moved** to amend Adjustment 12 on Council packet page 33 to correct the budget impact to $27,000 each year for 2017 and 2018. It is technically a revenue decrease due to the sliding scale, not a revenue increase.

The motion was seconded.

The following staff answered questions:
- Brad Bennett, Administrative Services Department
- Tyler Schroeder, Executive’s Office
- Bill Elfo, Sheriff

Councilmembers discussed the revenue decrease, waiving the policy to require the Sheriff to meet revenue targets, using the extra million dollars of jail operations money to cover the lower revenue projections, a possible need for additional equipment in the future, and being able to rent the equipment on a sliding scale.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

Longman reported on the Council budget action to fund the Dispute Resolution Center. They will amend the contract with the Dispute Resolution Center through Superior Court.

**Buchanan moved** to approve Adjustment 14 as shown on Council packet page 34 to provide funding for Whatcom Dispute Resolution Center in the amount of $25,000 each year for 2017 and 2018.

The motion was seconded.

Councilmembers discussed the necessity of having annual reports at the end of each fiscal year from organizations who receive County money. The reports should show how the money is used and how it’s been helpful. Councilmembers will work with Council Legislative Analyst Forrest Longman to define which agencies should provide a brief annual report to Council and the information that reports should include.

Louws described the billing and reporting policy.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)
Weimer moved to approve Adjustment 17 as shown on Council packet page 35 to fund a legal review of the County Council’s authority and options for limiting fossil fuel exports in the amount of $150,000 for 2017.

The motion was seconded.

Brenner moved to amend the description of action, “unrefined fossil fuel crude oil and coal,” and stated don’t include natural gas.

The motion to amend was seconded.

Councilmembers discussed whether part of the legal review would be to define and explain the term “unrefined fossil fuel” and if the Council’s definition of unrefined fossil fuels is adequate and correct.

The motion to amend failed by the following vote:

Ayes: Brenner (1)
Nays: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Browne moved to amend the description of action, “…the County can work to limit prevent transportation impacts, and/or increase the safety of new unrefined fossil fuel exports from transshipments facilities in the Cherry Point UGA.”

The motion to amend was seconded.

Councilmembers discussed not limiting the review to transportation, not narrowing the scope of the legal review, and Planning Commission review.

The motion to amend failed by the following vote:

Ayes: Browne (1)
Nays: Mann, Sidhu, Brenner, Buchanan, Weimer and Donovan (6)

Brenner moved to amend the description of action, “…the County can work to limit and/or increase the safety of unrefined fossil fuel exports other than North America from the Cherry Point UGA.” The motion was not seconded.

Councilmembers discussed how they chose the budget estimate amount.

The motion carried by the following vote:

Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

Councilmembers discussed parliamentary procedure and the requirement for votes to be seconded.

Mann withdrew his proposal for Adjustment 21.

Brenner moved to approve Adjustment 22 as shown on Council packet page 38 to fund a Planning Unit instream flow study in the amount of $500,000 for the year 2017.
The motion was seconded.

The following staff answered questions:
- Tyler Schroeder, Executive’s Office
- Jon Hutchings, Public Works Department

Councilmembers discussed whether the Planning Unit is the appropriate body to conduct the study, whether a study would make things better for their ability to approve exempt wells, the status of the groundwater model currently being undertaken, the Council not taking on administrative tasks, who sets the instream flow rule, which instream flow rules are in place, finding funds to finish the groundwater model, and the need to do additional studies beyond the groundwater model.

Linda Twitchell, Planning Unit, stated the Planning Unit will suggest that the remaining Planning Unit budget will go to the groundwater model. They don’t want to study instream flow, which may have negative impacts. Continue to involve the Planning Unit. The groundwater study is limited and is a good study.

The motion failed by the following vote:

Ayes: Brenner (1)
Nays: Weimer, Mann, Browne, Sidhu, Buchanan and Donovan (6)

Browne moved to approve Adjustment 23 as submitted by Council Policy Analyst Forrest Longman (on file) to fund development of a viable exempt well mitigation option in the amount of $250,000 for the year 2017.

The motion was seconded.

Councilmembers discussed budgeting for upcoming obligations when they arise rather than setting aside money now, not using this money to pay for an appeal of the State Supreme Court decision to the federal level, and whether the County can make a blanket determination that the first 350 gallons drawn per day from an exempt well does not impact instream flow, whether there is a qualified hydrologist in the county who can come up with mitigation plans for people, and whether or not they should set aside money now.

Jack Louws, County Executive, stated be cautious about setting aside money in the budget for decisions that won’t come forward for a while, and don’t create a budget that spends more than it takes in.

Browne withdrew his motion.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 11:01 a.m.
The Council approved these minutes on ______________, 2017.

ATTEST:  WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk    Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription

Special Committee of the Whole (AM), 11/22/2016, Page 5
WHATCOM COUNTY COUNCIL
Regular County Council Meeting

November 22, 2016

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, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.
Absent: None.

FLAG SALUTE

MINUTES CONSENT
Donovan moved to approve the Minutes Consent items.
The motion was seconded.
The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

1. SPECIAL COMMITTEE OF THE WHOLE FOR JUNE 14, 2016
2. SURFACE WATER WORK SESSION FOR JUNE 21, 2016
3. SPECIAL COMMITTEE OF THE WHOLE FOR JUNE 21, 2016
4. SPECIAL COMMITTEE OF THE WHOLE (AM MEETING) FOR JUNE 28, 2016
5. REGULAR COUNTY COUNCIL FOR JUNE 28, 2016
6. REGULAR COUNTY COUNCIL FOR JULY 12, 2016

ANNOUNCEMENTS
Buchanan reported for the Committee of the Whole on the discussion with Senior Deputy Prosecutor Karen Frakes regarding pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2016-018). He asked for a staff report on this item.
Mark Personius, Planning and Development Services Department, gave a staff report on the item scheduled for Introduction, **ordinance adopting interim amendments to the Whatcom County Comprehensive Plan and Whatcom County Code Title 15 (Buildings and Construction), Title 20 (Zoning), Title 21 (Land Division Regulations), and Title 24 (Health Code) relating to water resources (AB2016-309A)**. The Health Department and Planning Department will be able to lift the moratorium on exempt wells in certain areas and certain circumstances. It identifies all the legal sources of potable water available in Whatcom County.

He described the conditions for approval and the County’s next steps, which include:

1. Gathering information and data on permit approvals done before the decision
2. Fully funding and completing the County’s groundwater model
3. Seeking changes to the Growth Management Act (GMA) and water law from the State legislature
4. Continue ongoing water supply planning from the Nooksack strategy
5. Continue to work on GMA compliance

He described the impact of this and other court decisions on Whatcom County, and how other counties have managed compliance.

**PUBLIC HEARINGS**

1. **ORDINANCE AUTHORIZING THE 2017 WHATCOM COUNTY UNIFIED FEE SCHEDULE (AB2016-339)**

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Mann moved** to adopt the ordinance.

The motion was seconded.

Brenner stated she doesn’t support the significant increases.

The motion carried by the following vote:

**Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

**Nays:** Brenner (1)

2. **ORDINANCE AUTHORIZING THE LEVY OF TAXES FOR CONSERVATION FUTURES PURPOSES FOR 2017 (AB2016-341)**

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Mann moved** to adopt the ordinance.

The motion was seconded.

Brad Bennett, Administrative Services Department, answered questions about whether the levy would increase and the impact of the recent property tax appeal from BP Cherry Point.
The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

3. **ORDINANCE AUTHORIZING THE LEVY OF 2017 PROPERTY TAXES FOR COUNTY ROAD PURPOSES (AB2016-342)**

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Mann moved** to adopt the ordinance.

The motion was seconded.

Brad Bennett, Administrative Services Department, answered questions about whether the levy would increase and the impact of the recent property tax appeal from BP Cherry Point.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

4. **ORDINANCE AUTHORIZING THE LEVY OF TAXES FOR COUNTY AND STATE PURPOSES IN WHATCOM COUNTY, WASHINGTON, FOR THE YEAR OF 2017 (AB2016-343)**

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Mann moved** to adopt version two of the ordinance on Council packet page 443 and the substitute budget for 2017 for the Macaulay Creek Flood Control District submitted on November 21.

The motion was seconded.

Tyler Schroeder, Executive’s Office, gave a staff report and answered questions about whether it includes a tax increase.

The motion carried by the following vote:

**Ayes:** Mann, Sidhu, Buchanan, Weimer and Donovan (5)

**Nays:** Browne and Brenner (2)

5. **ORDINANCE ADOPTING THE FINAL BUDGET OF WHATCOM COUNTY FOR THE BIENNIAL 2017-2018 (AB2016-198C)**

Buchanan opened the public hearing, and the following people spoke:

Karlee Deatherage, ReSources for Sustainable Communities, stated she is concerned about funding for a climate impact advisory committee and about tracking wetland and critical areas locations. She’s pleased the groundwater model is being fully funded.
Chris Deile submitted a handout *(on file)* and stated more funding should go to affordable housing than parks and recreation services.

Hearing no one else, Buchanan closed the public hearing.

*Browne moved* to adopt the substitute ordinance.

The motion was seconded.

Brenner stated she is opposed to raising property taxes because it’s more regressive than sales tax. None of her proposals were accepted. They’ve approved more positions than they need.

The motion carried by the following vote:

**Ayes:**  Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

**Nays:**  Brenner (1)


*Council acting as the Point Roberts Transportation Benefit District Governing Body.*

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

*Weimer moved* to approve the resolution.

The motion was seconded.

The motion carried by the following vote:

**Ayes:**  Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:**  None (0)

7. **RESOLUTION ADOPTING THE 2017 BUDGET FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND SUBZONES (AB2016-345)**

*Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.*

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

*Weimer moved* to approve the substitute resolution.

The motion was seconded.

The motion carried by the following vote:

**Ayes:**  Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:**  None (0)
8. RESOLUTION ADOPTING THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT SIX-YEAR WATER RESOURCES IMPROVEMENT PROGRAM FOR THE YEARS 2017 THROUGH 2022 (AB2016-346)

Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Mann moved to approve the resolution.

The motion was seconded.

Tyler Schroeder, Executive’s Office, answered questions on whether this includes funding for things other than flood issues.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

9. RESOLUTION AUTHORIZING THE LEVY OF TAXES FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT FOR 2017 (AB2016-347)

Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Buchanan moved to approve the resolution.

The motion was seconded.

Brenner stated don’t use flood taxes on projects that aren’t related to flooding.

Brad Bennett, Administrative Services Department, answered questions about the impact of the recent property tax appeal from BP Cherry Point.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

OPEN SESSION

The following people spoke:

- Chris Deile spoke on the lack of available affordable housing.
- William LaFreniere spoke about funding for a proposed new jail.
- Danny Rockham spoke about the excessive County development requirements.
The following people spoke on the impact of the moratorium and in opposition to the ordinance adopting interim amendments to the Comprehensive Plan and Code Titles 15, 20, 21, and 24 relating to water resources (AB2016-309A), scheduled for Introduction:

- John Templeton
- Nicole Pope submitted a handout (on file)
- Steve Kass
- Mary Kay Robinson
- Laura Sanderson submitted a handout (on file)
- John Rockwood submitted and read from a handout (on file)
- Lyle Sorenson
- Allen Meeks
- Ken Gustafson
- Jason Reimer
- Bill Henshaw
- Jerry Peterson
- Jeremiah Ramsey
- Ron Reimer
- Todd Beld
- Bob Spell
- David Rehm
- David King, King Architecture Principal
- Bud Breakey
- Rolf Haugen
- Linda Twitchell, Building Industry Association of Whatcom County
- Tim Vander Meulen submitted a handout (on file)
- Maggie Cooper
- Mike Hill
- Cliff Langley
- Jenny Walters
- Cal Leenstra
- Terese Martin
- Rob Vanderveen
- Fred Blake
- Alexandra Meeks

Jack Louws, County Executive, spoke on the impact of the Supreme Court decision on Whatcom County and all other counties in Washington State, the legal battle with the State, the need for legislative relief, the County’s plans for working on the issue, and short- plat vesting challenges.

Browne stated he agrees with the comments from Executive Louws. The County is bound by the laws of Washington State. If it doesn’t resolve the situation accordingly, the Growth Management Hearings Board could take over the Council’s ability to find a solution and remove local control.

(Clerk’s Note: The Council took a break from 9:25 to 9:40 p.m.)
CONSENT AGENDA

_Browne_ reported for the Finance and Administrative Services Committee and **moved** to approve Consent Agenda items one through six.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ACCEPT SUNLIFE STOP-LOSS POLICY FOR INSURANCE PROTECTION FOR THE 2017 SELF-INSURED MEDICAL PROGRAM (AB2016-356)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND BELLINGHAM WHATCOM COUNTY TOURISM IN SUPPORT OF OPERATIONS AS RECOMMENDED BY THE LODGING TAX ADVISORY COMMITTEE, IN THE AMOUNT OF $275,000 (AB2016-357)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND MOUNT BAKER FOOTHILLS CHAMBER OF COMMERCE IN SUPPORT OF VISITOR CENTER OPERATIONS AS RECOMMENDED BY THE LODGING TAX ADVISORY COMMITTEE, IN THE AMOUNT OF $100,000 (AB2016-358)

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND BIRCH BAY CHAMBER OF COMMERCE IN SUPPORT OF OPERATIONS AS RECOMMENDED BY THE LODGING TAX ADVISORY COMMITTEE, IN THE AMOUNT OF $86,500 (AB2016-359)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND SUSTAINABLE CONNECTIONS IN SUPPORT OF SAVOR WHATCOM FOOD & FARMS REGIONAL CULINARY & AGRITOURISM PROGRAM OPERATIONS AS RECOMMENDED BY THE LODGING TAX ADVISORY COMMITTEE, IN THE AMOUNT OF $30,000 (AB2016-360)

6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND WHATCOM EVENTS IN SUPPORT OF MARKETING AND PROMOTION OF THE SKI TO SEA AND WONDERMUD RACES AS RECOMMENDED BY THE LODGING TAX ADVISORY COMMITTEE, IN THE AMOUNT OF $30,000 (AB2016-361)

OTHER ITEMS

1. ORDINANCE ESTABLISHING THE SUDDEN VALLEY STORMWATER IMPROVEMENTS FUND AND ESTABLISHING A PROJECT-BASED BUDGET FOR THE SUDDEN VALLEY STORMWATER IMPROVEMENTS PROJECT (AB2016-326)
Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. ORDINANCE ESTABLISHING THE HOVANDER PARK BUILDING IMPROVEMENTS FUND AND ESTABLISHING A PROJECT- BASED BUDGET FOR THE HOVANDER PARK BUILDING IMPROVEMENTS PROJECT (AB2016-327)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

3. ORDINANCE ESTABLISHING THE LAKE WHATCOM TRAIL DEVELOPMENT FUND AND ESTABLISHING A PROJECT-BASED BUDGET FOR THE LAKE WHATCOM PARK TRAIL DEVELOPMENT PROJECT (AB2016-328)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

4. ORDINANCE AMENDING ORDINANCE 2014-080 (ESTABLISHMENT OF THE ACADEMY ROAD STORMWATER IMPROVEMENTS FUND AND ACADEMY ROAD STORMWATER IMPROVEMENTS PROJECT-BASED BUDGET) TO REQUEST ADDITIONAL APPROPRIATION AUTHORITY, IN THE AMOUNT OF $98,000 (AB2016-329)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

5. ORDINANCE AMENDING ORDINANCE 2014-081 (ESTABLISHMENT OF THE AGATE HEIGHTS/ESTATE BAY LANE STORMWATER IMPROVEMENTS FUND AND AGATE HEIGHTS ESTATE/BAY LANE STORMWATER IMPROVEMENTS PROJECT-BASED BUDGET) TO REQUEST ADDITIONAL APPROPRIATION AUTHORITY, IN THE AMOUNT OF $170,000 (AB2016-330)
Brown reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

6. ORDINANCE AMENDING ORDINANCE 2014-083 (ESTABLISHMENT OF THE CEDAR HILLS/EUCLID STORMWATER IMPROVEMENTS FUND AND CEDAR HILLS/EUCLID STORMWATER IMPROVEMENTS PROJECT BASED BUDGET) TO REQUEST ADDITIONAL APPROPRIATION AUTHORITY, IN THE AMOUNT OF $200,000 (AB2016-275A)

Brown reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

7. ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, SEVENTEENTH REQUEST, IN THE AMOUNT OF $2,336,646 (AB2016-331)

Brown reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

8. ORDINANCE CLOSING THE RURAL ROAD SAFETY PROGRAM FUND 343 (AB2016-333)

Brown reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

9. ORDINANCE CLOSING THE LAKE WHATCOM BOULEVARD RE-SURFACING FUND 352 (AB2016-334)

Brown reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)
10. ORDINANCE CLOSING THE SLATER RD/NOOKSACK RIVER BRIDGE FUND 354 (AB2016-335)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes:  Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays:  None (0)

11. ORDINANCE CLOSING THE HANNEGAN RD STRUCTURAL OVERLAY PROJECT FUND 356 (AB2016-336)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes:  Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays:  None (0)

12. ORDINANCE CLOSING THE BEAVER CREEK STORMWATER IMPROVEMENTS FUND 366 (AB2016-337)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes:  Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays:  None (0)

13. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND KULSHAN SERVICES, LLC, FOR DEVELOPMENT AND IMPLEMENTATION OF A STAKEHOLDER INVOLVEMENT PLAN AND FACILITATION OF STAKEHOLDER MEETINGS TO SUPPORT THE UPDATE OF THE LOWER NOOKSACK RIVER COMPREHENSIVE FLOOD HAZARD MANAGEMENT PLAN, IN THE AMOUNT OF $60,000 (AB2016-353)

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 resolution.

The motion carried by the following vote:
Ayes:  Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays:  None (0)

14. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL
ZONE DISTRICT AND WASHINGTON STATE DEPARTMENT OF HEALTH FOR THE POLLUTION IDENTIFICATION AND CORRECTION PROGRAM TO EXTEND THE PERIOD OF THE GRANT AGREEMENT AND INCREASE THE BUDGET, IN THE AMOUNT OF $155,000 (AB2016-354)

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 substitute resolution.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Buchanan, Weimer and Donovan (5)
Nays: Brenner (1)
Abstains: Browne (1)

15. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND GENEVA CONSULTING SERVICES FOR COORDINATION OF THE WHATCOM COUNTY LOCAL INTEGRATING ORGANIZATION, IN THE AMOUNT OF $67,302 (AB2016-355)

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 resolution.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

16. RESOLUTION REQUESTING THAT THE COUNTY EXECUTIVE PREPARE ALTERNATIVE FINANCING OPTIONS FOR SELECTED WATER RESOURCE SERVICES (AB2016-351)

Weimer moved to approve the resolution.

The resolution was seconded.

John Hutchings, Public Works Department Director, answered questions about the reason this request is presented as a resolution.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

INTRODUCTION ITEMS
Browne moved to accept Introduction Items one through nine, including the substitutes for items six and seven.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

1. RECEIPT OF APPLICATION(S) FOR WILDLIFE ADVISORY COMMITTEE, APPLICANT: STEPHEN NYMAN (APPLICATION DEADLINE FOR ANY OTHER APPLICANTS TO THIS VACANCY IS 10 A.M. ON NOVEMBER 29, 2016) (AB2016-349)

2. RECEIPT OF APPLICATION(S) FOR 2 VACANCIES ON THE FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE, APPLICANT: DALE BUYS (APPLICATION DEADLINE FOR ANY OTHER APPLICANTS TO THIS VACANCY IS 10 A.M. ON NOVEMBER 29, 2016) (AB2016-352)

Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.

3. ORDINANCE AMENDING ORDINANCE 2012-050 ESTABLISHING THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR CRP NO. 907001 (AB2016-363)

4. ORDINANCE AMENDING WHATCOM COUNTY CODE TITLE 2, CHAPTER 2.120 SECTION 2.120.040 MEMBERSHIP-TERM OF OFFICE FOR THE SURFACE MINING ADVISORY COMMITTEE (AB2016-364)

5. ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, EIGHTEENTH REQUEST, IN THE AMOUNT OF $598,994 (AB2016-365)

6. ORDINANCE AUTHORIZING WHATCOM COUNTY SHERIFF’S OFFICE RESERVE DEPUTIES TO ENROLL IN THE VOLUNTEER FIREFIGHTERS’ AND RESERVE OFFICERS’ RELIEF AND PENSION ACT (RCW 41.24) (AB2016-366)

7. ORDINANCE ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE TITLE 15 (BUILDINGS AND CONSTRUCTION), TITLE 20 (ZONING), TITLE 21 (LAND DIVISION REGULATIONS), AND TITLE 24 (HEALTH CODE) RELATING TO WATER RESOURCES) (RELATED LEGISLATION: ORDINANCE NO. 2016-048, WHICH IMPOSED AN EMERGENCY MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR SUBDIVISIONS, BUILDING PERMITS, AND DISCRETIONARY PERMITS THAT RELY ON PERMIT-EXEMPT WELLS FOR WATER SUPPLY IN CLOSED BASINS) (AB2016-309A)

8. ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 6.04, ANIMAL CONTROL (AB2016-321)
9. ORDINANCE AMENDING WHATCOM COUNTY CODE 2.03, BOARDS AND COMMISSIONS, TO ALLOW STAGGERED TERMS WHEN APPOINTING MEMBERS TO BOARDS, COMMISSIONS, AND COMMITTEES RETURNING FROM HIATUS (AB2016-350)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Weimer reported for the Planning and Development Committee.

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 10:01 p.m.

The County Council approved these minutes on ______, 2017.

ATTEST:      WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:50 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL

1. DISCUSSION AND FORMULATION OF RECOMMENDATION RELATED TO THE COUNTY EXECUTIVE’S VETO OF ORDINANCE 2016-052 (LEVY OF TAXES FOR COUNTY AND STATE PURPOSES IN WHATCOM COUNTY, WASHINGTON, FOR THE YEAR OF 2017) (AB2016-343)

Jack Louws, County Executive, referenced his reasons for vetoing the ordinance as stated in his veto statement. He is not philosophically opposed to increases when necessary. However, Council’s expenditure increases are more than its revenue increases. He answered questions about the amount the Council budgeted for legal counsel regarding its options for limiting fossil fuel exports.

Councilmembers discussed the Executive’s veto statement that indicated increasing the tax levy by one percent is connected to the budget expenditure for outside legal counsel regarding the County’s options for limiting fossil fuel exports; budget reductions that councilmembers proposed, but did not approve, and; the Council and Executive working cooperatively rather than sending messages through the media.

Mann moved to eliminate the budget requests for a facilities manager in two additional services requests (ASRs), the manager assistant as described in two ASRs, and evaluation of the financial software system as shown in one ASR, for a total of five ASR’s, and to create a dedicated fund for the money saved by the emergency medical services (EMS) levy. He restated his motion to remove those five ASR’s from the budget and forego the one percent increase.

The motion was seconded.

Councilmembers discussed the process for overriding the veto and rewriting the ordinance to indicate that the tax raise is to pay for necessary projects and services.
Karen Frakes, Prosecutor’s Office, answered questions on how to move forward with making amendments and whether they need another public hearing.

**Mann withdrew** his motion.

**Weimer moved** to recommend that the full Council override the veto of Ordinance 2016-052.

The motion was seconded.

Councilmembers continued to discuss attaching a statement to the veto override vote, whether or not they should approve a budget with a deficit, whether surplus funds as a result of the EMS levy passage should be absorbed into the general fund or earmarked for specific services, and the process for overriding the veto.

Dana Brown-Davis, Clerk of the Council, stated the options are to override the veto or rescind the ordinance adopted on Nov. 22, and the budget will again be before the Council. If there are substantive changes not previously discussed, a new ordinance would have to be reintroduced and a public hearing held.

Councilmembers discussed the impact if they don’t adopt the ordinance by the end of the year and the process for overriding vetoes and amending ordinances.

The motion failed by the following vote:

**Ayes:** Weimer (1)

**Nays:** Donovan, Sidhu, Browne, Buchanan, Brenner and Mann (6)

**2. DISCUSSION AND FORMULATION OF RECOMMENDATION RELATED TO THE COUNTY EXECUTIVE’S VETO OF ORDINANCE 2016-053 (FINAL BUDGET OF WHATCOM COUNTY FOR THE BIENNIUM 2017-2018) (AB2016-198C)**

(Clerk’s Note: See the previous agenda item for discussion of this item.)

**Mann moved** to recommend that the full Council override the veto of Ordinance 2016-053.

The motion was seconded.

The motion failed by the following vote:

**Ayes:** None (0)

**Nays:** Weimer, Donovan, Sidhu, Browne, Buchanan, Brenner and Mann (7)

**Mann moved** to recommend to the full Council that the Council rescind its vote for Ordinance 2016-053.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)
1. DISCUSSION AND FORMULATION OF RECOMMENDATION RELATED TO THE COUNTY EXECUTIVE’S VETO OF ORDINANCE 2016-052 ( LEVY OF TAXES FOR COUNTY AND STATE PURPOSES IN WHATCOM COUNTY, WASHINGTON, FOR THE YEAR OF 2017) (AB2016-343)

Donovan moved to recommend that the Council rescind its vote to adopt Ordinance 2016-052.

The motion was seconded.

The motion carried by the following vote:
Ayes: Browne, Brenner, Mann, Sidhu, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Mann moved to recommend to the full Council that they adopt the levy that does not include the one percent tax increase.

The motion was seconded.

Councilmembers discussed the deficit in the proposed budget and the impact to revenue from fewer building permits and lower property values due to the Supreme Court’s Hirst decision.

The motion carried by the following vote:
Ayes: Browne, Brenner, Mann, Sidhu, and Buchanan (5)
Nays: Weimer and Donovan (2)

2. DISCUSSION AND FORMULATION OF RECOMMENDATION RELATED TO THE COUNTY EXECUTIVE’S VETO OF ORDINANCE 2016-053 (FINAL BUDGET OF WHATCOM COUNTY FOR THE BIENNium 2017-2018) (AB2016-198C)

Mann moved to recommend that the Council not approve additional services requests (ASRs) 5596, 5624, 5516, 5627, and 5588, for a total savings of $383,067.

The motion was seconded.

Councilmembers discussed the correct amounts approved in the ASRs, whether the costs of the additional facilities management positions would be made up through project savings, whether the existing staff can take on the additional responsibilities of all the pending capital projects, and the cost of needed infrastructure and capital projects.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Buchanan (4)
Nays: Weimer, Browne, Donovan (3)

Councilmembers discussed the process for making amendments to the budget.

SPECIAL PRESENTATION AND DISCUSSION
1. SPECIAL PRESENTATION AND COMMITTEE DISCUSSION OF A PROPOSED
ORDINANCE ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY
COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15
BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND
DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE RELATING TO
WATER RESOURCES, AND RESCINDING ORDINANCE 2016-048 (AB2016-
309A)

Gary Davis, Planning and Development Services Department, submitted and read
from a presentation (on file) beginning with the Supreme Court decision, which indicated
that relying on the State Department of Ecology’s measures to protect water resources does
not in itself protect water resources sufficient for Growth Management Act (GMA)
requirements.

Gary Stoyka, Public Works Department, continued the presentation with the Ecology
Map of the water resources inventory area instream flow protection status. The Instream
Resource Protection Program, known commonly as the Nooksack rule, covers water
resource inventory area (WRIA) 1.

Davis continued the presentation with the next group of slides on the Supreme Court
decision and the proposed amendments and next steps.

Stoyka concluded the presentation on the legal constraints. The one molecule rule
means that the law treats the water right for instream flow as the right to all the water in
the river. Not even a single molecule can be impaired. People have to look at how the
entire aquifer impacts instream flow, not just the aquifer under their property, despite how
much clay there may be.

Davis and Stoyka answered questions about a well taking groundwater that never
makes it into the instream flows, the definition of non-beneficial uses, why rain catchments
are problems, why small accessory dwelling units are treated differently than a home
expansion, where water banks work in other jurisdictions, whether they could approve a
well on the basis of an emergency, the difference between not having enough water and not
having the legal framework to allow creative water sources, using surplus water as a
mitigation strategy, transferring some of the excess water from the Public Utility District
(PUD) water right to the County to account for and allow exempt wells, vesting, issuing
permits with a condition on whether the well is hydrologically connected, and whether they
could allow a homeowner to truck in water.

Linda Twitchell, Building Industry Association, stated the Nooksack and other
instream flows were set as averages. She asked how to make county policies, given the
definition of instream flows, which means they can’t meet the minimum flow for half of the
year. They may find that they can’t meet instream flows because of its definition.

Councilmembers discussed the proposed resolution from Councilmember Mann and
the proposed letter to the legislators from Councilmember Browne.

Mann stated he will amend the resolution, which can reference the letter.
Tyler Schroeder, Executive’s Office, stated the administration supports the resolution.

Buchanan stated Councilmembers Browne and Mann will prepare a draft resolution and a draft letter.

Mark Personius, Planning and Development Services Department, answered questions about how long it will take to get information on the number of outstanding permits affected by the Hirst decision and the process for amending the interim ordinance.

COMMITTEE DISCUSSION (COUNCIL COMMITTEE ROOM)

1. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING PENDING LITIGATION, HIRST ET AL V. WHATCOM COUNTY, GMHB CASE NO. 12-2-0013 (AB2016-018)

This item was not discussed.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 4:55 p.m.

The Council approved these minutes on ____________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________  
Jill Nixon, Minutes Transcription
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, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

Buchanan announced the following items from earlier Special Committee of the Whole meetings:

1. Discussion regarding potential property acquisition for the Flood Control Zone District (AB2016-018)
   (Council acting as the Flood Control Zone Board of Supervisors.)
   
   Browne moved to authorize the County Executive, acting on behalf of the Whatcom County Flood Control Zone District Board of Supervisors, to execute an option agreement for the property discussed in executive session.

   The motion was seconded.

   The motion carried by the following vote:

   **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
   **Nays:** None (0)

MINUTES CONSENT

Buchanan stated item two is withdrawn from the agenda.

Browne withdrew item three.

Brenner moved to approve Minutes Consent items one and four through 12.
The motion was seconded.

The motion carried by the following vote:

_Ayes:_ Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

_Nays:_ None (0)

1. SPECIAL COMMITTEE OF THE WHOLE (AFTERNOON MEETING) FOR JUNE 28, 2016

2. REGULAR COUNTY COUNCIL FOR JULY 26, 2016

Withdrawn from the agenda.

3. BOARD OF HEALTH FOR AUGUST 2, 2016

Mann moved to approve the minutes.

The motion was seconded

The motion carried by the following vote:

_Ayes:_ Brenner, Mann, Sidhu, Buchanan, Weimer and Donovan (6)

_Nays:_ None (0)

_Abstains:_ Browne (1)

4. SPECIAL COMMITTEE OF THE WHOLE FOR AUGUST 9, 2016

5. REGULAR COUNTY COUNCIL FOR AUGUST 9, 2016

6. SPECIAL COMMITTEE OF THE WHOLE FOR SEPTEMBER 27, 2016

7. SURFACE WATER WORK SESSION FOR OCTOBER 18, 2016

8. SPECIAL COMMITTEE OF THE WHOLE (EXECUTIVE SESSION) FOR OCTOBER 25, 2016

9. REGULAR COUNTY COUNCIL FOR OCTOBER 25, 2016

10. SPECIAL COMMITTEE OF THE WHOLE FOR OCTOBER 27, 2016

11. BOARD OF HEALTH FOR NOVEMBER 1, 2016

12. SPECIAL COMMITTEE OF THE WHOLE NOVEMBER 1, 2016

PUBLIC HEARINGS

1. ORDINANCE ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE TITLE 15 (BUILDINGS AND CONSTRUCTION), TITLE 20 (ZONING), TITLE 21 (LAND DIVISION REGULATIONS), AND TITLE 24 (HEALTH CODE) RELATING TO
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.

WATER RESOURCES (RELATED LEGISLATION: SEE ORDINANCE BELOW) (AB2016-309A)

- AND -

2. ORDINANCE 2016-048 IMPOSING AN EMERGENCY MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR SUBDIVISIONS, BUILDING PERMITS, AND DISCRETIONARY PERMITS THAT RELY ON PERMIT-EXEMPT WELLS FOR WATER SUPPLY IN CLOSED BASINS (PROCEDURAL HEARING – ORDINANCE WAS ADOPTED ON OCTOBER 25, 2016) (AB2016-309)

Mann read into the record a resolution sending a letter to the State legislature requesting amendments to the Growth Management Act clarifying that counties can rely on Department of Ecology guidance for determining legal water availability (on file).

Browne moved to approve the resolution.

The motion was seconded.

Weimer stated he will vote against the resolution. He appreciates the sentiments and a good part of the resolution. The problem with water in this county has been exacerbated by 20 years’ of ignoring they have a problem and just moving forward without dealing with it. This does nothing to improve the problem. Without specific instructions of what they want from the legislature, they are ignoring tribal rights, instream flows that protect fish, and senior water right holders.

Brenner stated stipulate that they want the legislature to restore the understanding that counties have had for decades about water law and exempt wells. Exempt wells don’t cause a problem. It’s important to send this letter.

Donovan suggested a friendly amendment to the 21st Whereas statement, “...denying citizens their right ability to use permit exempt water withdrawals....”

Councilmembers discussed whether or not citizens have such a right.

Mann did not accept the friendly amendment.

Councilmembers discussed the actual amount of water from the pending exempt wells that are affected compared to the average instream flow of the Nooksack River, whether the decision will actually help protect instream flow, whether the moratorium was necessary now that the County is forced to comply with the Supreme Court decision, and the Department of Ecology’s lack of legal guidance.

Weimer moved to amend the resolution, “…can rely on Department of Ecology guidance for determining legal water availability and provide the Department of Ecology the necessary resources to create legally defensible guidance.”

Mann accepted the motion as a friendly amendment.
The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

Mark Personius, Planning and Development Services Department, introduced a presentation on the water resources interim ordinance. The Council has two options. First, adopt the interim ordinance, which lifts the moratorium and identifies legal water sources available for rural development per the Supreme Court’s decision. Second, don’t adopt the interim ordinance and maintain the moratorium.

Gary Davis, Planning and Development Services, and Gary Stoyka, Public Works Department, submitted and read from a presentation (on file).

Buchanan announced that tonight’s public comments will apply to both public hearing agenda items. He opened the public hearing, and the following people spoke:

Neil vandenHeuvel stated the letter to the legislature is a good start. He does not support the interim moratorium. The main issue is private property rights. Lift the current moratorium. Send the letter mentioned in the resolution to the legislature. Take a leadership role on behalf of the citizens and with other counties.

Sandy Robson stated she supports the moratorium and interim ordinance. Confirm with the Department of Ecology about whether SSAMarine/PIT water rights from Chevron meet all required conditions. Seek an outside legal opinion about the water rights transfer and Public Utility District (PUD) contract with SSA/PIT.

Dena Jensen stated she supports the interim ordinance. The County should find alternatives and resources to alleviate the hardships for people. Stop taking water for granted. Protect and enhance essential resources.

Marv Vanderpol spoke about how the Hirst decision affects his property.

Dave Cummins spoke about how a 2011 rezone and other County decisions have affected his property. He is opposed to the moratorium.

Ron Colson stated look at alternative water conservation systems. In the future, the population will grow and the amount of available water will lessen. He supports the moratorium.

Ronna Loerch stated take the time necessary to find creative solutions. Don’t spend taxpayer dollars on getting into compliance. She supports the moratorium.

JM Ramsey, Keller Williams Reality, submitted and read a letter into the record (on file) from an anonymous person regarding how the Hirst decision affects his property. He does not support the moratorium.

Jeremiah Ramsey, Keller Williams Realty, stated he supports the State legislative proposal from Senator Erickson. The issue is about curtailing development instead of water conservation. The Council should get alternate legal advice. Don’t extend the moratorium.
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.

Pam Borso stated she supports the proposed interim ordinance to allow time to find solutions to water development problems.

Vicki Hawley spoke about how the Hirst decision affects her property. She is against any moratorium.

Dave Hiller stated he opposes the Hirst decision and a moratorium.

Mary Kay Robinson, Whatcom County Association of Realtors President, stated she is against the moratorium. Fund a groundwater study to be done as quickly as possible. Vest homeowners. Do not use a water banking procedure. Craft a countywide process that is disconnected from the private, individual permit process.

John Rockwood stated this isn’t about water rights. It’s about taking private property rights from people.

Denise Thompson spoke about how the Hirst decision affects her property.

Jerry Hammer stated this is about controlling development, not water conservation.

John Soine submitted and read from a handout (on file) and stated plenty of water is available and described how the Hirst decision affects the properties of people he knows. He supports the proposed legislation from Senator Erickson and the resolution from Councilmember Mann.

Peter Kingma described how the Hirst decision affects his property. He supports the proposed legislation from Senator Erickson. Allow people midway through the process to complete their projects.

John Patten stated the Court doesn’t have the authority to make the ruling it made, to forbid property owners from using their own property.

John Worlund stated there is no hydrological link between groundwater pulled from an exempt well and instream flows.

Jerry Peterson stated basins that have been closed have the most water, and open basins have the least amount of water. Have the Department of Ecology reassess Whatcom County. Water in the well never affects instream flow.

Chris Brown stated he supports Councilmember Mann’s letter. He described how the Hirst decision affects his property. Overfishing is a bigger problem for fish than the instream flow level. He is opposed to the moratorium. Find a way to allow exempt wells.

Chet Kenoyer described how the Hirst decision affects the property of his clients. Give relief to the people who are midway through the development process. He supports the proposal from Senator Erickson.

Larry Humes described how the Hirst decision affects the property of his clients. Find a solution as quickly as possible. He opposes a building moratorium. He supports the proposed legislation from Senator Erickson.
Bill LaFreniere stated rural well owners aren’t responsible for the loss of instream water. Rural water use is more efficient than urban water. He is opposed to unions.

Bob Aegerter stated groundwater is excluded from property rights according to State law. He described the history of water issues in Whatcom County. These problems could have been avoided.

Joe Knight stated he supports the moratorium. Collect enough data to reach a scientific response to water rights and water allocation. Water quantity use must be measured, including by the agriculture community.

Bud Breakey submitted a handout (on file) and stated the moratorium is not required or necessary. The issue is not about water conservation. They can’t prove whether wells affect instream flow. The Council is supposed to represent the citizens, not the Supreme Court.

Lyle Sorenson submitted handouts (on file) and stated the real issue is about fish. They aren’t hearing from fisheries representatives. He does not support the interim ordinance. If it’s adopted, stop collecting taxes on the impacted properties.

Yoshe Ravelle stated property and money are false idols. Everyone should use less water and take care of the earth.

Luke White described how the Hirst decision affects his property. Allow those who have made investments to be vested. He has a constitutional right to his property and will defend it if he has to.

Karlee Deatherage stated she supports the moratorium. The County and Ecology should host more community meetings. Ask the State for funding to do a pilot study to measure how much water exempt wells use. Help folks impacted by this decision.

Abe Jacobson submitted and read from his testimony (on file) regarding the potential impact of wells on instream flow, gathering data on the amount of water used by exempt wells, and judicial review.

Peter Willing stated he supports the moratorium to come up with a solution.

Alan Meeks submitted a handout (on file) and described how the Hirst decision affects his property. He is opposed to the moratorium. Allow senior water rights holders to grant contracts to people for using water from a well until a water main can be built. Without water, his property is worth nothing and his property taxes should be refunded.

Mike Sennett stated he supports the moratorium and the interim ordinance.

Ron Freeman stated private property rights have been stolen. He is opposed to the moratorium. Property tax on rural undeveloped properties should be reduced by 60 to 80 percent. Wells have little impact on instream flows. Give people some relief.
Roger Almskaar submitted a handout (on file) and stated allow people who are midway through the permit process to complete the process. He supports Councilmember Mann’s resolution. They need better science and data to set good stream level minimums.

Lee First, ReSources North Sound Bay Keeper, stated water levels are low. The watershed is impaired for water quality and quantity. Find solutions. Quantify the impact of exempt wells. She supports the moratorium.

Dan Colacurcio stated the water used by exempt wells don’t affect the water problems. He does not support a six month interim ordinance, because it will delay the permit process by a year. Don’t wait for a solution from the State.

Linda Twitchell, Building Industry Association of Whatcom County, stated they can’t meet minimum instream flows because it is set on an average. Half the time they’re below the minimum flow. Consider whether it’s possible to use unused water rights from the PUD, for example. Move forward to allow vestsing for people who are midway through the permit process. Mitigation requirements make housing expensive. Keep housing costs in mind.

Andy Ingram stated they are losing salmon habitat. Annual peak flows are changing, which is a problem. Act on behalf of salmon and of future generations. He supports the moratorium and extending it for six months.

Zack Nutting described how the Hirst decision affects his property. He is opposed to the moratorium.

Brad Thompson described how the Hirst decision affects his property. He is opposed to extending the exempt well moratorium. There is liability for a class action lawsuit from residents.

Laurie Walton described how the Hirst decision affects her property. She is opposed to the moratorium. She supports the proposed legislation from Senator Erickson.

Laura Sanderson stated consider requesting that the Supreme Court reconsider its decision. Get a meeting with the Hearings Board to explain that the County can’t do what it’s been asked to do. Require the City of Bellingham to engage in water conservation. She does not support a six-month moratorium. She cares about salmon and tribal water rights, but targeting wells doesn’t address the issue.

Patty Bol stated she’s opposed to the moratorium. Resolve the problem as soon as possible.

David Haggith stated agriculture needs water. Farmers would like to help find a solution. He supports the proposed legislation from Senator Erickson. The intent of the law and Growth Management is to manage, not stop, growth.

Natalie McClendon stated she supports the moratorium to take time to deal with the issues. Water right applicants have been waiting for a decision from the Department of Ecology for decades.

Patrick Alesse stated water is power.
Jim Skerjanc stated he supports Councilmember Mann’s letter. Don’t burden the Health Department with enforcing regulations.

Kaleb Breakey described how the Hirst decision affects his brother’s property. Keep working hard on behalf of the citizens to find a solution.

Hearing no one else, Buchanan closed the public hearing.

Weimer moved to adopt the interim ordinance.

The motion was seconded.

Karen Frakes, Prosecutor’s Office, answered questions about the consequences of not adopting the interim ordinance. They can’t ignore the Supreme Court decision. The County is obligated to take steps to come into compliance with the ruling.

Councilmembers discussed the County’s legal constraints and interpreting the Court’s decision, how the County can achieve validity with the Hearings Board, whether they should rely on the legislature to amend the Act, first giving relief to people who have invested money into their projects, making sure the County doesn’t lose its local control to the Growth Management Hearings Board, steps the County can take to demonstrate it is operating in good faith, tasking the Planning Unit to work on water issues, and the timeline for completing the groundwater study.

Donovan moved to amend the ordinance to limit the length of the interim ordinance to two months.

The motion was seconded.

Councilmembers discussed giving the legislature time to approve an amendment that will fix the problem, how the interim ordinance is any different from the emergency moratorium, and what happens to the County if it doesn’t achieve validity.

Personius described the work staff is doing to collect, collate, and analyze the data they need on the folks who are in a hardship situation and then make a case to grandfather them into the process and come up with good policy and regulations. Six months will give the legislature time to act. He answered questions about when other GMA counties have to comply.

Sidhu suggested a friendly amendment to the amendment, to limit the length of the interim ordinance to three months. If necessary, they can extend it another three months.

Donovan accepted the friendly amendment.

The motion to amend carried by the following vote:

**Ayes:** Brenner, Weimer, Mann, Sidhu, Browne, Buchanan, and Donovan (7)

**Nays:** None (0)
Councilmembers discussed whether invalidity would apply to all building permits or only to permits regarding exempt wells, gambling on the risk of invalidity, and informing people who want to invest in property and build a house about the risk from a declaration of invalidity.

Frakes spoke about the impact to staff if the Council doesn’t renew the moratorium or approve the interim ordinance and answered questions about whether staff is responsible for interpreting the Supreme Court decision.

Councilmembers discussed whether the County could grandfather and conditionally approve some permits and maintaining a cooperative approach.

The motion as amended carried by the following vote:

**Ayes:** Sidhu, Browne, Buchanan, Weimer and Donovan (5)

**Nays:** Brenner and Mann (2)

*(Clerk’s Note: The Council took a break from 11:41 p.m. to 11:55 p.m.)*

**OTHER ITEMS**

11. DISCUSSION AND FORMULATION OF RECOMMENDATION RELATED TO THE COUNTY EXECUTIVE’S VETO OF ORDINANCE 2016-052 (LEVY OF TAXES FOR COUNTY AND STATE PURPOSES IN WHATCOM COUNTY, WASHINGTON, FOR THE YEAR OF 2017) (AB2016-343)

Buchanan reported for the Special Committee of the Whole.

**Browne moved** to sustain the Executive’s veto.

The motion was seconded.

The motion to sustain the veto carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, and Buchanan, (5)

**Nays:** Weimer and Donovan (2)

**Browne moved** to rescind the vote to adopt Ordinance 2016-052.

The motion was seconded.

Donovan stated they need the revenue.

The motion to rescind the vote carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, and Buchanan, (5)

**Nays:** Weimer and Donovan (2)

**Browne moved** to adopt the levy that does not have a tax increase.

The motion was seconded.
The motion to adopt carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, and Buchanan, (5)

**Nays:** Donovan and Weimer (2)


Buchanan reported for the Special Committee of the Whole.

**Browne moved** to sustain the Executive’s veto.

The motion was seconded.

The motion to sustain the veto carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** Weimer (1)

**Mann moved** to rescind the vote to adopt Ordinance 2016-053.

The motion was seconded.

The motion to rescind carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** Weimer (1)

**Mann moved** to amend the ordinance to not approve the following additional services requests (ASRs):

- ASR #5596 and #5624 Facilities Projects and Operations Manager
- ASR #5516 and #5627 Facilities Projects and Operations Manager Administrative Assistant
- ASR #5588 Evaluation of Financial System

The motion was seconded.

Councilmembers discussed the status of the deficit, given the approval of the emergency management services (EMS) levy and whether the existing County staff can serve the function of these positions.

**Sidhu moved** to vote on each ASR separately.

The motion was seconded.

The motion to vote on all ASRs separately failed by the following vote:

**Ayes:** Sidhu and Buchanan, (2)

**Nays:** Brenner, Mann, Browne, Weimer and Donovan (5)

**Browne moved** to withdraw from the motion ASRs 5596 and 5624 for a Facilities Projects and Operations Manager.
Councilmembers discussed the deficit, whether hiring a facilities projects and
operations manager would save the County money through project savings, and earmarking
EMS levy revenue for public safety enhancements.

Jack Louws, County Executive, described the administration’s reasons for adding the
new position and answered questions on capital facilities plans and the cost of past
contracts.

The motion to withdraw #5596 and #5624 from the motion to amend carried by the
following vote:

Ayes: Mann, Sidhu, Browne, and Donovan (4)
Nays: Brenner, Buchanan, and Mann opposed (3)

**Buchanan restated the amended motion** to not approve the following additional
services requests (ASRs):

- ASR #5516 and #5627 Facilities Projects and Operations Manager Administrative
  Assistant
- ASR #5588 Evaluation of Financial System

Councilmembers continued to discuss the motion.

The motion to amend the ordinance carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: Donovan (1)

**Brenner moved** to consolidate the Parks Department by putting Senior Services in
Health, Parks Planning in the Planning Department, and Parks M&O in the Public Works
Department.

Councilmembers discussed what would be gained.

The motion was seconded.

The motion failed by the following vote:

Ayes: Brenner, Mann and Buchanan (3)
Nays: Donovan, Sidhu, Browne, and Weimer (4)

**Sidhu moved** to draft a resolution to put the money saved from the passage of the
EMS levy into a fund for public safety, jail, triage center, or other similar uses.

The motion was seconded.

Forrest Longman, County Council Office, stated the EMS funds can’t be spent until
the Council appropriates them. The Council will have input on how those funds are spent.

**Sidhu withdrew** the motion.

**Browne moved** to adopt the ordinance as amended.

The motion to adopt as amended carried by the following vote:
Ayes: Sidhu, Browne, Buchanan, Donovan and Weimer (5)
Nays: Brenner and Mann (2)

OPEN SESSION

The following people spoke:
• Bud Breakey spoke about the Hirst decision (AB2016-309A).
• Cliff Langley spoke about the Hirst decision (AB2016-309A).

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through 24.

Mann withdrew items ten and 21.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND DR. STUART ANDREWS, MD, FOR PHYSICIAN SERVICES AT THE WHATCOM COUNTY JAIL AND WORK CENTER, IN THE AMOUNT OF $123,500 (AB2016-374)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND NORTHWEST YOUTH SERVICES TO FUND THE PROVISION OF HOUSING CASE MANAGEMENT SERVICES IN ASSOCIATION WITH THE WHATCOM HOMELESS SERVICE CENTER, IN THE AMOUNT OF $202,831 (AB2016-376)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND BENNETT ENGINEERING, LLC, TO PERFORM LANDFILL MONITORING SERVICES AT CLOSED LANDFILLS AT CEDARVILLE AND Y-ROAD, IN THE AMOUNT OF $67,850, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $134,458 (AB2016-377)

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY, THE PORT OF BELLINGHAM, AND THE CITY OF BELLINGHAM TO CONTINUE FUNDING THE SMALL BUSINESS DEVELOPMENT CENTER THROUGH WESTERN WASHINGTON UNIVERSITY FOR ECONOMIC DEVELOPMENT SERVICES, IN THE AMOUNT OF $423,500 (AB2016-378)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND
NORTHWEST REGIONAL COUNCIL FOR SUPPORT SERVICES FOR THE MEALS ON WHEELS PROGRAM, IN THE AMOUNT OF $80,000 (AB2016-379)

6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTACT BETWEEN WHATCOM COUNTY AND BELLINGHAM FOOD BANK TO PROCURE, WAREHOUSE, AND DISTRIBUTE FOOD AND OTHER ESSENTIALS TO LOW INCOME FAMILIES, IN THE AMOUNT OF $276,000 (AB2016-380)

7. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND PIONEER HUMAN SERVICES TO PROVIDE FUNDING TO OPERATE A PERMANENT SUPPORTIVE HOUSING PROGRAM FOR HOMELESS INDIVIDUALS, IN THE AMOUNT OF $371,412 (AB2016-381)

8. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND OPPORTUNITY COUNCIL TO PROVIDE HOUSING CASE MANAGEMENT AND SUPPORTIVE SERVICES TO INDIVIDUALS AND HOUSEHOLDS WHO ARE HOMELESS OR AT RISK OF HOMELESSNESS, IN THE AMOUNT OF $355,500 (AB2016-382)

9. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND OPPORTUNITY COUNCIL FOR OPERATIONS OF THE WHATCOM HOMELESS SERVICE CENTER, IN THE AMOUNT OF $474,203 (AB2016-383)

10. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND COMPASS HEALTH TO PROVIDE CRISIS STABILIZATION SERVICES TO ADULT INMATES AND DETAINED JUVENILES WITH BEHAVIORAL HEALTH PROBLEMS, IN THE AMOUNT OF $462,871 (AB2016-384)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

Mann stated he will not vote for any contracts with Compass Health due to the conditions of their facility downtown and lack of response to improve conditions.

The following staff answered questions:
- Tyler Schroeder, Executive’s Office
- Bill Elfo, Sheriff

Councilmembers discussed whether the County has any contract specifically regarding Rainbow Center and getting more information at a presentation, the impact of losing a psychiatrist in the jail, and the lack of service providers to meet the demand throughout the region.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Nays: Mann (1)
11. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND RESOURCES TO IMPLEMENT A COUNTYWIDE WASTE REDUCTION AND RECYCLING EDUCATION PROGRAM FOR YOUTH AT THE ELEMENTARY, MIDDLE, AND HIGH SCHOOL LEVELS, IN THE AMOUNT OF $35,000, FOR AN AMENDED CONTRACT AMOUNT OF $105,000 (AB2016-385)

12. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND LYDIA PLACE TO FUND THE PROVISION OF HOUSING CASE MANAGEMENT SERVICES IN ASSOCIATION WITH THE WHATCOM HOMELESS SERVICE CENTER, IN THE AMOUNT OF $162,210 (AB2016-386)

13. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND CATHOLIC COMMUNITY SERVICES TO FUND THE PROVISION OF HOUSING CASE MANAGEMENT SERVICES IN ASSOCIATION WITH THE WHATCOM HOMELESS SERVICE CENTER, IN THE AMOUNT OF $241,985 (AB2016-387)

14. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND SUSTAINABLE CONNECTIONS FOR IMPLEMENTATION OF THE COMMERCIAL WASTE REDUCTION AND RECYCLING EDUCATION PROGRAM, IN THE AMOUNT OF $50,000, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $85,000 (AB2016-388)

15. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND ASSOCIATED EARTH SCIENCES, INC. FOR GROUNDWATER MONITORING SERVICES TO SUPPORT THE ONGOING GROUNDWATER MODELING PROJECT IN THE NORTH COUNTY, IN THE AMOUNT OF $17,025 (AB2016-389)

16. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM TO DEFINE CITY AND COUNTY OBLIGATIONS FOR THE COOPERATIVE ADMINISTRATION OF THE LAKE WHATCOM HOMEOWNER INCENTIVE PROGRAM (AB2016-390)

17. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND SOFTRESOURCES, LLC, FOR CONSULTING SERVICES TO ASSIST WITH REQUEST FOR PROPOSAL MANAGEMENT, VENDOR ANALYSIS, DEMOS AND DECISION SUPPORT FOR A NEW PERMIT TRACKING AND DATA MANAGEMENT SYSTEM, IN THE AMOUNT OF $52,465, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $137,580 (AB2016-391)

18. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND
19. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO AUTHORIZE PURCHASE OF REPLACEMENT REDUNDANT CISCO SYSTEMS, INC. NETWORK FIREWALL APPLIANCES FROM VENDOR CENTURY LINK, INC., USING WASHINGTON STATE CONTRACT T12-MST-642, IN THE AMOUNT OF $87,142.56 (AB2016-393)

20. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND DOMESTIC VIOLENCE AND SEXUAL ASSAULT SERVICES IN SUPPORT OF THE DOMESTIC VIOLENCE COMMISSION, IN THE AMOUNT OF $120,000 (AB2016-394)

21. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND COMPASS HEALTH FOR PSYCHIATRIC SERVICES AT THE WHATCOM COUNTY JAIL, IN AN AMOUNT NOT TO EXCEED $90,000 (AB2016-395)

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 Donovan (6)
Nays: Mann (1)

22. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE PURCHASE AND AWARD BID #16-58 TO LOW BIDDER, BLADE CHEVROLET, FOR ONE ¾-TON DOUBLE CAB 4WD PICKUP TRUCK, IN THE AMOUNT OF $33,633.48 (AB2016-396)

23. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE PURCHASE AND AWARD BID #16-61 TO LOW BIDDER, BLADE CHEVROLET, FOR THREE ¼-TON EXTENDED CAB 4WD PICKUP TRUCKS, IN THE AMOUNT OF $93,154.52 (AB2016-397)

24. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A ONE YEAR RESIDENTIAL LEASE AGREEMENT BETWEEN WHATCOM COUNTY AND RODNEY AND HAYLIE PARKS FOR LEASE OF 7981 BLAINE ROAD, FOR THE MONTHLY AMOUNT OF $1,250 (AB2016-398)

OTHER ITEMS

1. ORDINANCE AMENDING ORDINANCE 2012-050 ESTABLISHING THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR CRP NO. 907001 (AB2016-363)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.
The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

2. **ORDINANCE AMENDING WHATCOM COUNTY CODE TITLE 2, CHAPTER 2.120 SECTION 2.120.040 MEMBERSHIP-TERM OF OFFICE FOR THE SURFACE MINING ADVISORY COMMITTEE (AB2016-364)**

Browne reported for the Finance and Administrative Services Committee and **moved** to adopt the ordinance.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

3. **ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 6.04, ANIMAL CONTROL (AB2016-321)**

Browne reported for the Finance and Administrative Services Committee and **moved** to adopt the ordinance.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

4. **ORDINANCE AMENDING THE 2016 WHATCOM COUNTY BUDGET, EIGHTEENTH REQUEST, IN THE AMOUNT OF $598,994 (AB2016-365)**

Browne reported for the Finance and Administrative Services Committee and **moved** to adopt the ordinance.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

5. **ORDINANCE AUTHORIZING WHATCOM COUNTY SHERIFF’S OFFICE RESERVE DEPUTIES TO ENROLL IN THE VOLUNTEER FIREFIGHTERS’ AND RESERVE OFFICERS’ RELIEF AND PENSION ACT (RCW 41.24) (AB2016-366)**

Browne reported for the Finance and Administrative Services Committee and **moved** to adopt the ordinance.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

6. **ORDINANCE AMENDING WHATCOM COUNTY CODE 2.03, BOARDS AND COMMISSIONS, TO ALLOW STAGGERED TERMS WHEN APPOINTING**
MEMBERS TO BOARDS, COMMISSIONS, AND COMMITTEES RETURNING FROM HIATUS (AB2016-350)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

7. RESOLUTION ADOPTING A SALARY SCHEDULE AND POLICIES FOR UNREPRESENTED WHATCOM COUNTY EMPLOYEES EFFECTIVE JANUARY 1, 2017, THROUGH DECEMBER 31, 2017 (AB2016-371)

Browne reported for the Finance and Administrative Services Committee and moved to approve the resolution.

Mann stated he has received information from an unrepresented employee that he would like to address at the next meeting.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

8. RESOLUTION TO MAKE APPLICATION TO THE RECREATION AND CONSERVATION OFFICE FIREARMS AND ARCHERY RANGE RECREATION PROGRAM FOR FUNDING ASSISTANCE TO REPLACE THE INDOOR RANGE ROOF AND HVAC SYSTEM AT THE PLANTATION RIFLE RANGE (AB2016-372)

Browne reported for the Finance and Administrative Services Committee and moved to approve the resolution.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

9. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND BROWN AND CALDWELL FOR THE DEMING LEVEE UPSTREAM IMPROVEMENT PROJECT IN THE AMOUNT $119,650, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $630,840 (AB2016-373)

(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, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
10. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL GRANT AGREEMENT BETWEEN WHATCOM COUNTY AND NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION AND ISLAND, SAN JUAN, SNOHOMISH, AND SKAGIT COUNTIES TO RECEIVE FUNDING SUPPORT FOR COSTS ASSOCIATED WITH THE COUNTY’S CAPITAL PROJECT FOR THE TRIAGE FACILITY EXPANSION, IN THE AMOUNT OF $2,500,000 (AB2016-375)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

13. APPROVAL OF SPECIAL STANDING COUNCIL MEETING DATES FOR 2017 (AB2016-368)

Sidhu moved to approve the meeting dates.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT TO FILL VACANCY ON THE WILDLIFE ADVISORY COMMITTEE, MEMBER WITH TECHNICAL EXPERTISE - APPLICANT: STEPHEN NYMAN (AB2016-349)

Sidhu moved to appoint Stephen Nyman.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. APPOINTMENT TO TWO VACANCIES ON THE FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE - APPLICANT: DALE BUYS (AB2016-352)

Council acting as the Flood Control Zone District Board of Supervisors.

Browne moved to appoint Dale Buys.
The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

3. APPOINTMENT, PER RCW 85.38.070(5), TO FILL VACANCY ON CONSOLIDATED DRAINAGE IMPROVEMENT DISTRICT #31 BOARD OF COMMISSIONERS, POSITION 1 - APPLICANT(S): DALE DEVRIES (AB2016-369)

* Brenner moved to appoint Dale DeVries.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Weimer reported for the Natural Resources Committee.

Mann asked for the official appraisal for the Galbraith Mountain acquisition.

Buchanan updated the Council on the status of the Jail Stakeholder Work Group. There have been three meetings. They are considering three proposals:

- The “All In” Proposal from the City of Bellingham
- A yet-to-be modified version of the original proposal
- The original proposal

The Committee meets again on Thursday, December 15 in Lynden.

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 1:11 a.m. on Wednesday, December 7, 2016.

The County Council approved these minutes on ______, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 11:00 a.m. in the Council Committee Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: Satpal Sidhu.

COMMITTEE DISCUSSION - COUNCIL COMMITTEE ROOM

1. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR JEFFREY SAWYER ELIZABETH GALLERY REGARDING PENDING LITIGATION, KING V. STACH, ET AL (AB2017-018)

   Attorney Present: Elizabeth Gallery

2. INTRODUCTION TO NEW LABOR NEGOTIATOR AND DISCUSSION OF STRATEGY PLANNING AND POSITIONS TO BE TAKEN REGARDING COLLECTIVE BARGAINING (AB2017-037)

   Attorney Present: None

   Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.110(1)(i) and discussion of agenda item two may take place in executive session pursuant to RCW42.30.140(4)(a). Executive session will conclude no later than 11:35 a.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

   Weimer moved to go into executive session until no later than 11:35 a.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

   The motion carried by the following vote:

   Ayes: Browne, Buchanan, Mann, Donovan and Weimer (5)
   Nays: Brenner (1)
   Absent: Sidhu (1)

   The Committee came out of executive session at 11:35 a.m. and Council reconvened the meeting in the Council Chambers at 11:40 a.m.
COMMITTEE DISCUSSION - COUNCIL CHAMBERS

3. DISCUSSION REGARDING PROPOSED ORDINANCE ADOPTING THE CURRENT STATE BUILDING CODE AND REPEALING THE EXISTING TITLE 15 OF THE WHATCOM COUNTY CODE (AB2016-289)

Wain Harrison, Planning and Development Services Department, answered questions.

Councilmembers discussed making the higher cost of fire suppression clear to the public; the possibility of a tracking system and testing of unpressurized fire systems; giving an owner the option of choosing the fire suppression system they want to install, with conditions; and the hazards associated with berry processing plants.

Weimer moved to recommend introduction to the full Council.

The motion was seconded.

Councilmembers continued to discuss the required amount of storage in manufacturing and warehouse processes, allowing businesses to stay competitive in the marketplace, defending the regulations in a worst-case scenario, the County officials’ ability to help permit applicants be as cost-effective as possible in adding a safe fire suppression system, and whether hold harmless agreements would hold up in court.

Donovan suggested a friendly amendment to amend Council packet page 23, section (4) to delete language, “e. Oil derricks.”

Weimer accepted the friendly amendment.

Harrison answered questions on the possibility of there being oil derrick projects.

Browne moved to amend page 46, item seven, to restore the 500 gallons per minute (GPM) and send the question to the Planning Commission.

The motion was seconded.

Councilmembers discussed sending this item to the Planning Commission, the history of the 500 GPM requirement, and the fire districts’ ability to appeal the Council’s decision.

Browne amended his motion and moved to amend page 46, item seven, to restore the 500 gallons per minute (GPM).

The motion was seconded.

Harrison answered questions on his ability to require a different GPM in certain situations.

The motion carried by the following vote:

Ayes: Mann, Browne, Buchanan, and Brenner (4)
Nays: Weimer and Donovan (2)
Absent: Sidhu (1)

The motion to recommend introduction with amendments carried by the following vote:

Ayes: Brenner, Mann, Browne, Buchanan, Weimer and Donovan (6)
Nays: None (0)
Absent: Sidhu (1)

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 12:34 p.m.

The Council approved these minutes on ______________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:30 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: Satpal Sidhu.

SPECIAL ORDER OF BUSINESS

1. ANNUAL REORGANIZATION OF THE WHATCOM COUNTY COUNCIL (AB2017-021)

This item was moved to the evening Council meeting.

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL

1. RESOLUTION FOR WASHINGTON STATE LEGISLATURE SUPPORT OF FUNDING FOR CORE PUBLIC HEALTH SERVICES (AB2017-033)

This item was not discussed.

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND PACIFIC NORTHWEST GUARDIAN AD LITEM, LLC FOR THE PROVISION OF GUARDIAN AD LITEM SERVICES FOR YOUTH SUBJECT TO DEPENDENCIES IN WHATCOM COUNTY SUPERIOR COURT IN THE AMOUNT OF $40 PER HOUR, UP TO 4,000 BILLABLE HOURS FOR 2017 (AB2017-034)

This item was not discussed.

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERAGENCY AGREEMENT BETWEEN WHATCOM COUNTY AND NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION TO SUPPORT THE COUNTY’S BEHAVIORAL HEALTH PROGRAM AND TO SUPPORT REGIONAL BEHAVIORAL HEALTH ACTIVITIES IN THE AMOUNT OF $498,867 (AB2017-035)

This item was not discussed.
COMMITTEE DISCUSSION – CRITICAL AREAS ORDINANCE UPDATE

1. CONTINUATION OF COUNCIL’S REVIEW OF THE 2016 CRITICAL AREAS ORDINANCE UPDATE – TOPICS SCHEDULED FOR DISCUSSION:

   Forrest Longman, Council Office, answered questions on the process for making proposed amendments.

   Mark Personius, Planning and Development Services Department, submitted and read from a presentation (on file) and answered questions on findings of fact number 13 regarding proposed regulations for critical areas and making the plan consistent with the Growth Management Act (GMA).

   Article 1 – Purpose (AB2016-276A)

       Personius continued the presentation and stated there are no changes.

   Article 2 – Administrative Provisions (AB2016-276B)

       Personius continued the presentation and stated there are procedural changes.

       Ryan Ericson, Planning and Development Services Department, continued the presentation on proposed amendments regarding the Natural Resources staff.

       Personius continued the presentation to Article 2. He and Ericson answered questions about hazard tree requirements, feasibility of offsite wetland mitigation projects, adjusting the ratio based on proximity of the offsite mitigation location to the application site, the option for jurisdictions to trade access into buffers in the City limits in exchange for protecting a much higher class of wetland in the county area in a transfer of development rights (TDR) program, indemnifying the County, how notification works, the range of herbicides that are banned, and dandelions.

   Article 5 – Critical Aquifer Recharge Areas (AB2016-276E)

       Personius continued the presentation and stated there are no changes other than a cross-reference. He answered questions on whether recent changes from the court regarding water affect how they look at aquifer recharge areas; steps the County is taking in the compliance process; the court requirement to protect water quality; the most recent science on water quality in wells; protection from aquifer nitrate contamination from agriculture; working with Canadian officials on cross-border contamination; and including the most recent best available science.

   Article 5.5 – Lummi Island (AB2016-276F)

       Personius continued the presentation and stated there are no changes other than grammatical.

   Article 9 – Definitions (AB2016-276J)
Personius continued and concluded the presentation and spoke about plans for the next meeting.

Councilmembers discussed how the Council should propose changes to each of these articles.

**OTHER BUSINESS**

There was no other business.

**ADJOURN**

The meeting adjourned at 2:37 p.m.

The Council approved these minutes on ______________, 2017.

**ATTEST:**

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________  
Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL
Regular County Council Meeting

January 10, 2017

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, Ken Mann, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.
Absent: Satpal Sidhu

FLAG SALUTE

ANNOUNCEMENTS
Buchanan reported for the Special Committee of the Whole meetings on the following items:

- Discussion with Senior Deputy Prosecutor Elizabeth Gallery regarding pending litigation (AB2017-018): No action taken
- Discussion with Senior Deputy Prosecutor Karen Frakes regarding pending litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2017-018): No action taken
- Discussion with Senior Deputy Prosecutor Jeffrey Sawyer regarding pending litigation, King v. Stach, et al (AB2017-018)

Mann stated and moved that in executive session, the County Council reviewed the lawsuit filed in the United States District Court, under No. 2:16-cv-01420-JCC-BAT, and affirmatively finds the provisions of the Whatcom County Code, Chapter 2.56.030 A, B, and C, which are:

A. The official(s) or employee(s) was acting in a matter in which the county had an interest
B. The official(s) or employee(s) was acting in the discharge of a duty imposed or authorized by law
C. The officials (s) or employee(s) did act in good faith

And the Council authorizes the County to provide legal services and indemnification to the officers, officials, agents or employees that are named defendants in this matter, pursuant to WCC 2.56

- Introduction to new labor negotiator and discussion of strategy planning and positions to be taken regarding collective bargaining (AB2017-037): No action taken
MINUTES CONSENT

Brenner moved to approve Minutes Consent items one and two.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Browne, Buchanan, and Weimer (5)
Nays: None (0)
Abstains: Donovan (1)
Absent: Sidhu (1)

1. REGULAR COUNTY COUNCIL FOR JULY 26, 2016

2. SURFACE WATER WORK SESSION FOR NOVEMBER 15, 2016

SPECIAL ORDER OF BUSINESS

County Council and Flood Control Zone District Board of Supervisors Chair

Browne nominated Buchanan. The nomination was seconded.

The nomination carried by the following vote:
Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

(Clerk’s Note: Buchanan assumed the duties of the Chair.)

County Council Vice-Chair

Buchanan nominated Browne. The nomination was seconded.

The nomination carried by the following vote:
Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

County Executive Pro Tempore

Mann nominated Weimer. The nomination was seconded.

The nomination carried by the following vote:
Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Finance and Administrative Services Committee
Mann nominated Mann, Browne, and Sidhu. The nominations were seconded.

The nominations carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Planning and Development Committee.

Buchanan nominated Browne, Weimer, and Brenner. The nominations were seconded.

The nominations carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Public Works, Health, and Safety Committee

Donovan nominated Donovan, Mann, and Brenner. The nominations were seconded.

The nominations carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Natural Resources Committee

Buchanan nominated Donovan, Sidhu, and Weimer. The nominations were seconded.

The nominations carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Bellingham International Airport Advisory Committee

Browne nominated Sidhu. The nomination was seconded.

The nomination carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Bellingham/Whatcom Chamber of Commerce and Industry

Donovan nominated Browne. The nomination was seconded.
The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Birch Bay Shellfish Protection District Advisory Committee

Buchanan nominated Donovan. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Council of Governments (COG) – Full Council

Brenner nominated Browne and Sidhu. The nominations were seconded.

The nominations carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Council of Governments – Executive Board and Transportation Policy Board

Browne nominated Sidhu. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Developmental Disabilities Board

Brenner nominated Mann. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Drayton Harbor Shellfish Protection District Advisory Committee

Brenner nominated Donovan. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)
Emergency Management Services (EMS) Oversight Board

Brenner nominated Buchanan. The nomination was seconded.

The nomination carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Emergency Management Services (EMS) Oversight Board alternate

Buchanan nominated Sidhu. The nomination was seconded.

The nomination carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Flood Control Zone District Advisory Committee

Brenner nominated Browne. The nomination was seconded.

The nomination carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Incarceration Prevention and Reduction Task Force

Brenner nominated Mann. The nomination was seconded.

The nomination carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Intergovernmental Tribal Relations Committee

Browne nominated Buchanan and Brenner. The nominations were seconded.

The nominations carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Integrated Behavioral Health Advisory Board

Buchanan nominated Brenner. The nomination was seconded.
The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Jail Stakeholder Workgroup

Browne nominated Buchanan and Donovan. The nominations were seconded.

The nominations carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Law Enforcement Officer & Firefighter (LEOFF) Board

Buchanan nominated Mann. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Local Emergency Planning Committee (LEPC)

Mann nominated Donovan. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Lummi Island Ferry Advisory Committee (LIFAC) non-voting attendee

Brenner nominated Donovan. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Lummi Island Ferry Advisory Committee non-voting attendee alternates

Buchanan nominated Mann and Brenner. The nominations were seconded.

The nominations carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)
Marine Resources Committee (MRC)

Browne nominated Weimer. The nomination was seconded.

The nomination carried by the following vote:
- **Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
- **Nays:** None (0)
- **Absent:** Sidhu (1)

North Sound Behavioral Health Organization Executive Committee

Browne nominated Mann. The nomination was seconded.

The nomination carried by the following vote:
- **Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
- **Nays:** None (0)
- **Absent:** Sidhu (1)

Northwest Clean Air Agency

Browne nominated Weimer. The nomination was seconded.

The nomination carried by the following vote:
- **Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
- **Nays:** None (0)
- **Absent:** Sidhu (1)

Northwest Regional Council

Mann nominated Sidhu. The nomination was seconded.

The nomination carried by the following vote:
- **Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
- **Nays:**None (0)
- **Absent:** Sidhu (1)

Opportunity Council

Buchanan nominated Weimer. The nomination was seconded.

The nomination carried by the following vote:
- **Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
- **Nays:** None (0)
- **Absent:** Sidhu (1)

Portage Bay Shellfish Protection District Advisory Committee

Browne nominated Weimer. The nomination was seconded.
The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Public Defense Advisory Committee

Buchanan nominated Brenner. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Public Health Advisory Board

Brenner nominated Buchanan. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Solid Waste Advisory Committee

Buchanan nominated Brenner. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Washington State Association of Counties (WSAC) Board alternate

Browne nominated Browne. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

WSAC Legislative Steering Committee

Mann nominated Browne. The nomination was seconded.

The nomination carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)
Whatcom Transportation Authority (WTA) Board

Buchanan nominated Sidhu. The nomination was seconded.

The nomination carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

OPEN SESSION

The following people spoke:
- Mike Kaufman spoke on the emergency management services (EMS) levy vote and funding various social services.
- Wendy Harris spoke about the critical areas ordinance.
- Amy Glasser spoke about the critical areas ordinance.
- Ron Reimer spoke about the Growth Management Act.
- Jason Reimer submitted a handout (on file) and spoke about the impacts of the interim amendments to the Whatcom County Comprehensive Plan and Whatcom County Code Title 15 (Buildings and Construction), Title 20 (Zoning), Title 21 (Land Division Regulations), and Title 24 (Health Code) relating to water resources.

OTHER ITEMS

1. RESOLUTION FOR WASHINGTON STATE LEGISLATURE SUPPORT OF FUNDING FOR CORE PUBLIC HEALTH SERVICES (AB2017-033)

Whatcom County Council acting as the Board of Health.

Brenner moved to approve the resolution.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Weimer and Donovan (5)
Nays: Mann (1)
Absent: Sidhu (1)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND PACIFIC NORTHWEST GUARDIAN AD LITEM, LLC FOR THE PROVISION OF GUARDIAN AD LITEM SERVICES FOR YOUTH SUBJECT TO DEPENDENCIES IN WHATCOM COUNTY SUPERIOR COURT IN THE AMOUNT OF $40 PER HOUR, UP TO 4,000 BILLABLE HOURS FOR 2017 (AB2017-034)

Mann moved to approve the request.
The motion was seconded.

Dave Reynolds, Superior Court Administrator, answered questions about this program and the court appointed special advocate (CASA) program.

Brenner spoke about the benefits of the CASA program.

The motion carried by the following vote:
Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERAGENCY AGREEMENT BETWEEN WHATCOM COUNTY AND NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION TO SUPPORT THE COUNTY’S BEHAVIORAL HEALTH PROGRAM AND TO SUPPORT REGIONAL BEHAVIORAL HEALTH ACTIVITIES IN THE AMOUNT OF $498,867 (AB2017-035)

Mann moved to approve the request.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT, PER RCW 85.38.070(5), TO FILL VACANCY ON DRAINAGE DISTRICT #3 BOARD OF SUPERVISORS, POSITION 1 - APPLICANT(S): ROGER BLOK (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, DISCUS, OR ACT ON ANY OTHER OFFICIAL AND DISTRICT BUSINESS) (AB2017-042)

Browne moved to nominate and appoint Roger Blok by acclamation.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

2. ANNUAL APPOINTMENTS TO COUNCIL-APPOINTED POSITIONS ON CITIZEN BOARDS, COMMISSIONS, AND COMMITTEES (AB2017-031)
Lummi Island Ferry Advisory Committee

Mann moved to appoint by acclamation Michael Skehan to the resident position.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Planning Commission District 2

Mann nominated Stephen Jackson and Andrew Rowlson.

The nominations were seconded.

The vote carried by the following vote:

Rowlson: Brenner, Browne, Buchanan, Donovan and Weimer (5)
Jackson: Mann (1)
Absent: Sidhu (1)

Planning Commission District 3

Brenner moved to appoint by acclamation Atul Deshmane.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Portage Bay Shellfish Protection District Advisory Committee

Mann moved to appoint by acclamation Christine Woodward, Lee First, and Dorie Belisle.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays: None (0)
Absent: Sidhu (1)

Solid Waste Advisory Committee

Mann moved to appoint by acclamation:

• Amber Jones to the Business/Industry Representative position
Larry McCarter to the Solid Waste Disposal Facility Representative position

The motion was seconded.

The motion carried by the following vote:

Ayes:  Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays:  None (0)
Absent:  Sidhu (1)

3. ANNUAL APPOINTMENTS TO FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS—APPOINTED POSITIONS ON CITIZEN ADVISORY COMMITTEES (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-032)

Flood Control Zone District Advisory Committee

Browne moved to appoint by acclamation:
•  Ron Bronsema and Scott Hulse to the Special Districts positions
•  Robert Bromley to the Impacted Cities position

The motion was seconded.

The motion carried by the following vote:

Ayes:  Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays:  None (0)
Absent:  Sidhu (1)

Birch Bay Watershed and Aquatic Resource Management Advisory Committee

Brenner moved to appoint by acclamation Scott Hulse.

The motion was seconded.

The motion carried by the following vote:

Ayes:  Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)
Nays:  None (0)
Absent:  Sidhu (1)

INTRODUCTION ITEMS

Weimer removed item four and stated he wanted to discuss it seperately.

Donovan withdrew item five.

Brenner moved to accept Introduction Items one, two, three and six.

The motion was seconded.

The motion carried by the following vote:
1. ORDINANCE ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING, PERMITTING KENNELS IN THE AGRICULTURE ZONE AS A CONDITIONAL USE (AB2017-038)

2. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, FIRST REQUEST, IN THE AMOUNT OF $170,302 (AB2017-039)

3. 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 (AB2017-040)

4. ORDINANCE PROVIDING LOCAL PROCEDURES TO PROCESS DEVELOPMENT PERMIT APPLICATIONS EFFICIENTLY AND TO PROMOTE FINALITY OF DECISIONS (AB2017-041)

Weimer moved to introduce the ordinance and moved to amend to delete Exhibit B and the last Be It Finally Ordained statement, “BE IT FINALLY ORDAINED that Whatcom County Code Section 20.92.210 is hereby amended as outlined in Exhibit B to this ordinance.” The Exhibit B section amends Title 20 and would have to go through the docketing process, which isn’t necessary to clean up certain procedures.

The motion was seconded.

The motion to amend carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

Weimer restated his motion to introduce as amended.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Browne, Buchanan, Mann, Donovan and Weimer (6)

**Nays:** None (0)

**Absent:** Sidhu (1)

5. ORDINANCE ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE TITLE 24, HEALTH CODE, RELATING TO WATER RESOURCES (AB2016-309C)

Donovan stated he withdraws this item from consideration. He attempted to find a solution in the interim ordinance to deal with projects that are substantially completed. However, it’s clear the ordinance wouldn’t accomplish the intent.

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 8:02 p.m.

The County Council approved these minutes on ______, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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TITLE OF DOCUMENT:
Ord for Procedures to Process Development Permit Apps and to Promote Finanility

ATTACHMENTS:

SEPA review required? ( ) Yes ( ) NO
SEPA review completed? ( ) Yes ( ) NO
Should Clerk schedule a hearing? ( ) 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.)
Ordinance providing local procedures to process development permit applications efficiently and to promote finality of decisions

COMMITTEE ACTION:
1/24/2017: Discussed

COUNCIL ACTION:
1/10/2017: Amended and Introduced 6-0, Sidhu absent
1/24/2017: Held in Council

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.
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 FINALLY 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.

ADOPTED this ______ day of ___________________, 2017.

ATTEST:

Dana Brown-Davis,
Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan,
Council Chair

APPROVED AS TO FORM:

[Signature]
Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

[Signature]
Jack Louws, County Executive

(   ) Approved    (   ) Denied

Date Signed: _______________
EXHIBIT A
(LOCAL PROCEDURES TO PROCESS DEVELOPMENT PERMIT APPLICATIONS)

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.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Appointment to Jail Stakeholder Workgroup, citizen living outside city of B'ham

**ATTACHMENTS:**

| SEPA review required? | ( ) Yes | ( ) NO |应 | Should Clerk schedule a hearing? | ( ) Yes | ( ) NO | 应 |
|-----------------------|--------|--------|---|---------------------------------|--------|--------|---|---------------------------------|--------|--------|---|
| SEPA review completed?| ( ) 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.)
Council to appoint one citizen representative to work with local elected officials, law enforcement, and jail staff to create an appropriate funding plan for a new county jail. Citizen must live in Whatcom County, outside the city of Bellingham.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
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<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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</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.
WHATCOM COUNTY COUNCIL
PRESS RELEASE

FOR IMMEDIATE RELEASE
Contact: Whatcom County Council Office, 778-5010

WHATCOM COUNTY COUNCIL TO FILL VACANCY ON JAIL STAKEHOLDER WORKGROUP
Council seeks citizen applicants to position for County resident living outside Bellingham

BELLINGHAM, Washington, January 27, 2017, – The Whatcom County Council is accepting applications for a citizen representative to work with local elected officials, law enforcement, and jail staff to create an appropriate funding plan for a new county jail. The Council will appoint one citizen who lives in Whatcom County, outside the city of Bellingham. Term ends when the Workgroup is dissolved upon County Council adoption of a jail ballot measure, no later than November 2017. To qualify, applicants must be a registered voter in Whatcom County and live outside the Bellingham city limits.

On June 14, 2016, the County Council approved a resolution to create a Jail Stakeholder Workgroup. The Workgroup is an essential component in developing the financial agreements necessary to build a new Whatcom County jail. The Workgroup focus is on costs, funding mechanisms, and the allocation of expenses among the jurisdictions. Additionally, the Workgroup will advise the County Council and County Executive on a new jail ballot measure by November 2017.

Application instructions are on the County website at www.whatcomcounty.us/1584/How-to-Apply. Workgroup meetings are open to the public. For more information, contact the Whatcom County Council Office at 778-5010 or council@co.whatcom.wa.us.
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  Irene
Last Name  Morgan
Date  1/30/2017
Street Address  1258 E. Pole Rd.
City  Everson
Zip  98247
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  360-354-3653
Secondary Telephone  Field not completed.
Email Address  impeace2@comcast.net

Step 2

I. Name of Board or Jail Stakeholder Workgroup
<table>
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<td>Jail Stakeholder Workgroup</td>
<td>Citizen living outside the city of Bellingham and within Whatcom County</td>
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<td>2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?</td>
<td>Yes</td>
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<tr>
<td>3. Which Council district do you live in?</td>
<td>District 4</td>
</tr>
<tr>
<td>4. Are you a US citizen?</td>
<td>Yes</td>
</tr>
<tr>
<td>5. Are you registered to vote in Whatcom County?</td>
<td>Yes</td>
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<tr>
<td>6. Have you ever been a member of this Board/Commission?</td>
<td>No</td>
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<td>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?</td>
<td>No</td>
</tr>
<tr>
<td>You may attach a resume or detailed summary of experience, qualifications, &amp; interest in response to the following questions</td>
<td>Irene bio-descrip - pix 2017.doc</td>
</tr>
<tr>
<td>8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education</td>
<td>I am a counselor and therapist and founded the Restorative Community Coalition 10 years ago. I have worked for and volunteered with many non-profit organizations in Whatcom County for over 30 years. I was integral in our family business of 20 years. I have been involved with the jail process and find I have a broader lens from which to view the course.</td>
</tr>
</tbody>
</table>
| 9. Please describe why you’re interested in serving on this board or commission | Mr. Hill Cummings approached me to be his proxy when he could no longer serve on this committee. I have worked with the consumers of the jail facilities for decades and feel I have a different view of our justice system than most. The clients we
see at the Restorative Community Coalition are 'the voiceless' users of the system. I feel I can represent this population - a voice that needs to be heard.

References (please include daytime telephone number):

Robbi Ferron, Tribal Court Judge, retired - 360-715-9588
Cathy Bradshaw, CPA, Accountant - 360-733-1750
Kristin Hanna - Attorney at Law - 253-279-0279

Signature of applicant: Irene R. Morgan

Place Signed / Submitted: Everson, WA

(Section Break)

Email not displaying correctly? View it in your browser.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES  Initial  Date  Date Received in Council Office  Agenda Date  Assigned to:
Originator: SM  1/24/17  Feb. 7, 2017  Full Council
Division Head: 
Dept. Head: 
Prosecutor: 
Purchasing/Budget: 
Executive: 

TITLE OF DOCUMENT: Appointments to Executive’s Boards and Commissions

ATTACHMENTS: Listing of nominations for appointments and reappointments; Membership applications.

SEPA review required? ( ) Yes ( X ) NO
SEPA review completed? ( ) Yes ( X ) 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.)

County Executive Jack Louws requests confirmation of his new appointments and reappointments to the boards and committees noted below and on the attached list. These appointments take effect on February 1, 2017.

ADA Compliance Committee
County Appeals Board
Development Standards Technical Advisory Committee
Rural Library Board
Veterans Advisory Board

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.

411
The following vacancies on boards and committees are filled with appointments by the Executive and confirmed by County Council.*

**AGRICULTURAL ADVISORY COMMITTEE**
*For Council information only: the Whatcom Conservation District has designated as its representative Mr. Larry Davis.*

**AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE COMMITTEE**
Nominated for appointment are Susan McClendon and Joshua McIntyre.

**COUNTY APPEALS BOARD**
Nominated for appointment is Dennis Smith.

**DEVELOPMENT STANDARDS TECHNICAL ADVISORY COMMITTEE (TAC)**
Nominated for appointment is Andrew Ross.

**RURAL LIBRARY BOARD (Whatcom County Library System)**
Nominated for appointment is Erika Nuerenberg.

**VETERANS ADVISORY BOARD**
Nominated for reappointment to a second term is Ward Nelson.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Larry Davis
Street Address: 2930 Jennifer Lane
City: Custer
Mailing Address (if different from street address): 
Day Telephone: 360-366-9172 Evening Telephone: 360-366-9172 Cell Phone: 360-927-5665
E-mail address: LcDaviss49@outlook.com

Date: 1/1/17

1. Name of board or committee—please see reverse:
   AGRICULTURAL ADVISORY COMMITTEE

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.)

4. Which Council district do you live in?
   ( ) One ( ) Two ( ) Three (K) Four ( ) Five

5. Are you a US citizen? (K) yes ( ) no

6. Are you registered to vote in Whatcom County? (K) yes ( ) no

7. Have you ever been a member of this Board/Commission?
   ( ) yes (K) 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? (K) yes ( ) no
   If yes, please explain: SEE ATTACHMENT

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 ATTACHMENT

10. Please describe why you’re interested in serving on this board or commission:
    SEE ATTACHMENT

References (please include daytime telephone number):
   Joe Heller 360-599-9947
   Dale Yoder 360-303-4240

Signature of applicant: Larry Davis

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QUESTION #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?

I am a member and officer of the Board of Supervisors for the Whatcom Conservation District. Our district works cooperatively with the County. At present, I believe the County and District are mutually engaged in six agreements.

QUESTION #9
Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

I am retired as of September 5, 2016. For the last seven years I worked at the duty free store at the Lynden/Aldergrove border crossing (at the end of the Guide Meridian Road). Prior to that experience I worked in Olympia for over 20 years:

- 2.5 years as a college intern and then aide to a state senator
- 11.5 years as staff for the Senate Education Committee
- 12.1 years as Executive Director for the State Board of Education

In those roles I developed strong policy development and analytic skills. I drafted state legislation for the Senate as well as the State Board. I also drafted implementing rules for the State Board. I have participated on and led a variety of committees over the last 30 years. By professional experience my expertise is in policy and process. My Olympia experiences allowed me to develop critical listening, questioning, writing, and public speaking skills.

Serving on the Whatcom Conservation District board is my primary community activity. It fulfills my intrinsic need to be engaged in public service. In addition to serving on the Whatcom CD board for approaching eight years, I have devoted significant time serving as an officer or member of numerous committees/task forces/work groups at the state and national levels, all related to conservation, all having a direct or indirect link to my local supervisor role.

I have a BA in Political Science from Central Washington University, cum laude.
QUESTION #10
Please describe why you're interested in serving on this board or commission

I am passionate about public service, particularly now as it relates to conservation of natural resources and agriculture needs and challenges. I am ready to step away from state and national commitments to focus at the county level. I have learned much about conservation issues. Representing Whatcom CD on the Agricultural Advisory Committee is an ideal opportunity to elevate my knowledge of county issues and challenges. I believe my experience and skill set have been of value not only to the Whatcom Conservation District, but to each of the conservation related groups I have served the last nearly eight years. I am confident the same would hold true for the work of the Agricultural Advisory Committee.

I do not take on volunteer commitments unless I am certain that I can and will attend the meetings of the board, committee or commission. I have the time and commitment to serve, the time and interest to learn, the time and energy to contribute, and the time and desire to join the Agriculture Advisory Committee team.
Application for Appointment to Whatcom County Boards and Commissions

Public Statement
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First Name
Susan

Last Name
McClendon

Date
1/10/2017

Street Address
3100 Plymouth Drive

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
404-219-6744

Secondary Telephone
360-756-2140

Email Address
susan.mcclendon@gmail.com

1. Name of Board or Committee
American with Disabilities Act (ADA) Compliance 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 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

40 years as architect and construction specification writer. Familiarity with building design, building codes, energy codes, zoning codes, building construction, urban design, accessibility design, energy conservation in construction. Interest in landscape design, natural landscapes, access to natural features, community and small scale agriculture, small scale energy, aging in place and other elder issues.

I'm retired and it's time to give back.

9. Please describe why you're interested in serving on this board or commission

References (please include daytime telephone number):

Natalie McClendon (sister), 360-319-8287

Susan McClendon

Signature of applicant:

Susan McClendon

Place Signed / Submitted

Bellingham, WA
Application for Appointment to Whatcom County Boards and Commissions

Public Statement
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First Name
Joshua

Last Name
McIntyre

Date
1/24/2017

Street Address
3005 northwest avenue apartment 1

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
717-224-6294

Secondary Telephone
Field not completed.

Email Address
Joshuadmcintyre@gmail.com

1. Name of Board or Committee
Americans with Disabilities Act (ADA) Compliance 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 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?
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

Field not completed.

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

I am currently a staff at The Max Higbee center, a part time direct support professional, part time legal intern at The elder law offices of Barry Myers and a part time student working towards a prelaw degree program track.

I have been serving the developmental and intellectual disability community in varying capacities for the last four years. I want to be an advocate and I am a strong believer in the power of the legal system to grant and protect the rights of all Americans, and in its ability to change society and make our communities more considerate, inclusive environments.

Kait Whitside (executive director-max higbee center) +1 (509) 969-9531 I can provide several more references in deemed useful.

Joshua Daniel McIntyre

Place Signed / Submitted

Bellingham, WA
Application for Appointment to Whatcom County Boards and Commissions

Public Statement
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First Name
Dennis

Last Name
Smith

Date
12/22/2016

Street Address
5723 Schornbush Rd.

City
Deming

Zip
98244

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
360-592-2343

Secondary Telephone
360-592-2343

Email Address
safetywork46@gmail.com

1. Name of Board or Committee
County Appeals Board

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?
Field not completed.

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

Field not completed.

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  
Retired "Worker Safety" consultant with an MA in Public Policy and a BA in Environmental Studies from Huxley College/WWU.

9. Please describe why you're interested in serving on this board or commission  
As a John Q Public representative I feel like I could add an impartial voice to the appeals process. I am excited about the idea of giving back to our community and taking on new challenges that such a position may entail.

References (please include daytime telephone number):  
I am currently available via email only as I am in a small Mexican village for the next three months.

Signature of applicant:  
Dennis Smith

Place Signed / Submitted  
La Manzanilla, Mexico
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Andrew (Andy) Ross
Street Address: 1840 High Noon Road
City: Bellingham, Washington
Mailing Address (if different from street address): Same as above
Day Telephone: See “Cell Phone” Evening Telephone: See “Cell Phone” Cell Phone: (360) 393-6998
E-mail address: salixenv@gmail.com

Date: January 23, 2017

1. Name of board or committee-please see reverse:
Development Standards Technical Advisory Committee
At Large/Environmental

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 ( ) 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? ( ) yes (X) no If yes, dates: 2000-2004

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, & 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 attached Resume. I am in the process of restarting a water and environmental consulting business.

(I was a caregiver for a person with multiple illnesses from 2011 to 2015).

10. Please describe why you’re interested in serving on this board or commission:

I have a strong public service ethic and believe my skillset would be useful to the Development Standards Technical Advisory Committee.

References (please include daytime telephone number): Elizabeth Binney, PhD, Principal, Pacific Ecological Consultants, LLC, (360) 671-2317
Jeremy Freimund, P.H. Water Resources Manager, Lummi Natural Resources Department, (360) 410-1775

Signature of applicant:

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Andrew M. Ross, MS, LG, LHG  
1840 High Noon Road, Bellingham, Washington 98226  
(360) 393-6998 • salixenv@gmail.com

Thirty years experience in water and natural resources management in the Pacific Northwest, including storm water management; evaluation, development, implementation, and enforcement of regulations; assessment of land use impacts; fluvial, shoreline, hillslope, and hydrogeologic characterizations; watershed management and planning; quality assurance and quality control; water quality; surface and ground water sampling; data analysis, management and reporting; community involvement; and expert and consulting witness services.

EDUCATION:

Bachelor of Science, Geology, 1988, Beloit College. Beloit, Wisconsin.  

LICENSES:

Washington State Licensed Geologist and Hydrogeologist (License No. 1454).

EXPERIENCE:

1990 to Present. Please see Community Involvement below.

2005 to 2011. Independent Contractor, Owner of Salix Environmental Services

Expert and consulting witness services for a federal civil lawsuit related to hydrologic and geomorphic impacts of prior forest harvest and associated activities. Provided training and technical support to Lummi Natural Resources staff for surface and ground water monitoring programs. Preparation of an extensive Quality Assurance Project Plan for the Lummi Nation’s surface and ground water monitoring programs. Trained staff in storm water plan review, approval, and site inspections. Performed water quality analysis and reporting. Coordinated and documented well-decommissioning. Aquifer delineation and reporting. Water well logging, testing and reporting. Evaluated wetland mitigation feasibility. Third-party review of stream restoration alternatives for the daylighting of Padden Creek.

1996 to 2005. Water Resources Specialist, Lummi Indian Business Council (LIBC)

Supervised the Water Resources Technician. Assessed potential land use impacts of proposed single family, multi-family, residential, commercial, municipal, and forest activities to surface and ground water, geomorphic processes, and other natural resources. Developed and reviewed storm water management plans and conducted storm water site inspections. Managed wetland permitting. Served as a technical representative of the LIBC for water resource issues with the Lummi Nation and non-tribal agencies and groups. Provided technical support for development and implementation of storm water management, wellhead protection, and wetland management programs, and for litigation-level ground water characterization study on the Lummi Reservation. Served as the LIBC technical representative to the Water Quality and Database Management technical teams of the Water Resource Inventory Area 1 Watershed Management Project (WRIA 1 WMP). Provided technical support to and substantially participated in the Instream Flow and Fish Habitat and Water Quantity Technical Team of the WRIA 1 WMP. Wrote grant applications and administered contracts. Conducted analysis of on- and off-Reservation water quality data and studies. Wrote annual and project specific water quality reports for on-Reservation water quality studies.
Developed Clean Water Act Section 303(c) Water Quality Standards for the Lummi Indian Reservation (Reservation) including the application to administer sections 303(c) and 401 of the Clean Water Act. Conducted the Reservation-wide surface and ground water quality monitoring programs and studies. Developed and implemented Quality Assurance and Quality Control (QA/QC) programs approved by the U.S. Environmental Protection Agency. Assessed fluvial, shoreline, and hillslope processes. Addressed and responded to complex regulatory environment for surface and ground water. Participated in the Washington Water Quality Standards triennial review process. Provided technical support to other divisions within the Natural Resources Department, and to other departments within the LIBC.

1990 to 1993. Independent Environmental Consultant
Performed work as an independent sub-contractor on projects throughout western Washington addressing water quality, wetlands, quality assurance and quality control plan development, and sediment erosion and delivery assessments related to forest harvest and development activities.

1985 to 1992. Seasonal Park Ranger at North Cascades National Park Service Complex
Stationed four seasons exclusively in wilderness, two seasons in remote vehicle-accessible areas, and two seasons in visitor centers. While at the visitor centers I was responsible for communicating trail conditions and regulations to up to 400 people per shift. In the field, I became familiar with the disturbance and response of land managed for wilderness, and ensured that visitors complied with Park regulations primarily through education but occasionally through formal enforcement.

COMMUNITY INVOLVEMENT:

2013 to Present. Water Resources Volunteer.

Tenmile Clean Water Project (Project). 11/2013 to Present.

Vice-chair for the first year of the Project and acting chair for much of that time. Primary person for coordinating and conducting monthly meetings during that period. Continue to contribute to outreach, water quality sample strategy and analysis, as well as grant writing. Helped to build a strong relation with the Laurel Watershed Improvement District (WID).

Portage Bay Shellfish Protection District Citizen Advisory Committee (Advisory Committee). 5/2014 to Present.

I have made strong contributions in the areas of data management and outreach; implementation of the Marine Recovery Area (MRA); and explaining some of the complexities of bacteria, water quality criteria and targets, Nooksack River dynamics, and the interaction of the Nooksack River with Portage Bay.

WR1A 1 Planning Unit (Planning Unit). 4/2015 to Present.

I became formally involved as an alternate representative for the Non Government Water Systems (NGWS) Caucus in April of 2015 and, with the exception of July and August of 2016, have been the NGWS representative to the Planning Unit since October 2015. Chair the Governance and Funding Committee (GFC) for that same time period.
WRIA 1 Combined Review Team (CRT) of the WRIA 1 Salmon Recovery Program. 3/2016 to 7/2016 (ongoing periodic position).

Technical Reviewer of proposed salmon recovery projects in Water Resource Inventory Area No. 1 (WRIA 1). Review included considerable written technical materials, complex evaluation criteria, technical meetings, and two days of site visits.

1995 to Present. Volunteer manager of the Suntree Water Association, a Group B non-expanding system with five connections.

1990 to Present. Volunteer review of land use proposals including forestry, residential development, small-scale hydropower development, flood damage prevention, and gas-fired electrical generation plants, on behalf of potentially affected parties and/or project proponents. Provide substantial comments and recommendations and communicate issues to the community members and/or appropriate agency personnel.

June 2000 to December 2004. Member of the Whatcom County Development Standards Technical Advisory Committee. This included development and review of the 2002 Whatcom County Stormwater Special District Standards (Section 221, Chapter 2, Stormwater Management).
Mr. Jack Louws, Whatcom County Executive  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

Dear Executive Louws:

At yesterday’s Whatcom County Library System Board of Trustees meeting, the Board voted to recommend Erika Nuerenberg for Position #1, which was vacated by Gwen Vanderhage. The Board Personnel Committee met with three candidates and selected Ms. Nuerenberg for several reasons, primarily her extensive prior experience serving on the boards of several nonprofits and government agencies. She is personable, highly competent, and comes with glowing accolades from previous employers and nonprofit leaders.

Ms. Nuerenberg is currently the Assistant Director of the Whatcom County Health Department. She consulted with her supervisor Regina Delahunt prior to applying for this position on the WCLS Board, and received her blessing to participate on her personal time. Ms. Delahunt is very positive about Ms. Nuerenberg and thinks she would make an excellent addition to our board. She has professional experience with HR/personnel issues, group decision-making, meeting facilitation, and strategic planning among other things. She’s also passionate about libraries and reading, which is always a plus in our book!

Ms. Nuerenberg’s five-year term would run from the date of her appointment (likely February 9 after the County Council meeting, if confirmed) through January 31, 2022.

If you have any questions about this recommendation, please do not hesitate to call. Thank you for your consideration. We look forward to hearing the news of your appointment.

Sincerely,

Christine Perkins, Executive Director
Application for Appointment to Whatcom County Boards and Commissions

Public Statement
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<table>
<thead>
<tr>
<th>First Name</th>
<th>Erika</th>
</tr>
</thead>
<tbody>
<tr>
<td>Last Name</td>
<td>Nuerenberg</td>
</tr>
<tr>
<td>Date</td>
<td>1/6/2017</td>
</tr>
<tr>
<td>Street Address</td>
<td>244 Chuckanut Point Rd</td>
</tr>
<tr>
<td>City</td>
<td>Bellingham</td>
</tr>
<tr>
<td>Zip</td>
<td>98229</td>
</tr>
<tr>
<td>Do you live in &amp; are you registered to vote in Whatcom County?</td>
<td>Yes</td>
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<td>Do you have a different mailing address?</td>
<td>Field not completed.</td>
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<tr>
<td>Primary Telephone</td>
<td>2068513117</td>
</tr>
<tr>
<td>Secondary Telephone</td>
<td>Field not completed.</td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:enuerenberg@gmail.com">enuerenberg@gmail.com</a></td>
</tr>
</tbody>
</table>

1. Name of Board or Committee
Rural Library Board

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? No

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? 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

6-16 resume Nuerenberg.pdf - attached

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

I am currently the Assistant Director of the Whatcom County Health Department. I have served on more than 10 boards/commissions and have experience in financial and strategic planning/oversight, advocacy and community relations, HR/personnel, facilitation, group decision-making and collaboration, management, and strong writing/editing and public speaking skills. I hold a bachelors degree in organizational studies/communication and a masters degree in public health.

9. Please describe why you’re interested in serving on this board or commission

I am a passionate user and advocate of the library system. I am invested in ensuring that it remain a important public good that provides opportunities for diverse communities within Whatcom County to improve and value literacy. I have significant board experience to offer, and a strong desire to help the library system.

References (please include daytime telephone number):

Megan Heahlke, JD - 206.351.5450 Kayla Schott-Bresler - 415.847.7611
Regina Delahunt - 360.778.6005

Signature of applicant:

Erika Nuerenberg

Place Signed / Submitted

Bellingham, WA
Erika Nuerenberg  
1608 E St #311 | Bellingham, WA 98225 | 206.851.3117 | enuerenberg@gmail.com

- Collaborative leader focused on staff and organizational development, with more than ten years of experience in driving policy, advocacy, communications and strategic decision-making.
- Strong relationship and coalition builder, particularly around contentious and politically charged issues.
- Long-term, strategic thinker with focus on outcomes, research-based decision-making and scalability.

Education:

UNIVERSITY OF WASHINGTON  Master of Public Health
MICHIGAN STATE UNIVERSITY  Bachelor of Arts in Organizational Studies/Communication

Select Experience:

WHATCOM COUNTY HEALTH DEPARTMENT; Bellingham, Washington
Assistant Director, April 2016-present
- Manage finance, accounting, budgeting, data, communication, and epidemiology/assessment staff and develop work plans, goals, and strategic plans for work teams.
- Lead or co-lead strategic direction of department through role in leadership, management, performance management, workforce development, and facility maintenance/capital planning staff teams.
- Manage biennial budget process and ensure the departmental budget is adhered to and not exceeded.

RECOLOGY; Seattle, Washington
- Led team of 18, with 12 direct reports in varied departments, and develop/oversee the budget, planning, and assessment matrices for all external strategies, including corporate giving, policy and advocacy, brand/name identity, education and outreach, retail store performance, and business development growth, both for new municipal contracts and mergers/acquisitions.
- Served as representative in contract cities with elected leadership, community organizations, and non-profits; represented company-wide perspective on panels at national and regional conferences.
- Worked closely with General Managers and operations staff in Washington and Oregon to identify partnerships with outside entities, service and operational improvements, and strategic and policy initiatives that have potential to benefit the company.

PUBLIC HEALTH - SEATTLE & KING COUNTY; Office of the Director; Seattle, Washington
Integration Consultant, January 2013 – September 2013
- Led multi-disciplinary team of staff to determine whether the King County public health department and human services department could improve service delivery and increase efficiencies by merging into one department; work included identifying impacts to the nearly 2000 staff affected, stakeholders and clients, as well cost modeling options and determining labor, legal, contractual, and funding issues.
- Served as point of contact to staff and labor, and regularly revised plans and direction based on employee and stakeholder feedback.
- Served as liaison and gave presentations on healthcare reform efforts to partners and local governments. Facilitated strategic decision-making around healthcare reform initiatives and pilot project viability.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; Seattle, Washington
Regional Outreach Specialist (September 2010 - June 2011), Interim Executive Officer (June 2011 - February 2012)
- Communicated with state, tribal, and local leaders and policy makers regarding federal policies, grants, and initiatives relating to the Affordable Care Act; provided guidance to Washington D.C. staff about local concerns and how to better articulate policies and collaborate with states.
- Led coordination of all external affairs for four-state region among divisions within Health and Human Services; served as liaison and technical expert to all stakeholders and government officials in Oregon and Idaho; provided trainings and presentations to stakeholders regarding the elements of the law that affect them.
- Coordinated all office public appearances, media responses, meetings with stakeholders and policy makers, and communication and marketing materials to ensure consistent and appropriate messaging; keynoted and sat on panels at conferences for health and human services professionals.

KING COUNTY: Office of Councilmember Julia Patterson

Senior Policy and Communications Advisor (June 2004-February 2008), Chief of Staff (February 2008-August 2010),
-Led department-wide staff of more than 100 people, and supported Councilmembers involved in personnel decisions, during Councilmember Patterson’s chairmanship of council.
-Oversaw policy and communications staff, created work plans, goals, budgets, specific roles and responsibilities, and managed workflow and strategic messaging of policy, communication, outreach and constituent relations.
-Project managed the creation and coordination of more than 100 strategic and policy processes, including managing contracts, staff, message development, timelines for completion, and post-resolution planning.
-Led regional health initiatives such as the development and policy-making for King County’s health incentives employee wellness program, the Veteran’s and Human Services levy ballot measure, and the King County Board of Health’s banning of trans fats and requiring chain restaurants to label their menus with nutrition information.
-Communicated regularly with state agencies, elected officials and their staff, constituents and other stakeholders.
-Briefed council members and staff on political and policy-related issues; guided and facilitated decision-making on health issues, including equity and social justice, trans fat ban and menu labeling, and health strategic planning legislation.

Community Activities:
2016-present: Washington State Association of Local Public Health Officials Board Member
2016-present: Allied Arts of Whatcom County Board Member
2015 – 2016: Puget Sound Regional Council (PSRC) Regional Food Policy Council Member
2014 – 2016: Pioneer Square Business Improvement Area (BIA) Board Member
2014 – 2016: Southwest King County Chamber of Commerce Board Member
2013-2014: Seattle Parks and Recreation Legacy Citizens’ Advisory Committee Member (2014 ballot measure development)
2011 - 2016: United Way of King County Public Policy Impact Council member
2004-2014: Community Psychiatric Clinic: Board Member and Trustee Committee Member
2008: Assistant Coach, Garfield High School Cross Country team
2005: Campaign Committee Co-Chair: Yes on King County Prop 1 (Veterans and Human Services Levy)
2002-2006: Domestic Abuse Women’s Network (DAWN): Board Member and Member of Executive Committee

Professional Development:
Northwest Center for Public Health Practice Management Certification: Class of 2017
UCLA Mergers and Acquisition Certificate: Class of 2016
Recology Academy: Class of 2015
Leadership Tomorrow: Class of 2006
Certified Public Health Professional, 2008-2018; National Association of Public Health Examiners
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
L. ward

Last Name
Nelson

Date
1/27/2017

Street Address
3369 agate bay In.

City
Bellingham

Zip
98226

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
3606718145

Secondary Telephone
3603060524

Email Address
lordward@aol.com

1. Name of Board or Committee
Veteran’s Advisory Board

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
Field not completed.

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:
   last 4 years

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
   pharmacist, council member, us army

9. Please describe why you’re interested in serving on this board or commission
   give back to the community

References (please include daytime telephone number):
Field not completed.

Signature of applicant:
L. ward Nelson

Place Signed / Submitted
bellingham wa.
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>
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<td>1/27/17</td>
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<td>3/01/17</td>
<td></td>
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</tbody>
</table>

TITLE OF DOCUMENT: Flood Control Zone District and Subzones 2017 Supplemental Budget Request #1

ATTACHMENTS: Resolution, Memoranda and 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: 

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 Flood Control Zone District Fund:

1. To appropriate $143,676 in Natural Resources to fund Phase IV Lynden-Everson-Nooksack-Sumas groundwater model.

COMMITTEE ACTION: 

BOARD OF SUPERVISORS 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.
RESOLUTION NO. __________
(A resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

AMENDMENT NO. 1 OF THE 2017 BUDGET

WHEREAS, the 2017 budget for the Whatcom County Flood Control Zone District and Subzones was adopted November 22, 2016; and,
WHEREAS, changing circumstances require modifications to the approved 2017 budget; and,
WHEREAS, the modifications to the budget have been assembled here for deliberation by the Board of Supervisors,

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors that the 2017 budget as approved in Resolution 2016-046 is hereby amended by adding the following additional amounts to the budgets included therein:

<table>
<thead>
<tr>
<th></th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flood Control Zone District Fund - Natural Resources</td>
<td>143,676</td>
<td>(100,000)</td>
<td>43,676</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>143,676</td>
<td>(100,000)</td>
<td>43,676</td>
</tr>
</tbody>
</table>

ADOPTED this ____ day of ______________________, 2017

WHATCOM COUNTY FCZD
BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of the Board of Supervisors

APPROVED AS TO FORM:

Civil Deputy Prosecutor
<table>
<thead>
<tr>
<th>Flood Control Zone District and Subzones</th>
<th>Budgets Amendment #1</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Fund Balance</th>
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</thead>
<tbody>
<tr>
<td>Flood Control Zone District Fund - Natural Resources</td>
<td>To fund Phase IV Lynden-Everson-Nooksack-Sumas groundwater model.</td>
<td>143,676</td>
<td>(100,000)</td>
<td>43,676</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td></td>
<td>143,676</td>
<td>(100,000)</td>
<td>43,676</td>
</tr>
</tbody>
</table>
MEMORANDUM

TO: Jack Louws, County Executive

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: January 19, 2017

RE: Supplemental Budget Request

Requested Action

The Public Works Natural Resources Division is requesting supplemental budget authority for FY 2017 to complete Phase 4 of a numerical groundwater modeling project for the Lynden-Everson-Nooksack-Sumas area of Whatcom County. The goal of the modeling project is to develop a model which will adequately assess the impacts to surface water flow from groundwater pumping. The model will be designed so that it can be expanded to include other WRIA 1 areas. The results of the modeling project will be used to inform the development of a water management plan that balances the needs of salmon and other aquatic resources with out-of-stream water needs. The funding included in this request is to complete Phase 4 of 4 which consists of development of the numerical computer model.

This request is for funding from the Flood Control Zone District fund and is partially offset by grant funding from the Puget Sound Partnership through in interlocal agreement with the Whatcom PUD.

Please contact Gary Stoyka at extension 6218, if you have any questions or concerns regarding the terms of this agreement.

Attachment
Supplemental Budget Request

Status: Pending

Public Works

<table>
<thead>
<tr>
<th>Supplier ID #</th>
<th>Fund</th>
<th>Cost Center</th>
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<tbody>
<tr>
<td>2232</td>
<td>169</td>
<td>169121</td>
<td>Gary Stoyka</td>
</tr>
</tbody>
</table>

Expenditure Type: One-Time
Year: 2017
Add'l FTE: []
Add'l Space: []
Priority: 1

Name of Request: Phase IV LENS Groundwater Model

Department Head Signature (Required on Hard Copy Submission): [Signature]
Date: 1-23-17

<table>
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<th>Costs</th>
<th>Object Description</th>
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<td>4333.6612</td>
<td>Puget Sound Watershed Grant</td>
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<td>6630</td>
<td>Professional Services</td>
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<tr>
<td><strong>Request Total</strong></td>
<td></td>
<td><strong>$43,676</strong></td>
</tr>
</tbody>
</table>

1.a. Description of request:
This SBR will provide funding for Phase IV of the Lynden-Everson-Nooksack-Sumas (LENS) groundwater modeling study. Phase IV consists of the construction of the numerical computer model and is the final phase of the project. The first three phases were funded by the WRIA 1 Joint Board. Following the dissolution of that Board in 2016, the County has agreed to provide the funding to complete the model. The LENS groundwater model will provide information that is vital to finding a solution to some of the County’s water resources challenges including finding legal water for agriculture and in dealing with the recent Supreme Court Hirst decision regarding the use of exempt wells in the County. The $143,676 in this SBR will be combined with existing funding in 169121 in the amount of $175,000 for the total Phase IV cost of $318,676. $100,000 of the funding will come from the Whatcom PUD. Whatcom PUD has been awarded this federal EPA grant funding through a grant from the Puget Sound Partnership.

1.b. Primary customers:
Residents and businesses in Whatcom County particularly including the agricultural community and rural landowners, but also including cities, water districts and associates, local tribes, and habitat restoration advocates.

2. Problem to be solved:
The people of Whatcom County face an array of challenges related to water resources including finding legal sources of water for agriculture, water for cities and water districts for development, rural landowners, and finding enough water to support fish. Some of these problems have been elevated to crisis levels with recent legal action by local tribes and several recent court decisions regarding water rights. Whatcom County elected officials have given direction to staff to support finding solutions to these water problems through cooperative engagement with other parties primarily including members of the WRIA 1 Joint Board. The LENS groundwater model will provide insight on the interaction between groundwater and surface water over much of the ag and rural lands of Whatcom County which is information that is crucial to finding solutions to these water problems. The first three phases of the modeling project have been completed and were funded by the WRIA 1 Joint Board. The WRIA 1 Joint Board dissolved in 2016 and thus, is no longer able to fund Phase 4. Completion of the groundwater modeling project is a high priority for many water interests in the County. This SBR provides the remaining funding necessary to complete the groundwater modeling project as soon as possible.

3a. Options / Advantages:
The WRIA 1 Joint Board funded the first three phases of the project; but has since dissolved. The Whatcom PUD was successful in securing a $100,000 grant to cover a significant portion of the remaining funding need. Other local agencies with an interest in water resources issues have been approached to provide the remaining funding, but no funding was identified. Consequently, this SBR seeks the remaining $43,676 from the Flood Fund in order to expedite the completion of the project.

Wednesday, January 18, 2017

Rpt: Rpt Suppl Regular

437
## Supplemental Budget Request

<table>
<thead>
<tr>
<th>Public Works</th>
<th>Natural Resources</th>
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<tr>
<td>Supp ID # 2232</td>
<td><strong>Fund</strong> 169 <strong>Cost Center</strong> 169121 <strong>Originator:</strong> Gary Stoyka</td>
</tr>
</tbody>
</table>

### 3b. Cost savings:

### 4a. Outcomes:
This project will provide information regarding the interaction of surface and groundwater in a large portion of the County facing water resources issues, which will aid in finding solutions to these problems. Phase IV is anticipated to take 12 to 18 months.

### 4b. Measures:
Completion of the model. Use of the model to aid in finding solutions to water resources problems.

### 5a. Other Departments/Agencies:
The County will be working closely with the City of Bellingham, Whatcom PUD, Lummi Nation, Nooksack Indian Tribe, Bertrand WID, and Department of Ecology on this project.

### 5b. Name the person in charge of implementation and what they are responsible for:

### 6. Funding Source:
Flood Control Zone District Fund (169121)
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**TITLE OF DOCUMENT:** 2017 Supplemental Budget Request #2

**ATTACHMENTS:** Ordinance, Memoranda & Budget Modification Requests

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**CLEARANCES**

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<tr>
<th>Purchasing/Budget:</th>
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<th>Executive:</th>
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</table>

**Date Received in Council Office:** 01/31/17

**Agenda Date:** 02/07/17

**Assigned to:** Intro

---

**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 #2 requests funding from the General Fund:

1. To appropriate $150,000 in Assessor to fund Petrogas facility appeal defense.
2. To appropriate $7,000 in Health to fund youth tobacco prevention grant.
3. To re-appropriate $334,836 in Non Departmental to fund Opportunity Council’s Housing Rehab grant.
4. To appropriate $321,036 in the Sheriff’s Department to fund 2017 portion of FY16 Operation Stonegarden grant program.
5. To appropriate $15,646 in the Sheriff’s Department to fund ballistic helmets from COB 2016 JAG program funds.
   - From the Road Fund:
   - To appropriate $1,630,000 to fund Anderson Creek Bridge No. 249 replacement.
   - To appropriate $50,000 to fund Yacht Club Road RR Quiet Zone.
   - From the Trial Court Improvement Fund:
   - To appropriate $9,946 to fund intercom and security system for Superior Court.

---

**COMMITTEE ACTION:**

---

**COUNCIL ACTION:**

---

**Related County Contract #:**

<table>
<thead>
<tr>
<th>Related File Numbers:</th>
</tr>
</thead>
</table>

**Ordinance or Resolution Number:**

---

439
ORDINANCE NO.
AMENDMENT NO. 2 OF THE 2017 BUDGET

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:

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</thead>
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<tr>
<td>Assessor</td>
<td>150,000</td>
<td>-</td>
<td>150,000</td>
</tr>
<tr>
<td>Health</td>
<td>7,000</td>
<td>(7,000)</td>
<td>-</td>
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<tr>
<td>Non-Departmental</td>
<td>334,836</td>
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<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>336,682</td>
<td>(336,682)</td>
<td>-</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>828,518</td>
<td>(678,518)</td>
<td>150,000</td>
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<tr>
<td>Road Fund</td>
<td>1,680,000</td>
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<tr>
<td>Trial Court Improvement Fund</td>
<td>9,946</td>
<td>-</td>
<td>9,946</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>2,518,464</td>
<td>(1,923,518)</td>
<td>594,946</td>
</tr>
</tbody>
</table>

ADOPTED this ____ day of ______________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

( ) Approved    ( ) Denied

Jack Louws, County Executive

Date: ______________________
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<th>Department/Fund</th>
<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>General Fund</td>
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<tr>
<td>Assessor</td>
<td>To fund Petrogas facility appeal defense.</td>
<td>150,000</td>
<td>-</td>
<td>150,000</td>
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<tr>
<td>Health</td>
<td>To fund youth tobacco prevention grant.</td>
<td>7,000</td>
<td>(7,000)</td>
<td>-</td>
</tr>
<tr>
<td>Non-Departmental</td>
<td>To reappropriate funding of Opportunity Council's Housing Rehab grant.</td>
<td>334,836</td>
<td>(334,836)</td>
<td>-</td>
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<tr>
<td>Sheriff</td>
<td>To fund 2017 portion of FY16 Operation Stonegarden grant program.</td>
<td>321,036</td>
<td>(321,036)</td>
<td>-</td>
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<tr>
<td>Sheriff</td>
<td>To fund ballistic helmets from COB 2016 JAG program funds.</td>
<td>15,646</td>
<td>(15,646)</td>
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<tr>
<td>Total</td>
<td></td>
<td>828,518</td>
<td>(678,518)</td>
<td>150,000</td>
</tr>
<tr>
<td>Road Fund</td>
<td>To fund Anderson Creek Bridge No. 249 replacement.</td>
<td>1,630,000</td>
<td>(1,245,000)</td>
<td>385,000</td>
</tr>
<tr>
<td>Road Fund</td>
<td>To fund Yacht Club Road RR Quiet Zone</td>
<td>50,000</td>
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<td>50,000</td>
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<tr>
<td>Total Road Fund</td>
<td></td>
<td>1,680,000</td>
<td>(1,245,000)</td>
<td>435,000</td>
</tr>
<tr>
<td>Trial Court Improvement Fund</td>
<td>To fund intercom and security system for Superior Court.</td>
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<td></td>
<td>9,946</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td></td>
<td>2,518,464</td>
<td>(1,923,518)</td>
<td>594,946</td>
</tr>
</tbody>
</table>
Supplemental Budget Request

Assessor

Status: Pending

Fund 1 Cost Center 300 Originator: KEITH WILLNAUER

Expenditure Type: One-Time Year 1 2017 Add'l FTE □ Add'l Space □ Priority 1

Name of Request: Petrogas Facility Appeal Defense

Department Head Signature (Required on Hard Copy Submission) Date

X

1/30/17

Costs:

<table>
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<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
<tr>
<td>6630</td>
<td>Professional Services</td>
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<tr>
<td></td>
<td>Request Total</td>
<td>$150,000</td>
</tr>
</tbody>
</table>

1a. Description of request:

Petrogas has appealed their 2016 property valuations on two of their Cherry Point Properties. The appeals involve Petrogas’s LPG Import/export Storage Facility and their deepwater Marine Pier (formerly owned by Intalco). They have placed over 245 Million dollars of valuation into controversy. The Washington State Board of Tax Appeals will hear the case. The Whatcom County Assessor’s Office is responsible for the defense.

The Assessor’s Office will contract professional services with specialty in this litigation arena to support the County’s position.

1b. Primary customers:

The effected taxing districts including Washington State, Whatcom County, (including EMS), the Port of Bellingham, the Rural Library District, Fire District #7, Cemetery District #7, and the Ferndale School District.

2. Problem to be solved:

The Assessor’s does not have the available staff resource and expertise to perform the required defense. The negative consequences for substantial valuation reductions and associated tax refunds are significant. Taxpayers will be effected by higher tax bills and diminished service delivery from taxing district budget impacts.

3a. Options / Advantages:

The parties are significantly distant in their initial opinions of value. No reasonable settlement is likely. The scope of damage to taxpayers and taxing districts requires a fully adequate defense.

3b. Cost savings:

The cost savings are estimated to be over $ 400,000.00 in direct taxing district budget revenue and an additional increase in property tax bills of $50.00 for a 250K (median valued) valuation for every Whatcom County property taxpayer.

4a. Outcomes:

The Washington state Board of Tax appeals will deliver it's decision following the cause’s hearings conclusion. This is expected to happen in 2018.

4b. Measures:

The ruling will establish both the outcome and the measure of success.

5a. Other Departments/Agencies:

The Whatcom County Prosecuting Attorney’s Department will be required to provide Deputy Civil Prosecuting Attorney assistance.

5b. Name the person in charge of implementation and what they are responsible for:

Monday, January 30, 2017

Rpt: Rpt Suppl Regular
Supplemental Budget Request

**Assessor**

**Fund 1**  
**Cost Center 300**  
**Originator: KEITH WILLNAUER**

The interim Assessor's Office assigned Deputy Civil Prosecuting Attorney is Daniel Gibson. He will be responsible for legal defense administrative support, strategic input, analysis, and document preparation.

6. **Funding Source:**

County Current Expense
Supplemental Budget Request

Health

<table>
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<tr>
<th>Supp1ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
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<tbody>
<tr>
<td>2237</td>
<td>1</td>
<td>677268</td>
<td>Patty Proctor</td>
</tr>
</tbody>
</table>

Expenditure Type: One-Time

Year 1 2017

Add’l FTE ☐ Add’l Space ☐ Priority 1

Name of Request: Youth Tobacco Grant

X

Department Head Signature (Required on Hard Copy Submission) 1/23/17

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<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<td>Oral Hlth Consolid Cont</td>
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<td>6610</td>
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<td></td>
</tr>
<tr>
<td>Request Total</td>
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</tr>
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</table>

1a. Description of request:

This contract supports strategies that reduce risks for tobacco use. Preventing tobacco initiation in the younger years significantly reduces the likelihood that individuals will use tobacco as adults. The identified strategies will limit youth exposure to tobacco and vapor products, and educate about the harms of using tobacco.

1b. Primary customers:

Reduced exposure to tobacco is primarily targeted to Whatcom County youth, although public education, policy work, and retailer education strategies will benefit all residents of Whatcom County.

2. Problem to be solved:

Prevent tobacco initiation among youth and enhance community participation in youth tobacco prevention and control efforts.

3a. Options / Advantages:

This contract provides dedicated efforts for tobacco prevention and control and is able to address emerging concerns around e-cigarettes and vapor products, an area significantly impacting youth in the county.

3b. Cost savings:

Many models for calculating savings to individuals and taxpayers have been established, but are not estimated at the county level at this time.

4a. Outcomes:

The implementation of prevention strategies will reduce youth exposure to tobacco products, increase the awareness of the harms of tobacco use, and reduce the overall risk for using tobacco products.

4b. Measures:

Short-term measures will focus on rates of youth perceiving harm from tobacco use, and reduced exposure to tobacco products. Long-term measures will focus on actual tobacco use rates, as available in Healthy Youth Survey results.

5a. Other Departments/Agencies:

Health Department staff will deliver services in partnership with local prevention coalitions.

5b. Name the person in charge of implementation and what they are responsible for:

Joe Fuller and Amy Hockenberry, Program Specialists, will oversee the implementation of tobacco prevention programs and services.

6. Funding Source:

Washington State Department of Health

Friday, January 20, 2017
<table>
<thead>
<tr>
<th>Health</th>
<th>Human Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supp ID # 2237</td>
<td>Fund 1 Cost Center 677268 Originator: Patty Proctor</td>
</tr>
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</table>
MEMORANDUM

To: Whatcom County Executive Jack Louws
    And Whatcom County Council Members
From: Suzanne Mildner, Grant Coordinator
Subject: Budget Supplemental, Opportunity Council Grant
Date: January 23, 2017

The attached supplemental request for $334,836 is for the purposes of establishing budget authority in order to pass-through a current grant from the Washington State Department of Commerce to the Opportunity Council. This is for a 3-year grant contract and Subrecipient Agreement that commenced in 2015 and expires in 2017.

The County entered into this agreement in early 2015. Due to a number of delays in getting projects started, the Opportunity Council has only expended a third of this ($500,000) grant. They expect to complete the balance of the housing rehab projects (approximately 20) in 2017.

This project proposed the rehabilitation of up to a total of 30 low-income, owner-occupied housing units over the three-year period. This is a direct benefit project (100% LMI) serving households in greater Whatcom County, excluding the City of Bellingham, as well as households in San Juan and Island Counties.

Please contact me at extension 5211 should you have any questions.

Thank you.
Supplemental Budget Request

Executive

[Suppl ID # 2241]

Fund 1

Cost Center 4276

Originator: Suzanne Mildner

Expenditure Type: One-Time

Year 1 2017

Add'l FTE [ ] Add'l Space [ ] Priority 1

Name of Request: Opportunity Council's Housing Rehab Grant

Department Head Signature (Required on Hard Copy Submission) 1/30/17

Costs:

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<td>$334,836</td>
</tr>
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</table>

Request Total $0

1a. Description of request:

This is an ongoing contract for a pass through grant from the Washington State Department of Commerce through their Community Development Block Grant Program. The grant supports the Opportunity Council's Housing Rehabilitation Program for the benefit of low-income citizens in Whatcom, San Juan and Island Counties. We currently have a Subrecipient Agreement between the County and Opportunity Council.

1b. Primary customers:

Low- and moderate-income residents in Whatcom, San Juan and Island Counties

2. Problem to be solved:

This state grant source is required to pass through the local jurisdiction. The County entered into this grant agreement in early 2015, and it is a 3-year grant contract period ending in June of 2017. Only one-third of the contract funds have been expended thus far, due to a number of delays in getting projects underway. The Opportunity Council expects to complete several more projects in the coming months which will expend the remainder of this funding.

3a. Options / Advantages:

N/A

3b. Cost savings:

N/A

4a. Outcomes:

The Opportunity Council's program will provide a direct benefit to approximately 30 low- and moderate-income households over the course of the contract period. Weatherization and home repair projects will increase home value and energy costs to the customers.

4b. Measures:

Opportunity Council provides ongoing status reports of projects in process. Both the State and the county conduct on-site monitoring visits to Opportunity Council and to project locations to review outcomes.

5a. Other Departments/Agencies:

Opportunity Council and their partner community resource centers in San Juan and Island Counties.

5b. Name the person in charge of implementation and what they are responsible for:

Greg Winter is the Director of Opportunity Council, and Ryan Beld is the Manager of the Housing Rehab Program.

6. Funding Source:

HUD, through the WA State Department of Commerce's CDBG Program

Wednesday, January 25, 2017
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: January 23, 2017
SUBJECT: Supplemental Budget ID# 2234
          FY16 Operation Stonegarden – 2016


Background and Purpose
The U.S. Department of Homeland Security (DHS) Homeland Security Grant Program (HSGP) authorized FY2016 Operation Stonegarden funds of $340,418 to Whatcom County to enhance law enforcement’s preparedness and operational readiness along the international borders of the United States: $120,272 for the Sheriff’s Office and $220,146 for other area law enforcement agencies (sub-recipients).

The Sheriff’s Office will use $19,382 of its allocation to conduct overtime patrols in 2016. The remaining $321,036 will be used in 2017.

Funding Amount and Source

Please contact Undersheriff Jeff Parks at extension 6610 if you have any questions.

Thank you.
Supplemental Budget Request

Sheriff

Expenditure Type: One-Time
Year 1 2017

Name of Request: FY16 Operation Stonegarden - 2017

Department Head Signature (Required on Hard Copy Submission)

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<td>6269</td>
<td>Unemployment-Interfund</td>
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1a. Description of request:
The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) awarded $340,418 to Whatcom County for Operation Stonegarden Grant Program (OPSG) FY2016 to enhance cooperation and coordination among local, tribal, territorial, state, and federal law enforcement agencies in a joint mission to secure the borders of the United States (W.C. Contract #201611036). The Sheriff's Office used $19,382 of the allocation to conduct overtime patrols in 2016 and anticipates using the remaining $321,036 in 2017.

The Whatcom County Sheriff's Office and other law enforcement agencies will utilize OPSG funding to provide enhanced patrols to increase law enforcement presence in maritime and land based border areas targeting illicit activity in Whatcom County, specifically the cross-border smuggling of aliens, weapons, currency, and narcotics.

1b. Primary customers:
Area law enforcement agencies and citizens of Whatcom County through increased capability of law enforcement to secure the international border.

2. Problem to be solved:
Budget authority is required to use remaining OPSG funds in 2017.

3a. Options / Advantages:
OPSG funds are awarded specifically for projects that improve border security.

3b. Cost savings:
Total award $340,418. The Sheriff's Office used $19,382 of the award in 2016 and anticipates using the remaining $321,036 in 2017 as follows: $46,375 for overtime, $6,407 for mileage, $48,108 for equipment, and $220,146 for sub-recipients.

Sunday, January 22, 2017

Rpt: Rpt Suppl Regular 449
Supplemental Budget Request

**Sheriff Operations**

<table>
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<tr>
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<td>1</td>
<td>1003516005</td>
<td>Dawn Pierce</td>
</tr>
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</table>

**Status:** Pending

4a. Outcomes:
Enhanced patrols will be conducted per contract specifications and timelines. Daily Activity Reports will be completed and sent to Border Patrol.

4b. Measures:
The Whatcom County Sheriff's Office and U.S. Border Patrol will monitor projects and expenditures against contract deliverables.

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: January 23, 2017
SUBJECT: Supplemental Budget ID #2236
City of Bellingham 2016 Justice Assistance Grant – Ballistic Helmets

The attached Supplemental Budget requests budget authority to use Edward Byrne Memorial Justice Assistance Grant (JAG) funds from the City of Bellingham Edward Byrne Memorial Justice Assistance Grant (JAG) FY2016 to purchase replacement ballistic helmets for SWAT in 2017. Supplemental Budget ID #2160 was approved in 2016 with award of funds. Helmets will be purchased in 2017.

Background and Purpose
The continued trend of violent attacks on innocent citizens at schools and public venues around the country reaffirms that law enforcement personnel must be prepared and equipped to deal with armed suspects in order to effectively mitigate threats to the public. It is essential that all Whatcom County Sheriff’s Office uniformed personnel have sufficient ballistic protective equipment to protect them from gunfire. Sheriff’s Office SWAT uses specialized helmets that not only provide ballistic protection, but are modified to accommodate hearing protection and communications headgear. The new helmets provide that enhanced capability.

The City of Bellingham has agreed to provide the County $15,646 from the Edward Byrne Memorial JAG FY2016 award to purchase ballistic helmets.

Funding Amount and Source
Funding of $15,646 will be provided by the City of Bellingham. Funds originate from the U.S. Department of Justice Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY2016, CFDA No. 16.738.

Please contact Undersheriff Jeff Parks at extension 6610 if you have any questions.
Thank you.
Supplemental Budget Request

Sheriff Operations

Supp ID # 2236 Fund 1 Cost Center 1003515006 Originator: Dawn Pierce

Expenditure Type: One-Time Year 1 2017 Add'l FTE □ Add'l Space □ Priority 1

Name of Request: SO Grant COB 2016 JAG - Ballistic Helmets - 2017

Department Head Signature (Required on Hard Copy Submission) Date

Costs:

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<td>6320.001</td>
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<tr>
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<td></td>
<td>$0</td>
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</tbody>
</table>

1a. Description of request:

The Sheriff's Office received 2016 Byrne Justice Assistance Grant (JAG) Program funds through the City of Bellingham to purchase and replace ballistic helmets that have exceeded the standard operational life (W.C. Contract #201606036). The helmets are NIJ certified and meet the current .06 Level IIIA standards of protection.

The continued trend of violent attacks on innocent citizens at schools and public venues around the country reaffirms that law enforcement personnel must be prepared and equipped to deal with armed suspects in order to effectively mitigate threats to the public. It is essential that all Whatcom county Sheriff's Office uniformed personnel have sufficient ballistic protective equipment to protect them from gunfire.

The Sheriff's Office is required to provide ballistic protective equipment to uniformed personnel who are subject to occupational hazards that include gunfire/ballistic threats and currently issues ballistic resistant vests and helmets to all deputy sheriffs. The SWAT helmets need to be replaced with specialized helmets that accommodate and integrate with hearing protection/communications gear which is necessary to carrying out their duties during critical missions.

The Sheriff's Office will utilize allocated funds to upgrade current ballistic helmets with specialized helmets for SWAT team members. The current SWAT helmets could be repurposed and issued to other members of the Sheriff's Office.

1b. Primary customers:

Whatcom County Sheriff's Office SWAT team members.

2. Problem to be solved:

Budget authority is needed to use grant funds to purchase ballistic helmets in 2017.

3a. Options / Advantages:

The Sheriff's Office will use grant funds rather than local funds to purchase this ballistic protective equipment.

3b. Cost savings:

Cost savings of $15,646.

4a. Outcomes:

SWAT members will receive specialized helmets designed for their assignment and operational needs.

4b. Measures:

Wednesday, January 18, 2017
## Supplemental Budget Request

**Status:** Pending

<table>
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<th>Operations</th>
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</thead>
<tbody>
<tr>
<td>Fund 1</td>
<td>Cost Center 1003515006</td>
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</table>

SuppID # 2236

### 5a. Other Departments/Agencies:

The City of Bellingham will administer the grant and provide $15,646 to Whatcom County Sheriff's Office to purchase ballistic helmets per the grant agreement.

### 5b. Name the person in charge of implementation and what they are responsible for:

### 6. Funding Source:

$15,646 from City of Bellingham. Funds originate from U.S. Department of Justice Edward Byrne Memorial Justice Assistance Grant (JAG) Program Fiscal Year (FY) 2016, CFDA No. 16.738
MEMORANDUM

To: The Honorable Jack Louws, Whatcom County Executive and The Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Director

From: Joseph P. Rutan, P.E., County Engineer / Assistant Director
James E. Lee, P.E., Engineering Manager

Date: January 20, 2017

Subject: 2017 Supplemental Budget Request
Roberts Road/Anderson Creek Bridge No. 249 Replacement
CRP #915020, Fed Aid No. BROS-2037(106)

Requested Action
Enclosed for your review and consideration is a supplemental budget request for 2017 (see attached Supplemental Budget Request #2239).

Background and Purpose
As included in the 2017-2022 Six-Year Transportation Improvement Program, construction of this project was originally scheduled for the summer of 2018 with the design and permitting work to be completed in 2016/2017. Design and permitting have been completed ahead of schedule, and final right of way certification is anticipated in early February which will allow for this project to be constructed in 2017. Therefore, this supplemental budget request authorizes $1,630,000 of additional expenditure authority (offset by $1,245,000 of grant funding) for replacement of the Roberts Road Bridge No. 249 over Anderson Creek this summer/fall.

Once right of way has been certified, a Local Agency Agreement (LAA) Supplement for obligating the federal construction funds will be submitted to Council for approval.

This project is listed as Item No. 25 on the approved 2017 Annual Construction Program (ACP). The current ACP has sufficient funds to finalize project design and permitting, however additional funds are needed for construction this summer.

Funding Amount and Source
The total project cost, including design and construction, is estimated at $1,936,200. The County has been awarded $1,387,170 in federal Bridge Replacement Advisory Committee (BRAC) Funding for this project with the remaining $549,030 will be from the County Road Fund.

Please contact James Lee at extension 6264 if you have any questions or concerns regarding this request.
Supplemental Budget Request

Status: Pending

Public Works

Fund 108 Cost Center 915020

Expenditure Type: One-Time Year 1 2017 Add'l FTE □ Add'l Space □ Priority 1

Name of Request: Anderson Creek Bridge No. 249 Replacement

Department Head Signature (Required on Hard Copy Submission) Date


Costs:

<table>
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<td>$385,000</td>
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</table>

1a. Description of request:

The project proposes to replace the existing 3-span concrete/timber Bridge No. 249 which carries Roberts Road over Anderson Creek with a prestressed concrete slab single span bridge with reinforced concrete substructure. Whatcom County was awarded federal 2014 Bridge Replacement Advisory Committee (BRAC) funds to replace the Anderson Creek Bridge No. 249 on Roberts Road.

This project is shown in the 2017 Annual Construction Program as line item 25. Construction of this project was originally scheduled for the summer of 2018 with the design and permitting work to be completed in 2016/2017. Design and permitting have been completed ahead of schedule, and final Right of Way certification is anticipated in early February which will allow for this project to be constructed in 2017. This request is to provide additional funding for construction of this project in 2017.

1b. Primary customers:

General public and local residents

2. Problem to be solved:

The existing bridge is structurally deficient and has advanced rot in several of the timber caps. This bridge is the only access road that serves several properties.

3a. Options / Advantages:

The advantage to completing the construction in 2017 is the more immediate removal of a structurally deficient bridge which provides the only access to several properties. The other option is to replace the bridge during the summer/fall of 2018 or 2019. This would result in increased construction costs due to inflation.

3b. Cost savings:

N/A

4a. Outcomes:

The project will be constructed in the summer/fall of 2017.

4b. Measures:

The project will be constructed and structural deficiency rating of the bridge will be removed.

5a. Other Departments/Agencies:

N/A

5b. Name the person in charge of implementation and what they are responsible for:

Friday, January 20, 2017
## Supplemental Budget Request

<table>
<thead>
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<th>Public Works</th>
<th>Engineering Design/Const</th>
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<tr>
<td><strong>Supplemental # 2239</strong></td>
<td><strong>Fund 108</strong></td>
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N/A

6. **Funding Source:**

Road Fund and federal BRAC funding
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MEMORANDUM

To: The Honorable Jack Louws, Whatcom County Executive and The Honorable Whatcom County Council

Through: Jon Hutchings, Director

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director
James P. Karcher, P.E., Engineering Manager

Date: February 7, 2017

Re: 2017 Supplemental Budget Request #2244
Yacht Club Road Railroad Quiet Zone
CRP No. 916008

Please find attached for your review and approval, a supplemental budget request amending CRP No. 916008 - Yacht Club Road Railroad Quiet Zone.

Requested Action
Public Works requests the addition of $50,000 in expenditure authority to proceed with the Yacht Club Road Railroad Quiet Zone capital project.

Project Background
Following direction from the Whatcom County Council on January 24, 2017, Public Works is moving forward with construction to establish a quiet zone railroad crossing at Yacht Club Road. The Yacht Club Road Railroad Quiet Zone appears as Item #15 on the 2017 Annual Construction Program with $5,000 for design. SBR #2244 supplements this project with $50,000 of construction funding.

Funding Amount and Source
The construction cost for the installation of the Additional Safety Measures is estimated at $42,615 for the current design. This request utilizes fund balance, offset by any additional revenues the county may receive for the project. It is likely that the Chuckanut Bay Community Association will be asked by the Whatcom County Council to fund the construction of the “Additional Safety Measures (ASM)” required for a Quiet Zone. An amount of $50,000 is used for the budget supplement due to unforeseen contingencies or minor changes to the current design.

Please contact Joe Rutan or Roland Middleton at extensions 6219 and 6212, respectively, if you have any questions or concerns regarding this topic.
Supplemental Budget Request

Public Works

Expenditure Type: One-Time Year 1 2017 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Yacht Club Road RR Quiet Zone

Department Head Signature (Required on Hard Copy Submission) Date

X

1. Description of request:
   Installation of roadway channelization measures to produce a safer at grade crossing.

2. Primary customers:
   General motoring public, community, Burlington Northern Santa Fe

3. Problem to be solved:
   Mitigate train horn to establish a quiet zone.

4. Options / Advantages:
   Full width railroad crossing arm gates have also been considered but were significantly more expensive.

5. Cost savings:
   Improved safety at the crossing translates to less potential for injury accidents.

6. Outcomes:
   A crossing that is safer than the current configuration will be available and used in consideration of a quiet zone designation from the railroad.

6. Measures:
   Additional safety measures will be recognized through a quiet zone designation by the railroad.

6. Other Departments/Agencies:
   Washington Utilities Transportation Commission, Burlington Northern Santa Fe, Federal Railroad Administration

6. Name the person in charge of implementation and what they are responsible for:
   Joe Rutan - County Engineer

6. Funding Source:
   Road fund balance.
January 23rd, 2017

TO: Jack Louws, County Executive
FROM: David Reynolds, Director of Superior Court Administration
RE: Trial Court Improvement Fund Request

Superior Court is requesting a onetime withdrawal of $9,946.00 from the Trial Court Improvement Account for the purchase an installation of an intercom and security system for Superior Court Departments 1 and 3. The system will provide much needed security outside of the judicial officer’s chambers.

This system and installation have been selected and approved by Facilities Management.

Should you have any questions, please do not hesitate in contacting me at X 5565.
Supplemental Budget Request

Superior Court

<table>
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<tr>
<th>Suppl ID #</th>
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<th>Cost Center</th>
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<td>2243</td>
<td>135</td>
<td>135100</td>
<td>David Reynolds</td>
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Expenditure Type: One-Time
Year 1 2017
Add'l FTE  ❑  Add'l Space  ❑  Priority  1

Name of Request: Judges’ Chambers Intercom System

X

[Signature]

1.23.17

Department Head Signature (Required on Hard Copy Submission)
Date

Costs:

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1a. Description of request:
Purchase and installation of an intercom system and securing entrance to judicial chambers for Superior Court Department’s 1 and 3.

1b. Primary customers:
Department 1 and 3 or the Superior Court.

2. Problem to be solved:
Current access to the hallways outside the Judge’s Chambers is unsecured. On more than one occasion, members of the public have been found loitering in those areas. This creates a significant security concern for the judicial officers and their staff.

3a. Options / Advantages:
We have considered locking the door to this area, however, it is the only access to the back stairwells and must remain accessible in case of an emergency. After consultation with Facilities Management, it has been determined this is the best option as it places the Judges in control of who has access, as well as will automatically unlock in case of an emergency.

3b. Cost savings:
There are no specific cost savings

4a. Outcomes:
Outcome will be delivered upon completion of the project.

4b. Measures:
Outcome will be achieved when this back hallway is secured from public access

5a. Other Departments/Agencies:
N/A

5b. Name the person in charge of implementation and what they are responsible for:
Mike Russell in Facilities Management will be the Project Manager

6. Funding Source:
Trial Court Improvement Funds
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
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<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
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</table>

**TITLE OF DOCUMENT:**
Ord amend WCC 2.03, 2.22, & 2.104 to Prohibit Appts. of Political Candidates

**ATTACHMENTS:**

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( ) NO</td>
<td>Requested Date:</td>
<td></td>
<td></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.)

Ordinance amending Whatcom County Code 2.03, 2.22, and 2.104, to prohibit the appointment of declared political candidates to boards, committees and commissions and requiring resignation from the ethics commission and salary commission for members seeking an elected position within the County

**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).*
ORDINANCE NO. _________

AMENDING WHATCOM COUNTY CODE 2.03, 2.22 AND 2.104, TO PROHIBIT THE
APPOINTMENT OF DECLARED POLITICAL CANDIDATES TO BOARDS, COMMITTEES
AND COMMISSIONS AND REQUIRING RESIGNATION FROM THE ETHICS
COMMISSION AND SALARY COMMISSION FOR MEMBERS SEEKING AN ELECTED
POSITION WITHIN THE COUNTY

WHEREAS, Whatcom County relies on dozens of boards, committees and
commissions to provide financial oversight, policy recommendations and technical advice; and

WHEREAS, many Whatcom County residents generously volunteer their time on
boards, committees and commissions, providing much needed expertise and community input; and

WHEREAS, boards, committees and commissions can provide meaningful
government experience and may inspire individuals to serve their communities in elected
positions; and

WHEREAS, such experience can also be politically valuable for those seeking elected office; and

WHEREAS, appointing declared candidates to boards, committees or commissions
could be construed as an endorsement by the County government of the candidate; and

WHEREAS, the County Council strives to abide by the intent and legal requirements
of RCW 42.17A.555 (Use of public office or agency facilities in campaigns); and

WHEREAS, the County Council does not want such appointments to be perceived as
an endorsement by the County government of any candidate for an elected office; and

WHEREAS, furthermore, members of Ethic Commission, which provide oversite of
elected officials, must not be in a position where they could be expected to provide ethical
oversight on themselves or their political opponents; and

WHEREAS, in addition, members of the Salary Commission, which decide
compensation for elected officials, should likewise not be in a position to influence their own
future compensation.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Code 2.03, 2.22 and 2.104 are amended as shown in Exhibit A.

ADOPTED this ____ day of _________, 20__.

ATTEST:

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

(Current Chair's Name), Council Chair

WHATCOM COUNTY EXECUTIVE
APPROVED AS TO FORM:

(Current Executive's Name), County

Civil Deputy Prosecutor
Executive

( ) Approved ( ) Denied
Date Signed: ______________________
EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 2 ADMINISTRATION AND PERSONNEL

Chapter 2.03
BOARDS AND COMMISSIONS

2.03.080 Vacancies on citizen boards, committees and commissions.
A. The clerk of the council shall cause to be compiled and published annually a listing of vacancies and anticipated vacancies on all citizen boards, committees and commissions, within the appointive jurisdiction of both the council and the executive.

B. The listing shall state the title and term of office of each position, residency requirements (if any), the appointing authority, and an address and telephone number for obtaining further information or for making applications. The listing shall also include a brief description of the duties of each position and information on when the regular meetings of the body in question are held.

C. The listing shall be posted in conspicuous places in the Courthouse, provided to all county councilmembers, public libraries and city halls in the county, and be made available to the public and news media at no charge.

D. Persons expressing an interest in applying for appointment to a council-appointed position on a board, commission or committee shall be given an application form which they must complete and file with the clerk, giving their name, address, telephone number, occupation and relevant qualifications. The applications shall be kept on file in the clerk’s office.

E. Persons expressing an interest in applying for appointment to an executive-appointed position on a board, commission or committee shall be given an application form which they must complete and file
with the executive’s office, giving their name, address, telephone number, occupation and relevant qualifications. The applications shall be kept on file in the executive’s office.

F. In fulfilling the obligations of this section, the clerk shall seek the cooperation of the executive and may accomplish his/her obligations through joint action with the executive’s office.

2.03.090 Qualifications.
To qualify for appointment by the council and/or executive to fill any vacancy on a board, committee or commission, a person shall be a qualified registered voter resident of the district, agency, or group he or she is appointed to represent on a specific board, committee or commission meeting all of the qualifications of Section 4.20 of the Whatcom County Charter. Individuals who have declared candidacy for a paid elected office within the county are not eligible for appointment while they are a candidate, but shall be eligible for reappointment to additional terms, as allowed by the Whatcom County Code, to the same board or committee they were on prior to their declaration of candidacy.

. . . . .

Chapter 2.22

WHATCOM COUNTY COMMISSION ON SALARIES FOR ELECTED OFFICIALS

. . . . .

2.22.040 Membership – Term of office.
A. The commission shall consist of 10 members. Six members shall be selected by lot and appointed and confirmed as provided in subsection B of this section. The remaining four members shall be appointed and confirmed as provided in subsection C of this section. The members of the commission may not include any officer, official, candidate for a paid elected office within the county, or employee of the county or any of their immediate family members. For the purposes of this section, “immediate family member” means parent, spouse, domestic partner, sibling, child, or dependent relative of an officer, official, or employee of the county, whether or not living in the same household.

B. Six of the 10 commission members shall be selected by lot by the county auditor from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission. The county auditor shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection if a person declines appointment or if, following the person’s appointment, the person’s position on the commission becomes vacant before the end of the person’s term of office. The county auditor shall forward the names of persons selected under this subsection to the county executive who shall appoint those persons to the commission. Appointments made by the county executive shall be confirmed by the county council.

C. Four of the 10 commission members shall be selected and appointed by the county executive and confirmed by the county council. The members under this subsection shall be residents of the county and
shall all have experience in personnel management. Of these four members, one member shall be selected from each of the following fields of expertise: business, professional personnel management, legal profession, and organized labor. The county council may confirm or reject appointments made under this subsection. If the council rejects an appointment, the county executive shall promptly appoint another person meeting the requirements of this subsection.

D. The members of the commission shall serve two-year terms, with their terms ending on December 31, 2014. Thereafter, all members shall serve for two years. No person may be appointed to more than two terms. Members of the commission may be removed by the county executive, with the approval of the county council, only for cause of incapacity, incompetence, neglect of duty, malfeasance in office, or for a disqualifying change of eligibility. Upon a vacancy in any position on the commission, a successor shall be appointed and confirmed to fill the unexpired term. The appointment and confirmation shall be concluded within 30 days of the date the position becomes vacant and shall be conducted in the same manner as the original appointment. (Ord. 2016-026 Exh. A; Ord. 2012-008 Exh. A).

*****

Chapter 2.104

CODE OF ETHICS

*****

2.104.090 Membership – Term of office.
A. The term of each member shall be four years without compensation, except that two of the new members appointed shall serve an initial term of two years, as determined by the drawing of lots.

B. No person shall be eligible for appointment to more than two four-year terms, except as provided in subsection (C) of this section.

C. An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he/she succeeds, but shall be eligible for appointment to two full four-year terms thereafter only if one year or less remains in the term he/she is appointed to fill. Any vacancy occurring on the commission shall be filled within 60 days in the manner in which that position was originally filled. A vacancy shall not impair the powers of the remaining members to exercise all the powers of the commission.

D. Any member who declares candidacy for elected county office must immediately resign their membership of the commission.