### TITLE OF DOCUMENT:
Birch Bay Community Park DRAFT Master Plan

### PRELIMINARY INFORMATION:
- **CLEARANCES:**
  - **Originator:** R.L. 02/08/2017
  - **Division Head:**
  - **Dept. Head:** M.M. 02/08/2017
  - **Prosecutor:**
  - **Purchasing/Budget:**
  - **Executive:**

### ATTACHMENTS:
- **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.)

Parks will present a brief power point slide show summarizing the work that has been completed in developing the draft Birch Bay Community Park Master Plan. This presentation will include a discussion of the planning process, community outreach and stakeholder coordination. Park staff will also be available to answer questions council members may have regarding details of the proposed plan.

### COMMITTEE ACTION:

### COUNCIL ACTION:

### RELATED INFORMATION:
- **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: Michael McFarlane
DATE: February 23, 2017
RE: Birch Bay Community Park Master Plan

Over the last six months Parks staff has been working on a master plan for Birch Bay Community Park. The effort has included a site inventory, cultural resources review, three community workshops, development of alternative plans and development of a draft master plan.

Parks would like to provide a short presentation to the Council in a work session format to describe the work that has been completed and review the draft proposal. This presentation will include a power point slide show describing the planning process including community outreach and stakeholder coordination. Park staff will also be available to answer questions council members may have regarding details of the proposed plan.

The draft plan has been submitted along with a SEPA checklist to Planning & Development Services and a threshold determination is expected in the next few weeks.

Please contact Rod Lamb at extension 5858 or 360.303.3399 if you have any questions or would like additional information.

Encl.
Whatcom County Council Agenda Bill
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Michael McFarlane
DATE: February 27, 2017
RE: Birch Bay Community Park Master Plan (DRAFT)

On March 7th Parks staff will address the Council and present the draft Birch Bay Community Park Master Plan. The attached plan was created over the course of several months and included a site inventory and analysis, public outreach and preliminary design.

The draft plan summarizes the planning process and includes a site plan, key program elements, estimated construction costs and a proposed development phasing plan. Copies of this plan will be provided to council members prior to the scheduled work session on March 7th.

Please contact Rod Lamb at extension 5858 or 360.303.3399 if you have any questions or would like additional information.

Encl.
Birch Bay Community Park Master Plan (DRAFT)
Birch Bay Community Park
Master Plan Report

Whatcom County Department of Parks & Recreation

Robert W. Droll, Landscape Architect, PS

February 24, 2017
# Table of Contents

Executive Summary ................................................................. 2
Site Analysis .................................................................................. 3
Public Involvement Summary ...................................................... 7
Master Plan Improvements Summary .......................................... 11
Master Plan Estimate of Probable Project Development Costs by Phase ................................................ 16
Master Plan Estimate of Probable Annual Maintenance Costs by Phase ................................................... 17

## List of Tables

Table 1 Project Development Costs by Phase ................................ follows page 16
Table 2 Annual Maintenance Costs by Phase ................................... follows page 17

## List of Figures

Figure 1 Vicinity Map ................................................................................ 3
Figure 2 Site Analysis .......................................................................... follows page 6
Figure 3 Recreation Opportunities for Parking ................................. 10
Figure 4 Preferred Master Plan ......................................................... follows page 14
Figure 5 Site Cross Sections .............................................................. follows page 14
Figure 6 Master Plan Phasing .............................................................. 17

## Appendices

Appendix A ................. Master Plan Estimate of Probable Project Development Costs by Phase
Appendix B ................. Master Plan Estimate of Probable Annual Maintenance Costs by Phase
Appendix C .............. Ongoing Cultural Resources Review at the Proposed Whatcom County Birch Bay Community Park
Appendix D .................. Public Meeting Comments Summary
Appendix E .................. Utilities Map & Stormwater Memo
Appendix F .............. Alternatives Considered
Acknowledgements

Special thanks to all those who attended the Birch Bay Community Park Master Plan meetings!

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Steering Committee Facilitators
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Bob Droll, ASLA, Robert W. Droll, Landscape Architect, PS (RWD)
Garth Baldwin, Drayton Archaeology
Rhett Winter, PE, Wilson Engineering, Inc.
Executive Summary
Whatcom County residents have long recognized the need for a public park on Birch Bay to fulfill recreation demand as evident in Whatcom County’s Comprehensive Parks, Recreation and Open Space Plan 2016. Residents have been working diligently to assure this need is fulfilled before all opportunities slip away and have communicated this need to Whatcom County decision-makers. When this property became available, the Whatcom County Council and Whatcom County Parks and Recreation Staff moved quickly to acquire this property with Conservation Futures Program Funding for the sole goal of providing support facilities for public enjoyment of Birch Bay aquatic and tideland resources. With the property acquired, Whatcom County sought to define the Program Elements, understand the site’s and region’s influencing considerations, examine master plan options, develop a consensus based Preferred Master Plan, and produce a phased approach to responsible development of this Birch Bay waterfront property.

The master plan process included: a design survey, cultural resources analysis, site inventory and analysis, program development, development of master plan options, refinement of the preferred master plan option, preparation of cost estimates and a phasing plan. The Preferred Master Plan integrates public feedback into its recommendations and works to propose enhancements compatible with Birch Bay’s unique history and identity. Over three months, three Steering Committee Meetings and three Public Meetings/Workshops were held to facilitate dialogue with the public and collect feedback. In addition, the public had the opportunity to comment via the Whatcom County’s website. Through a thoughtful, respectful, and fun process, participants came to agree on the Program Elements, gained an understanding of the site’s opportunities and constraints, and finally arrived at a consensus on a Preferred Master Plan.

Birch Bay Community Park is envisioned to be implemented in three phases over a span of three to eight years or as funding becomes available. Implementation of Phase 1 provides the park primary infrastructure framework to support recreation opportunities offered by Birch Bay. Phase 1 improvements include site access, frontage improvements, on-site parking, restrooms, central walk, information kiosk, Birch Bay Drive crosswalk, accessible ramp and steps to the beach, screen planting, and other site amenities. Phase 1 Estimate of Probable Cost (full project development costs) totals $3,532,300. Annual maintenance cost for Phase 1 totals $90,970.

Phase 2 implementation finishes the improvements on the south side of the Central Walk; Open Field Play and Special Event Hosting Space, Multi-Purpose Shelter/Performance Pavilion, Landscape Improvements, and Site Amenities. Estimate of Probable Costs for Phase 2 improvements totals $609,100. Annual Maintenance Cost for Phase 1 and 2 is projected to be $108,000.

Improvements in Phase 3 will finish the Preferred Master Plan vision. Phase 3 improvements include Open Field Play and Special Event Hosting Space, Nature Play, Landscape Improvements, and Site Amenities. Estimate of Probable Costs for Phase 3 improvements totals $255,600. Annual Maintenance Cost for Phase 1, 2 and 3 is projected to be $109,540.

Birch Bay Community Park Preferred Master Plan can be described as supportive, balanced, flexible, simple, and responsive. Supportive is an appropriate adjective because the Master Plan acknowledges the largest physical portion of the park and the recreation opportunities associated with the waters and tidelands of Birch Bay, are supported by parking facilities, restrooms, wash-down showers, event hosting areas, and open space. After working through a spirited discussion between parking capacity advocates and open park land advocates, public meeting participants found a balance. Parking capacity advocates
understood paving the entire park would still not address the full demand for parking, while open park land advocates certainly understood limited parking would create unintended consequences on, and off-site. They all concurred the Preferred Master Plan proposed two-thirds of the upland site is unpaved parkland and one third is proposed for paved surfaces (sidewalks and parking). A balance was further acknowledged when it was understood a portion of the parking could be temporarily programmed for recreation opportunities that required a hard surface such as court games, a three-wheel race course, or a model car race.

Flexibility is evident by the park serving passive and active recreation needs in a variety of shapes and forms. Open Field Play can function as a Frisbee grounds on Thursday. On Friday volunteers are setting up for Roll Back Weekend, and on Saturday the vintage vehicles are on display. On Monday folks are having lunch under the protection of the Multi-Purpose Shelter/Performance Pavilion (hereinafter Pavilion); on Wednesday at noon the military band plays for an hour; and on Saturday evening, a Blaine-Birch Bay Idol competition is being held just before the Family Movie Nights program begins. These types of facilities are simple, but very flexible in their capability to expand/contract/adjust to the needs of average daily use and to those of Special Events. The size, type, and location of Program Elements has been generated and confirmed by public meeting attendees to be responsive to the needs of the public and to the overall goals outlined in the Whatcom County Comprehensive Parks, Recreation and Open Space Plan.
Site Analysis (see Figure 2)

Previous/Current Land Use

This site was originally a farm, then developed as a vacation resort known as Edgewater Resort with individual cabins located along each loop road, a Commons building, and a storage building, both were located front and center of the site. Whatcom County purchased the property in 2014 for park development with Conservation Futures Program funding (RCW 84.34.200 & Whatcom County Code (WCC) 3.25).

The site is presently undeveloped and is programmed for temporary special events by the Blaine-Birch Bay Park & Recreation District 2, but maintained by Whatcom County Parks and Recreation Department (hereinafter Parks). With the permission of Parks, this site has served a staging area for Community, Chamber, and Birch Bay-Blaine Parks & Recreation District recreation events (Kite Festival, Sandcastle Competition, Roll Back Weekend, Birch Bay Days, etc.) and they have high hopes this site can be developed to continue hosting of these events, and meet a wide range of recreation opportunities for the Birch Bay Community and their visitors.

Size & Configuration:

Birch Bay Community Park is composed of one parcel (Parcel 400130090326), yet is functionally separated into two portions by Birch Bay Drive. The upland portion of the parcel totals 3.6 acres in a roughly square, polygon shape, and is located east of Birch Bay Drive. The tideland portion, located west of Birch Bay Drive, totals approximately 8.0 acres, and is in an asymmetrical rectangular configuration.

Topography & Existing Conditions:

Birch Bay Community Park (the upland parcel) is characterized by a wooded 1:1.5 slope forming the east property edge. West of this slope’s toe is a relatively flat area dominated by elevation 12. Two asphalt one-way loop roads merge in the middle of site. This level area is intermixed with concrete foundation remnants (from the Edgewater Resort cabins) and turf grass in poor condition. A six-foot chain link fence with one vehicle swing gate is located along the north property line. A four-foot chain link fence is located along the south property boundary, however, the fence is offset 4-7’ north of what appears to be the south property boundary. Several jersey barrier wall sections approximately define the western property edge. The site access is in the middle of the frontage and is gained by an opening in the jersey barriers and a temporary gate system. Citizen verbal accounts confirm this site experiences minor flooding on occasion. A Design Survey was performed, but no Boundary Survey was conducted during this planning effort.
A detailed overview of the site’s topography can be found in Appendix C Ongoing Cultural Resources Review at the Proposed Whatcom County Birch Bay Community Park.

**Zoning:**
This property is zoned RC; WCC Chapter 20.64, Resort Commercial District. Whereas Birch Bay Community Park is identified for development in Whatcom County’s Comprehensive Parks, Recreation and Open Space Plan 2016, the development of this public park is a permitted land use in the RC Zoning District (WCC 20.64.010.055(1)).

**Utilities:**
Water service is provided by Birch Bay Water and Sewer District. A water meter is located in the middle of the site adjacent to Birch Bay Drive. Sewer service is provided by Birch Bay Water and Sewer District. There are three side sewers that serve the site; one near the north boundary, one near the south boundary, and one mid-way. Gas is provided by Cascade Natural Gas. The gas main is on the east side of Birch Bay Drive. Power is provided by Puget Sound Energy. The main power lines are aerial and on the west side of Birch Bay Drive. There is a primary power pole on the west side of the road near the middle of the site. There was, but no longer a secondary pole on the east side also near the middle of the site that provides service to the site. There are also two additional secondary poles on site; one to the north and one to the south. Cable TV, internet, and telephone are provided by Comcast. Additional options may available. The aerial communication lines have the same configuration as the power since they are on a shared pole. A map of existing utilities is attached as Exhibit E.

**Recreation:**
Although Whatcom County owns Birch Bay Community Park, and Parks manages and maintains the park; the property is located within the Blaine-Birch Bay Park & Recreation District 2. The primary recreational focus and visitor attraction is Birch Bay with its wide and expansive tide flats and relatively sheltered waters.

**Soils:**
The NRCS website lists the soils for the site as predominantly Neptune very gravelly sandy loam and a portion along the east boundary as Whatcom Silt Loam. These are hydrologic soil groups A and C, respectively. No on-site geotechnical work has been completed to verify the items outlined in the Site Suitability Criteria for siting infiltration systems. Refer to Appendix C Ongoing Cultural Resources Review at the Proposed Whatcom County Birch Bay Community Park for a description of the site’s soils and geology.

**Stormwater:**
Birch Bay Community Park is located in the Central Reaches as defined in the Birch Bay Central South Subwatershed Master Plan prepared for Birch Bay Watershed and Aquatic Resources Management District. The Birch Bay Central South Subwatershed Master Plan indicates that there are no stormwater conveyance systems in the vicinity of the proposed Birch Bay Park and that fecal coliform is a pollutant of concern in the bay. The lack of infrastructure likely results in localized flooding. Utilizing permeable pavements and other Low Impact Development (LID) techniques to manage stormwater for the proposed design may be a possibility given that the soils are conducive to infiltration. The design would open up the soils and protect them from fouling, thereby restoring their ability to infiltrate stormwater. Infiltrating stormwater will also help reduce fecal coliform pollution, as it is attenuated in the soil rather than washing into the bay. There is no known stormwater conveyance infrastructure that serves the site.

**Vegetation:**
Douglas fir and Western red-cedar are the dominate overstory trees found along the eastern slope of the site. The understory vegetation of the eastern slope has been partially disturbed and blackberries are
evident along the edges; a continuous native understory plant community is not evident. The level of portion of the site is composed of turf grass which is in poor condition. The tideland portion of the site is beach sand/silt: no vegetation growth is evident.

**Critical Areas**

Review of the Whatcom County Critical Areas Ordinance Maps discloses the following:

- **Wildlife Habitat Conservation Areas**: the tidelands portion of the site is mapped as HCA 3-Habitats and Areas Associated with a State Priority Species and HCA 4-Commercial and Recreational Shellfish Areas. The upland portion of the site appears to be outside of any Habitat Conservation Area.

- **Wetlands**: the upland portion of the site is mapped as Developed. Although no wetland delineation was performed; cursory review of the site finds no wetland indicators. There may be wetland buffers that may affect the southeast corner of the site.

- **Critical Aquifer Recharge Areas**: the site is mapped as a High Aquifer Susceptibility area. The High Susceptibility designation for the site has no impact on the stormwater infiltration/permeable pavement design. This designation applies no further regulations on the development beyond meeting the stormwater regulations which are already protective of groundwater.

- **Geologically Hazardous Areas**: Whatcom County mapping indicates this site has no landslide hazards, is located within a low-moderate Liquefaction Susceptibility, mapped as a C-D Potential for Enhanced Ground Shaking, and no susceptibility for Volcanic Hazards. Birch Bay was not assessed for Tsunami hazards, however given the tidelands and uplands low gradient and the fact that Whatcom County Division of Emergency Management is installing a Tsunami Warning Siren on a seventy-foot pole on this park site, it reasonable to conclude this site is exposed to Tsunami events.

- **Flood Hazard**: FEMA Flood Insurance Rate Maps indicate this site is subject to Coastal Floods at an elevation of 10.0. The Berm Trail’s 90% Design Drawings indicate the top of the Berm Trail will be constructed at a Storm Surge elevation of 14.25 from STA 32+00 to 47+00 which covers this site’s frontage and on to the north. When constructed, the Berm Trail should provide some level of flood protection for this site; it is unknown as to whether or not FEMA maps will be modified accordingly.

**Shoreline Master Program**

This site is within 200 feet of Birch Bay and is therefore subject to the Whatcom County Shoreline Master Program (WCC Chapter 23), which indicates the upland portion of this site is designated Urban Resort, whereas the tidelands are designated Urban Conservancy. Since Birch Bay Community Park is a Water-Oriented Recreation park, Birch Bay Community Park would be considered a permitted use under WCC Chapter 23.

**Cultural Resources:**

Cultural Resources are found on this site and have influenced site planning efforts. Refer to Appendix C _Ongoing Cultural Resources Review at the Proposed Whatcom County Birch Bay Community Park_ for a summary assessment of Cultural Resources. The results from this document indicates the probability of encountering Cultural Resources is High along the front, and in the middle of the site, and Moderate along the southwest and northeast thirds of the site.

**Adjacent Land Use**

Adjacent land use to the north consists of a single family home and a small Recreational Vehicle/Mobile Home community (all are at one level). Sea Links at Birch Bay, a single family planned community borders the eastern property edge. Golden Tides Condos, a one level residential development, borders the
Birch Bay Community Park
Whatcom County Parks & Recreation Department

Site Analysis

Site Data
- Size: 3.6 Acres, plus 8 acres Tideland
- Zoning: RC-Resort Commercial - Public Parks are Permitted Uses
- Water & Sewer: Birch Bay Water & Sewer District
- Gas: Cascade Natural Gas
- Power: PSE
- Communications: Comcast
- Recreation: Blaine-Birch Bay Park & Recreation District 2
- Soils: Neptune Very Gravelly Sandy Loam & Whatcom Silt Loam

"The Berm Trail" w/ Crosswalk to Birch Bay Community Park

Birch Bay Drive 2 Lane Urban Collector Arterial, Regional Bike Route (East/West Route)

Robert W. Droll, Landscape Architect, P.S.
8/10/2006
south. Birch Bay Drive forms the western property edge; no development exists on the Tideland portion of this Whatcom County property. Adjacent properties are zoned Resort Commercial District.

**Views:**
Western views of Birch Bay are without question the most desirable, and the proposed plan protects these by placing the restroom, pavilion and vehicular parking toward the eastern half of the site. Views of the RV/Mobile Home community to the north are partially screened by overstory trees and understory shrubs. Views to the east up the slope to single family residences in Sea Links at Birch Bay are screened by the slope, and its overstory trees; some screening augmentation should be considered. Views to the south are of single level residential units in Golden Tides Condos. Residents of Golden Tides Condos have expressed concerns over losing their views of the park and especially Birch Bay, therefore selective and partial screening of these units should be carefully scrutinized in final design with an emphasis on considering views from these units.

**Transportation:**
All modes of transportation to this site are via Birch Bay Drive, a two lane Urban Collector Arterial and Regional Bike Route. Birch Bay Drive in its present condition along this site’s frontage offers a widened paved and unpaved shoulder often functioning as parallel and pull-in parking for beach access. Whatcom County Public Works calls for frontage improvements to comply with Standard Drawing 505.D-1. These improvements may include minor road widening, curb/gutter, planter strip, a five-foot sidewalk and stormwater treatment.

Hosting of Special Events at the park have shown southbound left turns from Birch Bay Drive entering, and southbound/northbound turns exiting the park during heavy traffic volumes have proven to be difficult creating backups and delays. Although this park is presently closed daily, except for Special Events, citizens report average daily site access should not be an issue, except during hot summer weekends. A traffic impact analysis should analyze volumes and anticipated turning movements to determine what, if any, traffic mitigation may be necessary with the development of this park.

Whatcom Transit Authority (WTA) provides transit service along Birch Bay Drive via Route 55. Two transit stops will serve Birch Bay Community Park: Stop ID 5568 to the north and Stop ID 5563 to the south. Although more coordination with WTA is needed, the proposed plan includes a new bus stop for the northbound route. This new service location may replace an existing stop, or be an addition to the two existing bus stops.

**Law Enforcement and Fire Protection**
Law Enforcement for this site is provided by Whatcom County Sheriff (360.778.6600). Fire Protection is provided by Fire Protection District #21, locally known as North Whatcom Fire & Rescue (360.318.9933).

**Political:**
This site is served by the elected County Council, Port of Bellingham, and PUD Commissioners of District 3.
Public Involvement Summary

Birch Bay Community Park Master Plan is a conceptual design document that generally describes and guides the future design, management, and development of this important park resource. Its preparation included a robust public process element to ensure that the needs of the public are met while preserving the ecological function and environmental quality of the site and while complying with Whatcom County’s policies, budget realities, and maintenance limitations.

When Parks engaged in the public participation for Birch Bay Community Park Master Plan, it did so with specific management objectives designed to improve its outcomes. These objectives are: make the purpose clear, commit to the process, provide adequate capacity and resources, focus on implementation, and commit to listening to public input. The public’s input and guidance throughout the Master Plan process was paramount in the attempt to fulfill these objectives.

Three Steering Committee Meetings and three Public Meetings were conducted to gather public input and gain master plan consensus. All three public meetings were held at Birch Bay Bible Community Church, 4460 Bay Rd., Blaine, WA. A summary of the public comments can be found in Appendix E. A summary of the Public Meeting findings and outcomes are as follows.

Birch Bay Community Park Master Plan Steering Committee Meeting 1, July 13, 2016

The steering committee discussed the best and broadest methods of notifying the public of the master process and meeting dates. It was decided the County’s website and social media pages, local newspapers, and interested individuals email list would likely produce the best turn out. Other discussion items included Grant funding opportunities, outreach to elected officials, utility needs to accommodate various functions envisioned at the park (water, electricity etc.), security cameras, and why the park cannot include a community center building because of specific Conservation Futures Program funding restrictions.

Birch Bay Community Park Master Plan Public Meeting 1, August 6, 2016

Public Workshop 1 commenced with the statement of Project Goals and anticipated Outcomes, a description of the Master Plan Process, an invitation for the public to be involved in the Master Planning Process, a clear description of the means by which the Public can offer their input, an overview of the site’s influencing characteristics (Site Analysis), a list of Potential Program Elements, a list of Special Events hosted on the site, and an overview of the Project Schedule.

Attendees formed four small discussion groups to generate, review, and comment on their needs, concerns, aspirations, observations, and ideas for Birch Bay Community Park. All of the groups arrived at a general consensus on the following Program Elements:

- Open and flexible space/staging area for community events/lawn areas
- Parking
- The “Beach” was the real draw for residents and visitors; protection of views to Beach and access and an ADA Route to the Beach was important
- Restrooms
- Picnic Shelter
- An Amphitheatre/Performance Space
- Address multi-generational interests
- Picnic opportunities
- Low Impact Development
- Outdoor wash-off showers
- Shade
- Environmental and Cultural Interpretation opportunities
- Safe vehicular & pedestrian access

The following Program Elements were discussed as site plan considerations, but no overall consensus on their definite inclusion was reached.
Attendees agreed walking was the most popular recreational activity in the community and facilities such as restrooms, drinking fountain, open space, tables, etc. in this park could enhance this experience. All agreed parking was necessary, but the amount of parking was in dispute with some asserting that this park is small and should not be consumed with pavement (the total number of parking stalls being debated was roughly 100-200 stalls). Others voiced that the real park was the tidelands and this parkland should provide parking support so the maximum amount of people could enjoy the tidelands as parking up and down Birch Bay Drive was in such short supply during the popular summer season. Many agreed open lawn areas with some shade trees and picnic tables was needed, while others pointed out that the open lawn areas and support facilities need to be sized to accommodate special events such as Kite Festival, Sandcastle Competition, Roll Back Weekend, and Birch Bay Days.

Based upon comments from Public Meeting 1, RWD prepared two Master Plan Concepts, which were reviewed by the Steering Committee and the public in Public Meeting 2.

**Birch Bay Community Park Master Plan Steering Committee Meeting 2, August 30, 2016**

Steering Committee focused on specifics of the Master Plan Concepts, and wanted to address the following:

- Inclusion of Family Friendly stalls in the Restroom
- Street improvements to reduce traffic congestion
- Using / Concern about the facility becoming a Park & Ride
- Wanted to consider including fold down chairs in the restroom stalls to facilitate changing into/out of beach clothes
- Accommodate emergency access from north.
- Discussion of a retaining wall to expand usable space
- Idea to include BBQ pits
- Installing park boundary signs

**Birch Bay Community Park Master Plan Public Meeting 2, August 31, 2016**

Public Meeting 2 opened with RWD reviewing the findings of Public Meeting 1 and presenting Master Plan Options A and B. Attendees formed four groups and were tasked with reviewing and commenting on all aspects of both Master Plan Options. Each Group presented their findings and recommendations followed by an open discussion on preferences. A consensus was reached on the following:

Concept B appeared to meet most of the Attendees needs. Attendees also preferred the following Program Elements:

- Preferred location of Restroom
- Park Host
- Nature Play
- Flexible Open Space
- Central Walk to Beach
- Outdoor Wash-off Showers
- Adult Fitness Stations
- Multi-Purpose Shelter
Attendees offered the following comments:
- Too much parking, not enough flexible open space
- Asked RWD to look into angled parking to create more parking in less space
- Hard Sport Courts take up too much room: consider climbing wall
- Many preferred Basketball Court to accommodate Teen recreation
- Golden Tide homeowners prefer Concept A asserting the Multi-Purpose Shelter is too close to their homes resulting in blocked views, noise and a disruption to their lifestyles
- Parking to be multi-purpose
- Shower off to one side, not in center
- Family sized/Uni-gender Restrooms
- May consider a Right-in/Right-out turning movement, and/or retaining an officer, or flagger to facilitate turning movements at the site access during Special Events
- Need to accommodate Teen recreation

Both Concepts were well received, however the majority of attendees preferred Concept B as it located the Multi-purpose Shelter away from the center of the property. The concern being during Special Events the center walkway leading to the beach would be blocked. Although both Concepts showed about the same amount of parking; many asserted that there was too much parking which would not be used the majority of the time. While others asserted the Beach (at low tide) has a huge capacity to accommodate a large number of people, the limiting factor is public parking, and this site appears to be the only public site to address the parking issue. Many felt both Concepts provided the balance between parking and recreation space. There was discussion of an overflow parking on turf grass open space.

Based upon these public comments and Parks’ guidance, RWD refine Concept B which as presented to the Steering Committee.

**Birch Bay Community Park Master Plan Steering Committee Meeting 3, Oct. 16, 2016**

The Steering Committee identified the following for further consideration.
- BBQ facilities locating them near fixed picnic tables and also a BBQ ash container
- Multi-purpose shelter needs water, power and sewer hookup (and perhaps stubbing out utilities from the restroom for an undetermined future structure).
- Gated entry
- Movie night
- Consider design strategies that are identified in or supported by Whatcom County’s “Committing Whatcom County to Adopt A ‘Healthy Planning’ Approach” (Resolution 2015-038)
Birch Bay Community Park Master Plan Public Meeting 3, October 18, 2016

Public Meeting 3 began with an overview of the Park Master Planning Process to date along with a presentation and open discussion of the Preferred Master Plan. While working through the Preferred Master Plan clarification question were asked. Many of the ideas contained in the Preferred Master Plan were further described and were well received. RWD presented graphic images and two Cross Sections of some of the major park elements.

RWD presented a concept of angled parking and how, in this instance, it did not result in parking efficiency or increased number of parking stalls in a smaller parking footprint. RWD modified the parking islands to foster sectioning off the south third of the parking to program space for hard surface recreation and presented three examples without increasing costs or pavement surfacing.

Figure 3 Recreation Opportunities for Parking
Master Plan Improvements Summary
The following is a summary of the Master Plan Improvements and Design Principles identified in the Birch Bay Community Park Master Plan.

Site Vehicular and Pedestrian Access
Site vehicular access was located to the north to maximize the Open Field Play Area and to locate the LID Parking parallel to the east slope orientation to maximize parking efficiency.

Pedestrian access is gained in three locations; along the Site Access road, in the middle of the site (Central Walk) in line with the “Berm Trail” crosswalk, and along the south property line.

LID Parking Lot
All Parking areas are planned to comply with WCC 20.80. The Low Impact Development practice of Porous Asphalt was selected for Parking lot pavement to maximize park space and to protect groundwater resources. Pervious Concrete is proposed for sidewalks for the same reasons. This will require elevating pavement surfaces approximately sixteen inches above existing grade and feathering these surfaces to undisturbed ground and proposed landscape grades.

Frontage Improvements
Frontage improvements comply with Standard Drawing 505.D-1 with the five-foot sidewalk (Pervious Concrete) next to the curb proposed along the entire frontage. Pedestrian activated crosswalk warning light systems and signs are proposed (not shown). A pull-out is shown for patron drop-offs which eliminates additional turning movements in/out of the park.

Whatcom Transit Authority may be interested in adding, or relocating one of their transit stops to the park. Two Seating Nooks are located just off the sidewalk to provide Walkers a restful space with a beautiful Birch Bay view.

Restrooms
The Restroom provides six individual uni-gender/family type restrooms. Each restroom is ADA compliant and can be secured/opened on an as-needed basis depending upon the season and demand. A Mechanical Chase/Storage Room (12’x26’+/-) separates the two rows of three restrooms providing easy maintenance access and ample storage space. A 14’ by 34’ canopy overhang on the front (west) side provides shelter for four picnic tables and an attractive visual focus down the Central Walk. Described in the Public Meetings as centrally located in the heart of the park, the Restroom is a gathering, as well as a functional space. An ADA accessible drinking fountain and jug filler is located on the east side of the Restroom.
Multi-Purpose Shelter/Performance Pavilion
This Pavilion anchors the southwest corner of the Open Field Play, provides panoramic views of Birch Bay, and serves as the focal point for Special Events. This ADA compliant structure is simply a canopy with multiple concrete stage levels (at grade, one-foot high, and the largest performance level is at 1.5-2.0 foot high) designed to accommodate a wide range of events as well daily casual use. Electrical improvements include wall sconces, soffit lights, electrical control panel, multiplex outs, and duplex outlets. An electrical powered screen for films will be mounted on the front truss to accommodate movie nights. Sleeves with removable plugs will secure posts that provide a flexible framework for a wide variety of stage backgrounds. An event staging area with vehicular access is located behind the Pavilion for easy access and event coordination. Whether the act is a military band, a Celtic Dance event, a Blues Band, or a Blaine-Birch Bay Idol competition, this Pavilion will modestly accommodate a wide range of entertainment acts while still functioning on a day-to-day basis as a great place for your lunch.

Open Field Play/Special Event Area
This 27,600 square foot natural turf area provides the freedom for open field play and the surfacing to host a wide variety of special events. Designed with a prescribed rootzone mix capable of vigorous turf growth and handling light vehicle loads, this open space will host dog shows, picnics, family reunions, Frisbee play, and a wide variety of average daily uses and Special Events.

Nature Play
Wide ranging discussion centered on whether or not to offer children’s play area, and if so, what kind of Play Area. Attendees preferred a low key, natural type of Play Area; commonly referred to as Nature Play. This 1500 square foot area is located on the northern terminus of the Open Field Area with nearby Picnic Tables to accommodate adult supervision.

Site Amenities
Several Site Amenities are found throughout the site to support the site’s function and the park patrons’ experience. A two-sided Information Kiosk along the Central Walk and close to the Birch Bay Drive Crossing provides a venue for dispensing Park Rules, History of Birch Bay, environmental information, and current events postings. The Kiosk is supported by a bike rack and an ADA compliant drinking fountain, dog dish, and jug filler. Three Wash-off Showers, one at foot level, are provided south of the Central Walk for patrons heading back to the Park. A five foot circular bench provides a seating opportunity and a place to store your stuff while you wash off.

Three types of Picnic Table opportunities are proposed. Free-standing Picnic Tables provide the freedom and flexibility for park patrons to arrange picnic tables to suit their desires and needs. Accessible Routes to ADA compliant Picnic Tables are found throughout the Park. Picnic Table Alcoves provide a nestled, territorial, and an attractive space within the landscape beds.

All ADA compliant Picnic Tables and
Picnic Table Alcoves have secured, free standing BBQ grills (not shown for clarity). A fire ash receptacle is located near the Restroom (not shown for clarity).

A Circular Bench/Fire Ring (8’ diameter) is proposed in front of the Shelter element of the Restroom and on center of the Central Walk to facilitate impromptu seating and gathering during the Spring, Summer, and Fall. The Circular Bench has a lid that three people can remove and store in the Restroom’s Storage Room revealing a fire pit useful for winter special events such as the Polar Bear Plunge.

Lighting improvements include security level Parking lot lighting, street lighting at the Site Vehicular Access, and soffit down lighting on the Restroom, and wall sconces and soffit lighting at the Pavilion.

**Landscape Improvements**

Landscape improvements for Birch Bay Community Park will be modest and can be categorized into four Landscape Treatments.

**Frontage Landscape**

Landscape treatment along the frontage is intended to facilitate Natural Surveillance into the park with low level native/naturalistic groundcovers and shrubs, large organic debris in the way of logs and logs with rootwads. In order to protect desirable bay views, the only overstory trees proposed are in the northwest and southwest corners for framing views to/from the park.

**Open Field Play & Enclosure**

Open Field Play is characterized by two wide open turf grass areas (north & south of the Central Walk). The turf grass and a root zone must capable of vigorous growth and handling occasional light vehicle loading and turning movements. The rootzone must have positive drainage and water retention characteristics. Overstory deciduous trees are proposed along the eastern edge of the Open Field to define and enclose the space and provide limited parking lot screening.

**Perimeter Screening**

Well designed screening is necessary along the north and south property lines to create an attractive and clear park edge definition. Invasive species along the eastern wooded slope need to be removed and gaps replanted with overstory and understory native vegetation. Existing trees need to be pruned to remove dead/damaged limbs. Landscape screening along the southern boundary should consider views to/from Golden Tides Condos while meeting code requirements.

**LID Parking Lot**

Overstory deciduous trees and evergreen groundcover should be utilized in the parking landscape islands to foster surveillance of the Parking Lot. Structural Soil, Structural Cells, and/or Suspended Pavement may be implemented to assure tree growth and long term pavement integrity. Selection of trees should consider the texture, size, and volume of organic debris generated to assure minimal impact on, and maintenance of the Porous Asphalt.

**Steps w/ ADA Ramp to Beach**

Access to the Beach is a high priority with Public Meeting Attendees and is a natural facility to fulfill this park’s goals as well as fulfilling the expectations of the “Berm” project. Beach Access is provided via a set of ten-foot precast concrete steps with landings at the top, middle and bottom. ADA Beach Access is gained by a precast concrete ramp @ 4.9% grade. Both facilities are envisioned to be pile supported and underlain by rip-rap and habitat mix to deter erosion. ADA compliant handrails will be installed on both sides of the steps and ramp. Habitat improvements will be required to mitigate this improvement’s impact; a specific mitigation proposal has not been presently identified.
Birch Bay Community Park
Whatcom County Parks & Recreation Department
Preferred Master Plan

- Berm Trail
- Screen Planting
- Site Vehicular Access
- Frontage Walk
- Transit Stop & Drop-off
- Kiosk, Bike Rack, ADA
- Drinking Fountain, Jug
- Filler, Dog Dish
- Central Walk
- Crosswalk
- Steps w/ ADA Ramp to Beach
- Tsunami Warning Tower
- Shower Wash-off w/ Circular Bench
- Seating Nook
- Picnic Table Alcove
- Pedestrian Access
- Multi-Purpose Shelter/Performance Pavilion; 1225 sf +/-
- Special Event Staging
- Screen Planting

Nature Play
Restrooms; 6 Uni-Gender, Storage, Shelter
124 Parking Stalls; 5 ADA; 32 Compact
Circular Bench (summer), Fire Ring (winter)
ADA Picnic Table
Free Standing Picnic Tables
Open Field Play/Special Event Area

Figure 4 Preferred Master Plan

Robert W. Droll, Landscape Architect, PS
1/20/2007

21
Birch Bay Community Park
Whatcom County Parks & Recreation Department
Cross Sections & Potential
Park Images

Section A-A'
Landscape Buffer: 12'-32' wide
Park Access
Nature Play (Photos indicate Character)
Open Field Play
Restroom/Storage/Shelter
Open Field Play/Special Event Area

Section B-B'

Parking: 124 Stalls, 5 ADA, 32 Compact
Landscape Buffer w/ existing Conifers:
Buffer width ranges: 25'-70'

Tsunami Warning Tower
Information Kiosk
Bike Rack
ADA Drinking Fountain
Circular Bench (summer) & Fire Ring (winter)
Restroom: 6 Uni-Gender, Storage, Shelter

Robert W. Droll, Landscape Architect, PS
10/16/2016
Site Security
This park’s security begins with Natural Surveillance from Birch Bay Drive and throughout the Site and is augmented by perimeter fencing. Existing fencing is found along the north and south property lines. Chain link fencing should be installed along the east boundary, but the fencing along the west, Birch Bay frontage should focus less on security, and more on a welcoming character and attractiveness. Sliding, or swing gates will provide security to the Site Vehicular Access as well as the three Pedestrian access points. A low level security fence will be located along the south vehicular access drive to safely provide separation from pedestrian use areas to the parking drive aisle. Lighting improvements are discussed under Site Amenities above.

Utilities
The water service will be connected to the existing meter and a new service line will be run to the outdoor shower area and to the Restroom. A branch off this service line will have a double check valve assembly to connect to the site’s irrigation. We have assumed at this point that fire protection is covered since the farthest structure is within 420-feet of the hydrant.

The sewer will be connected to the existing central side sewer and the other two side sewers will be abandoned in place. New sewer pipe will be installed from the road right-of-way to the Restroom. Connection charges – The property has a credit of 12 Equivalent Living Units on it.

We have assumed that the outdoor shower will not need to be connected to the sewer. Collected wash water will be dispersed subsurface through perforated pipe as it does in many other outdoor showers across Washington State.

A new gas service will be run from the existing gas main to the main building.

The existing secondary power pole will be removed since it is in the middle of site. Starting at the primary power pole, power will be converted to an underground service that will run from the power pole across Birch Bay Drive to connect to the Restroom.

Cable TV, internet, and telephone will originate from the same aerial pole and be converted to underground sharing the same routing as the power.

A map of proposed utilities is attached as Exhibit E.

Stormwater:
Birch Bay Community Park is located in the Central Reaches as defined in the Birch Bay Central South Subwatershed Master Plan prepared for Birch Bay Watershed and Aquatic Resources Management District. The Birch Bay Central South Subwatershed Master Plan indicates that there are no stormwater conveyance systems in the vicinity of the proposed Birch Bay Park and that fecal coliform is a pollutant of concern in the bay. The lack of infrastructure likely results in localized flooding. Utilizing permeable pavements and other Low Impact Development (LID) techniques to manage stormwater for the proposed design may be a possibility given that the soils are conducive to infiltration. The design would open up the soils and protect them from fouling, thereby restoring their ability to infiltrate stormwater. Infiltrating stormwater will also help reduce fecal coliform pollution, as it is attenuated in the soil rather than washing into the bay.

The site is presumed to have soils suitable for stormwater infiltration based on preliminary analysis. All new uncovered paving surfaces within the site and for frontage improvements will be pervious asphalt. Roof runoff from the main building and multipurpose shelter will be collected and routed to subsurface infiltration trenches. All stormwater is expected to be managed with these approaches.
Other Program Element Considerations

Several Program Elements suggested and discussed through the Steering and Public Meetings were considered by Parks and not included in the Preferred Master Plan due to space limitations, maintenance concerns, or management practices. A dedicated Mobile Food Vendors (MFV) space was not shown; Parks can accommodate Mobile Food Vendors by cordoning off parking stalls as needed for the MFV plus stalls for to accommodate wait lines. Parks believes dedicated hard sport courts would consume valuable Park space; such sport courts can be accommodated operationally by temporarily cordoning the Parking Lot and providing permanent court striping. Such court striping addresses the average daily demand for sport courts while addressing peak demand for parking.

The idea of a Park Host had some Attendees’ support, but Parks does not have any policies for such a Park Host program, and is of the opinion that Park Hosts are desirable for campgrounds where park patrons stay overnight; Birch Bay Community Park will be closed at night, so there is no need for a Park Host.

There was also discussion that a Community Center in this park would serve Blaine-Birch Bay residents well. Park’s interpretation of the Conservation Futures Program funding law (RCW 84.34.200 & Whatcom County Code (WCC) 3.25) concludes a Community Center would not comply with the legal requirements or the spirit of the Conservation Futures Program.

Play Areas are common Community Park Program Elements; however the prevailing thought was that Birch Bay and the expansive tidal areas are the park and playground providing unlimited play opportunities. A consensus of the Attendees concluded that typical play areas for two children age groups would consume too much of the limited park space that was needed for Open Field Play and Special Event Hosting.

A suggestion was promoted to move several historic farm/village structures to this park in an effort to create an historic village. Parks examined this potential and concluded this idea consumed valuable park space and displace Open Field Space, and was in contrast with the goal which drove to this property’s acquisition: providing support facilities for public enjoyment of Birch Bay water and tideland resources.

There seemed to be modest demand for Adult fitness stations. Park trends and demographics show that these fitness stations are frequented by parents with children playing on nearby play equipment. Parks believes fitness stations will not as desirable at Birch Bay Community Park as traditional Play Areas are not proposed for this park.

Some Public Meeting Attendees promoted Display and Demonstration Gardens as interpretive and educational tools and sources of beauty in the Park. While Parks agrees with this assertion, Parks maintains these Program Elements would be more useful in a Community Park with a larger land base that was not valuable waterfront property.
Master Plan Estimate of Probable Project Development Costs by Phase

Total cost for all three phases of Birch Bay Community Park’s capital improvements are estimated to be $4,397,000. All Master Plan Level Estimate of Probable Costs per phase can be reviewed in Appendix A. All Master Plan Level Estimate of Probable Costs are considered to be full project development costs and include detailed cost items, taxes, contingency, permits, and professional services (A/E) for each phase.

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<th>Phase</th>
<th>Cost</th>
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<td>Phase 2</td>
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<tr>
<td>Phase 3</td>
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<td><strong>Total Project Development</strong></td>
<td><strong>$4,397,000.00</strong></td>
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Figure 6 Master Plan Phasing
Master Plan Estimate of Probable Annual Maintenance Costs by Phase

With these Birch Bay Community Park capital improvements, comes the responsibility and cost of maintaining Whatcom County’s investment. With maintenance tasks identified, areas quantified, task frequencies confirmed, and labor and material costs defined, annual maintenance costs have been projected and are as follows by Phase. Phasing cost are successive.

Phase 1 .......................$90,970
Phase 2 .......................$108,000
Phase 3 .......................$109,540

Major task categories and corresponding percentage of total annual maintenance cost in Phase 3 (total build-out) is as follows.

Turfgrass Mowing/Maintenance ..................14.0%
General Park Clean-up/Trash Removal ..........21.7%
Restroom Maintenance ..........................38.2%
Pavilion Maintenance ..............................14.2%
Remaining Tasks .................................11.9%
Appendix A .......... Master Plan Estimate of Probable Project Development Costs by Phase
Birch Bay Community Park

Whatcom County Parks and Recreation Department

Master Plan Level Estimate of Probable Cost Summary

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<th>Phase</th>
<th>Estimate</th>
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<td>Phase 1</td>
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# Birch Bay Community Park

**Whatcom County Parks and Recreation Department**

## Phase 1 - Master Plan Level Estimate of Probable Cost

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<th>Unit</th>
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<th>Mobilization at 12%</th>
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Robert W. Droll, Landscape Architect, PS
# Birch Bay Community Park

## Whatcom County Parks and Recreation Department

### Phase 1 - Master Plan Level Estimate of Probable Cost

<table>
<thead>
<tr>
<th>Line</th>
<th>Item Description</th>
<th>total w/ Mob.</th>
<th>Unit</th>
<th>Quantity</th>
<th>Cost</th>
<th>Item Subtotal</th>
<th>Mobilization at 12%</th>
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## Birch Bay Community Park

**Whatcom County Parks and Recreation Department**

**Phase 1 - Master Plan Level Estimate of Probable Cost**

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<th>Line</th>
<th>Item Description</th>
<th>total w/ Mob.</th>
<th>Unit</th>
<th>Quantity</th>
<th>Cost</th>
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# Birch Bay Community Park

**Whatcom County Parks and Recreation Department**

**Phase 2 - Master Plan Level Estimate of Probable Cost**

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<th>Quantity</th>
<th>Unit Cost</th>
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# Birch Bay Community Park

**Whatcom County Parks and Recreation Department**

**Phase 3 - Master Plan Level Estimate of Probable Cost**

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Appendix B .......... Master Plan Estimate of Probable Annual Maintenance Costs by Phase
# Birch Bay Community Park Annual Maintenance Cost Projection

## Phase 1 Annual Task Frequency Schedule*

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<th>Dec</th>
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*This Annual Task Frequency does not include any time/cost for programming & hosting Special Events, nor does it account for Capital Improvements Repairs/Replacement.

**TOTAL HOURS**

897

**TOTAL ADJUSTED HOURS for Mob/Demob/Holidays/Sick Days, etc. @ 15%**

1,032

**Labor Costs / Hour @ $53/Hour**

$54,678

**Supervisory Cost @ 10% * $70/Hour**

$7,222

**Fuel Adjustment/Small Tools/Equipment Replacement @ 30%**

$16,403

**Materials Adjustment (mulch, seed, fertilizer, etc.) @ 8%**

$2,166

**Irrigation Water Cost (what's the cost per 100 cf?)**

$9,000

**Power Costs**

$1,500

**Total Annual Maintenance Cost**

$90,969

**High Annual Maintenance Cost (+ 10%)**

$100,066

**Low Annual Maintenance Cost (-10%)**

$81,872

Robert W. Droll, Landscape Architect, PS
**Whatcom County Parks & Recreation Department**

**Birch Bay Community Park Annual Maintenance Cost Projection**

**Phase 2 Annual Task Frequency Schedule**

<table>
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<th>Feb</th>
<th>Mar</th>
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**TOTAL HOURS**

1,063

**TOTAL ADJUSTED HOURS for Mob/Demob/Holidays/Sick Days, etc. @ 15%**

1,223

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<tr>
<td>Materials Adjustment (crushed surfacing, mulch, seed, fertilizer, etc.) @ 8%</td>
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<td>Irrigation Water Cost (what's the cost per 100 cf?)</td>
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<td><strong>High Annual Maintenance Cost (+ 10%)</strong></td>
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<td><strong>Low Annual Maintenance Cost (-10%)</strong></td>
<td><strong>$97,164</strong></td>
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*This Annual Task Frequency does not include any time/cost for programming & hosting Special Events, nor does it account for Capital Improvements Repairs/Replacement.*
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<th>Feb</th>
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<th>minutes per unit</th>
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**TOTAL HOURS:** 1,065

**TOTAL ADJUSTED HOURS for Mob/Demob/Holidays/Sick Days, etc. @ 15%:** 1,225

- Labor Costs / Hour @ $53 Hour: $64,917
- Supervisory Cost @ 10% * $70/Hour: $8,574
- Fuel Adjustment/Small Tools/Equipment Replacement @ 30%: $19,475
- Materials Adjustment (crushed surfacing, mulch, seed, fertilizer, etc.) @ 8%: $2,572
- Irrigation Water Cost (what's the cost per 100 cf?) : $12,000
- Power Costs: $2,000

**Total Annual Maintenance Cost:** $109,539

**High Annual Maintenance Cost (+10%):** $120,493

**Low Annual Maintenance Cost (-10%):** $98,585

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*This Annual Task Frequency does not include any time/cost for programming & hosting Special Events, nor does it account for Capital Improvements Repairs/Replacement.*
Appendix C .......... Ongoing Cultural Resources Review at the Proposed Whatcom County Birch Bay Community Park
Ongoing Cultural Resources Review at the Proposed Whatcom County Birch Bay Community Park (Redacted for Public Release).

Prepared By:
Garth L. Baldwin, MA, RPA

Prepared For:
Robert W. Droll,
Landscape Architect PS
4405 7th Avenue, SE
Lacey, WA 98503

Drayton Archaeology Report: 0316J
Redacted for Public Release: January 30, 2017
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Regulatory Context</td>
<td>2</td>
</tr>
<tr>
<td>Project Area and Description</td>
<td>2</td>
</tr>
<tr>
<td>Background Review</td>
<td>6</td>
</tr>
<tr>
<td>Environmental Context</td>
<td>6</td>
</tr>
<tr>
<td>Topography and Geology</td>
<td>6</td>
</tr>
<tr>
<td>Soils</td>
<td>7</td>
</tr>
<tr>
<td>Vegetation</td>
<td>7</td>
</tr>
<tr>
<td>Fauna</td>
<td>8</td>
</tr>
<tr>
<td>Cultural Context</td>
<td>8</td>
</tr>
<tr>
<td>Ethnographic</td>
<td>8</td>
</tr>
<tr>
<td>Historic</td>
<td>9</td>
</tr>
<tr>
<td>Previous Archaeology and Cultural Resources Studies</td>
<td>16</td>
</tr>
<tr>
<td>Cultural Resource Expectations</td>
<td>17</td>
</tr>
<tr>
<td>Field Investigation</td>
<td>17</td>
</tr>
<tr>
<td>Results and Recommendations</td>
<td>21</td>
</tr>
<tr>
<td>References</td>
<td>23</td>
</tr>
</tbody>
</table>

## FIGURES

- **Figure 1.** USGS (1978) Blaine, WA topographic map detailing the location of the project area.  
- **Figure 2.** Aerial map indicating the project area within the project area. Image from Google Earth, adapted by DA.  
- **Figure 3.** The proposed plans for the new Birch Bay Park.  
- **Figure 4.** An early C. Ellis postcard photograph of the Edgewater Resort, note only three cabins on the south side of the store.  
- **Figure 5.** Another C. Ellis postcard photograph of the Edgewater Resort, possibly from the 1960s.  
- **Figure 6.** An aerial image of the property in 1977 (WDOE).  
- **Figure 7.** An aerial image of the property in 1994 (WDOE).  
- **Figure 8.** An aerial image of the property (north side) in 2001 (WDOE).  
- **Figure 9.** An aerial image of the property (south side) in 2001 (WDOE).  
- **Figure 10.** A topographic survey map showing the remnant foundation excavations from the former cabins and outbuildings.
LIST OF PHOTOS

Photo 1. An overview of the project area, view south east.......................................................... 18
Photo 2. An overview of the project area, view south west.......................................................... 18
Photo 3. A typical sediment soil profile observed in shovel probes (GB2)................................. 20
Photo 4. The soil profile observed in GB4 .................................................................................. 20
INTRODUCTION

Drayton Archaeology (DA) was contracted to continue ongoing cultural resources assessment work for the Whatcom County Parks and Recreation proposed Birch Bay County Park located in Birch Bay, Whatcom County, Washington. This assessment was designed to further define the distribution of known cultural resources (cultural, historical, or archaeological materials or sites) across the property. Previous investigations by DA at the site included trenching and monitoring the demolition of the remaining buildings associated with the Edgewater Resort (Baldwin 2015, 2016, and DAHP Excavation Permit No: 2015-53).

DA’s cultural resources assessment consisted of background review, field investigation, and the production of this report. Field investigations included pedestrian survey, subsurface testing and monitoring during the entire course of the work DA has performed at the site. Presently we are reporting on shovel testing that was conducted to amend previously report upon work. During the course of the present field investigations archaeological materials of precontact and historic periods were observed. Sediments and soils in the project area are definitively impacted from over a century of occupation and use, but are generally consistent with the soils mapped and defined for the location by the University of California Davis (UC Davis SoilWeb n.d.) and the NRCS soil survey (n.d.). Based upon the result of this, and previous reviews DA recommends the following measures be prescribed for any construction work at the park site:

A. Prior to any ground disturbance an archaeological excavation and site disturbance permit must be secured through the DAHP.

B. Excavations of any type (e.g. construction or further soils testing) should avoid the area adjacent to Birch Bay Drive, to include the former store/office footprint without first conducting data recovery excavations first.

C. In our opinion any excavation should be avoided in the most sensitive areas, but there is no scientific basis to avoid excavation outside of that location. Areas of low or moderate probability will likely contain traces of historic and precontact materials, but those areas have been extensively impacted and disturbed according to all observations.

D. All construction activities and any related ground disturbance conducted at the park property should be monitored by a professional archaeologist.

E. Adoption of an inadvertent discovery plan for all use of the property.
F. Design of any structures, their locations, and the incorporation of fill to avoid excavation in the most sensitive area should be seriously considered.

REGULATORY CONTEXT

The regulatory prompt for the proposed development is subject to Whatcom County Land Use Regulations, Title 23.20.08 Archaeological, Historic and Cultural Resources. Prior to granting any permit involving ground disturbance, the county requires an archaeological assessment at any property within or near a recorded archaeological site, or within 200 feet of the shoreline. The project would also be reviewed by the Washington Department of Archaeology and Historic Preservation (DAHP) Lummi Nation, Tribal Historic Preservation Office (LNTHPO) and the Nooksack Tribe Tribal Historic Preservation Officer (NTHPO). Pertinent cultural resource management laws and regulations enforced by DAHP are defined under the Revised Code of Washington (RCW) 27.53 Archaeological Sites and Resources; RCW 27.44 Indian Graves and Records; and RCW 68.50.645 Skeletal Human Remains—Duty to Notify. The latter regulation provides a strict process for notification of law enforcement and other interested parties in the event of the discovery of any human remains, regardless of inferred cultural affiliation.

PROJECT AREA AND DESCRIPTION

The present review area can be located on the Blaine, Washington (1994) 7.5 Minute USGS map in Section 30, Township 40 North, Range 1 East, Willamette Meridian (Figures 1-2). The property address recorded with the Whatcom County Assessor's office is 7930 Birch Bay Drive and tax parcel number: 400130090326. The project area consists of approximately four (4) acres and is located along Birch Bay Drive immediately adjacent to Birch Bay. The property was formally a farm and then a vacation resort for many decades. The present proposal is, preliminarily at least, to construct a public park with a meeting structure with shower and restroom facilities, as well as a multi-use community building, vendor’s area, and parking (Figure 3).
Figure 1. USGS (1978) Blaine, WA topographic map detailing the location of the project area.
Figure 2. Aerial map indicating the project area within the project area. Image from Google Earth, adapted by DA.
Figure 3. The proposed plans for the new Birch Bay Park.
BACKGROUND REVIEW

Determining the probability for cultural resources to be present within the project area was based upon review and analysis of the environmental and cultural contexts of the area, as well as previous cultural resource studies and sites recorded in or near the project area. Consulted sources included the Department of Archaeology and Historic Preservation’s (DAHP) online database, the Washington Information System for Architectural and Archaeological Records Data (WISAARD), for information regarding previously conducted cultural resources studies, archaeological sites, historical sites, historic property inventory (HPI) forms, and cemetery / burial records.

Environmental Context

Topography and Geology

Birch Bay is located in the Puget Lowland (PL) geological province and is an extension of the Fraser deltaic system. Starting in the early Pleistocene (0.7-2.5 million years ago), the PL was subject to four periods of extensive glaciation scouring out the land as each glacier advanced and retreated. The present day geomorphic features of Birch Bay such as glacial outwash terraces and channels, moraines, river deltas, kettles, eskers, and marine terraces are remnants of the last continental glacier (Fraser Glaciation) that covered the region. Roughly 18,000 years ago the ice sheet advanced from British Columbia to just south of Olympia; the entire Puget Lowland was covered by glacial ice. In western Whatcom County, glacial ice reached a thickness greater than 5,500 feet (Easterbrook 2003). This tremendous volume of ice scoured out anything in its path, including the underlying rock. By 13,500 years ago the ice had retreated to Seattle. Due to the recession, large areas south of Seattle were covered by recessional outwash sands and gravels that are part of the Vashon Stade of the Fraser Glaciation. At about the same time, thinning ice allowed marine waters to return to the PL, and seawater lifted the ice causing it to break up into berg ice over the entire region. Approximately 10,000 years ago, the Cordilleran ice sheet disappeared, bringing an end to the Ice Age in this region. As a result of the melted ice, all of the rocks, sand, dirt and debris that were being scoured out and carried by the glacier were deposited as “great lowland fill” (Booth and Goldstein 1994).

Birch Bay is a sheltered crescent shaped headland bay approximately 4.9 km (3.05 miles) long from north to south. It is bounded to the north by the peninsula of Birch Point and the smaller projection of Point Whitehorn to its south. The primary sediment sources for beach building at Birch Bay have been identified as the eroding headlands from both points (Bauer 1975; Terich 1987). These bluffs are composed of glacial till, and as they erode provide a mixed source of sand, gravel, and cobbles for Birch Bay beaches (Downing 1983). Eroded materials appear to be redeposited and accumulated along the beach in a log spiral pattern from south to the northwest, which over the centuries has formed at least 12 spit beaches along the north end of the bay (Larsen 1971). The headland beach at Birch Bay is located at 0 m above sea level (ASL) and has an intertidal zone extending for several hundred yards. Above the beach are three, seven, 12 and 30
meter marine terraces, with the seven and 12 meter terraces being the most distinguishable (Larsen 1971: 28). Larsen (1971) believes the terraces are related to the Sumas Stade (glacial advance) or Everson Interstade (glacial retreat) of the Fraser Glaciation, which date nine to 13,000 years before present (B.P) (After Easterbrook 1966). A glacial outwash (meltwater) channel originating further east, bisects the seven and 12 meter terraces; meaning they predate the channel, which further attests their antiquity (Larsen 1971: 35).

Soils
In 1992, the Natural Resource Conservation Service (NRCS) performed a soil survey of Whatcom County with the intention of mapping and characterizing each distinct soil to aid in land use planning. Soils within the project area have been mapped as Neptune Very Gravelly Sandy Loam, 0-3 percent slopes and Whatcom silt loam, 30 to 60 percent slopes.

Neptune series soils are typically located on spits and marine terraces and are derived of fluviomarine deposits. Goldin (1992: 241) describes Neptune series soils as forming in coastal beach deposits containing marine shells. They include a very gravelly sandy black loam from 0-25 centimeters below ground surface (cmbgs) (0-10 inches), over a very dark brown extremely gravelly loamy sand from 25-68 cmbgs (10-27 inches). Below this is a gray to dark gray extremely gravelly coarse sand from 68 to 114 cmbgs (27-45 inches), and finer gray gravelly sand from 114 to 152 cmbgs (45-60 inches).

The other soil recorded for the area is Whatcom silts. The soils are a deep, moderately well drained soil formed in loess and volcanic ash over glaciomarine drift. They are found on glaciomarine drift plains and occupy the upland position in the kame-kettle type topography. The typical profile for Whatcom silt loam consists of a surface layer of silt loam from 0-23 cmbgs (0-9 inbs), a subsoil of lighter silt loam transitioning into loam with increased clay content from 23-66 cmbgs (9-26 inbs), and a yellowish compact loam from 66-153 cmbgs (26-60 inbs). It should be noted that gravel and cobble contents were significantly higher than the average gravel content for Whatcom silt loams (Goldin 1992:171-172) (UCDavis SoilWeb n.d., NRCS n.d.).

Vegetation
Birch Bay and its tidal flats are considered a nearshore habitat, meaning the shoreline is in close proximity to marine waters. Birch Bay originally derived its English name from Menzies a botanist with the Vancouver voyage, who upon visiting the area in 1792 was impressed with the abundance of black birch (Betula occidentalis) trees. He also noted white and trembling aspen (Populus trichocarpa and P. tremuloides), pink flowered onion (Allium acuminatum or cernuum), green flowered Melanthium, now thought to be death camas; (Zygadensis venemosus) mock orange (Philadelphus lewisii), pine (Pinus sp.) and nettles (Urtica). Menzies also noted bushes, grasses and wildflowers (Roberts 2005:101,115 and Jeffcott 1949:276-277). The journals also mention Vancouver’s men making spruce beer on the shores of Birch Bay, which indicates that Spruce grew in the area (Picea likely sitchensis) (Jeffcott 1949:276-289).
Vegetation in and around the project area includes deciduous birch (Betula sp.), alder (Alnus sp.), aspen (Populus sp.), maple (Acer sp.) and cherry (Prunus sp.) trees. Indigenous coniferous trees include western red cedar (Thuja plicata), western hemlock (Tsuga heterophylla), pine (Pinus sp.) and fir (Abies grandis and Pseudotsuga menziesii). Wetland plants include cattail (Typha latifolia), buttercup (Ranunculus sp.), bulrush (Scirpus sp.), and skunk cabbage (Lysichiton americanum). Water plants include water lily, eelgrass (Zostera marina), and milfoil (Achillea millefolium).

Other locally important and available vegetative species would have included bracken fern (Pteridium aquilinum), blackcap (Rubus occidentalis), currants (Ribes spp.), deer fern (Blechnum spicant), gooseberries (Ribes spp.), huckleberries (Vaccinium spp.), Indian plum (Oemleria cerasiformis), oceanspray (Holodiscus discolor), red elderberry (Sambucus racemosa), snowberry (Symphoricarpos albus), sword fern (Polystichum munitum), and trailing blackberry (Rubus ursinus) (Pojar and MacKinnon 1994). The Birch Bay salt waters would also have provided important food source plants such as various varieties of kelp, sea lettuce and eelgrass.

Fauna

Fauna living in or near the project area include Chinook salmon (Oncorhynchus tshawytscha), coho salmon (O.kisutch), sockeye salmon (O.nerka), pink salmon (O.gorbuscha), steelhead trout (Salmo gairdneri), and white sturgeon (Acipenser transmontanus), butter clams (Saxidomus gigantea), littleneck clams (Protothaca spp.), horse clams (Tresus spp.), cockles (Clinocardium spp.), bentnose clams (Macoma spp.), dogwinkles (Nucella spp.), and mussels (Mytilus spp.). Many species of bird, especially marine-adapted species such as eagles and waterfowl, live in the area. Mammals would have included beaver (Castor canadensis), bear (Ursus americanus), elk (Cervis Canadensis), mule deer (Odocoileus hemionus), and a variety of marine mammals.

Cultural Context

In any investigation of the history of an area, a discussion of the past inhabitants is necessary to appreciate the full spectrum of possible occupational remnants. It is also important to broadly discuss the history of land use in the area along the northwest coast of Whatcom County and the immediate area surrounding Birch Bay.

Ethnographic

The Birch Bay salt waters would also have provided important food source plants such as various varieties of kelp, sea lettuce and eelgrass. In any investigation of the history of an area, a discussion of the past inhabitants is necessary to appreciate the full spectrum of possible occupational remnants. It is also important to broadly discuss the history of land use in the area along the northwest coast of Whatcom County and the immediate area surrounding Birch Bay.

According to ethnohistoric data, this area was the ancestral land of the Semiahmoo or Semiahmah People, one group among the Coast Salish (Ruby and Brown 1990; Stern 1934; Suttles 1951).
Their territory is reported to have been the area around Boundary Bay, Drayton Harbor, and Birch Bay. They practiced exogamy with the surrounding groups. The traditionally local groups are now known as the Lummi, Nooksack, and Snokomish, who were nearly obliterated by disease in the early 19th century. Today, the international border between Canada and the United States divides this area, but there are people on both sides who recognize their ancestry as extending across the line. The descendents of the people who lived at Si’ke (Semiahmoo Spit), Te’polecks (Tongue Point), Ka’x an (Blaine), and ElElay (between Dakota and California Creeks) before the coming of Euro-Americans are scattered among the local Native communities of the Lummi Nation, the Nooksack Tribe, and the Semiahmoo Band of Canada. Birch Bay was the location of three permanent villages and numerous seasonal sites (Suttles 1951).

The area traditionally called Te’polecks in Xwlemi Chosen, the language of the Lummi people, has been described by Al Scott Johnnie as the area of Semiahmah (Semiahmoo Spit) from the place where it narrows (and before artificial stabilization the center of the spit used to wash out in winter) to the point of the spit. According to ethnohistoric and oral traditions, Te’polecks was a part of the ancestral land of the Semiahmoo People, a culturally distinct group of Coast Salish (Johnnie 2003 personal communication, Suttles 1951). Their territory is reported to have included the area around Boundary Bay, Drayton Harbor, and northern Birch Bay.

Point Whitehorn, a significant land feature on the south side of Birch Bay, falls within the traditional territory of the Lummi Tribe, the local federally recognized Indian tribe (Suttles 1951). The Lummi are a Salish speaking group with close affinal ties to the Nooksack Tribe whose lands lay east of this area, and the Semiahmoo Band of British Columbia, Canada, whose traditional use areas extend to the northern Birch Point Uplands. The Lummi traditionally lived throughout the San Juan Islands and in mainland areas close to the water, relying heavily on shellfish, marine mammals, and fish for much of their subsistence.

**Historic**

In June 1792, Captain George Vancouver visited Birch Bay and camped near a vacant native village at the present location of Birch Bay State Park. The native village location is recorded as 45WH9. The bay was named Birch Bay, disregarding the Spanish name Garzon for the abundance of black birch trees along the shoreline (Jeffcott 1949:276). The expedition botanist, Lieutenant Archibald Menzies, made the crew’s first observation of a tree suspended canoe burial at the vacant Birch Bay village (Jeffcott 1949:277). Suttles also records a Native village, šćé wax, at this location (Suttles 1990:455).

The Euro-American utilization of the general area began at Drayton Harbor around 1856 when the first Westerners arrived at Semiahmoo Spit and quickly realized the location’s potential as a staging area for the exploitation of local natural resources. During the gold rush that took place in the Fraser River Valley at about this time, Semiahmoo Spit was the site of a small “boom town” where miners and travelers stopped before heading to Canada (Jeffcott 1949). In 1856, William
King Leer built a wharf and other buildings to accommodate gold-seekers on their way to the Fraser River Gold Rush.

Leer’s development was the first permanent settlement of non-natives on Drayton Harbor. In 1857 the Boundary Survey, headed by Lt. Col. Campbell, stopped at Semiahmoo Spit, where the Semiahmah Village was located, before moving to the Campbell River camp (Jeffcott 1949). By 1858 the Canadian Government in Victoria had begun requiring miners to register for licenses in that city. As a result, the miner’s set-off point for the Fraser Valley shifted to the Port of Victoria, ending the majority of business at Semiahmoo City. In the late nineteenth century, the spit was the site of various failed attempts at settlement. Not until about 1872 was there any stable Euro-American settlement (Sullivan et al. 1982). At that time, Semiahmoo City was a trading post for settlers in the interior of northwest Whatcom County. The town of Semiahmoo City was eventually platted circa 1873 by R.S. Clark; it was central to the economic future of the area and played an important part in the settlement of Whatcom County as a whole (Roth 1926, Jeffcott 1949, Sullivan et al. 1982; Buswell [35-7]).

Euro-American settlement in the area was supported by fishing, logging and coal mining industries along the coast while in the interior the land was covered with large stands for mature coniferous forests; except for some areas of open prairie land. The inviting open spaces were probably not completely natural. According to Spear, the Nooksack maintained the prairies further inland near present-day Laurel and Lynden by setting fires to cull the re-growth of trees and brush so the area would continue to produce root crop plants (1977:17). Only after prairies were settled did people turn to clearing parcels that contained heavy timber (Tremaine 1975:72). As the Fraser gold fields panned out and the logging industry began moving east, cattle ranchers and subsistence farmers moved in to exploit the cleared prairies of northern Whatcom County where there was often plentiful water and easily accessible grazing for their animals (Koert 1976; Spear 1977:14; Tremaine 1975:77).

In the 1870s Misters Bruns and Preister settled most of the prime land on Birch Bay. Bruns homesteaded what is now Birch Bay Village and established the first post office there in 1872 (Jeffcott 1949:288). Preister is reported as settling on the south prairie of the bay, probably close to the present day State Park. Jeffcott reports Lora Gischer telling him, “The Indians must have been very numerous at one time, for when I was a boy we used to go up the beach near Preister Point and dig out skulls to play tricks on the unsuspecting” (1949:284). It is likely to be, but not completely clear if the site being was located at what is now Birch Bay Village. What is clear is that it was associated with Preister Point (which is not on current maps) and that Preister Point was at the “head of the bay.” This information was given to Jeffcott during his interviews of pioneers of the area. Lora Gischer was the son John Gischer, who settled along Terrell Creek at Birch Bay in 1872 (Jeffcott 1949:283).
The present project site was formerly owned by the Vogt Family. Charles Vogt arrived at Birch Bay with the Bruns, Henspeters and others on February 22, 1871 (Jeffcott 1949:280). Although there were two abandoned cabins at the bay when they arrived, the compliment of persons arriving in 1871 represents the first permanent and lasting settlement of the area. The Vogt homestead has been continually occupied by the descendants of Charles Vogt since that time. Figures 4-9 illustrate changes at the former Edgewater Resort through time. The postcard photos are from Clifford Ellis, the dates of the photos are not known but he was actively working between 1945 and 1970. The shoreline images were taken by Washington Department of Ecology (WDOE) for beach monitoring. Since 1977 the number of structures at the site had been reduced from about 43 to the remaining store building and a small shed at the rear of the site. Those structures were removed in 2015 (Baldwin 2016). In addition to the structures were numerous trees, where remnant root systems can be seen at the property. Former foundation locations are still surface-evident as illustrated by Figure 10, a topographic survey conducted by Wilson Engineering (provided for reporting).

Figure 4. An early C. Ellis postcard photograph of the Edgewater Resort, note only three cabins on the south side of the store.
Figure 5. Another C. Ellis postcard photograph of the Edgewater Resort, possibly from the 1960s.

Figure 6. An aerial image of the property in 1977 (WDOE).
Figure 7. An aerial image of the property in 1994 (WDOE).

Figure 8. An aerial image of the property (north side) in 2001 (WDOE).
Figure 9. An aerial image of the property (south side) in 2001 (WDOE).
Figure 10. A topographic survey map showing the remnant foundation excavations from the former cabins and outbuildings.
Previous Archaeology and Cultural Resources Studies

The majority of previous archaeological work in the area of Drayton Harbor and Birch Bay has been conducted at three focused areas: Semiahmoo Spit, Birch Bay Village and the Birch Bay shoreline. Past work has documented multiple sites with extensive and significant cultural resources relating a vast and varied precontact occupation of the area (Anderson and Smith 2001; Baldwin 1999, 2002; Baldwin and Wessen 2003; Clothier 1974; Gaston 1975; Gaston and Grabert 1975; Grabert 1973, 1976a-c; Grabert et al. 1978; Hovezak 2007; Miss 1992; Larsen 1969a-b, 1971; Reid 1997, 2000, 2001 2003; Roulette 1985, 1989; Solland and Stenholm 1963). To date, the majority of this work has focused on the precontact villages.

Birch Bay Village was also a precontact occupation area with numerous sites being recorded to account for the varied expressions of cultural use in the area. The recent increase in the number of development-related projects conducted at Birch Bay Village on the southern slope of the Birch Point Uplands have resulted in numerous cultural resource surveys (a few germane projects include, but are not limited to: Baldwin 2004a-b, 2005; Baldwin and Albaugh 2005a-b; Baldwin and Arthur 2005a-g; Baldwin and Campbell 2003; Baldwin and Koetje 2003). The sites and cultural resource work most relevant to the subject project is that conducted along the Birch Bay shore.

A number of known recorded sites outside of the current project area consist of: 45WH62, 45WH67, 45WH522, 45WH739, and 45WH767 (Gaston and Grabert 1975; Kaiser 2007; Reid 1997; Reid 2005; and Stone 2001). Little data exists for considering these deposits on the basis of their cultural affinity or level of temporal or cultural interconnectedness. In most cases the sites were recorded, and data collected, as part of development projects where CRM focus was on advancing construction and not necessarily the archaeological record of Birch Bay.

Site 45WH62 was originally assessed by Gaston and Grabert (1975) as a sparse and scattered shell midden. In 2001, Robert Stone identified a portion of the site east of the area studied by Gaston and Grabert. Precontact materials consisted of FMR, salmon bone fragments, and various species of shell including, horse clam, cockle, Pacific little neck clam, barnacle, blue mussel, snails and limpet (Stone 2001).

Site 45WH67 was first described by Gaston and Grabert (1975) as a thin shell matrix site (Gaston and Grabert 1975:50). Site deposits have been described as thin shell deposits, interbedded with sterile sand. Presumably it was a seasonally occupied site that was inundated by high water in between occupation events. Work by Shong (2004) resulted in a site form update and inclusion of additional data characterizing the site. Hovezak revisited the site in 2007 and again updated the site form.
Gaston and Grabert (1975) originally recorded and conducted limited data recovery at the site as part of the Birch Bay Water and Sewer development circa 1975. The latest CRM work at 45WH67 included monitoring.

CULTURAL RESOURCE EXPECTATIONS

Based upon previous work at the site and the surrounding associated site area, it was a foregone conclusion that archaeological site 45WH67 was present. The purpose of the present work was to investigate the heretofore uncharacterized portions of the site as expressed on the park property. Field investigations were designed to establish better boundaries for the known shell matrix deposit and attempt to verify soils/site conditions throughout the property.

FIELD INVESTIGATION

The physical archaeological assessment of an area is conducted through visual reconnaissance of a project area, examination of existing ground disturbances and subsurface excavation as needed. Surface survey of an area proposed for ground alteration or other impact is employed in an attempt to locate any surficial cultural materials or structures with any historic or archaeological importance or cultural concern. When utilized, shovel probes or mechanical excavation can assist in providing a wider sample of subsurface soil conditions for determining the potential for, or presence/absence of, buried archaeological deposits. The employment of probes or trenches is most often dependent upon considerations of the landform, topography, project proposal and subsurface geologic conditions.

Field investigations were conducted on June 28, 2016 and July 1, 2016 by DA Principal Garth Baldwin, Archaeologists Marsha Hanson, Oliver Patsch, Courtney Paton and Sebastian de Bont. Fieldwork conditions were sunny and warm. Present investigations consisted of additional pedestrian survey attempting to relocate previous subsurface test pit locations and for additional coverage of the surface area. The project area is a now empty lot, located in a densely developed and utilized commercial, recreational and residential area (Photos 1-2). After the surface review, 13 shovel probes were excavated.
Photo 1. An overview of the project area, view south east.

Photo 2. An overview of the project area, view south west.
Additional shovel testing was undertaken in order to further the known boundary of 45WH67 and to characterize soils and any heretofore unknown site deposits beyond. Probes were excavated as cylindrical pits, approximately 40 cm in diameter with no predetermined target depth. However, during the present survey all excavation was to cease when contact with any intact cultural deposit could be determined. All soil excavated from probes was screened through ¼” mesh hardware screen. Details regarding the location, depth, sediments encountered and material content were recorded for each SP.

During the present review 13 additional shovel probes were excavated with mixed results. The probes were intended to add to the growing database of subsurface data compiled from work by Drayton at the site and a shovel testing regiment conducted by ESA in 2015 (Ostander, et.al 2016). ESA excavated 28 shovel probes onsite. Probes and trenches have been determined “Positive” if any anthropogenic material was present, historic or precontact. The testing perimeters of ESA were reported as determining a probe positive and ceasing any further excavation (regardless of depositional integrity) when any suspected precontact material was encountered (to include FMR) (Ostander, et.al 2016).

The level of testing conducted by ESA was based on presence/absence of any cultural materials and when precontact material was encountered to end all excavation. Presence/absence data are sufficient for use here in our analysis. Drayton excavated trenches prior to 45WH67 being recorded on the property therefore more latitude was available for where, how and to what extent testing could be undertaken. The present Drayton shovel testing regiment was limited to areas outside of the known shell midden deposits and to cease excavation when intact archaeological deposits were encountered (or suspected as was the case here).

The site soils encountered within the probes generally consisted of an upper stratum of dark grayish-brown fine sandy loam with underlying strata consisting of coarse sands ranging in color from brownish gray to yellow gray, probably reflecting chemical weathering of organic materials from the upper to lower profile. And the base soil is a naturally deposited gray beach sand when the bay was further inland from today (Photo 3).
Photo 3. A typical sediment soil profile observed in shovel probes (GB2).

Photo 4. The soil profile observed in GB4
Past use of the property has ranged from clearing, with likely some grading or plowing, to the near total development of it as the Edgewater Resort. In the majority of the site area there is a general mixed condition of soils that is well represented in GB4 (Photo 4). These conditions extend across the property, the grass areas nearest Birch Bay Drive, and likely under the adjacent paved driveways to those locations. The present work and that conducted previously was too limited in scope to have been able to collect enough data to demonstrate that definitively.

RESULTS AND RECOMMENDATIONS

The present archaeological investigation of the proposed Birch Bay Community Park was conducted as additional testing to further define site deposits at the property related to the precontact shell matrix site 45WH67. It should be noted that due to the disturbed nature of the soils and the proximity of extensive cultural deposits the likelihood for encountering significant cultural materials such as human remains and burial offerings is high wherever excavation takes place. Intact deposits are known to be located at the former office/store location and along Birch Bay Drive. Excavation for construction should avoid that area. Fill can be imported to support foundation construction and existing utility line corridors can be used to bring in new water, power, and sewer lines. A permit from the DAHP will be required prior to any construction or disturbance of any soils at the site.

To reiterate the previously stated recommendations, based upon the result of this, and previous reviews at the site, DA recommends the following measures be prescribed for any construction work at the park site:

A. Prior to any ground disturbance an archaeological excavation and site disturbance permit must be secured through the DAHP.

B. Excavations of any type (e.g. construction or further soils testing) should avoid the area adjacent to Birch Bay Drive, to include the former store/office footprint without first conducting data recovery excavations first.

C. In our opinion any excavation should be avoided in the most sensitive areas, but there is no scientific basis to avoid excavation outside of that location. Areas of low or moderate probability will likely contain traces of historic and precontact materials, but those areas have been extensively impacted and disturbed according to all observations.

D. All construction activities and any related ground disturbance conducted at the park property should be monitored by a professional archaeologist.

E. Adoption of an inadvertent discovery plan for all use of the property.

F. Design of any structures, their locations, and incorporation of fill to avoid excavation in the most sensitive area should be seriously considered.
The following is only offered as a guide and is not the complete text of any code, regulation or law. Washington State law provides for the protection of all archaeological resources under RCW Chapter 27.53, Archaeological Sites and Resources, which prohibits the unauthorized removal, theft, and/or destruction of archaeological resources and sites. This statute also provides for prosecution and financial penalties covering consultation and the recovery of archaeological resources. Furthermore, RCW Chapter 27.44, Indian Graves and Records, states that the willful removal, mutilation, defacing, and/or destruction of Indian burials constitutes a Class C felony. The assessment of the property has been conducted by a professional archaeologist and meets or exceeds the criteria set forth in RCW: 27.53 for professional archaeological reporting and assessment. The most recent addition to Washington legal code, RCW 68.50.645, Notification, provides a strict process for the notification of law enforcement and other interested parties in the event of the discovery of any human remains regardless of perceived patrimony.
REFERENCES

Anderson, Shelby L. R., and Ross E. Smith

Baldwin, Garth L.
1999 Washington State Archaeological Site Inventory Form 45WH537. On file at the Department of Archaeology and Historic Preservation, Olympia.


2004b Washington Archaeological Site Inventory Form Update 45WH29. On file at the Department of Archaeology and Historic Preservation, Olympia.


2008 Washington Archaeological Site Inventory Form 45WH770. On file at the Department of Archaeology and Historic Preservation, Olympia.


Baldwin, Garth L. and David Albaugh

2005b State of Washington Archaeological Isolate Form 45WH736. On file at Department of Archaeology and Historic Preservation. Olympia, WA.
Baldwin, Garth L. and Edward P. Arthur


2005g *Archaeological Survey and Assessment of the Weigum Properties Condominium Project, 0 Morrison Avenue, Birch Bay WA 98230*. Report prepared for Rex Broward. On file at the Department of Archaeology and Historic Preservation, Olympia.

Baldwin, Garth L. and Sarah K. Campbell
Baldwin, Garth L. and Todd A. Koetje
2003 *Archaeological Investigations at Nootka Loop / Parcel No. 405123-531193, Birch Bay Village, Blaine WA.* Report prepared for Bill and Cathy Kelly by Drayton Archaeological Research Services, Blaine WA. On file at the Department of Archaeology and historic Preservation, Olympia.

Baldwin, Garth L., and Gary C. Wessen

Bauer, W.

Booth, D.B. and B. Goldstein

Buswell, Howard

Clothier, Milt
1974 *45WH17 Archaeological Dig.* Sehome High School privately published.

Downing, John

Easterbrook, D.J.

Gaston, Jeannette

Gaston, Jeannette and Garland F. Grabert
1975 *Salvage Archaeology at Birch Bay, Washington.* Reports in Archaeology #2, Department of Sociology and Anthropology, Western Washington State College, Bellingham.
Goldin, Alan

Grabert, Garland F.
1973 *Washington State Archaeological Site Inventory Form: 45WH73.* On file at the Department of Archaeology and Historic Preservation, Olympia.


Grabert, Garland F., Jacki A. Cressman, and Anne Wolverton

Hovezak, Mark
2007 *Washington State Archaeological Site Inventory Form Update: 45WH67.* On file at the Department of Archaeology and Historic Preservation, Olympia.

Jeffcott, Percival R.

Johnnie, Al Scott
2003 Personal Communication at Lummi Indian Business Council, Tribal Center, Cultural Resources Department.

Kaiser, Christopher
2007 *State of Washington Archaeological Isolate Form for Site 45WH767.* On file at the Department of Archaeology and Historic Preservation, Olympia.

Koert, Dorothy
Larsen, Curtis E.
1969a *Washington State Archaeological Site Inventory Form: 45WH25*. On file at the Department of Archaeology and Historic Preservation, Olympia.

1969b *Washington State Archaeological Site Inventory Form: 45WH22*. On file at the Department of Archaeology and Historic Preservation, Olympia.


Ostander, Tom, Katherine F. Wilson, and Chris Lockwood

Pojar and Mackinnon

Reid, Alfred
1997 *Washington State Archaeological Site Inventory Form 45WH522*. On file at the Department of Archaeology and Historic Preservation, Olympia.


2001 *Blaine Substation to Semiahmoo Parkway Express Feeder Project Cultural Resource Investigation, Phase I*. Alfred Reid Archaeological Consulting (ARAC), Bellingham, Washington.

2003 *Washington State Archaeological Site Inventory Form 45WH693*. On file at the Department of Archaeology and Historic Preservation, Olympia.


2005 *Washington State Archaeological Site Inventory Form 45WH739*. On file at the Department of Archaeology and Historic Preservation, Olympia.

Reid, Alfred, James Hale, and Rich Hutchings

Roberts, John E.

Roth, Lottie Roeder, (editor)

Roulette, Billy R.


Ruby, Robert H. and John A. Brown

Shong, M.

Solland, S.O. and N.A Stenholm

Spear, Robert
Stern, Bernhard J.

Stone, Robert P.

Suttles, Wayne P.
1951 *Economic Life of the Coast Salish of Haro and Rosario Straits.* Ph.D. dissertation Washington State University, Seattle.

Suttles, Wayne P. (volume editor)

Sullivan, Michael, Kent Shoemaker, and Marjorie Reichhardt

Terich, Thomas A.

Tremaine, David G.
Appendix D ........ Public Meeting Comments Summary
Birch Bay Community Park Meeting
August 6, 2016

Comments

1. “I would like to see BEAUTY created in the park, not just functionality. I would like to see flowering trees for shade, flower shrubs, and fragrant flowers. Picnic areas could be naturally shaded with trees and made to feel cozy and inviting. Strawberry plants could be planted along walkways among the flowers.”

2. “Would love to see a display garden featuring seed sown low input annuals. California poppy, nasturtium, to start and to be an example to the community to emulate the example in their own yard/roadside etc. plus or minus 1,000 sf.”

3. “Conservation Futures”
   - Support out Bay
   - Support our visitors
   - Support our locals
     Restrooms, covered area, parking”

4. “A new museum. Things I have in my garage should not be kept in my garage. Main interest, Capt. George Vancouver and early settlers. Kids could come for field trips.”

5. “Must capture multi-generational interests.
   - Playground – children
   - Sports – teens, young adults, adults
   - Walking trail, arts – adults, wheelchair accessible”

6. “Need direct beach access for handicapped, plenty of parking, showers, bathrooms, stage, playground, building for visitor center.”

7. “- twisty tube slide, - swings, - trees (lots), - ping pong, - hot dog stand, - spray park, - fountain, - Wi-Fi, - flowers, - signs to clean up after dogs, - monkey bars, - basketball hoops, - bathrooms!!!!!, - picnic tables.”

8. “- Amphitheatre if possible, - multi-use court (Pickle Ball, B-Ball), - use Sunset Park as alternative parking with a trail to beach park, - host site to cut maintenance costs, - restrooms and parking, - lawn areas with picnic tables and shade trees.”

9. “Blue postal mail drop box.”

10. “1. Provide barriers (either trees or fence) on both sides for businesses’ protection
2. not too much parking (there’s parking available at vacant golf course) – need lots of space for summer Chamber of Commerce functions
3. combine pickleball and basketball courts: install playground
4. provide wash off areas (for beachgoers) outside of bathroom
5. bike racks – no dogs allowed (many people don’t pick up poop)
6. no sports rentals (cost to hire people to rent and probably some theft)
7. picnic tables, and or stages to be located in front (pink area – archeological site)
8. remove front fence”

11. “Thanks for the presentation August 6th. I’m sorry there weren’t more young families represented.

The site plan groups brought up lots of interesting ideas.

One thing I would like to stress is that although parking is important, one should remember that the commercial entities are not buying this park - all the taxpayers are - and it behooves us to keep in mind that we want the park used by families and individuals. Walkers and bicyclists might not even go out on the tide flats or beach and that is okay but they need to be accommodated. I am quite sure the community could finance memorial benches etc.

I would like to see the NW Parks and Rec represented. Have you contacted them? That is where a basketball court and teenager amenities could be located. I do feel some kind of appropriate play equipment should be provided for the younger age children. Some of us grandparents/great grandparents like to sit and rest a bit and watch them while they use up some energy!!! The idea of an Indian canoe, stumps of various shapes and sizes, creative climbing structures would be appropriate. Not plastic items - everyone agreed on that!!! Some shade should be provided and all agreed I think on a large grassy open space which can be utilized in many ways.

Was a drinking fountain mentioned?? I can't recall that it was.

Am looking forward to your preliminary schematic.”

Meeting Notes – “Program Elements”

- changing area
- bike racks “locking”
- parking (ADA access)
- restrooms
- low impact development
- Birch Bay Rd. improvements
- picnic area (benches, picnic tables)
- limit parking to maximize recreation area
- flowering accent planting
- niche spaces
- low maintenance
- open shelter/public use only
- staging area for community events
- interpretive trail (island key map)
- playground
- Birch Bay history exhibit/historic structure
- accessible beach access
- recreational program support facilities
- shade canopy
- public/private concession
- teenage recreational facility
- skate spot along berm trail

Meeting Notes – “Site Observations”

- Purchasing Restrictions – Cons. Futures
- Need more Parking
- Zoning – Parking limits
- Emergency Vehicle Access
- Popular area for walking
- Mail drop box
- Tsunami warning beacon will be installed
- No showers or basketball courts
- Leverage volunteer groups
- Locate appropriate teen rec. fac.
- Tidelands are a key tourism draw/attraction
- Explore grant funding opportunities
Birch Bay Community Park Meeting
August 31, 2016

Comments

1. “- Fire place back of building (ex: Fay Park, Bainbridge Island)
   - Basketball hoop in parking
   - Natural play area, headstart at EWRRC in Kendall, mixed equipment, check out kids play equipment “fueled” by adult workout equipment
   - Less parking, more green space”

2. “ - Bus Lane - South side
   - Turn Lane - North side
   - Host Pad - N.E. corner
   - Wider parking spots 12’, angle maybe?
   - Basketball/pickle ball – use Park District
   - Exercise station vs. Playground at Bay Horizon”

3. “Use one way angle parking at 36°.”

4. “Chamber seems wedded to their original concept?! Can’t please everyone –
   Concept A - Seems to have more open multi-use space. “Stage” in front of multi-purpose area better size. Re band concerts: consider close neighbors and sound which travels across Bay disturbing the quietness/enjoyment of Birch Bay. Neighbors and I don’t like the bands/noise going on until 10 at night – state park (restaurants – sound travels all around Bay). Like children’s play area. Temporary closure of parking area a good idea. I’d like some parking reduction. BBQ stand-alones? Trash? Has water district been contacted?? Re showers, places to wash off – water scarce and expensive!! Like fire ring/seating idea. Again re parking – does not and will not solve events parking! Ordinary people will be using park regularly. Perhaps remove 10-11 spaces on right side of schematic – and push grassy open space back a bit. Like trees for shade...Thanks for incorporating so many ideas.”

5. “#A – Extend covered area towards Beach to make slightly bigger. Put in BBall Court. Teenagers are not being thought about in any of the plans. Court could be used as “open space” during events. Teens would use mostly 4pm – dusk.

6. “Like concept B the best
   I would add food truck space to concept B
   Possibly add more fire pits
   I would prefer an option with less parking
   I think for most of the year the parking spaces will be unused”
7. “- Par exercise course as it is good for summer and winter use. Good agreement in our group about this.
   - Scrap or really cut back the play area.
   - Add food truck access in plan B.
   - Add a way to cut part of the parking lot for low use times so a basketball goal can be put in (portable/removable goal).”

8. “Ramp to stage important
   3 entrances to park (walk-in) important
   Shower/rinse off not in center of entry
   Parking surface multi-use (pop-up basketball etc.)
   Fire pit - Play area accommodate adults and kids
   Turn lane.double lane at entrance
   No host site
   Separate/Unisex bathrooms great – some open all year - like pull-down bench
   Noise reduction planting – keep volume lower – too loud!
   Pavilion open to the public
   Yes to fire pit
   Open space #1 – flexible/multi-use
   Solar lighting – motion activated – NOT on all night
   Reduced parking creates an area that could be for play/games – so still have a small play area as in “B”
   Gate open as much as possible”

9. “Concept A is preferable to the Golden Tides Association located to the south of the property. (The shelter is a concern for view sight lines for units 17-19.) A has a much better layout for events and food trucks! Parking access looks great. Both plans are really terrific – we are excited to see this happen!”

10. “1) Temporary basketball court located on parking lot.
    2) No band pavilion in south corner – too much noise for condo owners.
    3) Enlarge center pavilion to hold bands.”

11. “Modified B
    - Shower off to side – not centered
    - Minimize structures/maximize flexibility multi-use
    - Possible to have 2 entrance/exit or double width – more play space
    - Flexible multi-use Less parking, more park. Maybe same parking not per, 5 yes, 1 neutral
    - Parking surface multi-use
    - Concern for safety w/ parking in back, lighting – motion
    - Public Art/small natural kids play area – something to do
    - Meter/time/event only/2-hour section
- Stone fire place in back of covered area
- Tent for events for shade
- Designated vendor space
- 3 walk-in entrances great
- Noise reduction
- Art – exercise course”
Birch Bay Community Park Meeting
October 18, 2016

Comments

1. “- Basketball hoop – Just one!
   - Pad for volunteer trailer!
   - Signage with Environmental info and things to do: ie: fly a kite, skim board, scavenger hunt, etc.
   - ID and count our Birds of Birch Bay – sell bird ID cards.”

2. “In the near term, please place some port-o-potties on the property and find a low cost way to make it available for parking during some months.”

Received Letters

1. “I have been reviewing Concept A and B of the plans, we own Units #_ and #_ at __________, also this letter is from _______ and _______ and _______ and _______, who own unit #_ and unit #_, it appears that Concept B would be North of our condos, which would block our view, which also would mean more lights, music, noise level and events going on to the North of our units, which in turn would disturb our peace and tranquility that we have so much enjoyed.

When we all purchased our condos most of us had a view and this would destroy our view of the bay, this would also lessen the value of our properties. We ask that you go with Concept A which is a reasonable request from units #_, #_, #_ and #_ at __________.”
Appendix E .......... Utilities Map & Stormwater Memo
This memo describes the stormwater management approach to address the proposed Birch Bay Community Park site development in accordance with the Whatcom County Municipal Code and the 2014 Stormwater Management Manual for Western Washington. In depth detail of the approach will be provided in a subsequent stormwater design report. The following outlines what is planned for stormwater management to address a few of the minimum requirements based on the current information available.

Existing Conditions
The site is approximately 3.60 acres. The site was last developed as a series of cabins with a few common structures as a lodging business. The remaining asphalt paving totals 22,700 sf. The remainder of the site is turf-type grass. The site is also known to have archeological artifacts on site.

Soil Information
The NRCS website lists the soils for the site as predominantly Neptune very gravelly sandy loam and a portion along the east boundary as Whatcom Silt Loam. These are hydrologic soil groups A and C, respectively. No on-site geotechnical work has been completed to verify the items outlined in the Site Suitability Criteria for siting infiltration systems.

Proposed Conditions
The existing asphalt paving will be demolished. The project includes the construction of a main building, a multi-use shelter, pedestrian hardscape, a parking lot, landscaping, and the associated underground utilities. Frontage improvements include pedestrian hardscape and additional paving for a transit stop.

Minimum Requirements
The new hard surfaces will exceed 10,000sf so all the Stormwater Manual minimum requirements will apply to all vehicle paving, pedestrian hardscape, building and shelter roofs, landscape surfaces, and frontage improvements. All of the requirements will be
addressed in the stormwater design report submitted at a later date. Below is a discussion of how Minimum Requirements (MR) #5, 6, and 7 will be addressed.

MR #5: On-site Stormwater Management

The site qualifies for List #2. Lawn and landscape areas will be prepared to meet BMP T5.13 Post-Construction Soil Quality and Depth. All roof runoff will be handled using BMP T5.10A Downspout Full Infiltration. Each roof has a separate system that will be located in nearby turf areas. See the attached Exhibit B for trench locations. The size of these systems is to be determined based on the results of the soils investigation. The site does not have enough remaining forest cover to qualify for Full Dispersion. Both onsite and frontage improvement vehicle and pedestrian paving will be constructed of permeable pavements in accordance with BMP T5.15.

Filling the site is a consideration if the results of the soils investigate conclude that the groundwater is high enough to preclude the use of the infiltration techniques.

MR#6: Runoff Treatment

The parking areas and paving for the transit stop are the only pollution generating hard surfaces that require treatment. A soils investigation will be conducted to evaluate the site suitability criteria. This evaluation will also determine whether or not the native soils are suitable for treatment. If the soils are not suitable, a layer of soil with a high organic content will be added below the permeable pavements to provide the necessary treatment before infiltration occurs. It is anticipated that 100-percent of the runoff volume will infiltrate so the soil treatment combine with infiltration satisfies the requirement to provide enhanced treatment.

MR#7: Flow Control

It is expected that all of the runoff generated by the proposed improvements will infiltrate within the site. No further flow control is proposed.

Enclosure:

Exhibit B-Proposed Utilities
The following memo is broke into two sections. The first section outlines each of the existing utilities. The second section outlines how each of the utilities will be used in the proposed site development including any upgrades that may be needed.

**Existing Utilities**

A map of existing utilities is attached as Exhibit A.

Water service is provided by Birch Bay Water and Sewer District. A water meter is located in the middle of the site adjacent to Birch Bay Drive.

Sewer service is provided by Birch Bay Water and Sewer District. There are three side sewers that serve the site; one near the north boundary, one near the south boundary, and one mid-way.

Gas is provided by Cascade Natural Gas. The gas main is on the east side of Birch Bay Drive.

Power is provided by Puget Sound Energy. The main power lines are aerial and on the west side of Birch Bay Drive. There is a primary power pole on the west side of the road near the middle of the site. There was, but no longer a secondary pole on the east side also near the middle of the site that provides service to the site. There are also two additional secondary poles on site; one to the north and one to the south.

Cable TV, internet, and telephone are provided by Comcast. Additional options may available. The aerial communication lines have the same configuration as the power since they are on a shared pole.

There is no known stormwater conveyance infrastructure that serves the site.

**Proposed Use of Utilities**

A map of proposed utilities is attached as Exhibit B.

The water service will be connected to the existing meter and a new service line will be run to the outdoor shower area and to the main building. A branch off this service line will have a double check valve assembly to connect to the site's irrigation.
We have assumed at this point that fire protection is covered since the farthest structure is within 420-feet of the hydrant.

The sewer will be connected to the existing central side sewer and the other two side sewers will be abandoned in place. New sewer pipe will be installed from the road right-of-way to the main building. At this time we have assumed that the outdoor shower will not need to be connected to the sewer. Collected wash water will be dispersed subsurface through perforated pipe.

A new gas service will be run from the existing gas main to the main building.

The existing secondary power pole will be removed since it is in the middle of site. Starting at the primary power pole, power will be converted to an underground service that will run from the power pole across Birch Bay Drive to connect to the main building.

Cable TV, internet, and telephone will originate from the same aerial pole and be converted to underground sharing the same routing as the power.

The site is presumed to have soils suitable for stormwater infiltration based on preliminary analysis. All new uncovered paving surfaces within the site and for frontage improvements will be pervious asphalt. Roof runoff from the main building and multipurpose shelter will be collected and routed to subsurface infiltration trenches. All stormwater is expected to be managed with these approaches.

Enclosures:

Exhibit A: Existing Utilities

Exhibit B: Proposed Utilities
Exhibit B - Proposed Utilities
Appendix E .......... Master Plan Alternatives
# WHATCOM COUNTY COUNCIL AGENDA BILL

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**TITLED OF DOCUMENT:**

Ordinance amending Whatcom County Code Chapter 2.27A to prevent the release and spread of Aquatic Invasive Species

**ATTACHMENTS:**

Draft code changes.

**SEPA review required?**

( ) Yes  (X) NO

**SEPA review completed?**

( ) Yes  ( ) NO  

Should Clerk schedule a hearing? (X) Yes  ( ) NO  
Requested Date: 3/21/17

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

Public Works staff will introduce for discussion proposed changes to the aquatic invasive species ordinance (WCC 2.27A).

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

TO: Honorable Members of the Whatcom County Council, and
The Honorable Jack Louws, County Executive

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: February 22, 2017

RE: Proposed Changes to the Aquatic Invasive Species Code
(WCC 2.27A)

At the March 7, 2017 Natural Resources Committee meeting, Public Works staff will introduce for discussion proposed changes to the aquatic invasive species ordinance (WCC 2.27A) and associated portions of the Unified Fee Schedule.

Requested Action
Public Works is requesting County Council approval of the proposed ordinance changes. Public Works staff is working with City of Bellingham staff to pursue proposed changes to their respective ordinances on a parallel track that will allow coordinated implementation of the Aquatic Invasive Species Program in time for the 2017 boating season. Public Works staff anticipates bringing the ordinance to the Council for adoption at the March 21st meeting.

Please contact Gary Stoyka at extension 6218 if you have any questions regarding this information.

Attachment
ORDINANCE NO.________________

AMENDING WHATCOM COUNTY CODE CHAPTER 2.27A TO PREVENT THE RELEASE AND SPREAD OF AQUATIC INVASIVE SPECIES

WHEREAS, the County has authority under Washington State law to protect the health, safety, and general welfare of the public, to regulate and protect waters within its jurisdiction, and to control the transport and release of Aquatic Invasive Species,

WHEREAS, Lake Whatcom and Lake Samish are the drinking water sources for approximately half of the residents of Whatcom County and the vast majority of the City of Bellingham residents; and

WHEREAS, Whatcom County has adopted goals and policies to protect Lake Whatcom, Lake Samish and other freshwater lakes and streams; and

WHEREAS, Aquatic Invasive Species pose a serious threat to the waters of Whatcom County and can have severe impacts to ecology, water quality, water supply infrastructure, and recreational use; and

WHEREAS, watercraft transported from water bodies with Aquatic Invasive Species to uninfested waters are the principal cause of new infestations; and

WHEREAS, prevention programs that include education, screening, and watercraft inspection are effective in preventing the spread of Aquatic Invasive Species to uninfested water bodies; and

WHEREAS, an Aquatic Invasive Species prevention program is necessary to reduce the risk of Aquatic Invasive Species infestation and related impacts at Lake Whatcom and other waters of Whatcom County; and

WHEREAS, Whatcom County has authority under RCW 36.32.120 and Washington State law generally to regulate and protect its water supply and other waters within its jurisdiction; and

WHEREAS, Whatcom County adopted Ordinance 2012-034 in September 25, 2012, codified at WCC Chapter 2.27A, to prevent the release and spread of Aquatic Invasive Species into waters of Whatcom County; and

WHEREAS, it is in the best interests of Whatcom County to amend WCC Chapter 2.27A to further define and enhance its Aquatic Invasive Species detection and prevention program, including the adoption of mandatory inspection and permitting requirements for watercraft in Whatcom County;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 2.27A is hereby amended as set forth in Exhibit A, attached hereto.
ADOPTED this _____ day of ____________ 2017.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council

, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Daniel L. Edelson
Civil Deputy Prosecutor

Jack Louws, County Executive
( ) Approved ( ) Denied

Date Signed: ____________________
Exhibit A

WCC Chapter 2.27A
Aquatic Invasive Species

2.27A.010 Definitions

For the purpose of this chapter, the following definitions shall apply:

A. “Authorized Inspector” means a person who has received the necessary training approved by Whatcom County and authorized to inspect Watercraft to detect the presence of aquatic invasive species.

B. “Aquatic Invasive Species” and “AIS” shall mean an aquatic species that is: (i) nonnative to public water bodies located in unincorporated areas of Whatcom County; and (ii) whose introduction causes or is likely to cause economic or environmental harm or harm to human health, and include “Aquatic Invasive Species” and “AIS” shall include but not be limited to those species classified in Washington Administrative Code (WAC) 220-12-090 as ”prohibited aquatic animal species”, and those plant species listed in WAC 16-752-400-415; 505; and 610. For purposes of this chapter, WAC 220-12-090 and WAC 16-752-400-415; 505; and 610, as presently constituted or as hereinafter amended, are adopted and incorporated herein by reference.

C. “Enforcement Officer” includes any Authorized Inspector and any peace officer with jurisdiction in Whatcom County, and the County Noxious Weed Coordinator or his or her designee, to enforce the prohibitions set forth in this chapter.

D. “Inspection” means an inspection of a Watercraft or other vessel conducted by an Authorized Inspector for the purpose of detecting Aquatic Invasive Species and preventing their transport and release into any Public Water Body. Inspections may consist of questioning as well as a visual and tactile search of the exterior and interior of the Watercraft or other vessel, including but not limited to the hull, trailer, motor, propeller, bilge pump, compartments, bait well, ballast tank, bladder, and all areas of standing water.

E. “Inspection Seal” means a cord or tether installed by an Authorized Inspector in a manner that connects a Watercraft to its trailer for the purpose of indicating that the Watercraft has passed inspection, has not entered a water body since passing Inspection, and, therefore, may launch without further Inspection when returning to the same water body so long as the Inspection Seal is intact at the time of launch.

F. “Launch” means any act that places or attempts to place a Watercraft into a Public Water Body.

G. "Public Water Body" shall mean Lake Whatcom, Lake Samish, Baker Lake, Tennant Lake, Lake Terrell, Wiser Lake, Silver Lake, Toad Lake, Squalicum Lake, Reed Lake, Cain Lake and all other freshwater lakes and streams in unincorporated areas of Whatcom County where Watercraft have access.

G.H. "Motorized Propulsion System" shall mean any mechanism or system used to generate thrust to move a watercraft across water, including but not limited to outboard motors, inboard motors, jet motors, and inboard/outboard motors.

H.I. “Watercraft” shall mean any type of vessel, boat, or craft capable of being used as a means of transportation on water, including but not limited to motor boats, sail boats, row boats, kayaks, canoes, barges, and all associated equipment, including trailers, that routinely or reasonably could be expected to contain or come into contact with water. The term "Watercraft" specifically excludes the following: surf
boards, paddle boards, and kite boards; and non-motorized inflatables that are 10 feet or less in length. “Watercraft” shall consist of the following categories:

(1) “Class A Watercraft” shall mean any vessel that has a motorized propulsion system or requires registration by the State of Washington Department of Licensing under RCW 88.02 and WAC 308-93-030 and any vessel registered under the laws of a state other than Washington State or a country other than the United States.

(2) "Class B Watercraft" shall mean any vessel that has a Motorized Propulsion System that does not require registration by the State of Washington Department of Licensing under RCW 88.02 and WAC 308-93-030 or under laws of a state other than Washington State or a country other than the United States.

(3) “Class B-C Watercraft” shall mean vessels that do not have a Propulsion System and do not require registration by the State of Washington Department of Licensing under RCW 88.02 and WAC 308-93-030.

2.27A.020 Prohibitions

The following activities are prohibited:

A. The transport or release of Aquatic Invasive Species into a Public Water Body.

B. Launching, operating or keeping on a Public Water Body a Watercraft that has not submitted to Inspection and decontamination as required by this chapter.

C. Launching, operating or keeping on a Public Water Body a Watercraft without a current AIS Permit as required by WCC 2.27A.050, below.

2.27A.030 Inspection and Decontamination.

A. Inspections shall be required of:

   i. All Watercraft prior to its first launch onto Lake Whatcom or Lake Samish in each calendar year; and

   ii. All Watercraft prior to its first launch onto Lake Whatcom or Lake Samish after it has entered any fresh water body located outside Whatcom County, Washington; and

   iii. All Watercraft prior to each and every launch onto a Public Water Body from a public access point for which an AIS check station is operating under this chapter, except Watercraft bearing an intact Inspection Seal.

B. Exemptions. Watercraft inspections and the associated fees shall not be required for:

   i. Law enforcement and emergency response watercraft.

   ii. Watercraft involved in search and rescue operations or training.

C. Inspection and Decontamination Services

   i. Whatcom County may establish and operate AIS check stations at public access points to Public Water Bodies.
ii. Whatcom County may, upon request by an owner or operator of a Watercraft, conduct an Inspection on private property owned by the Watercraft owner or operator.

iii. All AIS check stations operating under this chapter shall be marked by signs and staffed by one or more Authorized Inspectors. AIS check stations authorized by this chapter shall be subject to hours of operation and other program requirements established by the Director of Public Works or his designee.

iv. If, upon Inspection, an Authorized Inspector determines that a Watercraft is not contaminated with Aquatic Invasive Species, then said Watercraft shall be permitted to launch, subject to payment of fees authorized in WCC 2.27A.050.

v. If, upon Inspection, an Authorized Inspector reasonably suspects that a Watercraft or any other vessel is contaminated with Aquatic Invasive Species, the Authorized Inspector may decontaminate the watercraft on site or direct the Watercraft owner or operator to a decontamination station where the Watercraft will undergo a decontamination process. Following decontamination, the Watercraft owner or operator shall not launch the Watercraft onto a Public Water Body until the Watercraft has been re-inspected and approved for launch by an Authorized Inspector.

vi. A Watercraft owner or operator may refuse to stop and consent to Inspection at any AIS check station authorized by this chapter; provided, if any Watercraft owner or operator refuses to stop and consent to Inspection at an AIS check station authorized by this chapter, then said owner or operator shall not launch his or her Watercraft from said location and shall be in violation of this chapter if he or she nevertheless attempts to do so.

2.27A.040 Safe Harbor

Any person who voluntarily stops and consents to Inspection at an AIS check station or other inspection station and cooperates in the decontamination process shall not be subject to penalties under this chapter for possessing or transporting Aquatic Invasive Species.

2.27A.050 AIS Permits and Fees

A. Every Watercraft subject to the inspection requirements of this Chapter shall visibly display a valid AIS Permit issued by Whatcom County or the City of Bellingham prior to launching and while operating on Public Water Bodies.

B. AIS Permits shall be issued upon passage of Inspection and payment of the applicable fee.

C. The fee for Inspection and decontamination services for all classes of Watercraft shall be established in the Whatcom County Unified Fee Schedule.

D. AIS Permits shall be available as follows:

i. Annual Sticker. Each Annual Sticker shall be effective during the calendar year in which it is issued and shall entitle the holder to unlimited Inspections and Inspection Seal installation services for the Watercraft to which the Annual Sticker is affixed.

ii. Class A Three-Day Pass. Each three-day pass shall entitle the holder to unlimited inspections and sealing services for the applicable Watercraft for the duration of the period specified on the pass. Day passes are available for Class A and Class B Watercraft only.
Three Day Pass. Each three day pass shall entitle the holder to unlimited inspections and sealing services for the applicable Watercraft for the duration of the period specified on the pass. Three day passes are available for Class A and Class B Watercraft only.

Special Event Passes. Special event passes may be issued for fishing tournaments, sailing and rowing regattas, and other group events approved by the director of public works or his designee upon the event sponsor's execution of a special event agreement with Whatcom County or the City of Bellingham in a form approved by the director of public works. Special event passes shall entitle each event participant to inspection and sealing services for the duration of the event, subject to the terms and conditions of the special event agreement.

Annual Watercraft Business Permit. Watercraft business permits may be issued to person or entities who are in the business of providing Watercraft services (including transport, maintenance, repair, storage or other similar activities) upon execution of a cooperative agreement with Whatcom County or City of Bellingham in a form approved by the director of public works. Watercraft business permits shall be effective during the calendar year in which they are issued and shall entitle the permit holder to expedited inspection services and issuance of AIS annual stickers for Watercraft within the company's possession or control, all subject to the terms and conditions of the cooperative agreement.

An on-line AIS Awareness Course shall be developed and made available to the public. Persons successfully completing the on-line course shall, upon providing verification of their successful completion to the Authorized Inspector, be entitled to the reduced AIS Awareness fee schedule for AIS inspections for each boat that they own. The AIS Awareness fee schedule shall be established in the Whatcom County Unified Fee Schedule.

AIS Permits are nontransferable and shall apply to a single Watercraft. AIS Permits shall be affixed to the Watercraft as directed by the Authorized Inspector in a visible location located above the waterline.

A Watercraft shall be deemed to be in compliance with the inspection and permitting requirements of this chapter if his or her Watercraft is currently in compliance with an Aquatic Invasive Species inspection and permitting program adopted by the City of Bellingham, Washington.

The fees authorized by this chapter are intended to offset the cost to Whatcom County of implementing this chapter for the purpose of detecting and preventing the spread of Aquatic Invasive Species and are not intended to be, nor shall they be construed to be, charges imposed upon access to Public Water Bodies for the purpose of outdoor recreation. Fees shall be evaluated annually to ensure they are sufficient for program needs.

2.27A.060 Cooperative Agreements.

Whatcom County may enter into cooperative agreements with persons and entities, including but not limited to, homeowner's associations, condominium associations, civic groups and governmental entities, to adopt and execute plans, which may be implemented inside or outside Whatcom County, to detect and prevent the transport and release of Aquatic Invasive Species in Public Water Bodies.

2.27A.070 Penalties

A. Any person violating this chapter shall have committed a civil infraction, and shall be punished by a fine not to exceed $1,000 for each violation. Each violation of this chapter shall be a separate infraction, and in the case of a continuing violation, each day's continuance shall be deemed to be a
separate and distinct infraction. Civil infractions under this chapter shall be issued and processed in accordance with Chapter 7.80 RCW, except as otherwise provided in this chapter. Each party to a civil infraction case shall bear its own attorney’s fees, witness fees and costs.

B. Any individual who violates this chapter may be held responsible for the costs expended by Whatcom County or its designee for response and mitigation of impacts.

C. Payment of any civil penalty herein shall not relieve any individual from the responsibility of correcting the violations as found by the Enforcement Officer.

D. Any person found not in compliance with this chapter is subject to citation, shall be escorted off the Public Water Body, and shall be subject to any other legal action as deemed necessary by the Enforcement Officer including but not limited to detaining said person and Watercraft until inspected and decontaminated as required under this chapter.

E. Fines collected as a result of violating this chapter that are not otherwise encumbered, shall be used to fund the Whatcom County Aquatic Invasive Species Management and Prevention Program.

2.27A.080 Applicability
The provisions of this chapter shall apply in addition to the provisions of any other code provision or ordinance. Where there is a conflict, the more restrictive provision shall apply. The provisions of this chapter are in addition to those provisions regulating Aquatic Invasive Species as contained in Washington State law.

2.27A.090 Severability.
If any section, provision, or portion of this chapter shall be determined to be invalid, the remainder of the chapter shall not for that reason be rendered ineffective or invalid.
WHATCOM COUNTY COUNCIL AGENDA BILL

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FEB 28 2017
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
Washington Department of Fish & Wildlife Lake Whatcom Hatchery Easement

ATTACHMENTS:
Easement and exhibits

SEPA review required?  ( ) Yes  ( X ) NO  Should Clerk schedule a hearing?  ( ) Yes  ( X ) NO
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.)

Request authorization to grant the Washington Department of Fish & Wildlife an easement on park property located on the South Bay Lake Whatcom for the purpose of construction and maintenance of a fish hatchery and stream bank on Brannian Creek.

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: Honorable Council Members and County Executive Louws

FROM: Michael McFarlane, Director

DATE: February 17th, 2017

RE: WDFW Easement Request

Attached is an easement for your signature which allows the Washington Department of Fish & Wildlife access on and across park property located on the south end of Lake Whatcom. This easement is being requested to allow for construction and maintenance of the stream and fish collection structures required for their hatchery operation on Brannian Creek.

The hatchery shares a common border with the parks property and access is required on both sides of the stream to properly maintain improvements. This easement is not anticipated to have any adverse effect upon the park property or future use.

This easement request was reviewed by the Parks & Recreation Commission at their February 16th meeting and approval is recommended.

Please contact me at 5855 if you have any questions or require additional information.
After Recording Return To:
Washington Department of Fish and Wildlife
Real Estate Services
600 Capitol Way North
Olympia, WA 98501-1091
Attn: Elyse Kane

Document Title: Easement
Grantor: Whatcom County
Legal Description: Ptn NE ¼ Sec. 27, Twp 37 N, Rge 04, E W.M.
Assessor's Parcel No.: 3704273703800000 Parcel ID No: 34419
County: Whatcom

EASEMENT

WHATCOM COUNTY, a political subdivision of the State, whose address is 311 Grand Avenue, Bellingham, owner of record of the following described property, for and in consideration of the desire to improve the Lake Whatcom Hatchery, hereby grants and conveys to THE STATE OF WASHINGTON, THE DEPARTMENT OF FISH AND WILDLIFE, Grantee, an easement on, over and across lands hereinafter described, so that the Department of Fish and Wildlife may, at its discretion, enter upon and utilize said lands for the purposes of replacing, constructing, installing, and maintaining such wooden or concrete walls, revetments, or structures as necessary for the taking of fish spawn, operation of fish hatchery, creek stabilization, and creek bank protection. The Grantee's rights are not transferrable. The term of this easement shall be for the period of use. If said structures are removed, or Grantee ceases its use for a period of 5 consecutive years, or if the Grantee's property is sold, all rights and interest hereby granted shall revert to and revest in Grantor without notice or declaration of forfeiture. Upon such reversion, Grantee shall, at its sole cost, execute and deliver such instruments and documents as Grantor may deem reasonably necessary to confirm the complete release of this easement. The real estate referenced being located in Whatcom County, State of Washington, as more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference:

Whatcom County

By: ____________________________ Date: ____________________________
   Jack Louws, County Executive
STATE OF WASHINGTON  
)  
) ss
County of Whatcom  
)

I certify that I know or have satisfactory evidence that Jack Louws is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Whatcom County Executive to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this ______ day of __________, 2017.

______________________________
Notary Public in and for the State of Washington,  
residing at __________________________.  
My appointment expires __________________.
EXHIBIT A

EASEMENT DESCRIPTION

THAT PORTION OF GOVERNMENT LOT 2, LOCATED IN SECTION 27, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION OF SAID SECTION 27;
THENCE NORTH 00°47’07’’ EAST, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 27, A DISTANCE OF 1344.135 FEET;
THENCE NORTH 89°55’03’’ EAST, A DISTANCE OF 339.11 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 25°29’23’’ WEST, ALONG A LINE THAT IS PARALLEL TO AND 20.00 FEET EASTERLY OF THE HIGH WATER MARK ON THE EASTERLY SIDE BRANNIAN CREEK, A DISTANCE OF 28.55 FEET;
THENCE NORTH 33°33’21’’ WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 21.24 FEET;
THENCE NORTH 05°42’33’’ WEST, A DISTANCE OF 11.74 FEET;
THENCE NORTH 01°34’52’’ EAST, A DISTANCE OF 13.54 FEET;
THENCE NORTH 60°57’25’’ EAST, A DISTANCE OF 23.30 FEET;
THENCE NORTH 67°17’43’’ EAST, A DISTANCE OF 18.32 FEET;
THENCE SOUTH 54°06’53’’ EAST, LEAVING SAID PARALLEL LINE, A DISTANCE OF 33.30 FEET;
THENCE SOUTH 54°19’43’’ EAST, A DISTANCE OF 30.79 FEET;
THENCE SOUTH 36°26’30’’ WEST, A DISTANCE OF 44.64 FEET;
THENCE SOUTH 48°52’16’’ WEST, A DISTANCE OF 41.67 FEET TO A POINT THAT IS 20.00 FEET EASTERLY OF THE HIGH WATER MARK ON THE EASTERLY SIDE OF SAID BRANNIAN CREEK;
THENCE NORTH 25°29’23’’ WEST, ALONG A LINE THAT IS PARALLEL TO AND 20.00 FEET EASTERLY OF THE HIGH WATER MARK OF SAID BRANNIAN CREEK, A DISTANCE OF 15.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 5,084 SQUARE FEET, OR 0.1167 ACRES, MORE OR LESS.

THOMAS E. CARNER, P.L.S.
BRH JOB NO. 2016225.00
DECEMBER 16, 2016

BUSH, ROED & HITCHINGS, Inc.
2009 MINOR AVENUE EAST
SEATTLE, WA 98102
(206) 323-4144
WHATCOM COUNTY COUNCIL AGENDA BILL

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**TITLE OF DOCUMENT:**
Port of Bellingham/ADO Economic Development Update

**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.)

Whatcom County Port of Bellingham/Associate Development Organization (ADO) economic development update

**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.
TITLE OF DOCUMENT:
Human Resources will present its semiannual report to Council

ATTACHMENTS:

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.)

Human Resources to present its semiannual report to Council

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.
### Whatcom County Council Agenda Bill

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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.)

Finance Director Bennett’s quarterly report to Council.

### Committee Action:  Council Action:

- **Related County Contract #:**
- **Related File Numbers:**
- **Ordinance or Resolution Number:**

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WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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TITIE OF DOCUMENT:
Introduction and discussion of proposed modifications to the Unified Fee Schedule to accommodate changes to the Aquatic Invasive Species (AIS) Ordinance WCC 2.27A.

ATTACHMENTS:
Draft ordinances changes.

SEPA review required? ( ) Yes (X) NO
SEPA review completed? ( ) Yes ( ) NO
Should Clerk schedule a hearing? (X) Yes ( ) NO
Requested Date: 3/21/17

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

Public Works staff will introduce for discussion proposed changes to the Unified Fee Schedule needed to accommodate changes to the aquatic invasive species ordinance (WCC 2.27A).

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: Honorable Members of the Whatcom County Council, and
The Honorable Jack Louws, Whatcom County Executive

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: February 22, 2017

RE: Proposed Changes to the Whatcom County Unified Fee Schedule
(Ordinance 2016-049)

At the March 7, 2017 Finance Committee meeting, Public Works staff will introduce for
discussion proposed changes to the Unified Fee Schedule needed to accommodate
changes to the aquatic invasive species ordinance (WCC 2.27A) scheduled for potential
adoption by the Council on March 21, 2017.

Requested Action
Public Works is requesting discussion by County Council on the proposed ordinance
changes. Public Works staff is working with City of Bellingham staff to pursue proposed
modifications to their respective ordinances on a parallel track that will allow
coordinated implementation of the Aquatic Invasive Species Program in time for the
2017 boating season. Public Works staff anticipates bringing the ordinance to the
Council for adoption at the March 21st meeting.

Please contact Gary Stoyka at extension 6218 if you have any questions regarding this
information.

Attachment
ORDINANCE NO. ____________

AMENDING THE WHATCOM COUNTY UNIFIED FEE SCHEDULE

WHEREAS, the Whatcom County Council adopted Ordinance No. ____________ on ____________, 2017, thereby establishing mandatory Aquatic Invasive Species inspections prior to launch at certain Whatcom County water bodies for new classes of watercraft; and

WHEREAS, the current Whatcom County Unified Fee Schedule was adopted by the Whatcom County Council as Ordinance No. 2016-049 on November 22, 2016; and

WHEREAS, fees for Aquatic Invasive Species inspections for these new classes of watercraft are not included in the current Unified Fee Schedule;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the current Whatcom County Unified Fee Schedule, Ordinance No. 2016-049, is hereby amended as set forth in Exhibit A, attached hereto.

ADOPTED this _____ day of ______________ 2017.

ATTEST

Dana Brown Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Daniel J. Wilson
Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved ( ) Denied

Date Signed: ____________
Exhibit A

Unified Fee Schedule
Whatcom County Ordinance 2016-049

**DELETIONS:**
- Aquatic Invasive Species Inspection Class A Watercraft Multi-Day Pass: $20.00
- Aquatic Invasive Species Inspection Class B Watercraft Annual Sticker: $10.00
- AIS Awareness - Aquatic Invasive Species Inspection Class B Watercraft Annual Sticker: no charge

**ADDITIONS:**
- Aquatic Invasive Species Inspection Class A or Class B Watercraft 3-Day Pass: $20.00
- Aquatic Invasive Species Inspection Class A or Class B Watercraft Day Pass: $10.00
- Aquatic Invasive Species Inspection Class B Watercraft Annual Sticker: $30.00
- AIS Awareness - Aquatic Invasive Species Inspection Class B Watercraft Annual Sticker: $20.00
- Aquatic Invasive Species Inspection Class C Watercraft Annual Sticker: $10.00
- AIS Awareness - Aquatic Invasive Species Inspection Class C Watercraft Annual Sticker: no charge

**MODIFICATIONS:**
- Aquatic Invasive Species Inspection Class A Watercraft Annual Sticker: $50.00

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110
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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**TITLE OF DOCUMENT:** Cooperative Agreement between the Commodity Credit Corporation and Whatcom County for the Agricultural Conservation Easement Program

**ATTACHMENTS:** Memo, Information Sheet, Agreement, Terms and Conditions

**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.)

The Natural Resource Conservation Service (NRCS) is offering Whatcom County 50% cost share for the purchase of four Purchase of Development Rights (PDR) easements through their Agricultural Conservation Easement Program (ACEP) grant. The four easements will be placed on the Grubbs property, the Williams 1 property, the Cougar Creek Ranch property, and the Matheson property. The ACEP grant works on a reimbursement system. The County will pay the full amount of the easement from Conservation Futures Fund, and then the fund will be reimbursed a few weeks after closing for 50% of the purchase price. Council reviewed PDR applicant properties at their 08/09/2016 meeting and approved Resolution 2016-029 which authorized the PDR program administrator to proceed towards purchasing easements on 6 properties, and acquiring appraisals and title services on 4 other properties. The four properties that this agreement applies to were among those confirmed by Resolution 2016-029. Approving this grant agreement will authorize the Executive to sign the agreement.

**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](http://www.co.whatcom.wa.us/council).
Enclosed are two (2) originals of the contract between The Commodity Credit Corporation and Whatcom County for your review and signature.

▪ **Background and Purpose**
The Natural Resource Conservation Service (NRCS) is offering Whatcom County 50% cost share for the purchase of four Purchase of Development Rights (PDR) easements through their Agricultural Conservation Easement Program (ACEP) grant. The four easements will be placed on the Grubbs property, the Williams 1 property, the Cougar Creek Ranch property, and the Matheson property. The ACEP grant works on a reimbursement system. The County will pay the full amount of the easement from Conservation Futures Fund, and then the fund will be reimbursed a few weeks after closing for 50% of the purchase price.

▪ **Funding Amount and Source**
The grant provides $593,020.00 to be used as match funding on the four properties listed above.

Please contact Karin Beringer at extension 5956 if you have any questions or concerns regarding the terms of this agreement.
Originating Department: Planning & Development Services  
Program/Project: Purchase of Development Rights Program  
Contractor’s / Agency Name: The Commodity Credit Corporation  
Contract or Grant Administrator: Karin Beringer  
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): 5405461601H  
MP CFDA#: 10.931  
Is this contract grant funded? Yes ☒ No ☐  
If yes, Whatcom County grant contract number(s):  
Is this the result of a RFP or Bid process? Yes ☐ No ☒  
If yes, RFP and Bid number(s): Contract  
Cost Center:  
Is this agreement excluded from E-Verify? Yes ☒ No ☐  
If no, include Attachment D Contractor Declaration form.  
If YES, indicate exclusion(s) below:  
☐ Professional services agreement for certified/licensed professional.  
☐ Contract work is for less than $100,000.  
☐ Contract work is for less than 120 days.  
☐ Interlocal Agreement (between Governments).  
☐ Contract for Commercial off the shelf items (COTS).  
☐ Work related subcontract less than $25,000.  
☐ Public Works - Local Agency/Federally Funded FHWA.  
Contract Amount:(sum of original contract amount and any prior amendments): $593,020  
This Amendment Amount: $  
Total Amended Amount: $  
Summary of Scope: The Natural Resource Conservation Service (NRCS) is offering Whatcom County 50% cost share for the purchase of four Purchase of Development Rights (PDR) easements through their Agricultural Conservation Easement Program (ACEP) grant. The four easements will be placed on the Grubbs property, the Williams 1 property, the Cougar Creek Ranch property, and the Matheson property. The ACEP grant works on a reimbursement system. The County will pay the full amount of the easement from Conservation Futures Fund, and then the fund will be reimbursed a few weeks after closing for 50% of the purchase price.  
Term of Contract: Expiration Date: 08/31/2020  
Contract Routing:  
1. Prepared by:  
2. Attorney signoff:  
3. AS Finance reviewed:  
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:  

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NOTICE OF GRANT AND AGREEMENT AWARD

1. Award Identifying Number 68-046-17-507
2. Amendment No. n/a
3. Award/Project Period Date of final NRCS signature - 8/31/2020
4. Type of Award Instrument Cooperative

5. Agency: Natural Resources Conservation Service (NRCS) (Name and Address)
   NRCS - Washington State office
   316 W. Boone Ave. Ste 450
   Spokane WA 99201

6. Recipient Organization: (Name and Address)
   Whatcom County, 5280 Northwest Drive
   Bellingham, WA 98226

7. NRCS Program Contact:
   Kreft, Dave
   Dave.Kreft@iwa.usda.gov

8. NRCS Administrative Contact:
   Georgia Welton
   georgia.welton@wdc.usda.gov

9. Recipient Program Contact:
   Karin Beringer 360-778-5956
   kberinger@co.whatcom.wa.us

10. Recipient Administrative Contact:

11. CFDA Number 12. Authority
    10.931 ACEP
    Section 2301 of the Agricultural Act of 2014 (Public Law 113-79)

13. Type of Action
    i. New Agreement

15. Project Title/Description:
    ACEP-ALE FY17 - NEST#540546170HIMP
    Complete agreement includes this NRCS-ADS-093 (NOA) and attachments: A-Statement of Work, Attachment X SOW & Y GTC & A: List of Land Easement Parcels.

16. Entity Type: ___Profit ___Nonprofit ___Higher Education ___Federal ___XX State/Local ___Indian/Native American ___Other

17. Select Funding Type:
    ✔ Federal ☑ Non-Federal
    Original Funds Total: $ 593,020.00
    Additional Funds Total: $ 618,020.00
    Grand Total: $ 593,020.00 $ 618,020.00

18. Accounting and Appropriation Data
    | Financial Code | Amount     | Fiscal Year | Treasury Symbol |
    |----------------|------------|-------------|-----------------|
    | NRSLACEA.53.0000.16.XXF | $ 543,020.00 | 2017       | 12X1004         |
    | NRSLACEA.53.0000.17.XXF | $ 50,000.00  | 2017       | 12X1004         |

19. APPROVED BUDGET
    | Personnel | $ |
    | Travel    | $ |
    | Supplies  | $ |
    | Construction | $ |
    Total Direct Cost $ 1,211,040.00
    Total Indirect Cost $ 618,020.00
    Total Non-Federal Funds $ 618,020.00
    Total Federal Funds Awarded $ 593,020.00
    Total Approved Budget $ 1,211,040.00

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.
NOTICE OF GRANT AND AGREEMENT AWARD

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Name and Title of Authorized Government Representative
Roylene Rides at the Door, State Conservationist

Name and Title of Authorized Recipient Representative
Karin Beringer, PDR Program Administrator

Signature

Date

*See also Page 2a. for Authorized Agreement Signatory*

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a).
Whatcom County

Recommended for approval

By: ________________________________

Title: Whatcom County Executive

Date: _____________________________

STATE OF WASHINGTON )
COUNTY OF ______________________ ) ss.

On this _______ day of ____________, 2017 before me personally appeared
__________________________ to me know to be the County Executive of Whatcom County and who
executed the above instrument and who acknowledged to me the act of signing and sealing
thereof.

________________________________

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

________________________________

My commission expires __________________

Approved as to form:

Prosecuting Attorney

Date

2-23-17
December 28, 2016

Wahtcom County
5280 Northwest Drive
Bellingham, WA 98226

Dear Sir or Madam,

Enclosed for signature is the new USDA NRCS agreement number 68-0546-17-507 for the project titled; To facilitate and provide funding for the purchase by eligible entities of agricultural land easements on eligible land through the Agricultural Conservation Easement Program. The NRCS award amount is $593,020 and the effective dates for this project will be the date of final signature to 8/31/2020.

The Notice of Grant and Agreement Award (NOA), when signed by authorized NRCS official, is the authorizing and fully executed document. This letter is not an authorization to begin performance and incur cost associated with the award. This agreement is not fully executed until signed by the proper NRCS official. No work may be performed under this agreement until it has been signed by BOTH parties.

All pre-award cost must be negotiated before the grant or agreement is fully executed and requires prior written approval from the NRCS Grants and Agreements Branch.

Please sign page two (2) of the Notice of Award. Your signature certifies full compliance with all terms and conditions of the agreement, as well as stated grant and agreement regulations, and that the document has not been altered. Once signed, please email a copy of the NOA to me.

If you have any questions regarding this agreement, please contact me at 817-509-3520 or by email at georgia.welton@wdc.usda.gov.

Sincerely,

Georgia Welton
Georgia Welton
Grants Management Specialist
COOPERATIVE AGREEMENT
between
THE COMMODITY CREDIT CORPORATION
and the
WHATCOM COUNTY
for the
AGRICULTURAL CONSERVATION EASEMENT PROGRAM

This Cooperative Agreement is entered into by and between the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation (CCC), and WHATCOM COUNTY (hereinafter whether singular or plural ENTITY) for the purchase of agricultural land easements (ALE) under the Agricultural Conservation Easement Program (ACEP). The CCC will utilize the expertise and services of NRCS to perform its duties identified in this Cooperative Agreement. The term “Parties” as used herein refers collectively to NRCS and the ENTITY.

I. AUTHORITY

NRCS enters this Cooperative Agreement under the authorities of the Commodity Credit Corporation Charter Act, 15 U.S.C. Section 714 et seq., the Agricultural Conservation Easement Program, subtitle H of title XII of the Food Security Act of 1985, 16 U.S.C. Section 3865 et seq., and the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. Section 6304 et seq. This Cooperative Agreement will be administered in accordance with the policies and procedures set forth in the ACEP regulation (7 CFR Part 1468) and uniform regulation for grants and agreements in 2 CFR Parts 25, 170, 200 and 400.

WHATCOM COUNTY enters this Cooperative Agreement under the authorities of RCW 64.04.130, RCW 84.34.230 and Whatcom County Ordinance No. 2002-054.

II. PURPOSE

This Cooperative Agreement stipulates the terms and conditions under which NRCS will provide ACEP cost-share assistance to the ENTITY. The ENTITY has signed the Notice of Grant and Agreement Award acknowledging that the award is subject to the terms and conditions of this Cooperative Agreement and all applicable laws, regulations, and policy.

THEREFORE, the Parties agree to enter into this Cooperative Agreement to purchase agricultural land easements from eligible landowners (Grantors) to protect the agricultural use, future viability, and related conservation values of eligible land by limiting nonagricultural uses of that land or to protect grazing uses and related conservation values by restoring and conserving eligible land. The Parties have identified these eligible lands on attachments to this Cooperative Agreement as Parcels, herein referred to collectively as “Parcels” or individually as “Parcel.”

III. OBLIGATION OF FUNDS

A. Upon execution of this Cooperative Agreement, NRCS will make cost-share assistance available up to the amount specified on the Notice of Grant and Agreement Award for the acquisition by the ENTITY of agricultural land easements on the Parcels listed on attachments to this Cooperative Agreement. To receive this cost-share, the ENTITY must close the agricultural land easements and request payment of the NRCS cost-share in accordance with section VII of this Cooperative Agreement.

B. NRCS may make additional cost-share assistance available in future fiscal years through the execution of mutually acceptable amendments to this Cooperative Agreement that identify the additional cost-share assistance amount, the additional funded Parcels, and the terms and conditions
of the funding if different from the terms and conditions identified herein, as provided in section IX.D.

C. Upon mutual agreement of the Parties and execution of an amendment, as provided in section IX.D, NRCS may allow substitution of Parcels at any time, provided the Parcels are of comparable conservation value as determined by the NRCS.

D. This Cooperative Agreement will be for a term of 3 years and not to exceed 5 years. The ENTITY must meet each performance schedule deadline in table 1 unless the ENTITY requests and NRCS grants an extension in writing prior to the original deadline. The performance schedule deadlines for an individual attachment may be extended for one consecutive 12-month period, as provided in section IX.B. Should the ENTITY not meet the performance schedule deadlines, NRCS may release any remaining funds from this Cooperative Agreement.

Table 1 – Performance Schedule

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<td>March 31, 2020</td>
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E. Requests for an extension to the attachment expiration deadline must be submitted by the ENTITY to NRCS 30 days in advance of the attachment expiration date.

F. Nothing in this document obligates NRCS or the ENTITY to purchase all or any of the agricultural land easement Parcels listed in the attachments.

IV. FEDERAL SHARE

Based on a determination by NRCS that the ENTITY has satisfied the terms and conditions of this agreement, NRCS will pay the ENTITY a cost-share amount for the purchase of each agricultural land easement acquired by the ENTITY. The Federal share will not exceed 50 percent of the fair market value of the agricultural land easement as determined using one of the methods set forth in 7 CFR § 1468.24.

V. COOPERATING ENTITY’S CONTRIBUTION

A. The ENTITY will contribute an amount for the easement purchase at least equivalent to the Federal share. The ENTITY may include as part of its contribution a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the eligible landowner if the ENTITY contributes its own cash resources in an amount that is at least 50 percent of the amount contributed by NRCS. If the NRCS State Conservationist has waived a portion of the ENTITY’s cash contribution requirement for individual projects of special significance, the Parcels receiving the waiver will be identified in the attachment and the ENTITY will provide a copy of the approved waiver at the time payment is requested. The ENTITY’s reduced contribution of its own cash resources for projects of special significance will be in an amount at least [SELECT ONE: 25 or 10] percent of the Federal share.

B. The ENTITY must self-certify on NRCS Form 230, “Confirmation of Matching Funds” (exhibit 4), that the ENTITY’s contribution of its own cash resources has not come from additional donations, payments, loans or fees made by or charged to the Grantor of the agricultural land easement, immediate family members, or organizations controlled by or funded by the Grantor, either through

NRCS Representative Initial _________

Entity Representative Initial _________
formal or informal agreements. The ENTITY must provide a completed NRCS Form 230 to NRCS for a Parcel prior to the closing or an advance of funds for that Parcel.

VI. PAYMENTS

A. The ENTITY must meet the terms and conditions set forth in this agreement and provide NRCS with the items identified in this section and section VII in order to receive the Federal share for a Parcel.

B. The ENTITY may request payment of the Federal share as reimbursement after closing or as an advance payment prior to closing of an agricultural land easement on a Parcel.

C. To obtain reimbursement or an advance payment of the Federal share, the ENTITY will submit the Form SF-270 (Request for Advance/Reimbursement of Funds (exhibit 5)), the SF-270 supplement for noncertified eligible entities (exhibit 6), and the information and documentation required by the supplement to the NRCS contact named on the Notice of Grant and Agreement Award. The ENTITY may submit the SF-270 payment request package:
   1. 60 days prior to the planned closing date when a payment is to be issued at closing (advance payment);
   2. After the agricultural land easement has been recorded and the landowners have been paid (reimbursement); or
   3. On a quarterly basis for each quarter that agricultural land easements have been recorded and the landowners have been paid (reimbursement).

C. ENTITY will maintain current registration in the Dun and Bradstreet Data Universal Numbering System (DUNS) and meet the System for Award Management (SAM) registration requirements or successor registry for the duration of this Cooperative Agreement.

D. NRCS will disburse following receipt of a fully complete and correct SF-270 payment request package from the ENTITY within 30 days if the Federal share for the individual easement is less than $250,000 and within 60 days if the Federal share for the individual easement is $250,000 or greater.

E. If NRCS provides an advance payment the ENTITY will obtain a receipt for the Federal funds from the closing agent and provide it to NRCS prior to closing. The ENTITY will ensure the closing agent does not hold the Federal funds in escrow for more than 30 calendar days. If closing does not occur within 30 calendar days of advance payment, the ENTITY will ensure the Federal funds and any interest earned on those funds while in escrow are returned to NRCS by the 31st calendar day. The ENTITY must ensure that the Federal funds are fully insured while held in escrow.

VII. RESPONSIBILITIES

A. ENTITY Responsibilities:

1. ENTITY will purchase agricultural land easements on eligible land from eligible landowners for the Parcels identified on the attachments to this Cooperative Agreement consistent with the requirements identified in this Agreement. ACEP agricultural land easements are conservation easements conveyed for the purpose of protecting natural resources and the agricultural nature of the land and permit the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan, as specified in in this part.

2. ENTITY will ensure that agricultural land easements acquired with funds made available under this Cooperative Agreement and that the deeds satisfy the following requirements:
   a. Contain the "Minimum Terms for the Protection of Agricultural Use", attached to this Cooperative Agreement as exhibit 7 (ALE Minimum Deed Terms). The ENTITY is authorized to use its own terms and conditions in the agricultural land easements so long as the ENTITY’s additional language does not alter or defeat the intent, purpose or effective enforcement by the Parties of the ALE minimum deed terms, the Agricultural Conservation

NRCS Representative Initial __________

Entity Representative Initial __________


Easement Program, or the agricultural land easements acquired under this Cooperative Agreement.

b. Address all of the minimum deed requirements identified at 7 CFR § 1468.25(d);

c. Address the disposition of the agricultural land easement and the Federal share in the event the agricultural land easement is ever extinguished, terminated, or condemned in whole or in part.

d. Are conveyed for the purpose of protecting natural resources and the agricultural nature of the land;

e. Run with the land in perpetuity or where State law prohibits a permanent easement, for the maximum duration allowable under State law;

f. Protect the agricultural use, future viability, and related conservation value, of the Parcels by limiting nonagricultural uses of that land or protect grazing uses and related conservation values by restoring and conserving eligible land, including grasslands of special environmental significance;

g. Provide for the administration, management, and enforcement of the agricultural land easement by the ENTITY or its successors and assigns;

h. Permit effective enforcement of the conservation purposes of such easements; and

i. Subject the Parcel to an agricultural land easement plan that meets the requirements of this Section.

3. The ENTITY has the following three options for ensuring that the agricultural land easement contains the ALE Minimum Deed Terms required in paragraph VII.A.2 above:

a. Attach the ALE Minimum Deed Terms Addendum as an Exhibit to the Agricultural Land Easement Deed. Under this option the ENTITY does not need to have the entire agricultural land easement deed reviewed by NRCS, instead NRCS at the State level will verify prior to the ENTITY requesting an advance of the Federal share or closing on an agricultural land easement that the ENTITY satisfies all of the following requirements:

(i) The ALE Minimum Deed Terms addendum is signed by the landowner and the ENTITY and will be attached to the agricultural land easement deed at the time of closing and recordation;

(ii) The terms of the ALE Minimum Deed Terms addendum are not modified; and

(iii) The paragraph below is inserted at the bottom of the agricultural land easement deed:

This Agricultural Land Easement is acquired with funds provided, in part, by the Agricultural Conservation Easement Program, (ACEP). The EXHIBIT ______ is attached hereto and incorporated herein by reference and will run with the land in perpetuity for the maximum duration allowed under applicable State laws. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT ______ is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Terms For The Protection Of Agricultural Use in EXHIBIT ______ that is appended to and made a part of this easement deed.

b. Incorporate the ALE Minimum Deed Terms into the Body of the Agricultural Land Easement Deed. Under this option, the ENTITY shall ensure the terms as stated in the ALE Minimum Deed Terms addendum are included in the body of the agricultural land easement deed. The ALE Minimum Deed Terms may be formatted to select options where instructed, conform terms to deed formatting, complete terms with required information, and delete instructions to drafters. Each individual agricultural land easement deed must be reviewed and approved by NRCS National Headquarters prior to the ENTITY requesting an advance of the Federal share or closing on an agricultural land easement.

NRCS Representative Initial

Entity Representative Initial
c. Entity Agricultural Land Easement Deed Template Approved by NRCS. Upon mutual agreement of the Parties, the Cooperative Agreement may be amended to replace or supplement the attached exhibit 7 with an agricultural land easement deed template to be used for every Parcel listed on attachments to this Cooperative Agreement. The terms and conditions of the agricultural land easement deed template must contain the ALE minimum deed terms as stated and must be approved by NRCS National Headquarters in advance of the amendment. If the ENTITY uses the approved NRCS NHQ-approved deed template without changing any terms or conditions, then the ENTITY is not required to obtain NRCS NHQ review and approval of the individual, final agricultural land easement deeds. NRCS at the State level will verify prior to the ENTITY requesting an advance of the Federal share or prior to closing on an agricultural land easement that the individual, final agricultural land easement deed is the same as the NHQ-approved template.

4. The ENTITY must provide to NRCS a copy of the agricultural land easement deed and all exhibits at least 90 days before the planned closing date.

5. NRCS may require adjustments to the provisions identified in paragraph VII.A.2 above and require the addition of other provisions if NRCS determines that they are necessary to meet the purposes of ACEP and protect the conservation values of the Protected Property.

6. The ENTITY will perform necessary legal and administrative actions to ensure proper acquisition and recording of valid agricultural land easements.

7. The ENTITY will pay all costs of agricultural land easement acquisition and will operate and manage each agricultural land easement in accordance with its easement program, this Cooperative Agreement, 16 U.S.C. Section 3865 et seq. and applicable regulations. NRCS will have no responsibility for the costs or management of the agricultural land easements purchased by the ENTITY unless NRCS exercises the rights of the United States under an agricultural land easement.

8. NRCS will not be responsible for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the ENTITY in connection with its acquisition or management of the agricultural land easements acquired pursuant to this Cooperative Agreement. This includes but is not limited to acts and omissions of the ENTITY agents, successors, assigns, employees, contractors, or lessees that result in violations of any laws and regulations that are now or that may in the future become applicable.

9. The ENTITY will prepare a baseline documentation report documenting the condition of the Parcel as of the time the easement is acquired and include a completed baseline documentation report in the payment request package submitted to NRCS pursuant to part VI. The baseline documentation report must contain maps, full descriptions and pictures of the Parcel location, existing structures and infrastructure, land use, land cover and its condition, and any special features for which the Parcel is being protected. The ENTITY must provide NRCS a draft baseline documentation report at least 90 days before the planned closing date of the agricultural land easement deed.

10. ENTITY will ensure completion of an agricultural land easement plan for each Parcel that must:
   a. Meet the requirements for an agricultural land easement plan specified in 7 CFR § 1468.26(a);
   b. Describe the activities that promote the long-term viability of the land to meet the purposes for which the Parcel was selected;
   c. Identify required or recommended conservation or management practices or activities that address the purposes and resource concerns for which the Parcel was selected;
   d. Require the management of any grasslands according to a grassland management plan or forest lands that exceed the greater of 40 acres or 20 percent of the Parcel according to a forest management plan;
   e. Require a conservation plan that meets the requirements of 7 CFR Part 12 for any highly erodible cropland; and

NRCS Representative Initial

Entity Representative Initial
f. Require, if specified prior to closing, the conversion of highly erodible cropland to less intensive uses.

11. ENTITY will choose one of the options below for completing the agricultural land easement plan by initialing the appropriate box when signing this Cooperative Agreement. (Initial only one option):

   a. ENTITY requests that NRCS personnel complete the agricultural land easement plan and ENTITY will coordinate with NRCS State office and landowner to ensure that the plan is completed and signed by the landowner prior to closing.

   b. ENTITY will complete the agricultural land easement plan without the assistance of NRCS personnel and at its own expense. ENTITY will ensure the plan meets NRCS standards and specification or other applicable industry standards. ENTITY will provide the plan to NRCS at least 90 days prior to the planned closing date and must obtain NRCS approval of the plan prior to closing. ENTITY will ensure NRCS has authorized access to the property and landowner if needed to review and approve plans prepared using this option. ENTITY will ensure the approved plan is signed by the landowner prior to closing.

12. In acquiring agricultural land easements, the ENTITY will ensure that the title to the lands or interests therein will be unencumbered or that outstanding or reserved interests are subordinated to the agricultural land easement. The ENTITY and NRCS will review the title commitment to ensure there are no encumbrances that would allow nonagricultural uses of the property that are not acceptable to the ENTITY or NRCS. The ENTITY shall provide NRCS a copy of the title commitment or title report, a summary of the ENTITY title review findings, and any other requested documentation related to title at least 90 days before the planned closing date. Any exceptions to the requirement to remove or subordinate outstanding or reserved interests must be consistent with this Cooperative Agreement, 16 U.S.C. Section 3865, and applicable regulations, and approved by NRCS and documented on the certificate of use and consent.

13. The ENTITY will secure proper title evidence and insurance using an owner’s American Land Title Association (ALTA) policy with the ENTITY listed as the insured on the policy and the policy issued for the full amount of the agricultural land easement purchase price.

14. The ENTITY will obtain a determination of the fair market value of the agricultural land easement for each Parcel at its own cost using one of the methods set forth in 7 CFR § 1468.24. Individual appraisals conducted by a certified general appraiser that conform to the NRCS Appraisal Specifications provided as exhibit 8 and either the Uniform Standards of Professional Appraisals Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 2000) (USFLA). The effective date of the appraised value must be within 6 months prior to or after the date the Parcel is added to this agreement as a funded Parcel or within 12 months of the closing date of the agricultural land easement on the Parcel. Use of fair market valuation methodologies other than individual USPAP or USFLA appraisals must be approved by NRCS in writing prior to entering into this Cooperative Agreement.

15. The ENTITY will provide the appraiser the NRCS appraisal specifications (exhibit 8) and all of the items required to be provided by the ENTITY as identified in the NRCS appraisal specifications. The ENTITY must receive a separate appraisal report for each funded Parcel identified on an attachment. Under no circumstances will the ENTITY allow the landowner to approve or disapprove of the appraiser selected to prepare the appraisal report. The landowner will not be listed as the client.

16. The ENTITY must provide NRCS a completed appraisal report at least 90 days before the planned closing of the agricultural land easement so that NRCS may conduct a technical review of the appraisal. The ENTITY will not close the agricultural land easement until the technical reviewer approves the appraisal report. If the ENTITY closes the agricultural land easement prior to the

NRCS Representative Initial ________

Entity Representative Initial ________
approval of the appraisal by the technical reviewer NRCS may not provide the Federal share for the agricultural land easement and may terminate this agreement.

17. The ENTITY will not use ACEP funds to acquire an easement on a property in which the ENTITY’s employee or board member with decision-making involvement in easement acquisition and management matters has a property interest or whose immediate family member or household member has a property interest. The ENTITY agrees to conduct itself in a manner so as to protect the integrity of agricultural land easements it holds and avoid the appearance of impropriety or actual conflicts of interest in its acquisition and management of agricultural land easements.

18. The ENTITY will not at any time, when the ENTITY is named as a Grantee on the agricultural land easement, seek to acquire the remaining fee interest in the Parcel. Likewise, if the ENTITY enters into an agreement with another entity to manage or monitor the agricultural land easement, and that entity seeks to acquire the underlying fee, the ENTITY agrees to immediately terminate such agreement and arrange for an uninterested party to manage or monitor the Parcel.

19. The ENTITY will implement easement enforcement procedures when a violation of the agricultural land easement or agricultural land easement plan is identified by or reported to the ENTITY. ENTITY enforcement procedures resulting from a violation of a conservation plan can only be initiated after all administrative and appeal rights have been exhausted by the landowner in accordance with 7 CFR Part 12 and 7 CFR Part 614.

20. The ENTITY will submit a completed Federal Financial Report Standard Form 425 (FFRs) (exhibit 2) to the NRCS State office at least 5 business days prior to the end of each fiscal quarter (December 31, March 31, June 30, and September 30) for each quarter the ENTITY closes an agricultural land easement on a Parcel. Reports must be submitted on an accrual accounting basis. Failure to submit complete reports in accordance with the above schedule may result in suspension or termination of the Cooperative Agreement. A final FFR must be submitted no later than 90 days after the end date of the Cooperative Agreement.

21. At a minimum, the ENTITY will monitor every agricultural land easement on an annual basis to ensure and document compliance with the easement deed and agricultural land easement plan provisions. Each year the ENTITY will submit the annual monitoring report for that year to the appropriate NRCS State office in the format required by NRCS.

22. Nongovernmental organizations must continue to meet the definition of nongovernmental organization in 7 CFR Section 1468.3 for the entire term of this agreement.

23. This paragraph and paragraphs 2, 7, 8, 9, 10, 17, 18, 19, 20, and 21 of this section VII.A will survive the closing of the agricultural land easement and the termination or expiration of this Cooperative Agreement.

B. NRCS Responsibilities:

1. The United States, by and through NRCS, will review applications submitted by the ENTITY, determine land and landowner eligibility, rank eligible applications, obtain and review a hazardous substance record search, conduct an onsite visit, and authorize Parcels to be added to the attachments to this Cooperative Agreement as tentatively selected for funding or as substitutes.

2. NRCS will provide technical and other services as requested and to the extent resources allow to assist in developing an agricultural land easement plan that meets ACEP requirements and NRCS standards and specifications or other applicable industry standards.

3. NRCS will manage the funds obligated to this Cooperative Agreement and subject to the availability of funds, disburse the appropriate funds to the ENTITY in accordance with this Cooperative Agreement.

4. After the required materials have been submitted by the ENTITY, prior to closing, NRCS will:

NRCS Representative Initial _________

Entity Representative Initial _________
a. Review the agricultural land easement deed based on the option selected by the ENTITY for incorporating the ALE minimum deed terms, and provide the ENTITY with any approval instructions or items requiring resolution.
b. Review the title documents submitted by the ENTITY, complete a certificate of use and consent, and provide the findings to the ENTITY for information or remedy as necessary.
c. Conduct a technical review of the appraisal submitted by the ENTITY and provide the findings to the ENTITY for information or resolution as necessary.
d. As requested by the ENTITY, either develop or review the agricultural land easement plan, and identify any items for resolution to the ENTITY.
e. Review the draft baseline documentation report provided by the ENTITY and notify the ENTITY if additional information is needed; and
f. Review and provide notice of determination on any waiver requests submitted by the ENTITY in accordance with ACEP policy.
g. After NRCS reviews are completed and the materials are determined acceptable, provide the ENTITY with an “Approval for a Non-Certified Eligible Entity to Proceed with the ALE Acquisition” letter and the NRCS-signed “Confirmation of Matching Funds.”

5. If an advance payment is requested, NRCS will also provide a copy the NRCS closing agent requirements to the ENTITY.

6. Prior to NRCS disbursement of funds, the NRCS State Conservationist will verify that the ENTITY has provided all documentation, certifications and information required by sections VI and VII.A. NRCS will conduct an internal review the SF-270 payment request package in accordance with NRCS easement acquisition internal controls policy. The NRCS State office will submit a copy of the payment request package for national review and approval for all agricultural land easement payments that meet the national review threshold. Complete payment request packages for national review must be submitted by NRCS at the State level to NRCS NHQ no less than 30 days before the planned closing date.

7. NRCS will certify payment and disburse funds, for Parcels listed as funded on the attachments to this Cooperative Agreement when the ENTITY has requested payment by the payment request deadline and acquired agricultural land easements on the funded Parcels by the closing deadline, consistent with the requirements of the this agreement.

8. NRCS will review the annual monitoring reports provided by the ENTITY to ensure monitoring is conducted annually and reports are sufficient and submitted to NRCS annually for every NRCS-funded conservation easement held by the ENTITY.

VIII. PUBLIC INFORMATION

A. The ENTITY agrees to acknowledge NRCS cost-share assistance in any public outreach materials or events related to agricultural land easements acquired pursuant to this Cooperative Agreement and to provide draft copies of such information to the NRCS State office for review and comment before public release.


IX. GENERAL PROVISIONS

A. This Cooperative Agreement constitutes financial assistance and, therefore, all Federal laws, regulations, and Executive orders are applicable, including 2 CFR Parts 25, 170, 200, and 400.

B. It is the intent of NRCS to fulfill its obligations under this Cooperative Agreement. However, NRCS cannot make commitments in excess of funds authorized by law or made administratively available. If
NRCS cannot fulfill its obligations under this Cooperative Agreement because of the unavailability of funds, this Cooperative Agreement will automatically terminate.

C. No assignment, in whole or in part, will be made of any right or obligation under this Cooperative Agreement without the joint approval of both NRCS and the ENTITY. Nothing herein will preclude NRCS or the ENTITY from entering into other mutually acceptable arrangements or agreements, except as identified in section VIIA.18 of this Cooperative Agreement. Such documents will be in writing, will reference this Cooperative Agreement, and will be maintained as part of the official Cooperative Agreement file.

D. This Cooperative Agreement may be amended or modified by written amendment signed by the authorized officials of the NRCS and the ENTITY.

E. NRCS may terminate this Cooperative Agreement if NRCS determines that the ENTITY has failed to comply with the provisions of this Cooperative Agreement or if it determines that it is in the best interests of the Federal Government to terminate. In the event that this Cooperative Agreement is terminated for any reason, the financial obligations of the Parties will be as set forth in 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

F. If any recipient of Federal funds under this Cooperative Agreement fails to comply with the terms and conditions of this Cooperative Agreement, NRCS reserves the right to wholly or partially recapture funds provided in accordance with applicable regulations.

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<th>PROGRAM: ACEP Funds Authorized</th>
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<tbody>
<tr>
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<td>Acct. Code:</td>
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NRCS Representative Initial ________
Entity Representative Initial ________
NRCS has made cost-share assistance available up to the amount specified on the NRCS-ADS-093, “Notice of Grant and Agreement Award,” for parcels on this attachment that have been selected for funding. Parcels listed and not currently selected for funding and parcels identified at the time of the proposed substitution may be substituted for funded parcels that are cancelled upon mutual agreement of the Parties and removed from this attachment.

Funding obligated under this attachment will expire on August 31, 2018, unless a request for extension for this funding year has been approved by the State Conservationist and the agreement is amended with a new attachment expiration date of August 31, 2019, for this attachment_A_.

<table>
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<tr>
<th>Landowner’s Name(s)</th>
<th>Total Acres</th>
<th>Estimated Agricultural Land Easement Value</th>
<th>Estimated Federal Contribution</th>
<th>NEST Parcel ID Number</th>
<th>Selected for Funding (check)</th>
<th>Received a Cash Contribution Waiver</th>
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NRCS Representative Initial

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| Totals           | 261.58           | $1,211,040.00    | $593,020.00 | □ | □ |

1 Note: the original expiration date entered will be August 31 of the year 2 years following the fiscal year the attachment is added to the agreement. The extension date entered will be August 31 of the following year. Therefore, if an attachment is approved by NRCS in FY 2015, the expiration date would be August 31, 2017, and the extension date would be August 31, 2018.

NRCS Representative Initial

Entity Representative Initial
U.S. Department of Agriculture  
Natural Resources Conservation Service  
AGRICULTURAL CONSERVATION EASEMENT PROGRAM  
AGRICULTURAL LAND EASEMENT  
MINIMUM DEED TERMS FOR THE PROTECTION OF AGRICULTURAL USE  

1) When these terms are appended as an exhibit to the Agricultural Land Easement deed, as opposed to being inserted directly into an Agricultural Land Easement deed, this paragraph will be inserted at the bottom of the ACEP funded Agricultural Land Easement deed:

This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT ____ is attached hereto and incorporated herein by reference and will run with the land [SELECT ONE: in perpetuity OR for the maximum duration allowed under applicable State laws]. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT ____ (legal description or survey) is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT ____ that is appended to and made a part of this easement deed.

2) When these terms are being inserted directly into an Agricultural Land Easement deed the following will be included in the deed’s introductory paragraph and recitals:

[Include in introductory paragraph after Grantor and Grantee:]

and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).

[Include in Recitals:]

This [INSERT DEFINED TERM FOR EASEMENT DEED] is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of [SELECT ONE: protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of OR protecting grazing uses and related conservation values by restoring and conserving] the Protected Property.

Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is [SELECT ONE: appended to this easement deed OR maintained in the files of the Grantee].

3) A fully executed copy of the Exhibit below must be attached to the ACEP funded Agricultural Land Easement deed at the time of closing and recordation or, with NRCS approval, the Section I and II terms below must be incorporated into the body of the Eligible Entity’s Agricultural Land Easement deed unmodified except for appropriate formatting changes, selecting options, removing instructional provisions, and substituting as needed, the defined term for the Parcel instead of “Protected Property”.

1
MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS

The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit ______, hereafter referred to as “the Protected Property”, for the purpose of [SELECT ONE: protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of OR protecting grazing uses and related conservation values by restoring and conserving] the Protected Property.

The [LANDOWNER NAMES] (collectively Grantor), the [ELIGIBLE ENTITY NAMES] (collectively Grantee), and the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the “Parties”) acknowledge that the ALE is acquired by the Grantee to [SELECT ONE: protect the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of OR protect grazing uses and related conservation values by restoring and conserving] the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is [SELECT ONE: appended to this easement deed OR maintained in the files of the Grantee].

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between the ALE and this Exhibit. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control; provided however, if other sections of the ALE have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive to the rights of the Grantor than Section I Paragraph 4 and 5 and Section II then Section I Paragraph 4 and 5 and Section II will control.

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

The terms and conditions of the ALE run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. Agricultural Land Easement Plan. As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use of the property will be subject to the ALE Plan on the Protected Property.
EXHIBIT 7

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

2. Limitation on Impervious Surfaces. Impervious surfaces will not exceed [Insert approved impervious surface percentage] [Note: if greater than 2 percent, a written waiver from the Chief of NRCS or authorized designee (Chief of NRCS) is required], of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE.

Include the following if limited subdivision is allowed below: [In the event the Protected Property is subdivided as provided for in Section I, Paragraph (3)(A), the total cumulative impervious surface of the subdivided parcels must not exceed the impervious surface limitation referenced above. The Grantor, with Grantee approval, will allocate the impervious surface limit among the subdivided parcels and ensure said impervious surface limitation is clearly defined in each subdivided parcel’s recorded instrument.]

3. Limitations on Nonagricultural Uses. Any activities inconsistent with the purposes of the ALE are prohibited. [Note: The term “ALE grassland enrollments” refers to both general ALE grazing uses enrollments or ALE Grassland of Special Environmental Significance enrollments (GSS).] [Also include the following sentence for ALE grassland enrollments: The provisions of this ALE limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, and protect grazing uses, and related conservation values]. The following activities are inconsistent with the purposes of ALE and are specifically prohibited, subject to the qualifications stated below:

(A) Subdivision – [Select Option 1, 2, or 3.]

[Option 1] Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited [Where required by State law the following may be inserted: except where State or local regulations explicitly require subdivision to construct residences for employees working on the Protected Property]. Grantor must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS or his or her authorized designee (Chief of NRCS) prior to division of the Protected Property.

[Option 2] The Protected Property must not be divided or subdivided into, or separately conveyed as, more than _____ farm or ranch parcels (____ divisions allowed), the boundaries and the allocation of
the impervious surface limitation of which have been identified in EXHIBIT ____, which is appended to and made a part of this ALE. To protect the [SELECT ONE: agricultural use and future agricultural viability OR the grassland, grazing uses], and related conservation values of the Protected Property, the boundaries of such divisions have been preapproved in writing by Grantee and the Chief of NRCS or authorized designee of the Chief of NRCS. Deviations from the identified boundaries will not be allowed. Grantor must give Grantee and the Chief of NRCS written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property.

[Option 3] The Protected Property must not be divided or subdivided into, or separately conveyed as, more than _____ farm or ranch parcels (____ divisions allowed). To protect the [SELECT ONE: agricultural use and future agricultural viability OR the grassland, grazing uses], and related conservation values of the Protected Property, the boundaries of such divisions must be approved in writing by Grantee and the Chief of NRCS or the authorized designee of the Chief of NRCS before any such division, subdivision, or separate conveyance occurs. The Chief of NRCS may only approve the division, subdivision, or separate conveyance of the Protected Property into separately conveyable farm or ranch parcels when—

1. The Grantee requests the Chief of NRCS approval to subdivide the Protected Property into separate farm or ranch parcels, after receiving a request from the Grantor;

2. The Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agriculture use and that separate conveyance of the Protected Property farm or ranch parcels will move the land from one agricultural operation to another; and

3. The Chief of NRCS determines that the—

   a. Parcels resulting from the subdivision of the Protected Property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels, and

   b. The resulting parcel will not be below the median size of farms in the county or parish as determined by most recent United States Department of Agriculture’s National Agricultural Statistical Survey (NASS).

(B) Industrial or Commercial Uses – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) agricultural production and related uses conducted as described in the ALE Plan;

(ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the conservation purposes of this Easement;

(iii) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;
(iv) commercial enterprises related to agriculture or forestry including but not limited to [Select those consistent with ALE purposes for the Protected Property: agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries.]
[For properties that contain historical or archaeological resources the following may be inserted: Commercial enterprise activities related to interpretation of the Protected Property’s historic or archaeological resources.]

(v) small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(C) Construction on the Protected Property – All new structures and improvements must be located within the Building Envelopes, containing approximately _____ acres and described in EXHIBIT _____, which is appended to and made a part of the ALE.

[Include the following subparagraph if future building envelope adjustments may be considered: The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the [SELECT ONE: agricultural use and future viability OR the grassland, grazing uses], and related conservation values of the Protected Property.]

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under Section I, Paragraph (4)(C) that neither individually nor collectively have an adverse impact on the [SELECT ONE: agricultural use and future viability OR grassland, grazing uses] and related conservation values of the Protected Property, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the utilities or agricultural structures are consistent with the ALE Plan described Section I, Paragraph 1.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property. [The preceding sentence must be struck for ALE grassland enrollments].

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Protected Property or to mark boundaries of the Protected Property. [For ALE grassland enrollments replace the preceding sentence with: Fences may be maintained and replaced and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements.]

(D) Granting of easements for utilities and roads – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact [SELECT ONE: the agricultural
(E) Surface Alteration – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) dam construction in accordance with an ALE plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

(ii) erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or

(iv) [SELECT ONE: Agricultural activities OR Grazing uses or grassland restoration and conservation activities] conducted in accordance with the ALE Plan.

(F) Oil, Gas, or Mineral Exploration and Extraction – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Protected Property is prohibited. [Include the following subparagraph if a limited allowance for agricultural purposes may be authorized: Provided however, limited mining activities for materials (e.g., sand, gravel, or shale) used for agricultural operations on the Protected Property is allowed where the extraction of materials used for such agricultural operations is limited, localized, and small with a defined area and acreage identified in EXHIBIT ____ and does not harm the conservation values or the agricultural uses of the Protected Property.]

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).

The following may be inserted to qualify the above if Grantee chooses to allow oil and gas exploration and extraction as an alternative to a complete prohibition on oil or gas exploration and extraction on the Parcel – Beginning of Optional Additional Oil and Gas Language: Oil and gas exploration and extraction on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate that such exploration and extraction of oil and gas is—

(i) not accomplished by any surface mining method;
(ii) accomplished by a method of extraction, production, and transport that has no more than a limited and localized impact that does not harm the agricultural use or conservation values of the Protected Property;

(iii) within the impervious surface limits of the ALE; and

(iv) subject to a plan that includes provisions for oil and gas exploration and extraction.

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this Deed and will incorporate by reference this Deed.

Impervious surfaces as defined in [Insert Citation to Impervious Surface Limitation] of this Easement will include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses allowed by this paragraph. End of Alternate Oil and Gas Language]

[Include the following paragraph for ALE Grassland Enrollments: (G) Crop Cultivation. Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial nongrassland agricultural product is prohibited.]

4. Preserving Agricultural Uses. The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property, ALE Plan and ALE uses, and do not violate Federal laws, including Federal drug laws. [The preceding sentence must be struck for ALE grassland enrollments.] No uses will be allowed that decrease the ALE’s protection for [SELECT ONE: the agricultural use and future viability, and related conservation values OR the grazing uses and related conservation values or adversely impact the restoration or conservation of the grassland, and related conservation values] of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) Agricultural Production – The production, processing, and marketing of [SELECT ONE: agricultural crops and livestock OR livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values] is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph 1.

(B) Forest Management and Timber Harvest – Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the
following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities, buildings, and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

(C) On-Farm Energy Production – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.

Include the following paragraph any time the property is in grassland use, an ALE grassland enrollment, or funded for conservation purposes that include conserving or restoring grassland uses or grassland dependent species: (D) Grassland Uses of the Protected Property – Grantors are allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire presuppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the property affected by this restriction will be set forth within the ALE Plan for the Protected Property that has been approved by Grantor, Grantee, and NRCS.

Include the following paragraph if Land Eligibility is based on the presence of historical or archaeological resources or the project received ranking points for the multifunctional benefits of agricultural land protection for historical and archaeological resources:

5. Historic or Archaeological Resources. Existing archaeologically, culturally, or historically significant features on the Protected Property including, but not limited to, such features as documented in the Baseline Documentation Report, must be maintained consistent with the guidelines provided in The Secretary of Department of the Interior’s Standards for the Treatment of Historic Properties pursuant to 36 CFR Part 68, as amended. The up-to-date version of such guidelines must be maintained by Grantee in the Baseline Documentation and made available to Grantor upon request. The archaeologically, culturally, or historically significant features may not be altered or removed without Grantee’s prior written approval, which approval will not be given except where the proposed activity is accomplished in accordance with the guidelines provided in The Secretary of The Department of the Interior’s Standards for the Treatment of Historic Properties.

SECTION II - PROTECTION OF THE UNITED STATES’ INTERESTS

1. United States Right of Enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns,
on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney’s fees and expenses related to Grantor’s violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney’s fees and expenses related to Grantee’s violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor’s representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor’s representative at the earliest practicable time.

2. **General Disclaimer and Grantor Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor’s negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

3. **Environmental Warranty.** Grantor warrants that it is in compliance with, and will remain in
compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor’s indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

“Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

4. **Extinguishment, Termination, and Condemnation.** The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is ________ percent, hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land.
The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, __________ percent of the Proportionate Share; and (b) to the United States ________ percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor’s successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

5. Amendment. This ALE may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.
I. APPLICABLE REGULATIONS

a. The recipient, and recipients of any subawards under this award, agree to comply with the following regulations, as applicable. The full text of Code of Federal Regulations references may be found at https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR and http://www.ecfr.gov/.

(1) 2 CFR Part 25, “Universal Identifier and System of Award Management”
(2) 2 CFR Part 170, “Reporting Subaward and Executive Compensation Information”
(3) 2 CFR Part 180, “OMB Guidelines To Agencies On Governmentwide Debarment And Suspension (Nonprocurement)”
(4) 2 CFR Part 182, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)”
(5) 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards”

b. The recipient, and recipients of any subawards under this award, assure and certify that they have and/or will comply with the following regulations, as applicable. The full text of Code of Federal Regulations references may be found at https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR and http://www.ecfr.gov/.

(1) 2 CFR Part 175, “Award Term for Trafficking in Persons”
(2) 2 CFR Part 417, “Nonprocurement Debarment and Suspension”
(3) 2 CFR Part 418, “New Restrictions on Lobbying”
(4) 2 CFR Part 421, “Requirements for Drug-Free Workplace (Financial Assistance)”

c. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and to the extent applicable to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR and http://www.ecfr.gov/.

(1) 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles And Audit Requirements For Federal Awards”
II. UNALLOWABLE COSTS

The following costs are not allowed:

a. Costs above the amount authorized for the project
b. Costs incurred after the expiration of the award including any no-cost extensions of time
c. Costs that lie outside the scope of the approved project and any amendments thereto
d. Compensation for injuries to persons or damage to property arising from project activities

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, “Subpart E - Cost Principles”, or direct specific inquiries to the NRCS administrative contact identified in the award.

III. CONFIDENTIALITY

a. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term “confidential information” means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS.

b. The recipient’s personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient’s personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).

c. The recipient agrees to comply with NRCS guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), 7 U.S.C. 8791.

d. The recipient agrees to comply with the “Prohibition Against Certain Internal Confidentiality Agreements:”

1. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
2. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
4. If NRCS determines that you are not in compliance with this award provision, NRCS:
   a. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;
b. May pursue other remedies available for your material failure to comply with award terms and conditions.

IV. PRIOR APPROVAL REQUIREMENTS

The following are the most common situations requiring prior approval. However, the recipient is also bound by any other prior approval requirements of the applicable administrative provisions and Federal cost principles.

a. Purpose or Deliverables.—When it is necessary for the recipient to modify the purpose or deliverables, the recipient must submit a written request and justification for the change along with the revised purpose or deliverables of the award to the NRCS administrative contact. The request should contain the following:
   1. Grant or agreement number
   2. Narrative explaining the requested modification to the project purpose or deliverables
   3. A description of the revised purpose or deliverables
   4. Signatures of the authorized representative, project director, or both

b. Subcontractual Arrangement.—The recipient must submit a justification for the proposed subcontractual arrangements, a statement of work to be performed, and a detailed budget for the subcontract to the NRCS administrative contact. Subcontractual arrangements disclosed in the application do not require additional postaward approval.

c. Absence or Change in Project Leadership.—When a project director or the person responsible for the direction or management of the project—

1. Relinquishes active direction of the project for more than 3 consecutive months or has a 25 percent or more reduction in time devoted to the project, the grantee must notify the NRCS administrative contact in writing, identifying who will be in charge during the project director’s absence. The notification must include the qualifications and the signature of the replacement, signifying his or her willingness to serve on the project.

2. Severs his or her affiliation with the grantee, the grantee’s options include—
   i. Replacing the project director. The grantee must request written approval of the replacement from the NRCS administrative contact and must include the qualifications and the signature of the replacement signifying his or her willingness to serve on the project.
   ii. Subcontracting to the former project director’s new organization. The grantee must request approval from the administrative contact to replace the project manager and retain the award, and to subcontract to the former project director’s new organization certain portions of the project to be completed by the former project director.
   iii. Relinquishing the award. The grantee must submit to the NRCS administrative contact a signed letter by the grantee and the project director that indicates that the grantee is relinquishing the award. The letter must include the date the project director is leaving and a summary of progress to date. A final Standard Form (SF) 425 reflecting the total amount of funds spent by the recipient must be attached to the letter.
3. Transfers the award to his or her new organization, the authorized organization’s representative at the new organization must submit the following to the NRCS administrative contact as soon as the transfer date is firm and the amount of funds to be transferred is known:
   i. The forms and certifications included in the application package
   ii. A project summary and work statement covering the work to be completed under the project (deliverables and objectives must be the same as those outlined in the approved proposal)
   iii. An updated qualifications statement for the project director showing his or her new organizational affiliation
   iv. Any cost-sharing requirements under the original award transfer to the new institution; therefore, cost-sharing information must be included in the proposal from the new organization

Note: The transfer of an award from one organization to another can take up to 90 days to accomplish, which may result in a delay in the project director resuming the project at the new organization.

d. Budget Revisions.—Budget revisions will be in accordance with 2 CFR Part 200.308.

e. No-Cost Extensions of Time.—When a no-cost extension of time is required, the recipient must submit a written request to the NRCS administrative contact no later than 30 days before the expiration date of the award. The request must contain the following:
   ▪ The length of additional time required to complete the project and a justification for the extension
   ▪ A summary of progress to date
   ▪ An estimate of funds expected to remain unobligated on the scheduled expiration date
   ▪ A projected timetable to complete the portions of the project for which the extension is being requested
   ▪ Signature of the grantee and the project director
   ▪ A status of cost sharing to date (if applicable)

Note: An extension will not exceed 12 months. Requests for no-cost extensions received after the expiration of the award will not be granted.

V. PAYMENTS

a. Payment by NRCS to the entity will be made monthly or quarterly (whichever is mutually agreed upon by both parties) on a reimbursable or advanced basis upon completion of work outlined herein. Payment will be executed upon the submission of a properly executed form SF-270. The SF-270 must cite the agreement number, remittance address, and billing period. The SF-270 must be sent to the NRCS administrative contact at the address identified in block 8 of the Notice of Grant/Agreement Award.

b. Unless otherwise specified in the award, the recipient must receive payments through electronic funds transfers.
c. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and 31 CFR Part 205.

d. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the grantee makes advance payments to contractors, the grantee must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Payment requests from the grantee’s contractors will not be sent to NRCS for review or approval.

e. Accounting records for all costs incurred under this award must be supported by source documentation. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subcontract award documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the approved project period of this award, including any approved no-cost extension of time. Costs that cannot be supported by source documentation or that are incurred outside of the approved project period and budget may be disallowed and may result in award funds being returned to the Federal Government by the recipient.

VI. FINANCIAL REPORTING

a. Recipients must submit a Federal Financial Report (FFR), SF 425 and 425A, in accordance with the following schedule (recipients may download the applicable form at http://www.forms.gov):

<table>
<thead>
<tr>
<th>Quarterly Schedule</th>
<th>Report Due Date</th>
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<tr>
<td>October 1 to December 31</td>
<td>January 31</td>
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<tr>
<td>January 1 to March 31</td>
<td>April 30</td>
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<td>April 1 to June 30</td>
<td>July 30</td>
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<tr>
<td>July 1 to September 30</td>
<td>October 30</td>
</tr>
</tbody>
</table>

Reports must be submitted on an accrual accounting basis. Failure to submit reports in accordance with the above schedule may result in suspension or termination of award.

b. A final Report must be submitted no later than 90 days after the completion of the award. For final FFRs, reporting end date must be the end date of the project or agreement period. The reports should be submitted to the NRCS administrative contact identified in award notifications.

VII. PERFORMANCE MONITORING AND REPORTING

a. The recipient is responsible for monitoring day-to-day performance and for reporting to NRCS. If the project involves subcontractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.

b. Every 6 months the recipient must submit a written progress report. Each report must cover—
1. A comparison of actual accomplishments with the goals and objectives established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.

2. The reasons why goals and objectives were not met, if appropriate.

3. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit cost.

c. The recipient must submit a final performance report within 90 days after completion of project.

VIII. SPECIAL PROVISIONS

a. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.

b. Employees of NRCS will participate in efforts under this agreement solely as representatives of the United States. To this end, they may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, NRCS employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in efforts regarding such parties until approved by the agency.

c. Employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement.

IX. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

a. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.

b. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to:

   Acquisitions Division
   Grants and Agreements Services Branch
   1400 Independence Avenue, SW.
   Room 6823 South Building
   Washington, DC 20250

c. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.
d. The following acknowledgment of NRCS support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (World Wide Web pages, computer programs, etc.) that is substantially based upon or developed under this award:

- “This material is based upon work supported by the Natural Resources Conservation Service, U.S. Department of Agriculture, under number [recipient should enter the applicable award number here].”

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

- “Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture.”

e. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA and NRCS home pages. If the material is too small to permit the full nondiscrimination statement to be included, the material must, at a minimum, include the statement:

- “USDA is an equal opportunity provider and employer.” Any publication prepared with funding from this agreement must include acknowledgement to USDA, Natural Resources Conservation Service.”

The recipient is responsible for ensuring that an acknowledgment of NRCS is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss in a substantial way work funded by this award.

X. COST-SHARING REQUIREMENTS

a. If the award has specific cost-sharing requirements, the cost-sharing participation in other projects may not be counted toward meeting the specific cost-share requirement of this award, and must come from non-Federal sources unless otherwise stated in the applicable program announcement.

b. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must—
   1. Immediately notify the NRCS administrative contact of the situation.
   2. Specify the steps it plans to take to secure replacement cost sharing.
   3. Indicate the plans to either continue or phase out the project in the absence of cost sharing.

C. If NRCS agrees to the organization’s proposed plans, the recipient will be notified accordingly. If the organization’s plans are not acceptable to NRCS, the award may be subject to termination. NRCS modifications to proposed cost sharing revisions are made on a case-by-case basis.

d. Failure by the recipient to notify NRCS in accordance with paragraph (b) above may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by NRCS of some of the NRCS funds provided under the award, and possible termination of the
award, and may constitute a violation of the terms and conditions of the award so serious as to provide grounds for subsequent suspension or debarment.

c. The recipient must maintain records of all project costs that are claimed by the recipient as cost sharing as well records of costs to be paid by NRCS. If the recipient’s cost participation includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.

XI. PROGRAM INCOME

Income derived from patents, inventions, or copyrights will be disposed of in accordance with the recipient’s own policies. General program income earned under this award during the period of NRCS support must be added to total project funds and used to further the purpose and scope of this award or the legislation under which this award is made.

XII. NONEXPENDABLE EQUIPMENT

Recipients purchasing equipment or products with funds provided under this award are encouraged to use such funds to purchase only American-made equipment and products. Title to nonexpendable equipment purchased with award funds will vest in the recipient upon completion of the award project and acceptance by NRCS of required final reports. When equipment is no longer needed by the recipient and the per-unit fair market value is less than $5,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to NRCS. However, if the per-unit fair market value is $5,000 or more, the recipient must submit a written request to the NRCS administrative contact for disposition instructions.

XIII. LIMIT OF FEDERAL LIABILITY

The maximum financial obligation of NRCS to the recipient is the amount of funds indicated in the award as obligated by NRCS. However, in the event that an erroneous amount is stated on the approved budget, or any supporting document relating to the award, NRCS will have the unilateral right to make the correction and to make an appropriate adjustment in the NRCS share of the award to align with the Federal amount authorized.

XIV. MODIFICATIONS AND TERMINATIONS

NRCS may amend or modify the award through an exchange of correspondence between authorized officials of the recipient and NRCS. The award is subject to termination if NRCS determines that the recipient has failed to comply with the terms and conditions of the award. In the event that the award is terminated, the financial obligations of the parties will be those set forth in 2 CFR Part 200.339.

XV. AWARD CLOSEOUT

Award closeout is the process by which NRCS determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.
**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>
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<td>SK</td>
<td>2/8/17</td>
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<td>3/7/17</td>
<td>Public Works, Health &amp; Safety</td>
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**TITLE OF DOCUMENT:**
The Sheriff’s Office will present its annual report to Council

**ATTACHMENTS:**

**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.)

The Sheriff’s Office to present its annual report to Council

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
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<td>2/24/17</td>
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<td>2/24/17</td>
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<td>2/21/2017</td>
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<td>Dept. Head:</td>
<td>Jon Hutchings</td>
<td>2-26-17</td>
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<td>Prosecutor:</td>
<td>Daniel Gibson</td>
<td>1/26/17</td>
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<td>Purchasing/Budget:</td>
<td>Brad Bennett</td>
<td></td>
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<tr>
<td>Executive:</td>
<td>Jack Louws</td>
<td>1/30/17</td>
<td></td>
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## TITLE OF DOCUMENT:
Marine Drive/Marietta Area traffic patterns and speed limit presentation

## ATTACHMENTS:

## 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.)

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:

2/7/2017: Postponed until March 7
2/21/2017: Withdrawn from the agenda

## COUNCIL ACTION:

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<td>Mark Perconti</td>
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<td>Jack Louws</td>
<td>2/17</td>
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## TITLE OF DOCUMENT:

2016 Critical Areas Ordinance Update

- Review of additional staff proposed amendments (post-Planning Commission recommendation)
- Review of certain questions, comments, and suggestions by Council members

## ATTACHMENTS:

(all current and past materials provided to the Council can be found at [http://www.whatcomcounty.us/2417/County-Council-Review](http://www.whatcomcounty.us/2417/County-Council-Review))

- Staff memo to Council dated 2/23/2017
- Best Available Science Report 2016 (previously distributed)
- Chapter 16.16 Draft Critical Areas Ordinance - 2016-06-09, PC adopted (previously distributed)

## 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](http://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: February 23, 2017

SUBJECT: 2016 Critical Areas Ordinance Update
        County Council Review Workshop 6 on March 7, 2017

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

- Review of additional staff proposed amendments (post-Planning Commission recommendation) related to:
  - Article 6, Wetlands
  - Article 7, Habitat Conservation Areas
  - Article 3, Geologically Hazardous Areas (tsunami hazard areas)
  - Article 9, Definitions.

- Review of certain questions, comments, and suggestions by Council members related to:
  - Overall (shall v. may)
  - Article 1, Purpose
  - Article 2, Administrative Provisions
  - Article 7, Habitat Conservation Areas

Note that we have received other questions and comments by Council members on Articles 5 (Critical Aquifer Recharge Areas), 8 (Conservation Program on Agriculture Lands), and 9 (Definitions) that are not yet addressed in this memo as they will take additional time to research and address. Those we will address at a subsequent workshop.

To prepare for this meeting, please review this memo.
Additional Proposed Amendments (Post-Planning Commission Recommendation)

ISSUE 1. (Staff)

16.16.263 Mitigation Banking.
A.3 Preference shall be given to mitigation banks that implement restoration actions that have been identified formally by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the WRIA 1 Watershed Management Salmon Recovery Board Habitat Project List or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

16.16.680 Wetland mitigation.
A.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 WRIA 1 Watershed Management 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(f)), or an in lieu fee program.

16.16.720 Habitat conservation areas — General standards.
B. Relocation of streams, or portions of streams, when there is no other feasible alternative and when the relocation will result in equal or better habitat and water quality and quantity, and will not diminish the flow capacity of the stream or other natural stream processes; provided, that the relocation meets state hydraulic project approval requirements and that relocation of shoreline streams shall be prohibited unless the relocation has been identified formally by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement or identified in watershed planning documents prepared and adopted pursuant to Chapter 90.82 RCW, the WRIA 1 Salmonid Recovery Plan or the WRIA 1 Watershed Management Salmon Recovery Board Habitat Project List or County shoreline restoration plan.

M. In-stream structures such as, but not limited to, high-flow bypasses, dams, and weirs, shall be allowed only as part of a watershed restoration project as defined pursuant to WCC 23.110.230(10) or identified in watershed planning documents prepared and adopted under Chapter 90.82 RCW, the salmonid recovery plan or WRIA 1 Watershed Management Salmon Recovery Board Habitat Project List, and the County’s shoreline restoration plan and upon acquisition of any required state or federal permits. The structure shall be designed to avoid adverse effects on stream flow, water quality, or other habitat functions and values.

16.16.760 Habitat conservation areas — Mitigation standards.
A.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 salmonid recovery plan or project that has been identified on the WRIA 1 Watershed Management Salmon Recovery Board Habitat Project List or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.
Reason: The name of this Board changed in 2017 by Interlocal agreement.

ISSUE 2. (Staff)

16.16.230 Exempt Activities.
D. Low impact activities that do not cause adverse impacts such as hiking, canoeing, viewing, nature study, photography, hunting, fishing, education or scientific research when the activity does not cause adverse impacts.

Reason: Sentence structure.

ISSUE 3. (Staff)

16.16.270 Reasonable use.
Replace the word “permit” throughout this section with the word “exception.”

Reason: Natural Resources staff recommends this word replacement, as they don’t really issue a permit for a reasonable use, but rather allow an exception to the regulations in their Natural Resources review.

ISSUE 4. (Staff)

16.16.365 Tsunami Hazard Areas – Standards.
The standards of WCC 16.16.320 and 16.16.350 shall apply. For development within tsunami hazard areas the proposed development shall be designed to provide protection for the tsunami hazard that meets the projected hazard on the Department of Natural Resources Tsunami Inundation Maps. For other low lying coastal areas not included on the inundation maps, development shall be designed to provide protection for debris impact and an inundation as determined by current Department of Natural Resource modeling unless other measures can be shown to provide equal or greater protection.

Reason: 16.16.350 contains the standards for volcanic hazard areas, none of which could apply to tsunami hazard areas.

ISSUE 5. (Staff)

K. Phosphorus reducing BMP structures approved and installed through the Homeowners’ Improvement Program (or as may be renamed) within the Lake Whatcom watershed to treat runoff from existing development may be permitted within the outer 50% percent of a Category II, III or IV wetland buffer.

16.16.720 Habitat conservation areas – General standards.
U. Phosphorus reducing BMP structures approved and installed through the Homeowners’ Improvement Program (or as may be renamed) within the Lake Whatcom watershed to treat runoff from existing development may be permitted within 25 feet of the lake shoreline.

Reason: Requested by Public Works to allow homeowners participating in the Lake Whatcom Homeowners’ Improvement Program to install phosphorus reducing structures (grass swales, etc.) near
(though not on the immediate shore of) the lake. This is often where such structures need to be due to gravity.

**ISSUE 6. (Staff)**

16.16.710 Habitat conservation areas – Designation, mapping, and classification

A. Habitat conservation areas, as defined in Article 9, are those areas identified as being of critical importance to the maintenance of certain fish, wildlife, and/or plant species. These areas are typically identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both. All areas within the County meeting these criteria are hereby designated critical areas and are subject to the provisions of this article.

**Reason:** Added a reference to the updated definition in Article 9. The language in this subsection is a synopsis of the definition, but not the official definition.

**ISSUE 7. (Staff)**

16.16.710 Habitat conservation areas – Designation, mapping, and classification

A. Habitat conservation areas shall include all of the following:
   1. Streams\(^1\). Streams, as defined in Article 9, shall be designated according to the following criteria:
      a. Shoreline streams are those streams identified and regulated as shorelines of the state as defined by WAC 173-18-410 and designated in the Whatcom County Shoreline Master Program (WCC Title 23).
      b. Other fish-bearing streams that do not meet the definition of shorelines of the state but have current, historic, known or potential use by anadromous or resident fish species. The technical administrator shall make determinations of known or potential fish use in consultation with federal, state and tribal biologists and in accordance with best available science, and shall take into consideration factors such as Factors of consideration when determining a stream as fish bearing include but are not limited to species life cycle requirements, habitat suitability, channel gradient, presence or lack of fish passage barriers, stocked fish populations by government or tribal entities, and/or a reasoned evaluation of current, historic, and potential fish use by a qualified professional.
      c. Non-fish-bearing streams are those streams that have no current, historic, known or potential use by anadromous or resident fish. All streams which meet the criteria for Type S, F, Np or Ns waters as set forth in WAC 222-16-030 of the Washington Department of Natural Resources (DNR) Water Typing System, as now or hereafter amended.
         i. **Type S Streams** are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC 222-16-030(1) as now or hereafter amended, as a Type S Water and are inventoried as “Shorelines of the State” under the Shoreline Management Master Program for Whatcom County, pursuant to RCW Chapter 90.58. Type S waters contain salmonid fish habitat.
         ii. **Type F Streams** are those surface waters, which meet the criteria of the Washington Department of Natural Resources, WAC 222-16-030(2) as now or hereafter amended, as Type F Water. Type F streams contain habitat for salmonid fish, game fish and other anadromous fish.

\(^1\) Note that ditched channels may or may not meet the definition of a stream. See Article 89, Definitions.
iii. **Type Np Streams** are those surface waters, which meet the criteria of the Washington Department of Natural Resources, WAC 222-16-030(3) as now or hereafter amended, as Type Np Water. Type Np waters do not contain fish habitat.

iv. **Type Ns Streams** are those surface waters, which meet the criteria of the Washington Department of Natural Resources, WAC 222-16-030(4) as now or hereafter amended, as a Type Ns Water. These streams are areas of perennial or intermittent seepage, ponds, and drainage ways having short periods of spring or storm runoff. Type Ns waters do not contain fish.

b. Ditches or other artificial water courses are considered streams for the purposes of this Chapter, when:
   i. Used to convey natural streams existing prior to human alteration; and/or,
   ii. The waterway is used by anadromous or resident salmonid or other fish populations; or
   iii. Flows directly into shellfish habitat conservation areas.

**Reason:** The stream typing system we currently have is an older model. The WA Department of Natural Resources, who has jurisdiction on the typing system, now uses this system. Natural Resources staff recommends moving to this system so as to be consistent with DNR and most other jurisdictions. DNR staff concurs.

### Water Type Conversion Table

<table>
<thead>
<tr>
<th>Permanent Water Typing</th>
<th>Previous Water Typing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type S</td>
<td>Type 1</td>
</tr>
<tr>
<td>Type F</td>
<td>type 2 and 3</td>
</tr>
<tr>
<td>Type Np</td>
<td>Type 4</td>
</tr>
<tr>
<td>Type Ns</td>
<td>Type 5</td>
</tr>
</tbody>
</table>

**ISSUE 8. (Staff)**

16.16.710 Habitat conservation areas – Designation, mapping, and classification

C. Habitat conservation areas shall include all of the following:

6. **Areas in which state listed saltwater critical areas are found**, as listed in WAC 173-26-221(2)(c)(iii)(A) Commercial and recreational shellfish areas, including designated Shellfish Habitat Conservation Areas.

7. **Kelp and eelgrass beds**.

8. **Documented and potential Surf smelt, Pacific herring, and Pacific sand lance spawning areas of forage fish, including but not limited to**: surf smelt, Pacific herring, Pacific sand lance, northern anchovy, and longfin smelt.

**Reason:** Natural Resources staff recommends amending C.6 to read as above and deleting 7 & 8 as WAC 173-26-221(2)(c)(iii)(A) includes all these listings. This WAC is under State Master Program Approval/Amendment Procedures and Master Program Guidelines, General Master Program Provisions, and reads as follows:
Applicability. Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

ISSUE 9. (Staff)

16.16.900 Definitions.

"Critical Saltwater Habitat" saltwater habitats includes all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as Pacific herring, surf smelt and Pacific sand lance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.

Reason: If the Council accepts the proposed amendment listed under Issue 8, staff would also recommend adding this definition.

ISSUE 10. (Staff)

"Ditch" or "Drainage Ditch" means an artificially created watercourse constructed to convey surface or groundwater. Ditches are graded (manned) channels installed to collect and convey water to or from fields and roadways. Ditches may include:

- irrigation ditches,
- waste ways,
- drains,
- outfalls,
- operational spillways,
- channels,
- stormwater runoff facilities
- or other wholly artificial watercourses, except those that directly result from the modification to a natural watercourse.

Ditched channels that support fish are considered to be streams or other artificial water courses where:
1. natural streams existed prior to human alteration, and/or
2. the waterway is used by anadromous or resident salmonid or other fish populations, or
3. flows directly into shellfish habitat conservation areas

Reason: If the Council accepts the proposed amendment listed under Issue 7, staff would also recommend amending this definition as the latter, struck out portion would be incorporated into code.

ISSUE 11. (Staff)

"Reasonable use" means a property that is deprived of all reasonable use when the owner can realize no reasonable return on the property or make any productive use of the property. Reasonable return does
not mean a reduction in value of the land, or a lack of a profit on the purchase and sale of the property, but rather, where there can be no beneficial use of the property; and which is attributable to the implementation of the Critical Areas Ordinance, means any one of the uses allowed within a given zone that has the least impact on the critical areas found on the subject property. For zones that allow single-family residential uses, this typically would mean a house that has a development footprint (including all appurtenances except drainfields) and landscaping of 2,500 square feet or less.

“Reasonable Use Exception” means an exception to the standards of this title that allows for any one of the uses allowed within a given zoning designation which cannot otherwise conform to the requirements set forth in this title, including the variance criteria; that have the least impact on the critical areas found on the subject property.

**Reason:** Natural Resources staff recommends adding these definitions. The first defines what a reasonable use is (the existing definition describes the exception) and removes language already found in 16.16.270. The second adds language to clarify what the exception does.

**ISSUE 12. (Staff)**

“Streams” means those areas where surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the annual passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include ditches or other artificial water courses unless they are used to convey streams naturally occurring where streams existed prior to human alteration, and/or the waterway is used by anadromous or resident salmonid other fish populations, or flows directly into shellfish habitat conservation areas. (See also “drainage ditch” definition.)

**Reason:** Natural Resources staff recommends amending this definition.

**ISSUE 13. (Staff)**

“Swale” means a shallow drainage conveyance with relatively gentle side slopes, generally with flow depths less than one foot.

**Reason:** Natural Resources staff recommends adding this definition.

**ISSUE 14. (Council)**

16.16.710 Habitat conservation areas – Designation, mapping, and classification

C.14.a.i. The Department of Planning and Development Services shall maintain a current list of Species of Local Importance as designated by the County Council. As of 2017 the list includes:

1) None. Osprey;
2) Turkey Vulture;
3) Nooksack dace;
4) Salish sucker.
Reason: Changing the date since the CAO update won’t be adopted until this year. The list is subsection 1) to be deleted per direction by County Council given at 1/24/17 workshop.

ISSUE 15. (Staff)

16.16.720 Habitat conservation areas – General standards.
T. On Eliza Island, applicants shall complete the U.S. Fish & Wildlife Service (USFWS) self-assessment (https://www.fws.gov/pacific/eagle/) to determine whether a USFWS bald eagle permit is needed, and if so, apply for one. Development activities near bald eagle habitat shall be carried out consistent with the national Bald Eagle Guidelines. WCC 20.35.653 (Bald eagle management plan) shall also apply.

16.16.750 Habitat conservation areas – Review and reporting requirements.
C.6 Applicants near a bald eagle nest shall complete the U.S. Fish & Wildlife Service (USFWS) self-assessment (https://www.fws.gov/pacific/eagle/) to determine whether a USFWS bald eagle permit is needed, and if so, apply for one. Development activities near bald eagle habitat shall be carried out consistent with the national Bald Eagle Guidelines. Bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292), the provisions of which require a site cooperative habitat management plan to be developed in coordination between the WDFW and landowner whenever projects are proposed on land that involves land containing or adjacent to an eagle nest or communal roost site that alter habitat are proposed within a nest territory or communal roost. The County shall issue development permits only after certification from the WDFW that the development is in compliance with an approved habitat management plan. (See WAC 232-12-292 for specific details.)

Reason: Received word from WDFW on 11/28/16 that WAC 232-12-292 has no effect; referencing it in a CAO is meaningless and that WDFW no longer participates in developing or reviewing Bald Eagle Management Plans; CAOs should not require it. WDFW recommends USFWS self-assessment instead. WCC 20.35.653 should probably be repealed.

ISSUE 16. (Council)

16.16.750 Habitat conservation areas – Review and reporting requirements.
B. The technical administrator shall have the authority to waive the report requirement when he/she determines that the project is a single-family building permit that involves less than one-half acre of clearing and/or vegetation removal and will not directly disturb the species, or specific areas or habitat features that comprise the habitat conservation area (nest trees, breeding sites, etc.) as indicated by a site plan or scaled drawing of the proposed development.

Reason: At your 1/24/17 workshop Council requested staff to reinsert this language that had been proposed to be deleted.

ISSUE 17. (Staff)

16.16.900 Definitions.
“Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the
likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company, means areas important for maintaining species in suitable habitats within their natural geographic distribution so that isolated populations are not created.

Reason: The state definition has been updated. (WAC 365-190-030(6)(a) & (c) and WSR 15-04-039 Permanent Rules, Department of Commerce.).

Questions, Comments, and Suggestions by Council Members

Overall

ISSUE 18. (Brown) asked for a review of the specific reasons to change each instance of “may” to “shall.”

16.16.255 Critical areas assessment reports.
The intent of these provisions is to require a reasonable level of technical study and alternatives analysis pursuant to WCC 16.16.225 sufficient to assess potential project impacts and to protect critical areas. When the technical administrator determines a need for additional critical area assessment pursuant to WCC 16.16.250(C)(3) proposed development is within, abutting, or is likely to adversely affect a critical area or buffer pursuant to the provisions of this chapter, s/he shall have the authority to require a critical areas assessment report, to be prepared by a . A qualified professional, as defined by this chapter, shall prepare the report and be consistent with best available science.

16.16.260 General mitigation requirements.
C. Mitigation Monitoring and Maintenance.

1. The technical administrator shall have the authority to require that compensatory mitigation projects be monitored annually for at least five years to establish that performance standards have been met.

16.16.270 Reasonable use

4. In making reasonable use or variance decisions, the technical administrator and/or hearing examiner shall have the authority to require submittal of technical reports in accordance with WCC 16.16.255 and/or 16.16.260(B).

Staff Response: In all cases of removing “shall have the authority to,” the department has been operating under the assumption that this is effectively a requirement. PDS considers the removal of “have the authority to” a simplification of the verbiage with no impact on operational flexibility.
16.16.255 Critical areas assessment reports.
E. The technical administrator shall may reject or request revision of the field and literature findings and conclusions reached in a critical areas assessment report when s/he can demonstrate that the assessment is inaccurate, incomplete, or does not fully address the critical areas impacts involved.

Staff Response: If the administrator finds the assessment inaccurate, incomplete, etc., and can demonstrate such, it would be strange not to reject or request revision of the report. In practice this change has no impact.

16.16.262 Watershed-Based Management Plans.
B. If approved, said plan shall may be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:

Staff Response: If an applicant goes through the rather lengthy process to develop said plan, the department should be required to use the plan to satisfy the requirements. Flexibility in this example seems inappropriate.

In addition to the applicable general protective measures found in WWC 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(f), or an in lieu fee program.

Staff Response: The language requires the administrator to consider all items. It is unlikely there is any impact of this change in practice. The underlying requirement is that “mitigation [must be] sufficient to achieve no net loss of wetland function and values” it is unlikely the consideration of these items has any meaningful impact on this requirement.
Article 1. Purpose and intent

**ISSUE 19. (Donovan) Doesn’t WAC 365-196-830(2) require protection of critical areas and ecosystems?**

**Staff Response:** WAC 365-196-830(1) states, “The Growth Management Act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities.” It does not mention ecosystems, only critical areas. However, subsection (2) then says, “Critical areas that must be protected include the following areas and ecosystems.” Staff reads the two, taken together, to mean that not all ecosystems need be protected under the CAO, though certainly those ecosystems of our critical areas must be protected. Adding “and ecosystems” to the purpose in the wrong place or out of context with “critical areas and their ecosystems” may put the County on the hook to protect all ecosystems. Council could elect to do so, though it would be going beyond what’s required by State law.

**ISSUE 20. (Donovan) Section A should state:**

16.16.100 Purpose and intent.

A. The purposes of this chapter are to carry out the goals of the Whatcom County comprehensive plan and the State of Washington Growth Management Act (Chapter 36.70A RCW) and its implementing rules by designating and classifying critical areas, and by protecting the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economically beneficial or productive use of land and property. Critical areas regulated under this chapter include geologically hazardous areas, frequently-flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas. This chapter seeks to maintain harmonious relationships between human activity and the natural environment.

1. The Growth Management Act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities. The Washington Department of Commerce department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

2. Critical areas that must be protected include the following areas and ecosystems:

   (a) Wetlands;

   (b) Areas of critical recharging effect on aquifers used for potable water;

   (c) Fish and wildlife habitat conservation areas;

   (i) Fish and Wildlife Habitat Conservation Areas are areas that serve a critical role in sustaining needed habitats for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas are further defined in WAC 365-190-030(6)(a).

   (ii) Fish and wildlife habitat conservation means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so the habitat available is sufficient to support viable populations over the long term and isolated sub-populations are not created. This means not degrading or reducing populations of habitats so that they are no longer viable over the long term.

   (d) Frequently flooded areas; and
(e) Geologically hazardous areas

3. "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

4. Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

5. Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

6. Functions and values must be evaluated at a scale appropriate to the function being evaluated. Functions are the conditions and processes that support the ecosystem. Conditions and processes operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

7. Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

8. Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs. When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

9. In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

Staff Response: The text above is identical to WAC 365-196-830 with the exception of paragraphs A.2.c.i and ii (that following “Fish and wildlife habitat conservation areas”). Subsection (i) is an abbreviated version of the definition of “Fish and wildlife habitat conservation areas” found in WAC 365-190-030(6)(a). Staff doesn’t think it needs to be repeated here, as our own definition of “Fish and wildlife habitat conservation areas” (in Article 9) is proposed to be amended to this language verbatim.
Subsection (ii) is an abbreviated version of WAC 365-190-130(1), part of the minimum guidelines for protecting F&W HCAs. Staff doesn’t think it necessary to repeat state law in our own code.


16.16.215. Relationship to other jurisdictions

**ISSUE 21. (Donovan) Subsection (B):** Other agencies...Such agencies may include, but are not limited to, the... *We need clarification as to what specific permits can be “substituted.” Perhaps a specific, exhaustive list is needed here.*

**Staff Response:** Substitution of permit conditions from other agencies is a discretionary administrative action subject to the review and approval of the Technical Administrator on a case-by-case basis. Those documents and conditions of approval from outside agencies would be discussed in the written findings required in WWC 16.16.250(C)(4), if approved. Furthermore, other agencies permit requirements change over time, so listing specific permits would likely require a code revision every time another agency amends their rules.

**ISSUE 22. (Donovan) Subsection (C):** “The County shall make *written* findings.”

**Staff Response:** Staff believes this insertion is fine, though the code WWC 16.16.250(C)(4) (Submittal requirements and critical areas review process), which covers the processes for all critical areas, is already proposed to be amended to state this.

16.16.220 Identification and mapping of critical areas.

**ISSUE 23. (Weimer) Subsection (A):** The County has identified critical areas and areas where the conditions under which critical areas typically occur and/or have the potential to occur. The approximate location and extent of critical areas within the County’s jurisdiction are shown on maps, which shall be available at the planning and development services department *and online* for public inspection.

**Staff Response:** Staff has no issue with adding this language.

16.16.225. Regulated activities

**ISSUE 24. (Weimer) Subsection (A):** The following activities shall be subject to the provisions of this chapter when they occur within critical areas or their buffers *or will impair the functions and values of a critical area:*

**Staff Response:** Staff has no issue with adding this language.

**ISSUE 25. (Donovan/Weimer) Subsection (B)(2):** Alteration is necessary to accommodate an essential public facility or public utility where no feasible alternative location will accommodate the facility and the facility is located, designed, and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible. *Mitigation is required for alteration of a critical area in order to accommodate an essential public facility or public utility; or*
**Staff Response:** Staff believes this added language is unnecessary as the rest of the code, including the requirement to mitigate impacts, would still be applicable for such a facility. All this part of the code is saying is that an Essential Public Facilities or public utility may alter a critical area or buffer if it *must* be located in a certain place.

**ISSUE 26. (Donovan/Weimer) Subsection (B)(3):** Alteration is necessary to accommodate an approved water-dependent oriented-use and any associated development/activity and/or the development activities listed in WCC 23.90.130(B)(7)(a) when permitted in accordance with the Whatcom County Shoreline Management Program (SMP);

**Staff Response:** Staff believes this is a good change as it mimics the language in the Shoreline regulations.

**ISSUE 27. (Donovan) Subsection (B)(4):** Such feasible measures shall include, *but not be limited to,* clustering...

**Staff Response:** Removing this language would leave clustering as the only feasible measure to avoid and minimize impacts for “essential elements of an activity allowed by this chapter,” though there may be others. It seems like we should be open to other possibilities. However, it is odd that it only goes on to explain the benefits of clustering. Staff believes the text would be better were it to just end at the end of the first sentence, deleting “such feasible measures shall include, but not be limited to, clustering where permitted by zoning and as appropriate to protect critical areas. The purposes of clustering shall be to minimize adverse effects of development on critical area functions and values, minimize land clearing, maintain soil stability, preserve native vegetation, provide for wildlife corridors, maintain hydrology, and mitigate risk to life and property.” This would give the most flexibility.

16.16.230. Exempt activities

**ISSUE 28. (Donovan) Exemption B is too broad. Cut all but the exemption for removing invasive and noxious species. Or move this to activities allowed with notification.**

B. Maintenance of lawfully established vegetation, landscaping, and gardens within a regulated critical area or its buffer, including, *but not limited to,* cutting, mowing lawns, weeding, *removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas; provided, that native growth protection areas, mitigation sites, or other areas protected via conservation easements or similar restrictive covenants are not covered by this exception.*

**Staff Response:** Staff’s understanding is that this exemption is here because prior to the adoption of the first CAO there were many instances where people had encroached their landscaping into what are now defined and protected as critical areas and/or their buffers, but Council didn’t want to make such existing instances illegal. Staff supports maintaining the existing language.

16.16.250: Submittal requirements

**ISSUE 29. (Donovan) Subsection (B):** ...within a critical area or its buffer
ISSUE 30. (Donovan) Subsection (C)(2): ...adversely affect the functions and values of a critical area or buffer

ISSUE 31. (Donovan) Subsection (C)(3): ...and would affect the functions and values of a critical area

Staff Response: Staff has no issue with any of these additions.

16.16.255 Critical areas assessment reports

ISSUE 32. (Donovan) Subsection (A): Restore the sentence: The intent of these provisions is to require a reasonable level of technical study and analysis sufficient to protect critical areas... The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity the functions and values of the critical area.

Staff Response: The first sentence, which Councilmember Donovan suggests reinstating, wasn’t deleted, but moved to before (A), as it seemed better to express intent right up front. Reinsertion isn’t necessary.

As for his proposed change to the next sentence: What the current text basically says that if it’s a minor critical area or a minor impact, the assessment doesn’t have to be as complicated as were it an important critical area or a major impact. This section is basically giving the Technical Administrator some discretion as to how complicated an assessment report needs to be. Often someone proposes something that may only slightly affect a critical area or its buffer, and in these instances it’s best to be able to tailor the scope of the report to the scope of the impact, thus saving the applicant money. Staff does not support this change.

ISSUE 33. (Donovan) Subsection G: Need clarification on what the changes in this subsection are doing.

Staff Response: This section requires applicants to submit their critical areas data (e.g., delineations, etc.) electronically so that we can update our database and maps. The purpose of the amendments is to ensure it’s in a format we can use.

16.16.263 Mitigation Banking.

ISSUE 34. (Donovan) Off-site mitigation... any evidence that this works?

Staff Response: The Department of Ecology has undertaken numerous studies to evaluate whether wetland mitigation actually works or not. Ecology started reevaluating various mitigation techniques after the results of their 2002 Wetland Mitigation Evaluation Study (http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/study/index.html) were published.

The results of this study showed:

- Over all, three projects (13%) were found to be fully successful; eight projects (33%) were moderately successful; eight (33%) were minimally successful; and five (21%) were not successful.
- The results of the Phase 2 study indicate that “created wetlands” are more successful than previous studies have shown, since 60% of them were at least moderately successful, and only
one project (10%) was not successful. However, only 65% of the total acreage of wetlands lost was replaced by creating or restoring new wetland area, thereby resulting in a net loss of 24.18 acres of wetland area.

- No enhancement projects were fully successful, while eight out of nine (89%) enhancement projects were minimally or not successful. Nearly two-thirds of the total acreage of mitigation that was established resulted from enhancement activities.

- In addition, mitigation projects designed and implemented by public entities fared worse than projects done by private entities: 71% of private mitigation projects were judged to be fully or moderately successful, while 35% of public mitigation projects were judged to be fully or moderately successful. However, the difference in level of success between public and private projects is not statistically significant, because the sample size was too small.

- Seventy-nine percent of mitigation projects were at least somewhat achieving their ecologically relevant measures, while 63% of projects at least partially compensated for the permitted wetland losses. This implies that, although projects may be doing a reasonable job of achieving ecologically relevant permit requirements, these requirements are not always sufficient indicators of whether mitigation projects adequately compensate for the permitted loss of wetlands.

- Phase 2 findings suggest that follow-up by regulatory agencies results in more-successful mitigation projects. Responses to a consultant questionnaire indicated that 75% of the fully and moderately successful projects experienced some degree of agency follow-up, while only 27% of the minimally and not-successful projects had some follow-up.

- It was interesting to note that being out of compliance with permit requirements did not necessarily mean a mitigation project ultimately would be unsuccessful. In fact, 66% of the projects that ultimately were fully successful were not in compliance in Phase 1. However, all of the projects that ultimately did not succeed also were not in compliance with their permits. The primary key to success appears to be follow-up monitoring and maintenance to make sure the mitigation actions have a chance to work.

- Based on these results, the authors recommend that Department of Ecology improve the follow-up on wetland mitigation projects by developing and implementing a compliance tracking system. Additionally, Ecology should work collaboratively with other regulatory agencies, applicants, and their consultants to come up with new guidance to improve mitigation at every step in the process, from choosing an appropriate site to monitoring and performing site maintenance. By working together, those involved in wetland mitigation can develop solutions and approaches that improve wetland mitigation, and thereby help to protect the state’s valuable wetland resources.

Based on these results, as well as other findings regarding the complexity of wetland mitigation, Ecology started their “Mitigation That Works Initiative” (see http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/initiative.html), working with other agencies and stakeholders to improve success. They claim to have made significant progress since 2006.
Regarding wetland banks in particular (the section under which Councilmember Donovan asked his question, Ecology states: The wetland mitigation banking system we are creating in Washington works for the environment. And it provides a predictable option for developers. Alternatives like wetland mitigation banks work because they put successful solutions in place before any mitigation is needed. The tool also demonstrates innovative environmental solutions can go hand in hand with economic prosperity and faster project delivery.

16.16.265 Critical areas protective measures.

ISSUE 35. (Donovan) Subsection (B): Delete the last sentence: This requirement may be waived by the Technical Administrator... (e.g., old alluvial deposits).

Staff Response: Staff has no issue with deleting this sentence.

16.16.270 Reasonable use.

ISSUE 36. (Donovan) Subsection (B)(2)(e): Do we need to define what measures to protect surface and groundwater quality?

Staff Response: Staff doesn’t think so, as there are too many and covered by code elsewhere and subject to change.

ISSUE 37. (Donovan) Subsection (B)(2)(k): Is this creating a new exemption (a new “reasonable use”?) Why allow new exemption for 2500 sq. ft. single family house?

Staff Response: No. If someone has a lot that’s totally encumbered with critical areas, we must still allow the use of that property (otherwise it could be found to be a “regulatory taking”). Across the State, a single family residence is typically considered the least impactful use, and thus the most “reasonable” to allow to impact a critical area. However, there have been many court and GMHB cases challenging jurisdictions attempt at limiting the house to the smallest size possible. The courts generally look to the sizes of homes in the neighborhood and lean toward a median home size as reasonable. The inserted language comes from PDS Policy PL5-85-001A, adopted and in use since 1985 as a guide to what a reasonable house size is in Whatcom County.

ISSUE 38. (Donovan) Subsection (C)(1)(a): Need clarity on this change. Why an exemption for single family homes?

Staff Response: Most the changes here relate to separating out the reasonable use rules from the variance rules, which were moved into a new section (the two mechanisms are different and each warrants its own section). The existing “exemption” for SFR from a reasonable use public hearing allows staff to process the permit and keep the cost lower for homeowners.

Article 7. Habitat Conservation Areas

16.16.710 HCA Designation, mapping, and classification

ISSUE 39. (Donovan) Subsection (A): Shouldn’t the designation reflect specifics as defined in WAC 365-190-030(6)(a)
**Staff Response:** WAC 365-190-030(6)(a) reads, "Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species."

Staff believes our proposed CAO does cover all these specifics listed therein. WCC 16.16.710 lists all ecosystems, habitats, and species that would be protected, though perhaps it’s not readily apparent as there is no long list of individual species and habitats, as is found in our current CAO in Appendix D, which is proposed for deletion. As explained in the workshop on this Article, we are proposing to replace this list with 16.16.710 subsections (C)2, 3, 4, & 5, which adopts the federally and state listed species and habitats. The reason for doing so is that these lists do change from time-to-time, with new species being added and others removed. Adopting their lists would mean we wouldn’t have to do a code amendment every time their lists change (or having an out-of-date list were the code not amended). Staff would keep these lists (and our maps) current at the counter, with links online.

If you would like to review these lists, they can be found at the following links:

- Department of Natural Resources’ Natural Heritage Program ([http://www1.dnr.wa.gov/nhp/refdesk/plants.html](http://www1.dnr.wa.gov/nhp/refdesk/plants.html))

The question did raise a scrivener’s error, however. It appears that subsections 3 and 4 address the same lists (state listed), though with slightly difference language. We would suggest that subsection 4 be deleted as it’s a duplicate of 3.

**16.16.720 General standards**

**ISSUE 40. (Donovan) Preamble:** What are the implications of the inserted "When pursuant to Article 2," given that Article 2 would seem to expand administrative discretion?

**Staff Response:** You will notice throughout the code that cross-references to other pertinent sections were added, basically as a reminder to readers to look at those sections as well. Even without them, those sections would apply; however, the Citizens Advisory Committee thought it would be helpful to add them.

**ISSUE 41. (Donovan) Subsection (O):** Does this standard require that a person has to prove something that is impossible?

**Staff Response:** Subsection (O), as proposed to be amended, reads:

- O. On-site sewage disposal systems (OSS) may be permitted in the outer 50% of HCA buffers when accessory to an approved residential structure for which there are no alternatives and when
not feasible to connect to a public sanitary sewer system and when operated and maintained in accordance with WCC 24.05.170; provided, that there are no adverse effects on water quality and slope stability are avoided.

The added language of allowing OSS in HCA buffers was added by the Citizens Advisory Committee to clarify that while they may be allowed in an HCA buffer, they shouldn’t be allowed in an actual HCA. This language was modified by the Planning Commission to “the outer 50%” so as to keep them as far away from the HCA as possible while still allowing them. The phrase “there are no alternatives and when” was added by the Technical Advisory Committee in an effort to minimize such intrusions by having to show that one has looked at other alternatives prior to encroaching into the HCA. We don’t believe that any of these are impossible to do or show. Thus, we suspect that it’s the last added phrase “there are no” that Councilmember Donovan is asking about. This was added by the TAC as a way to ensure that allowing such systems in an HCA buffer had no effects on water quality or slope stability. That would be an administrative decision the Technical Administrator would make on a case-by-case, site-specific basis.

**ISSUE 42. (Donovan) Subsection (R): What is the consequence of changing from when permitted by zoning to with a valid permit?**

**Staff Response:** The term “when permitted by zoning” only implies that a development may be allowed if allowed by the zoning code; it doesn’t say one must go through the permitting process. “With a valid development permit” implies the same, as well as having met all other codes (a condition of obtaining a valid permit).

**16.16.760 HCA Mitigation standards**

**ISSUE 43. (Donovan) Add New Subsection (B)(9):** Cumulative impacts of mitigation described in WCC 16.16.760 will be evaluated by PDS to determine if mitigation succeeds in ensuring no net loss of habitat function and values.

**Staff Response:** This is a new concept. The “impacts of mitigation” have never been addressed in site-specific Critical Area Assessment Reports (done by applicants) since mitigation is seen as a positive impact and we’re generally looking at how a project might harm critical areas. Furthermore, addressing the “cumulative impacts of mitigation” seems to be the same thing as doing an overall assessment of the effectiveness of our mitigation strategies. It doesn’t seem that this should be required of individual applicants. Rather, if Council wants such an assessment, it seems that it would be best just to say so by requesting PDS to commence such an undertaking. Obviously, this would be a multi-year project, as mitigation takes 5-10 years to get established, and Council would need to appropriate resources.

If Councilmember Donovan’s intent is to address the cumulative impacts a particular project might have on critical areas, adding (modified) language to this section is not necessary, as the requirement to address cumulative impacts is already found in 16.16.255 (Critical areas assessment reports), subsection (B)(4), which applies to all assessments.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>M.A.</td>
<td>1/24/2017</td>
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<td>2/7/2017</td>
<td>Planning &amp; Development Committee</td>
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<td>Executive: Jack Louws</td>
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**TITLE OF DOCUMENT:**

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

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<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
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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:**

2/7/2017: Discussed

**COUNCIL ACTION:**

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<th>Related County Council File #’s:</th>
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<tr>
<td>AB2016-232 (Res 2016-027)</td>
<td>County Planning File #</td>
<td>PLN2016-00012</td>
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<td>AB2016-047B (Comp Plan Chapter 2 Land Use)</td>
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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.
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 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/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.¹ 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. 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 not 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.

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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 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 accommodate 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
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.

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.
- Cherry Point Urban Growth Area

Major Port/Industrial UGA
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.

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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.

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:

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—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 workday 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.

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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 - Alternative # 2 (No Action Alternative) 9/14/2016

Whatcom County Comprehensive Plan

Map UGA-10

- 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-I 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

85. The Cherry Point area contains valuable aquatic ecosystems and fish & wildlife habitat (Cherry Point Environmental Aquatic Reserve Management Plan, DNR, amended 2017).

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

Commissioners present at the January 12, 2017 meeting when the vote was taken: Atul Deshmane, Gary Honcoop, 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/ducks 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. 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).

- 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 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 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. 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-1110: 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-1211: 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-1413: 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.
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

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 Rowlson asked that boarding of horses be added to the list of pending business items. The commission agreed.
Approval of Minutes

September 8, 2016: Commissioner Rowison amended page 7, line 1 to add:
Commissioner Rowison 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 suspicions 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-
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 overturned 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 areclaiming 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*
polution in 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 affected 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 mangers 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.
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 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 wilding 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
Regular Meeting

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 McClendon 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 McClendon 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 shellfishing, 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
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 Rowlson, Atul Deshmame

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 Rowlson reminded Mr. Personius of the pending business items on the agenda.

Mr. Personius thanked Commissioner Rowlson 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.

268

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
going 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 if 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.
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 Rowlson 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

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

- 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 aAvoidance 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 is 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
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 Honcoo, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowlson, Atul Deshmale
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 Honcoo 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 piecemeal 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 Welmer amendments.

Jean Carmean, 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 PIH/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 piecelmealing; 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 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 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
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. Deshmone 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 it 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 Weimer 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 Weimer 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 Weimer 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 Weimer
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
Weimer 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. He 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 nor 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.
Regular Meeting

Lucas Burdick, Whatcom County: Existing laws are important for any government. The Magnon 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
disruptors”. 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 arctic 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 Hedricks, 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 Honcoop 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
docketed it should be. They had not really had any time to review it.

Commission Honcoop 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 Rowlson 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
Call To Order: The meeting was called to order, by Natalie McClendon-acting Chairperson, in the Whatcom County Council Chambers at 6:30 p.m.

Roll Call
Present: Natalie McClendon, Jerry Vekved (by phone), Gary Honcoop, David Hunter, Andy Rowlson, Atul Deshmane
Absent: Nicole Oliver, Kelvin Barton, Michael Knapp

Staff Present: Mark Personius, Matt Aamot, Becky Boxx

Due to the absence of both the Chair and Vice-Chair Commissioner Rowlson nominated Commissioner McClendon as acting Chair. Commissioner Honcoop seconded. The motion carried.

Department Update
Mark updated the commission on:
- The Planning Commission schedule
- Reappointment to the Commission of Andy Rowlson and Atul Deshmane. There is still one vacancy which can be filled from either district 1 or 4.
- There was an appeal of the Cherry Point SEPA determination which will be heard by the Hearing Examiner.

Open Session for Public Comment
Carole Perry, Whatcom County: She attended a County Council meeting the previous Tuesday. In one of the committee meetings they were discussing fire flow. Because two of the council members had been affected by fire flow they were very concerned. Because they were not sure of all of the regulations one of them made a motion to take the issue back to the commission in order for them to gather more information. She had never seen that happen before. The motion failed because some of the council members didn’t want it going back to the commission. The council does know that the commission does have some experience to forward to the council.

Commissioner Comments
There were no commissioner comments.

Approval of Minutes
December 8, 2016: Commissioner Deshmane addressed page 13, line 28. A member of the public made a comment regarding something Commission Deshmane had said in the past. Commissioner Deshmane stated he did not believe he had made that comment.

Commissioner Rowlson moved to approve the minutes as written. Commissioner Deshmane 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.

Matt Aamot presented an update including proposed staff changes.

Wetlands

The Department of Ecology (DOE) indicated that there are other important intertidal wetlands in the region, therefore staff is recommending the text be modified as shown: 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.

Piers

The Planning Commission recommended text from the council proposal that the county no longer supports additional piers. At a subsequent meeting the commission recommended Policy 2CC-11 stating the county supports a limit on the number of piers consistent with vested rights, approvals or agreements. The text and the policy need to be reconciled.

Citing Policies

This relates to citing applicable polices in the text to direct the readers to the policies. The policies are what guide the county’s actions.

DNR Aquatic Reserve

The Department of Natural Resources (DNR) issued an order on January 3, 2017 expanding the Cherry Point Aquatic Reserve to include the 45 acres which is the site of the fourth proposed pier. Staff recommended revising the text in accordance with the order.

There are proposed findings in the packet which support the Planning Commission’s recommendation. Staff proposed changes relating to the order by the Commissioner of Public Lands and the DNR update of the Cherry Point Environmental Aquatic Reserve Management Plan.

The commission took comment from the public.
Sandy Robson, Whatcom County: The lease application for a fourth pier is definitely no longer in existence. That language regarding the pier should be removed from the draft. She did not think that the comment from the Whatcom Business Alliance (WBA), described by the organization as a collaborative alternative, should be given any higher level of consideration than any other submitted comments. The fact that the WBA met with the Planning Department staff is inappropriate. She hoped that the commission did not try to place the WBA suggestions at any higher level. There should not have been any alternatives at all generated by PDS before any SEPA checklist was made. It confused things for the public. The council directed one proposal only for review by the commission. The other alternatives were pushed by the county administration. She contacted the DOE who replied stating that the county has a fair amount of flexibility when conducting SEPA review on their Comprehensive Plan updates. They also said that usually the analysis of alternatives is better suited for an EIS rather than a SEPA checklist. She asked that the commission only look at the council proposal and treat the other alternatives as comments.

Tony Larson, Whatcom County: President of the Whatcom Business Alliance. There was a lot of effort put into their recommendation and it was done in good faith. The intent of the preamble, in the policy sections, was to create language that is factually accurate and created a balance between the environment, the quality of life and business. These are things we all share and are important to everyone. They share the goal to improve the quality of life for everyone in the county as do the industries at Cherry Point. The industries do this through their environmental stewardship and economic opportunities that are extraordinary in the county. There was a study done by the University of Washington and Western Washington University that shows that if the industries at Cherry Point sneeze the Whatcom County economy will catch a cold. The final product recommended to the council should recognize the Cherry Point industries as a good community partner, which is what they are. It should allow them to thrive and adapt to the changing marketplace. That is what is fair and what any business requires. It should require environmental stewardship and community review. Alternative 3 does exactly that. Alternative 3 was written as a compromise. This was done at the request of the commission.

Ron Coleson, Whatcom County: Representing the Mt. Baker Group of the Sierra Club. The club appreciates all of the revisions made and feel that the final additions to 2CC should be further scrutinized. 2CC-3, as maintained in draft, it is important to acknowledge the history of Cherry Point and the Treaty of 1855. This policy should support collaboration with the Lummi Tribe, specifically for archeological review of sites at Cherry Point. This is respectful to the Lummi Nation and is absolutely necessary. 2CC-11, states, existing vested rights, approvals or agreements, is meant to exempt Gateway Pacific Terminal (GPT) and must be removed. All proposals on the site must be held to the same standard for approval and GPT should not be given any leverage over other companies. This policy could also be improved by indicating that since the marine preserve is now closed to any new piers the county no longer supports additional piers. In policy 2CC-15 the staff recommendation does not protect against piecemealing of expansions that would not require public permits. The original proposal’s intent is to ensure that the county does not allow minor developments that
violate the Marine Mammal Protection Act and Magnuson Amendment. The study on fossil fuel export should not take two years. The information can be readily available and a deadline in 2017 is ample time.

Alex Ramel, Whatcom County: Representative for STAND. Urged the commission to pass the draft. Policy 2CC-3 ideally would include reference to making bulkheads the last alternative. It should include reference of consultation with the Lummi Nation as part of the archeological review. Encouraged the commission to update the narrative in Policy 2CC-11 to reflect the fact that both the Army Corps of Engineers and Washington State Department of Natural Resources have effectively precluded the possibility of a fourth pier being constructed at Cherry Point. Encouraged them to change the conclusion date of the study to December 2017. Encouraged them to change back the two references to coal, oil and natural gas back to the original unrefined fossil fuels.

Eddy Ury, Whatcom County: Representing ReSources. There are different legal opinions regarding the Magnuson Amendment. He stated they were happy to see language in the draft that asks agencies to enforce the Magnuson Amendment but would like it to go a little further. There are cases were certain projects may not be automatically triggering Magnuson review or there might be change in uses. Whatcom County may receive minor permit applications for piecemeal upgrades that will facilitate increased outbound shipping of bitumen and crude oil through existing piers arriving by existing pipelines. There may not be any significant federal review of these applications. Regarding the rewritten chapter by the WBA it is nice to see their attempts at compromise. They did agree with them on some language, specifically Policy 2CC-2 which states: Ensure that developments at Cherry Point UGS maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan.

Wendy Harris, Whatcom County: Supported the comments made by Sandy Robson and STAND. She expressed her distaste for the fact that this process is even taking place. It is inappropriate. She was not criticizing the Planning Commission. This issue should never have come to them. The County Council issued a resolution with one person against. That one person argued extensively for their position which was rejected. The council knew what they wanted and were told by legal counsel that it had to come back to the commission. Once it came to the commission it turned into a three ring circus because the Planning staff decided that they were going to set this up as some sort of EIS type review with alternatives. She has never seen a resolution treated in this manner. The council knows what they want. They discussed it extensively. They weren’t asking for anyone’s input because they had already received it. A lot of time has been wasted. This has been nothing more than an opportunity for the administration to allow businesses at Cherry Point to come in and get some extra words in and try to get the community riled up. It is completely political and inappropriate. What would be appropriate would be for the commission to make changes that have to do with circumstances that have changed since this first came to them for review. There is no need for any major changes. There was no change in
facts or circumstances here, it was just manipulation. More and more that has come to
define what is happening in county politics. Someone needs to say it’s wrong.

Erin Anderson, Whatcom County: Speaking on behalf of the WBA. The comprehensive
plan process is driven by the people. It is a bottoms up process that requires counties
to adopt a public participation process. It is not a process to be conducted outside of
the public. Regarding changing circumstances, changes to the comprehensive plan or
zoning can be docketed for amendment every year whether there is a change in
circumstances or not. It is not a change in circumstances test. Regarding Policy 2CC-3,
you have been encouraged to enunciate a preference for the Lummi Nation, however,
she did not think it was a wise move to identify one tribe and not others because they
all have different rights and they are recognized as separate governments. There is a
process for them to establish their rights. It is a worrisome path to call out one for
rights and not others. As for consultation, consultation with tribes is a federal a
process. Washington State does not have a similar process. The Washington State
Historical Preservation Office does consult with the tribes and jurisdictions as needed.
As far as bulkheads and hardening, that is already taken care in the Whatcom County
Shoreline Master Program. She encouraged the county to spend taxpayer’s money
wisely, including money spent on the study. To take taxpayer’s money to fund a study
that prevents the county from growing their businesses and adapting to the future
seems unreasonable.

Alyssa Willis, Whatcom County: Secretary for the Students for Local Industry Club at
the Bellingham Technical College. It is really important to have a forum for the public
to interact and get involved in politics, etc. As a person who studies process
technology, there is a difference between crude oil and refined oils. Don’t change the
language. She supports the WBA alternative.

Carole Perry, Whatcom County: Explained why this issue came to the commission.
During a work session the council slipped in these amendments. There was no one left
at the meeting. Gradually people heard about what was happening and began to pay
attention and attend meetings. There were a lot of business people at one of the
meetings and Councilmember Weimer told them the council wanted their input. At the
meeting in December there was no mention of any other alternatives.

Dena Jensen, Whatcom County: As far as the acknowledgement of the Lummi Tribe,
she did not feel this gave them any super rights. The Cherry Point area is an area that
is sacred territory to them which we need to acknowledge. Native American nations
historically have not been properly consulted. There traditional territories have been
taken from them and abused. It would be proper to stand up against that. If we need
to mention other tribes we should certainly do that. It is in no way harmful to
recognize the importance and significance that Cherry Point has to the Lummi Nation.

The public comment period was closed.
Commissioner Honcoop moved to adopt the staff proposed changes, as outlined in the memo dated January 3, 2017. Commissioner Rowlson seconded. The motion carried (ayes-6, nays-0).

Commissioner Honcoop asked where things are in regards to the proposed study. Has it been funded?

Mr. Personius stated the council adopted a budget of $150,000 for the study which will be done by the council office.

Commissioner Honcoop stated the language is not policy so what is the need to have it in the Comprehensive Plan. The council is moving ahead with the study regardless. Don’t they have the ability at any time to request a study?

Mr. Personius stated they do have that jurisdiction.

Commissioner Honcoop moved to delete Policy 2CC-16. Commissioner Vekved seconded.

Commissioner Deshmane asked staff if the council has indicated a timeline for the study.

Mr. Personius stated he did not believe the budget adoption established a timeline.

Commissioner Deshmane asked if any parameters have been established.

Mr. Personius stated he was not aware of any.

Commissioner Rowlson asked if the study has started yet.

Mr. Personius stated it has not started yet.

Commissioner Honcoop spoke to his motion. The language does not fit in the Comprehensive Plan. This policy will still be in the plan after the study is done which it shouldn’t be.

Commissioner Deshmane spoke in opposition to the motion. He stated this is the opportunity to prioritize the study. The purpose of the study should be discovery and understanding rather than specifying an outcome. In the current language there is somewhat of an implied outcome. They know what the objectives of the council are. Some of the questions that would be great to have answered in the study would be: Has export happened in our region? Has this been a concern? What is the real cause of the herring decline? What type of industrial activities harm habitat in general? What would be the impact of a Magnuson Amendment repeal? How do treaty rights impact commercial development in general? What kind of heavy industry will be welcomed at Cherry Point?
Commissioner Hunter stated he felt there was confusion about the real purpose of
Policy 2CC-16. Now, more than ever, those places in our nation that have a genuine
interest in environment concerns and the health and welfare of the American people
are wanting to be sending out messages that they intend to remain, in spite of
whatever has happened in the country, attentive to and concerned about the ways in
which we are, as a people, degrading our environment, particularly through carbon
burning. The policy is simply a statement that he is happy to have in a place where it
is apparently getting a good deal of attention. We need to create a living environment
which is open for employment that is healthy and closed to processes which are
unhealthy. This is a good focus. It may not fit the general rule as to what goes into the
Comprehensive Plan but it does not make it unreadable, inoperable or hard to
understand.

Commissioner Rowlson asked staff if the language adds value. Is there legal recourse
to point to it? Does it help the county in some way regarding the process?

Mr. Personius stated yes, because it clearly shows intent, whether you disagree with
that intent or not. It also shows the rational for the other amendments to the chapter.

Commissioner Rowlson stated that the study is going to happen and having it in the
chapter is not super relevant, but leaving it in would leave them the option to do
another study to counterbalance it. Since the commission can recommend studies he
would like to see a study done which looks at ways the county can support economic
development in the Cherry Point UGA.

Commissioner Deshmoe asked why have two different studies. The commission can
add language to the current recommended study.

Commissioner Rowlson stated he was open to that idea. He proposed adding a second
study.

Commissioner Honcoop stated the first study is definitely designed to find legal ways
the county can work to limit crude oil, etc. It has already been predetermined what the
result will be. We know what the council’s goal is. He did not see putting two studies
together working.

Commissioner Vekved stated this is a case of where the cart if before the horse. One
would expect to read the results of this study, in the preamble text, as justification for
policy. The policy might be what is currently in the preamble text. He was opposed to
the premise of the study because it is kind of a witch hunt. However, the council is
going to do what they want to do. He wants to have the study reflect the language in
the preamble text and policies as a result of the study. He supported the motion.

Commissioner Hunter stated he remains amazed that we imagine that the
degradations that are being put upon our planet by far too heavy use of fossil fuels is
still a witch hunt. We don’t have to guess about this any longer. We don’t have time to
ponder whether it is true or not. We know it’s true. We seem shocked to be asked to
do something about it. This is only a note to us that we need to take a step back. He
didn't know if there were any foregone conclusions about what the study will bring. He
was not optimistic that they would find legal ways of avoiding the Commerce Clause,
although he would like to believe they could. He did not think there was anyone in
Whatcom County that imagines they can just tear down the industries at Cherry Point
to the extent that they are no longer able to produce. This is a call they need to pay
attention to. It should not be so difficult. Businesses do not need our help. They are in
the business of making profits. If they can't do it they will stop doing it. He was not
interested in developing an economic plan. Cherry Point does not need them for that.
When they figure out it is going to profit them more by moving abroad than it does to
stay they will do that and drop every single employee they have to do it. That is all
they care about. It is time to stop pretending.

Commissioner Deshmane stated he did not like the way Policy 2CC-16 currently read.
Regarding a second study it is currently not funded. If we recommend a second study
maybe that will force the council to fund it.

Commissioner McClendon stated she would vote against the motion. Whether the
commission adopts it or not this is what was adopted by the council and they will
proceed with a study. We don't need to spend time on the issue. She agreed with
Commissioner Hunter regarding anyone finding legal ways to get around the
Commerce Clause but we have to go through the process to make it clear to everyone,
on both sides of the issue, what the federal laws are that have to be dealt with.

Commissioner Honcoop stated a study is not a good way to spend taxpayer money. We
will also be spending taxpayer money to defend it which will be a long expensive
process.

The vote on the motion failed (ayes-3, nays-3).

Commissioner Rowlson moved to add a new Policy, 2CC-17, to read: While
conducting a study as outlined in Policy 2CC-16 to limit some exports from
the Cherry Point UGA the county shall also undertake a study, to be completed
by December 2018, to examine ways the county can work to support
economic development of the Cherry Point UGA and other industrial areas
throughout the county. Based on the study develop or update economic
development strategies, programs and initiatives.

Commissioner Deshmane seconded.

Commissioner Rowlson stated during the Great Recession nothing happened regarding
economic development. This is the opportunity to make something happen.

Commissioner Deshmane proposed an amendment to the motion. Assess, in
the Cherry Point UGA, the impacts of industrial activity and what can be done
to support clean, low carbon development.
Commissioner Rowson stated he was not in favor of the amendment. It should be
treated as two different issues.

**Commissioner Deshmane withdrew the motion.**

Commissioner McClendon asked staff if the motion duplicated what is already
happening with economic development and low carbon development.

Mr. Aamot stated the county just updated the Comprehensive Economic Development
Strategy in 2015. The Port of Bellingham is one of the agencies responsible for
promoting development in the county. There are a number of initiatives in process.

Commissioner Deshmane asked if the proposed language should be limited to just the
Cherry Point area, not all industrial areas in the county.

Commissioner Rowson stated he would like it to apply to all industrial areas.

Mr. Aamot stated the meeting was advertised for the Cherry Point area, which is
something to keep in mind.

Commissioner Hunter asked what the purpose of the motion was. Was Commissioner
Rowson interested in promoting clean economic development?

Commissioner Rowson stated he had a preference for clean economic development.

Commissioner Hunter stated that the proposed language is just a repeat of what is
already in the Comprehensive Plan.

Commissioner Rowson stated the language in Policy 2CC-16 addresses exploring
things such as Comprehensive Plan amendments, etc. for the council to consider in
order to eliminate the export of fossil fuels from Cherry Point. The economic
development study may help them study ways they can propose changing rules to help
with economic development. He stated he did not want to go as far as proposing
certain codes, etc. He wanted to leave the study more open.

Commissioner Honcoop stated he would support the motion because it provides a
better balance to 2CC-16 which is on a direct path for the purpose of restricting
activity at Cherry Point. If we are going to restrict activity there and we still have it
designated as a heavy industrial UGA we should provide some answers as to what
Whatcom County will accept. There have been multiple industries that have tried to
come here and every one of them has not been allowed.

Commissioner McClendon stated she opposed the motion because the entire section
being considered does not need balanced. Everything about the section states what the
parameters are.

The vote on the motion failed (ayes-3, nays-3).
Commissioner Honcoop moved to change 2CC-13 to read: Work with the Cherry Point industries industrial land owners to maximize public access to the Cherry Point beaches without compromising industrial security.

The motion failed for lack of a second.

Commissioner Deshmane moved to change Policy 2CC-16 to read: 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 enhance 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.

Commissioner Honcoop seconded.

Commissioner Deshmane stated the refineries do not need Whatcom County's help with planning. This proposal would actually help create a template for other businesses to come here. Instead of saying what they can and can't do this would encourage them to come here and create change.

Commissioner Hunter stated he had nothing against adding the language, however he did not want to get rid of the other language. Why get rid of what is the heart of the policy?

Commissioner Hunter made an amendment to read: 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 enhance 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.

Commissioner Vekved seconded.

Commissioner McClendon stated similar language is already in Policy 2CC-3. Do we need to duplicate it in the study?

Commissioner Vekved stated the study will reveal more than what is stated in Policy 2CC-3.
The vote on the amendment carried (ayes-5, nays-1).

Commissioner Rowlson moved to change Policy 2CC-16 to read: 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 enhance 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.

Commissioner Honcoop seconded.

The motion carried (ayes-4, nays-2).

Commissioner Vekved moved to change page 2 (of the Planning Commission draft), line 26-35 to read: Since adoption of earlier versions of this Comprehensive Plan government have increased their recognition of the observed and projected effects there has been an increasing recognition of the impacts that fossil fuel extraction, use and transportation and use have 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 Hunter seconded.

The motion carried (ayes-6, nays-0).

Commissioner Vekved moved to change page 2, line 35-37 to read: The Cherry Point UGA contains the second-largest emitter of carbon air pollution pollutants (primarily CO₂, which was ruled air pollution by the US Supreme Court in 2007) in Washington State (Ecology, June 2016).

Commissioner Rowlson seconded.

The motion carried (ayes-5, nays-1).

Commissioner Honcoop moved to change page 2, lines 5-10 to read: 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 4,650 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.

Commissioner Rowlson seconded.

Commissioner McClendon asked staff if they knew what the correct acreage was.

Mr. Aamot stated they would have to check it through the GIS staff.

Commissioner Honcoop amended his motion to read: 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.

Commissioner Rowlson agreed to the amendment.

The motion carried (ayes-6, nays-0).

Commissioner Vekved addressed the Rail Access section. The WBA proposal clarifies
that the rail is used for items other than crude oil. There was concern, from Petrogas,
about this issue.

Commissioner Vekved moved to replace this section with the WBA language
which reads: Cherry Point is served by a branch line of the BNSF Railway
mainline serving western Washington. 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. Cherry Point industries use rail to ship and
receive multiple feedstocks and products. Both the Cherry Point Refinery and
the Ferndale Refinery receive crude oil shipments by rail.

Commissioner Rowlson seconded.

The motion carried (ayes-4, nays-1, abstain-1).

Commissioner Vekved moved to replace Policies 2CC-4, 2CC-5, 2CC-6 with the
WBA language to read:
2CC-4: 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.

2CC-5: Support development regulations that require master site
planning of large parcels in advance of new major development or subdivision at Cherry Point.

2CC-6: Support development regulations that require site planning for new major users (generally 40 acres or more) before the development of accessory or supporting uses to assure that accessory or supporting uses are compatible and coordinated with the major industrial use.

Commissioner Honcoop seconded.

Commissioner Vekved stated the WBA language is less regulatory and more policy.

Commissioner Rowlson referred to Policy 2CC-6. The change in language is from a major user to a new major user. Would a site plan be required for a major user or only new major users?

Mr. Aamot stated it would be for new users.

Commissioner McClendon asked what the development regulations now, requiring a master site plan. Are they only for new major development?

Mr. Aamot stated a permit could be issued for an addition to something existing or something new. The way it is worded now it would be in advance of any development or subdivision.

Commissioner McClendon asked if a minor change was asked to be permitted would it fall under an existing master site plan.

Mr. Aamot stated is would just be a building permit.

Commissioner McClendon asked if all of the Cherry Point industries currently have a master site plan.

Mr. Personius stated some of the developments were done before there was zoning so those regulations were not in place. The purpose of the proposed language is to require any new development to have a master plan.

Commissioner McClendon stated she would vote no on the motion simply because she was not clear on the impacts. The existing language seems to have been working.

Mr. Personius stated he would be nervous to have the wording changed without staff being able to compare them against the existing regulations. The motion failed (ayes-0, nays-6).

Commissioner Honcoop moved to change Policy 2CC-4 to read: 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.

Commissioner Vekved seconded.

The motion carried (ayes-5, nays-1).

Commissioner Honcoop addressed Policy 2CC-3. The policy wording does not work. You either encourage or make sure it is consistent with, you can’t do both.

No action was taken.

Commissioner Honcoop moved to add language from the WBA proposal to the preamble on page 2 of the Planning Commission draft to read: There is a variety of stakeholders with interest in the Cherry Point UGA/Port Industrial Area. These stakeholders include, but are not limited to, the citizens of Whatcom County who are dependent on jobs, human services, housing, utilities, and public infrastructure that support a healthy economy; industry; a diverse group of Native American tribes; and environmental interests. Whatcom County has long planned for industry at Cherry Point.

Commissioner Vekved seconded.

Commissioner Rowson stated he would not support the language because it does not add much more than is already stated elsewhere.

The motion failed (ayes-3, nays-3).

Commissioner Honcoop moved to change page 3, line 38 to read: Existing industries Industrial uses, within the Cherry Point UGA, 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).

Mr. Aamot stated the current language is quoted from the CPAR MP. To be consistent with the document it should use that current language.

Commissioner Honcoop withdrew the motion.

Commissioner Vekved addressed the proposed language on page 7, lines 20-23 which reads: 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 crude oil, coal and natural gas. Commissioner Vekved stated this language would be appropriate if we had the results of the study. If the study shows that we would run afoul of Commerce what is the effect of the proposed language?
Mr. Aamot stated the text isn’t policy. The Prosecuting Attorney had warned about putting policy into text.

Commissioner Vekved stated the words chosen end up being an assertion, not so much policy.

Commissioner McClendon stated this is a judgement that needs to be stated. Regardless of what is being done it needs to be done in a way that does not significantly impact the ecology of the Salish Sea.

Commissioner Honcoop stated the title of this section refers to use compatibility and land use designation. That is what we are after. The land use designation is heavy industrial. That’s what it is used for. By saying “or encourage expansion” you are effectively discouraging expansion on the very land you have designated for that use.

**Commissioner Honcoop moved to change the language to read: 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 crude oil, coal and natural gas.**

**Commissioner Vekved seconded.**

Commissioner Vekved stated he would be okay with leaving the language in if there was a study to back it.

Commissioner McClendon stated it is only a value statement. We either adopt it as our value or we don’t.

Commissioner Vekved stated it shapes the intent of policy which shapes the intent of regulation.

Commissioner Hunter stated all of this refers to a business and it is a business which creates a lot of problems and is a business we need to be moving away from. There is nothing about the language that says we are going to tear down the industries or restrict them in ways that make it impossible for them to do business, but we are not going to encourage expanded use of that. We should be restricting the use of carbon based fuels in every way. This language is a judgement about where we are in the world today.

Commissioner Vekved stated that judgment has already been made, well in advance of this.

Commissioner Deshmame stated all of the language is addressed in other sections. The language does not flow well in this section.

**Commissioner Deshmame made an amendment to remove the language from this section.**
Commissioner Vekved seconded.

Commissioner Vekved stated the proposed deleted language is dealt with in the policies.

Commissioner Deshmane stated the language is too much like policy.

Commissioner Honcoop supported his motion stating retaining some of the language is important to retain. It provides balance to the paragraph.

The vote on the amendment failed (ayes-2, nays-4).

The vote on the main motion carried (ayes-4, nays-2).

Findings of Fact and Reasons for Action

Commissioner Honcoop asked if any of the changes made that evening would impact the Findings of Fact.

Mr. Aamot stated he could not say for sure. Staff will review them and if something needs changed it could be brought back to the commission.

Mr. Aamot pointed out amendments to the findings (e-mailed to the Commission on January 10, 2017) regarding the update to the Cherry Point Environmental Aquatic Reserve Management Plan. It was amended in January 2017. Also, on January 3, 2017, the Washington State Commissioner of Public Lands announced expansion of the Cherry Point Environmental Aquatic Reserve, by 45 acres, previously considered for a coal export terminal.

Commissioner Hunter moved to approve the amendments to findings.

Commissioner Deshmane seconded.

The motion carried (ayes-5, nays-0, abstain-1)

Commissioner Rowlson moved to adopt the findings and recommend approval of the language, as amended, in the Planning Commission draft.

Commissioner Hunter seconded.

Roll Call Vote: Ayes-Deshmane, Hunter, McClendon, Rowlson, Vekved; Nays-Honcoop; Abstain-0; Absent-Barton, Knapp, Oliver. The motion carried.

The meeting was adjourned at 10:05 p.m.

Minutes prepared by Becky Boxx.
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
January 12, 2017

Regular Meeting

1
2 WHATCOM COUNTY PLANNING COMMISSION ATTEST:
3
4
5

6
7 Natalie McClendon, Acting Chair               Becky Boxx, Secretary
Proposed Council Changes

Comprehensive Plan, Chapter 2 – Cherry Point Amendments

Page and line numbers reflect Planning Commission Recommended Draft (1/12/17). To improve clarity of Councilmember requested changes, previous edits (i.e. staff and Planning Commission) are included, but not show as edits.

1) p. 1-11
   Replace with “Alternative # 1” considered by the Planning Commission (Brenner)

2) p. 4; lines 38-41:
   Whatcom County does not enforce the Magnuson Amendment through the local permitting process. However, the County can does encourage federal agencies to enforce the Magnuson Amendment and will strive to consult with federal agencies on whether proposed development at Cherry Point may conflict with the Magnuson Amendment before issuing local permits when possible may, if necessary, seek to enforce the Magnuson Amendment through the court system (see Policy 2CC-15). (Weimer)

3) p. 7; lines 25-29:
   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 or encourage expanded export of refined fossil fuels. (Weimer)

4) p. 8; Policy 2CC-2:
   Ensure that developments in the Cherry Point UGA maintain and operate under management plans to that accomplish the goals of the Aquatic Reserve Management Plan. (Donovan)

5a) p. 8; 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 done in cooperation with the Lummi Nation; and
   • Water recycling technology to minimize water use.
   (Weimer)
5b) p. 8; 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;
- Water recycling technology to minimize water use; and
- **Enhance existing industries.**
  (Donovan)

6a) p. 9; Policy 2CC-11: It is the **continuing** policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point **to the existing three piers**, taking into account the need to, consistent with:

- **Honor** any existing vested rights, approvals or agreements granted under Whatcom County’s Shoreline Master Program;
- **Update the Whatcom County Shoreline Master Program to conform** with this policy;
- **Encourage the** continued agency use of best available science;
- **Support and remain consistent with** the state Department of Natural Resources’ withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- **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;

**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.

(Weimer)

6b) p. 9; Policy 2CC-11: It is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point to the existing three piers.

- 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.

(Donovan)

7a) p. 10; 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). To accomplish this the County will seek consultation with appropriate federal agencies if applications for development permits are submitted to the County that staff thinks may conflict with the Magnuson Amendment. If necessary, Whatcom County may initiate legal action to enforce the provisions of the Magnuson Amendment.—(Weimer)

7b) p. 10; 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.

Whatcom County will only consider shoreline permits for conditional use, or for substantial shoreline developments, that are consistent with, and not violating, federal laws, Washington's Coastal Zone Management Act, and Washington's Shoreline Management Act.

(Donovan)
8) p. 10; Policy 2CC-16: The County shall undertake a study to be completed if possible 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 may choose can work to limit crude oil, coal, liquefied petroleum gases and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017. 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.

(Weimer)

9) New Policy 2CC-17: New text and amendments in this Comprehensive Plan regarding piers at Cherry Point, and regarding [fossil fuels / crude oil, coal, and natural gas/ exports] shall not limit the expansion of existing facilities nor limit the expanded operations of existing facilities, nor limit maintenance of existing facilities, not limit the development of new facilities related to existing industries at Cherry Point. (Donovan)
Title of Document:
Resolution initiating proposed Whatcom County Comprehensive Plan and Zoning Ordinance amendments. Removing two applications, which were previously initiated for further review, from the docket.

Attachments:
1. Cover letter
2. Draft Resolution Initiating Comprehensive Plan and Zoning Amendments
3. Correspondence relating to de-docketing two previously initiated applications

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

Under the Growth Management Act, the County Council is to consider amendments to the Comprehensive Plan no more frequently than once per year (with certain exceptions). Whatcom County Code 2.160.050 indicates that proposed Comprehensive Plan amendments are to be “initiated” for further review by a majority vote of the County Council. Whatcom County Code 20.90.030 also allows the Council to initiate zoning amendments. Planning and Development Services is forwarding the proposed amendments so that the Council can determine which items to initiate for further review.

Additionally, Planning and Development Services requests the County Council to consider removing two previously initiated applications from the docket pursuant to WCC 20.90.041(2).

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 Jack Louws, Whatcom County Executive
    The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Assistant Director

DATE: February 6, 2017

SUBJECT: Resolution Initiating Comp Plan & Zoning Amendments and De-docketing Two Applications

New Applications

Pursuant to state and local law, proposed comprehensive plan and zoning amendments are initiated for further review by the County Council each year. Whatcom County has received or submitted new proposals relating to the following topics for consideration in 2017:

- Urban Fringe Subarea Plan Update;
- Marijuana Production Facility – Buffer Waivers;
- Marijuana Production Facility – Buffer Reduction;
- Mineral Resource Lands – County-wide Designation Process;
- New Marine Resource Lands Section in the Comprehensive Plan;
- Water Resources - Growth Management Act Compliance; and
- Whatcom County Code (WCC)/Title 20 Amendments.

The Council should determine which of the above proposals to initiate for further review in 2017. Initiated amendments will be submitted for SEPA review, evaluated by the Planning Department, and go to a public hearing before the Planning Commission prior to returning to the County Council for a final decision. If a comprehensive plan amendment is not initiated by Council, it will not go forward.

334
Regarding the two new suggested zoning text amendments for which no fee was paid (relating to marijuana production facilities), WCC 20.90.040(4) states:

Interested persons may suggest revisions to WCC Title 20 . . . These suggestions require no payment of a fee, are not initiated amendments, and will not be processed as an amendment unless they have first been initiated in the manner provided under WCC 20.90.030. None of the parties with authority to initiate amendments under WCC 20.90.030 are under any obligation to initiate suggested revisions as amendments. All suggested revisions shall be forwarded to the county council for review.

Under WCC 20.90.030, zoning amendments may be initiated for further review by any of the following methods:

1. Planning & Development Services may initiate the amendment;
2. The Planning Commission may initiate an amendment by a majority vote;
3. The County Council may initiate an amendment by approving a resolution; or
4. A citizen may initiate an amendment by submitting an application and paying the application fees.

The Council may initiate the suggested zoning amendments, in which case no fees will be required. Alternatively, if the Council chooses not to initiate these suggested zoning amendments, the applicant may initiate them by paying the required application fees.

Previous Applications

In addition to the new applications, the following projects were initiated for review in previous years. They are included in the proposed resolution, as review has not been completed:

- Critical Areas Ordinance Update;
- Wireless Communication Facilities;
- Permit Review Procedures;
- Sign Regulations Update;
- Cherry Point Amendments;
- Code Enforcement Amendments;
- Point Roberts Character Plan Amendments;
- Boundary Line Adjustments;
- Weddings and Special Events;
- Bellingham Development Standards;
- Agricultural Strategic Plan Implementation; and
- MRL Expansion – North Star Rd.
**De-Docketing Applications**

WCC 20.90.041(2) states:

The county council may remove a proposed amendment from the approved docket by motion, unless the proposed amendment was:

(a) initiated by a citizen per WCC 20.90.030(4),

(b) the amendment is consistent with state and federal regulations, and

(c) the applicant has provided all information required by the planning and development services department.

The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year’s docket.

There are two previous applications that should be considered for removal from the docket:

- MRL Expansion - Lummi Island; and
- Offsite wetland mitigation/habitat restoration.

The MRL Expansion - Lummi Island application was initiated for further review in 2011 (File # PLN2011-00009). This application was originally submitted by Lummi Rock, LLC. However, the property has since changed hands. It is now owned by the Lummi Island Heritage Trust. On December 15, 2016, Whatcom County Planning and Development Services wrote a letter to the Lummi Island Heritage Trust (with a copy sent to Lummi Rock) inquiring about removal of the application from the docket. The Lummi Island Heritage Trust responded in an e-mail dated December 16, 2016, which states “Lummi Island Heritage Trust wholeheartedly supports the removal of the proposed amendment (PLN2011-00009) from the docket.” Therefore, we recommend that Council consider removing this proposed amendment from the approved docket.

The offsite wetland mitigation/habitat restoration application, and the associated fee, was submitted in 2008 by KG, LLC (File # ZON2008-00001). On December 9, 2016, Whatcom County Planning and Development Services wrote a letter to KG, LLC stating:

... Staff ... requested additional information from you, including working with the Washington State Department of Ecology and the U.S. Army Corps of Engineers to determine what modifications might be necessary to meet their requirements, as well as performing a watershed analysis. I find no evidence in the file that any of the requested information was submitted.

I am now writing to inform you that unless we either receive the requested information, or a letter from you withdrawing the application, PDS intends to
recommend to Council that they remove this project from the docket and
close out the file pursuant to WCC 20.90.041(2)(c) (the applicant has failed
to provide all information required by PDS). That section also requires that
we notify the applicant not less than 30 calendar days prior to consideration
of removal from the docket.

You should also be aware that WCC 16.16.260(F) outlines the requirements
for offsite mitigation banks (essentially what your proposal is). This language
was reviewed and evaluated during our periodic Critical Areas Ordinance
(CAO) update to see if appropriate language could be inserted to facilitate
your or similar proposals. However, neither the Technical Advisory
Committee nor the Citizens Advisory Committee found it consistent with
current state or federal mitigation standards and thus did not recommend
amendments on this issue.

Because the applicant has not provided the information requested by the Planning
and Development Services Department, we recommend that Council consider
removing this proposed amendment, submitted about nine years ago, from the
approved docket.

Thank you for your consideration of the proposed resolution and de-docketing the
two applications set forth above. We look forward to discussing these matters with
you.
RESOLUTION NO. ______

INITIATING COMPREHENSIVE PLAN AND ZONING AMENDMENTS

WHEREAS, the Growth Management Act (RCW 36.70A.130) requires that the County Council may consider amendments to the Whatcom County Comprehensive Plan no more frequently than once per year (with certain exceptions); and

WHEREAS, the provisions of WCC 2.160.050 indicate that Comprehensive Plan amendments are to be "initiated" for review by approval of a resolution by the County Council. WCC 20.90.030 indicates that the Council may also initiate zoning amendments; and

WHEREAS, the Whatcom County Planning and Development Services Department has forwarded a docket of proposed Comprehensive Plan and zoning amendments to the County Council for consideration;

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council hereby initiates for formal review the amendments shown on attached Exhibit A.

APPROVED this ____ day of ____________ 2017.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council      Barry Buchanan, Council Chair

APPROVED AS TO FORM:

__________________________
Civil Deputy Prosecutor
<table>
<thead>
<tr>
<th>File #</th>
<th>File Name</th>
<th>Applicant</th>
<th>Description</th>
<th>Location</th>
<th>Fee Waiver Requested?</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLN2017-00001</td>
<td>Urban Fringe Subarea Plan Update</td>
<td>Whatcom County</td>
<td>Review and update the Urban Fringe Subarea Plan and related provisions of the Whatcom County Comprehensive Plan.</td>
<td>Bellingham Urban Fringe</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2017-00002</td>
<td>Marijuana Production Facility - Buffer Waivers</td>
<td>Seth Stromme of Agape Research</td>
<td>Amend the Whatcom County Zoning Code to allow marijuana production facilities in the Agriculture zone closer to churches when a waiver is signed by the legal representatives of the church.</td>
<td>Agriculture Zoning District</td>
<td>Yes (suggested amendment)</td>
</tr>
<tr>
<td>PLN2017-00003</td>
<td>Marijuana Production Facility - Buffer Reduction</td>
<td>Seth Stromme of Agape Research</td>
<td>Amend the Whatcom County Zoning Code to reduce the minimum buffer between a marijuana production facility in the Agriculture zone and a community center or church from 1,000' to 500'.</td>
<td>Agriculture Zoning District</td>
<td>Yes (suggested amendment)</td>
</tr>
<tr>
<td>PLN2017-00004</td>
<td>MRL County-wide Designation Process</td>
<td>Whatcom County</td>
<td>Through a county-led countywide assessment, seek to identify and designate potential commercially significant mineral resource lands, to meet future demand, compatible with water resources, agricultural lands, forest lands and other GMA goals pursuant to Comprehensive Plan Policy 8R-1.</td>
<td>County-wide</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2017-00005</td>
<td>New Marine Resource Lands Section</td>
<td>Whatcom County</td>
<td>Create a new Marine Resource Lands section in the Comprehensive Plan (Chapter 8) pursuant to Comprehensive Plan Policy 8S-1.</td>
<td>Marine Areas</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2017-00006</td>
<td>Water Resources - GMA Compliance</td>
<td>Whatcom County</td>
<td>Amend the Whatcom County Comprehensive Plan and development regulations to address exempt wells in closed basins, in accordance with the Washington Supreme Court's decision in Hirst v. Whatcom County (Oct. 2016).</td>
<td>County-wide</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2017-00007</td>
<td>WCC/Title 20 Amendments</td>
<td>Whatcom County</td>
<td>Review and, if needed, revise the Whatcom County Zoning Code and other sections of the Whatcom County Code to implement Comprehensive Plan</td>
<td>N/A</td>
<td>N/A</td>
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<td>File #</td>
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<td>Applicant</td>
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<tr>
<td>PLN2016-00002</td>
<td>Kennels-in-the Ag-Zone</td>
<td>Ken-and Charmae Scheffer</td>
<td>Amend the Whatcom County Zoning Ordinance to allow Commercial Kennels as a conditional use in the Agriculture zone on parcels between one and five acres in size.</td>
<td>N/A</td>
<td>The applicant paid the fees.</td>
</tr>
<tr>
<td>PLN2016-00003</td>
<td>Capital Facility Planning</td>
<td>Whatcom County</td>
<td>Review and update the 20-Year Capital Facilities Plan (Appendix E) and the Six-Year Capital Improvement Program for Whatcom County Facilities (Appendix F) of the Whatcom County Comprehensive Plan.</td>
<td>County-wide</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00004</td>
<td>CAO Update</td>
<td>Whatcom County</td>
<td>Update the Critical Areas Ordinance, in accordance with the Growth Management Act.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00005</td>
<td>Low-Impact Development Code-Revision</td>
<td>Whatcom County</td>
<td>Whatcom County is updating the Comprehensive Plan, codes and standards to be consistent with the Low-Impact Development (LID) principles condition of the 2013-2018 National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit. As a Phase II Permittee, the County is required to review and update its development codes and standards to make LID the preferred and commonly-used approach to site development within the areas of the County covered by the NPDES Permit. The County is also using this as an opportunity to review its stormwater regulations, and may potentially amend other sections to standardize stormwater regulations throughout the County.</td>
<td>N/A</td>
<td>N/A</td>
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<td>File #</td>
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<tr>
<td>PLN2016-00006</td>
<td>Wireless Communication Facilities</td>
<td>Whatcom County</td>
<td>Review and update provisions in Chapter 20.13 to ensure consistency with new 2015 FCC rules (80 FR 1238) which are designed to implement and enforce Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. The sections to be reviewed and updated will include WCC 20.13.010 – Purpose; WCC 20.13.020 – Definitions; WCC 20.13.040 – Permitted Uses; and WCC 20.13.120 – Application requirements and conditions of issuance.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00007</td>
<td>WCC/Title-20 Amendments</td>
<td>Whatcom County</td>
<td>Review and, if needed, revise the Whatcom County Zoning Code and other sections of the Whatcom County Code to address issues identified in the administration of the codes. Additionally, any revisions needed to achieve consistency with the Growth Management Act and the Whatcom County Comprehensive Plan will also be considered.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00008</td>
<td>Permit Review Procedures</td>
<td>Whatcom County</td>
<td>Review and revise Whatcom County Code 2.33 (Permit Review Procedures), including updating the code for consistency with state law.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00009</td>
<td>Sign Regulations Update</td>
<td>Whatcom County</td>
<td>Review and revise Whatcom County Code 20.80.400 (Sign Regulations), including updating the code for consistency with the U.S. Supreme Court’s decision in Reed v. Town of Gilbert (2015).</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00010</td>
<td>2016 Comp Plan Update</td>
<td>Whatcom County</td>
<td>The Washington State Growth Management Act (GMA) requires the county to periodically review and revise its comprehensive plan under RCW 36.70A.130(1). Additionally, the GMA requires review of urban growth areas (UGAs) under RCW 36.70A.130(3). The UGAs must be able to</td>
<td>County-wide; including UGAs</td>
<td>N/A</td>
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<td>Cherry Point</td>
<td>Review proposed amendments to the Cherry Point Comprehensive Plan.</td>
<td>This amendment relates to the Cherry Point Comprehensive Plan.</td>
<td>N/A</td>
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<td>Amendments</td>
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<td>PLN2016-00012</td>
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<td>Broadcast-Height</td>
<td>Create a new Whatcom County Code (WCC) Title 19, called &quot;Code Enforcement,&quot;</td>
<td>N/A, Yes, Suggested Amendment</td>
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<td>Tower Limits - Point</td>
<td>to establish an efficient system to address enforcement of building, critical</td>
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<td>Roberts</td>
<td>amendment would also insert a definition of &quot;Broadcast-Tower&quot; into the</td>
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<td>Zoning Ordinance.</td>
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<td>Code Enforcement</td>
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<td>PLN2015-00002</td>
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<td>Whatcom County</td>
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<td>John-Lesow and Armene</td>
<td>Amend the Whatcom County Zoning Ordinance to prohibit broadcast-towers greater than 25 feet in height</td>
<td>N/A, Yes, Suggested Amendment</td>
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<tr>
<td>Belless</td>
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<td>Cherry Point</td>
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<td>Amendments</td>
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<td>PLN2015-00003</td>
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<td>Whatcom County</td>
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<td>County / Arthur Reber</td>
<td>Amend the Point Roberts Subarea Plan, including the provisions of WCC 15.15, 16.16, and 20 to a new WCC Title</td>
<td>N/A, Yes, Suggested Amendment</td>
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<td>Amendments</td>
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<td>PLN2015-00004</td>
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<td>Point Roberts</td>
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<td>Character Plan</td>
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<td>County Zoning Ordinance (WCC Title 20), and Whatcom County Permit Review Procedures (WCC 2.33). Amend the Point Roberts Character Plan to address timelines for Character Plan Advisory Committee review of projects, roof materials, exterior finish, fire hydrant appearance, screening dumpsters, utilities &amp; other uses, signs rules, and Character Plan Advisory Committee timelines for responding to alleged code violations.</td>
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<tr>
<td>PLN2014-00001</td>
<td>Boundary Line Adjustments</td>
<td>Jay Irwin</td>
<td>Amend Section 20.83.110 of the Whatcom County Zoning Ordinance relating to boundary line adjustments. The amendment would allow boundary line adjustments to nonconforming parcels to resolve encroachments such as fences, trees and other occupational indicators. The amendment would also allow boundary line adjustments that modify the boundaries between two nonconforming parcels based upon land owner preferences, as long as the smallest parcel is not decreased in size.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2014-00016</td>
<td>Weddings and Special Events</td>
<td>Whatcom County</td>
<td>Amend the Whatcom County Zoning Ordinance to allow “Weddings and Special Events” in specific zone districts through a conditional use permit. Amend WCC 20.97 to define “Special Events” and amend the parking space requirements in WCC 20.80.580.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2013-00003</td>
<td>Bellingham Development Standards</td>
<td>Whatcom County</td>
<td>Review and potentially revise the Whatcom County Code to adopt City of Bellingham Development Standards for the Bellingham Urban Growth Area (UGA).</td>
<td>These amendments relate to the Bellingham UGA</td>
<td>N/A</td>
</tr>
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<tr>
<td>PLN2012-00006</td>
<td>Specified Fittings (R5A to R1M)</td>
<td>Gregory &amp; Kathleen Gundel and Ken Mann</td>
<td>Amend the Comprehensive Plan designation from Rural to Rural Community and amend the zoning from Rural one dwelling/five acres (R5A) to Rural Industrial and Manufacturing for approximately 1.86 acres located on the north side of Smith Rd., west of the Guide Meridian</td>
<td>Parcel # 390225 459079. Within the SE ¼ of section 25, T39N, R2E, W.M.</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2012-00007</td>
<td>Agricultural Strategic Plan Implementation</td>
<td>Whatcom County</td>
<td>Resolution 2011-023 was approved by the County Council on 7/26/2011 declaring support for the Whatcom County Agricultural Strategic Plan. An immediate priority in this plan is to review the Rural Study Areas as listed in the 2007 Rural Land Study and make recommendations for possible changes in accordance with Resolution 2009-040 (100,000 acre target), Resolution 2011-023 (the Agricultural Strategic Plan), and RCW 36.70A.170 and .177. Other immediate and short-term priorities in this plan include developing tools that can be incentives for agricultural operators within the priority agricultural areas. These activities may lead to proposed changes to the agricultural portions of the Comprehensive Plan and zoning regulations.</td>
<td>Proposal relates to Agricultural and Rural lands</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2012-00009</td>
<td>MRL Expansion – North Star Rd.</td>
<td>Ferndale Ready Mix &amp; Gravel</td>
<td>Amend the comprehensive plan designation from Rural to Mineral Resource Lands (MRL) and amend the zoning map to expand a MRL overlay zone on approximately 19.7 acres on the west side of North Star Rd., south of Brown Rd. The underlying zoning is Rural one dwelling/five acres (R5A).</td>
<td>Parcel # 390110 212100; Within the SW ¼ of section 10, T39N, R1E, W.M.</td>
<td>N/A</td>
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<td>File #</td>
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<tr>
<td>PLN2012-00012</td>
<td>Rural Element Update</td>
<td>Whatcom County</td>
<td>Amend the Rural element of the Whatcom County Comprehensive Plan, including provisions relating to water resources, in response to a decision of the Growth-Management Hearings Board. Make related amendments to the Official Whatcom County Zoning Ordinance and maps.</td>
<td>Rural Areas</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2011-00009</td>
<td>MRL-Expansion - Lummi Island</td>
<td>Lummi Rock, LLC</td>
<td>Amend the comprehensive plan designation from Rural Forestry to Mineral Resource Lands (MRL) and amend the zoning map to expand a MRL overlay zone on approximately 27.5 acres on Lummi Island. The underlying zoning is Rural Forestry.</td>
<td>Parcel # 370124 191084; Within the SW ¼ of section 24, T37N, R1E, W.M.</td>
<td>N/A</td>
</tr>
<tr>
<td>ZON2008-00001</td>
<td>Offsite Wetland Mitigation/ Habitat Restoration</td>
<td>KG, LLC</td>
<td>Amend the Official Whatcom County Zoning Ordinance to allow offsite wetland mitigation and habitat restoration as a form of compensatory mitigation in all zoning districts.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
December 15, 2016

Lummi Island Heritage Trust  
c/o Rebecca Rettmer  
PO Box 158  
Lummi Island, WA 98262

To: Rebecca Rettmer

On December 27, 2010, a Comprehensive Plan Map and Zoning Map amendment application was submitted by Matt Vaughn on behalf of Lummi Rock, LLC. This amendment (PLN2011-00009) would change the comprehensive plan designation and zoning from Rural Forestry to Mineral Resource Lands (MRL) for much of parcel 370124191084 that was not already zoned and designated as MRL.

Through a series of events, the Lummi Island Heritage Trust has become the title owner of the above referenced parcel, along with a few neighboring parcels. Due to this transfer of ownership and subsequent Deed of Right to Use Land for Conservation Purposes to the State of Washington, it is the intention of Whatcom County Planning Development Services to request that the County Council remove the amendment proposed in PLN2011-000009 from the Whatcom County docket. This would close the file and no further action would be taken on the application.

If you would like the proposed amendment to remain on the docket for continued processing, please contact me in writing prior to January 20, 2017.

Kind Regards,

Joshua Fleischmann  
Whatcom County PDS  
jfleisch@co.whatcom.wa.us  
360-778-5900

cc: becca@liht.org  
cc: Matt Vaughn, mvaughn@aggwest.com  
cc: Lummi Rock  
cc: Mark Personius
Joshua,

Lummi Island Heritage Trust wholeheartedly supports the removal of the proposed amendment (PLN2011-00009) from the docket.

Thank you,
Rebecca

Rebecca Rettmer
Executive Director
Lummi Island Heritage Trust
P.O. Box 158
Lummi Island, WA 98262
Ph: 360-758-7997
Fax: 360-758-7001

http://www.liht.org/

"Preserving the Nature of Lummi Island"

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From: Joshua Fleischmann <jFleisch@co.whatcom.wa.us>
Date: Thursday, December 15, 2016 at 1:15 PM
To: Rebecca Rettmer <becca@liht.org>
Cc: "mvaughn@aggwest.com" <mvaughn@aggwest.com>, Mark Personius <MPersoni@co.whatcom.wa.us>
Subject: PLN2011-00009 - Lummi Island MRL Comp Plan Amendment

Hello Rebecca,
Please see the attached letter regarding the potential removal of the Lummi Island Mineral Resource Land Comprehensive Plan Amendment from the Whatcom County docket.

Please let me know if you have any questions.

Kind Regards,
Joshua Fleischmann

Whatcom County PDS
5280 Northwest Drive
Bellingham, WA 98226
December 9, 2016

KG, LLC
1442 Sunset Avenue
Ferndale, WA 98248

RE: ZON2008-00001, Proposed Code Amendment to Allow Compensatory Off-Site Mitigation and Habitat Restoration as a Permitted Use in All Zone Districts

Dear KG, LLC,

Whatcom County Planning and Development Services (PDS) has an open application you submitted on January 31, 2008, proposing a code amendment to allow compensatory off-site mitigation and habitat restoration as a permitted use in all zone districts. The project was given the PDS file number ZON2008-00001 and the County Council docketed it. It is still considered an “open” (i.e., pending) application as no official action has been taken on it.

I’ve been assigned the task of reviewing the project file and recommending what action, if any, needs to be taken on it to close the file. In doing so, I’ve found that multiple agencies, including PDS, had grave issues with the proposal and would recommend denial were it to go forward. You were given the option of withdrawing the proposal and receiving a refund of your application fee, or to go forward with a recommendation of denial. Based on the notes in the file, you evidently did not want to withdraw the project. Staff therefore requested additional information from you, including working with the Washington State Department of Ecology and the U.S. Army Corps of Engineers to determine what modifications might be necessary to meet their requirements, as well as performing a watershed analysis. I find no evidence in the file that any of the requested information was submitted.

I am now writing to inform you that unless we either receive the requested information, or a letter from you withdrawing the application, PDS intends to recommend to Council that they remove this project from the docket and close out the file pursuant to WCC 20.90.041(2)(c) (the applicant has failed to provide all information required by PDS). That section also requires that we notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. Please consider this letter as that notification. Council will consider the docket sometime around March 1, 2017, probably at their February 21st meeting (the schedule has not yet been set). You should also know that pursuant to WCC 20.04.022(2)(c) even were you to withdraw your application we can no longer offer to refund your application fee, as it is past the 90-day deadline.

You should also be aware that WCC 16.16.260(F) outlines the requirements for offsite mitigation banks (essentially what your proposal is). This language was reviewed and evaluated during our periodic Critical Areas Ordinance (CAO) update to see if appropriate language could be inserted to facilitate your or similar...
proposals. However, neither the Technical Advisory Committee nor the Citizens Advisory Committee found it consistent with current state or federal mitigation standards and thus did not recommend amendments on this issue. Final County Council review of the proposed CAO will begin in January 2017 if you wish to participate. See the following link http://www.whatcomcounty.us/2417/County-Council-Review for additional information.

Please feel free to contact me at (360)778-5942 or cstrong@co.whatcom.wa.us if you have any questions.

Sincerely,

Cliff Strong
Senior Planner

Cc: Aqua-Terr Systems, Inc., attn.: Jim Wiggins, 21993 Grip Road, Sedro Woolley, WA 98284
    Mark Personius, Asst. Director, PDS
    File ZON2008-00001
No, I haven’t received any word from him.

Thanks,

Cliff Strong
Senior Planner
Whatcom County Planning & Development Services

cstrong@co.whatcom.wa.us
360.778.5942
www.co.whatcom.wa.us/pds

Hi Cliff:

As you know, WCC 20.90.041(2) states that the “county council may remove a proposed amendment from the approved docket by motion” if certain conditions are met. One of those conditions is that PDS notify the applicant not less than 30 calendar days prior to consideration of removal from the docket.

You sent a letter to the applicant dated December 9, 2016 indicating that the County will consider removing this project from the docket, unless the applicant provides the requested information. Has the applicant responded to your letter?

Thanks,

Matt

Thanks,

Cliff Strong
Senior Planner
WHATCOM COUNTY COUNCIL AGENDA BILL

Subject:
Video presentation and discussion relating to Supreme Court Hirst decision

Attachments

Summary Statement:

<table>
<thead>
<tr>
<th>Related County Contract #</th>
<th>Should the Clerk schedule a hearing? (Y/N)</th>
<th>Requested Date</th>
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Video presentation and panel discussion relating to the Supreme Court's Hirst decision.

Recommended Motion (for final action):

Council Action Taken

Related File Numbers: Ordinance or Resolution Number (this item only):
WHATCOM COUNTY COUNCIL SCHEDULES SPECIAL PRESENTATION REGARDING HIRST ET AL V. WHATCOM COUNTY

BELLINGHAM, Washington, February 23, 2017 – The Whatcom County Council has scheduled a special presentation at its meeting on March 7, 2017, to present information related to the State Supreme Court’s decision on Hirst et al v. Whatcom County (Hirst decision). The meeting will begin at 6 p.m. in the County Council Chambers, 311 Grand Avenue, Bellingham.

In the Hirst decision, the Supreme Court ruled that Whatcom County failed to comply with the Growth Management Act requirements to protect water resources. The court ruled:

- It is the County’s responsibility under the Growth Management Act to determine legal availability of water for purposes of issuing land use decisions, not the Department of Ecology.

- Development permit applications that are proposing to use a private well water supply (in a basin that is closed or partially closed to surface water withdrawals by the Department of Ecology) must demonstrate that groundwater withdrawal will not impair a senior water right, including instream flows established in Chapter 173-501 WAC (the Nooksack Basin Instream Flow Rule).

The Council will begin its meeting on March 7 by showing a twenty minute video to provide audience members with important information related to the Hirst decision. Following the video, councilmembers will ask questions of state and local water experts, specifically attorneys Tadas Kasilius and Bob Carmichael, hydrogeologist Chuck Lindsay, and local public utilities district manager Steve Jilk.

Following the presentation portion of the meeting, Council will hold a public hearing on a proposed interim 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 (AB2016-309D). A copy of the ordinance can be found here:

http://www.co.whatcom.wa.us/DocumentCenter/View/25660

Additional information on the Hirst decision can be found at:

http://www.co.whatcom.wa.us/2487/Exempt-WellWater-Information

Questions? Contact the Council Office at 306.778.5010 or council@co.whatcom.wa.us

Below is a link to the Notify Me ® page of the County website where you can subscribe to receive notifications of your choice via email or text.

http://www.whatcomcounty.us/List.aspx

###
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<tr>
<td>Gary Davis</td>
<td>GND</td>
<td>2/14/17</td>
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<td>2/21/2016</td>
<td>Introduction</td>
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<td>Mark Personius</td>
<td>WIP</td>
<td>2/14/17</td>
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<td>3/7/2016</td>
<td>Council-Hearing</td>
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<td>Royce Buckingham</td>
<td>KAF</td>
<td>2/14/17</td>
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FEB 14 2017
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
Second Interim Ordinance adopting 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.

ATTACHMENTS:
Memorandum
Draft Ordinance

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.)

Second Interim Ordinance adopting 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.

COMMITTEE ACTION: 2/21/2017: Introduced

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 Jack Louws, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Gary Davis, AICP, Senior Planner

THROUGH: Mark Personius, AICP, Assistant Director

DATE: February 14, 2017

SUBJECT: Second Interim Ordinance – Water Resources

A second interim ordinance relating to development permits and water resources is scheduled for introduction on February 21, 2017, and for public hearing on March 7. The first interim ordinance, adopted in December 2016, is set to expire March 18.

The attached draft interim ordinance is similar to the first (see the November 23, 2016 memorandum for a description of that ordinance). As with the first interim ordinance, this ordinance would require Whatcom County to verify the existence of adequate water supply in terms of water quality, quantity, and legal availability prior to accepting applications for project permits that require potable water, and applicants would be required to prove legal availability through one of several options, including a water right permit, letter from a public water purveyor stating the ability to provide water, documentation of an adequate rainwater catchment system, a study showing no impairment of senior water rights, a mitigation plan, or proof that the permit-exempt withdrawal would be in the Samish River watershed, or in Point Roberts, Eliza Island, or Lummi Island.

The second interim ordinance makes a few wording changes from the first ordinance. In WCC 24.11.060(A), which describes ways to prove legal availability of water, the revised subsections (A)(4) and (A)(5) replace the term “permit-exempt well” with “permit-exempt groundwater withdrawal” to more accurately match the wording of RCW 90.44.050, and the term “new” to clarify when the provision applies to new withdrawals. Also, the second interim ordinance includes a formatting change in the manner in which it depicts regulations governing permit-exempt withdrawals by moving the regulations into a new subsection (B) to better
differentiate the regulations governing those specific withdrawals from more
general regulations governing other water sources.

The County is actively working with the Washington Association of Counties and
state legislators in this legislative session to remedy the challenges the Supreme
Court’s Hirst decision has placed on property owners and counties across the state.
Adoption of a second interim ordinance will allow the County needed time to
continue working with the legislature to enact laws that give counties and the
Department of Ecology adequate tools to permanently protect instream flows and
accommodate responsible growth. County government is supportive of state
enabling legislation that would:

- Allow counties to rely on state-adopted instream flow rules to determine
  legal water availability
- Establish a Department of Ecology mitigation program for permit-exempt
  wells in closed basins based on cumulative impact analyses to identify the
  instream flow impairment significance of permit-exempt withdrawals – with
  a fee-in-lieu mitigation payment option for affected permit applicants, which
  would allow permits to proceed while state and counties provide for the
  actual instream flow mitigation
- Allow counties to condition local permits to limit daily use of state permit
  exempt groundwater withdrawals to less than 5,000 gpd
- Provide financial assistance for developing public rural water supplies,
  mitigation projects and/or water banks
- Allow use of unexercised municipal water rights for mitigation purposes
- Allow for “out-of-kind” instream flow impairment mitigation option that
  provides an overall net ecological benefit

Attachments:
   Draft Ordinance, Proposed Amendments
ORDINANCE NO. ______________________

AN INTERIM ORDINANCE ADOPTING 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

WHEREAS, an October 6, 2016 Washington State Supreme Court decision (Whatcom County, Hirst vs. Western Washington Growth Management Hearings Board, No. 91475) has found that Whatcom County’s Comprehensive Plan does not comply with the Growth Management Act (GMA) requirements for protecting water resources; and

WHEREAS, RCW 36.70A.070(1), requires that the land use element of a county comprehensive plan “shall provide for protection of the quality and quantity of groundwater used for public water supplies.”; and

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county comprehensive plan “shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: ... protecting critical areas...and surface water and groundwater resources.”; and

WHEREAS, RCW 19.27.097(1) states: “Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An
application for a water right shall not be sufficient proof of an adequate water supply.”; and

WHEREAS, RCW 19.27.095(1) states: “A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.”; and

WHEREAS, RCW 58.17.110(2) requires that “A proposed subdivision and dedication shall not be approved unless the...county legislative body makes written findings that...appropriate provisions are made for...potable water supplies...”; and

WHEREAS, RCW 58.17.170(2) states that lots in a long subdivision “shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015,” and, “Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007.”; and

WHEREAS, Whatcom County Code (WCC) Chapter 15.04 specifies information required for a complete building permit application; and

WHEREAS, WCC Chapter 20.97 provides definitions of terms used in the code; and

WHEREAS, WCC Chapters 21.04 and 21.05 contain requirements for water supply in short subdivisions and long subdivisions, respectively; and

WHEREAS, WCC Chapter 24.11 contains requirements for drinking water; and

WHEREAS, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations regulating ground water withdrawals, adding Policy 2DD-2.C.3.6, which adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-
2.C.3.7, which adopts by reference WCC 24.11.050 and 24.11.060; and

WHEREAS, because Comprehensive Plan Policy 2DD-2.C.3.6 adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7 adopts by reference WCC 24.11.050 and 24.11.060, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and

WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and

WHEREAS, on October 6, 2016, the State Supreme Court (Court), in reversing a Court of Appeals decision, upheld the Board’s decision that the County’s Comprehensive Plan does not satisfy the GMA requirements to protect water availability, and stated, “We hold that the Board properly concluded that the GMA requires counties to make determinations of water availability.”; and

WHEREAS, the Court stated, “…the GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing building permits.”; and

WHEREAS, the Court stated, “…The county’s policies incorporate WCC provisions that do not allow water to be withdrawn from ‘an area where [the Department of Ecology] has determined by rule that water for development does not exist.’...these ordinances further provide that an application for a permit-exempt appropriation will be approved without any analysis of that withdrawal’s impact on instream flows. The Board found that these provisions result in water withdrawals from closed basins and senior instream flows—flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA...”; and

WHEREAS, Chapter 173-501 WAC Instream Resources Protection Program – Nooksack Water Resource Inventory Area (WRIA) 1 identifies water bodies in Whatcom County that are closed or partially closed to further appropriation, by listing their status as “closure,” “partial year closure,” “low flow,” or “minimum flow,”; and
WHEREAS, on October 25, 2016 Whatcom County adopted Ordinance 2016-048, an emergency moratorium on the filing, acceptance, and processing of new applications for project permits for uses that rely on permit-exempt groundwater withdrawals within a closed or partially closed basin, to allow the County time to review its Comprehensive Plan and development regulations in light of the Supreme Court ruling, and to draft and enact the necessary amendments as soon as feasible; and

WHEREAS, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within 60 days of adoption; and

WHEREAS, on December 6, 2016 the County Council adopted Ordinance 2016-066, an interim ordinance adopting amendments to the Whatcom County Comprehensive Plan and WCC Title 15, Title 20, Title 21, and Title 24 relating to water resources, which is effective until March 18, 2017, and the County has applied the provisions of the ordinance to project permit applications relying on new permit-exempt groundwater withdrawals; and

WHEREAS, a second interim ordinance is required to allow the County time to pursue a permanent legislative solution to the issues raised by the Court decision, and to provide clarity to project permit applicants in the meantime; and

WHEREAS, in accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of the proposed interim amendment; and

WHEREAS, this ordinance shall be effective for not longer than six months following its effective date, but may be renewed for one or more six month periods if subsequent public hearings are held and findings of fact are made prior to each renewal.

WHEREAS, the County Council is scheduled to hold a public hearing on this issue on March 7, 2017;

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above “WHEREAS” recitals as findings of fact in support of it action as required by RCW 36.70A.390
BE IT FURTHER ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended, on an interim basis, as shown in Exhibit A; and

BE IT FURTHER ORDAINED that this ordinance shall be effective for not longer than six months following its effective date.

ADOPTED this ______ day of ________________, 2017.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

________________________________________  __________________________________________
Dana Brown-Davis, Council Clerk               Barry Buchanan, Chairperson

APPROVED as to form:

________________________________________
Civil Deputy Prosecutor

________________________________________
Jack Louws, Executive

( ) Approved    ( ) Denied

Date: ____________________________

Page 5 of 5
EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 15 BUILDINGS AND CONSTRUCTION
Chapter 15.04
BUILDING CODES

15.04.020 Amendments to the International Building Code.
A. The IBC is amended as follows:

4. Section 105.3, Application for Permit, is amended to include the following:

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

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

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

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

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

5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant’s authorized agent.

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

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

9. For a building necessitating potable water, provide evidence of an adequate water supply for the intended use of the building, as defined in 20.97.451 WCC.

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

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15.04.030 Amendments to the International Residential Code.

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

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

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

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

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

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

5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant’s authorized agent.

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

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

9. **For a building necessitating potable water, provide evidence of an adequate water supply for the intended use of the building, as defined in 20.97.451 WCC.**

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

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**TITLE 20 ZONING**

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Chapter 20.84

VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

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20.84.200 Conditional uses.

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20.84.220 Criteria.

Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:
(5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, adequate water supply as defined in WCC 20.97.451, and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

Chapter 20.97
DEFINITIONS

20.97.451 Water Supply, Adequate
"Adequate water supply" means a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability, as documented by a water availability notification signed by the director of the Whatcom County Health Department, per WCC 24.11.060.

TITLE 21 LAND DIVISION REGULATIONS

Chapter 21.04
SHORT SUBDIVISIONS

21.04.090 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a short plat, except as specified in subsection (2) of this section.

(2) For a residential short subdivision, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that
has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) The applicant demonstrates that adequate water supply exists to serve the subdivision, as defined in 20.97.451 WCC; and

(e) The short subdivision is not located within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor’s water line; or

(fd) If the short subdivision is located within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor’s water lines and:

(i) The purveyor water cannot be provided water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

* * *

CHAPTER 21.05

PRELIMINARY LONG SUBDIVISIONS

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21.05.080 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and
(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) If the subdivision is within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor’s water lines:

(i) The water cannot be provided to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water right(s) exists to serve the subdivision, as defined in 20.97.451 WCC, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the health department.

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.


TITLE 24 HEALTH CODE

Chapter 24.11

DRINKING WATER

24.11.050 General requirements.
A. Applicants must submit all required forms, letters and documents to the director.
B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:

1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or

2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or

3. The existing public water system has water lines adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or

4. The existing public water system has defined a “service area boundary” in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.

D. The director will only approve a private or Non Group B 2 party well for proposed short subdivisions or long subdivisions when analytical results of untreated water samples for primary inorganic or organic contaminants do not exceed a maximum contaminate level (MCL) adopted by Washington State Department of Health.

E. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include at a minimum, possession of a water right permit or certificate for:
1. All surface water sources excluding seawater.
2. All groundwater sources using more than 5,000 gallons per day.
3. Irrigating more than one-half acre of lawn or noncommercial garden.

24.11.060 Water availability required.
Prior to issuance of a building permit or other project permits, the applicant must provide Whatcom County planning and development services evidence of adequate water supply as documented by a water availability notification signed by the director, except as described in subsection B. evidence of an adequate water supply to Whatcom County planning and development services (PDS) except when: The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.

A. The applicant must provide evidence of legal availability in the form of:

1. A water right permit from the Department of Ecology, or
2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water, or

3. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017.

B. Notwithstanding the provisions of subsection A, for a new permit-exempt groundwater withdrawal per RCW 90.44.050 the applicant must provide evidence of legal availability in the form of:

1. Documentation that the well site is located in the Samish River watershed, or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060; or

2. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be the permit applicant’s responsibility; or

3. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:

   a. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be the permit applicant’s responsibility.

   b. A monitoring and reporting plan, including a quality assurance/quality control plan.
c. Financial assurance to ensure mitigation measures for the duration of the water use, and prohibit water provided for the purpose of mitigation from appropriation for any other purpose.

C. A water availability notification is not required for:

A. 1. A building—A project permit that does not require potable water.

B. 2. A project permit relying on a permit-exempt groundwater withdrawal per RCW 90.44.050, and proposing (a) a remodel of an existing building or (b) replacement of a demolished or removed building, but not proposing a change of use; however, such permits shall require current documentation of water quality and quantity, as approved by the director. A residential remodeling does not add additional bedrooms or result in an increase of floor space of more than 50 percent.

C. 3. A project permit relying on surface water withdrawal for potable water, and proposing (a) a remodel of an existing building or (b) replacement of a demolished or removed building, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require current documentation of water quality and quantity, as approved by the director. PDS determines that the building will replace a demolished or removed building and the building will not have more bedrooms or more than 50 percent greater floor space than the previous building.
24.11.070 Determining adequacy of water supply for building permit applications proposing to use an existing public water system.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to obtain water from an existing public water system the applicant must:

1. Submit to the director, an Availability Notification for Public Water form (as amended) signed by an authorized representative of the water system proposing to serve water to the building. The authorized representative:

   a. Must indicate on the form that the water system will provide water to the proposed building.

   b. Must sign a statement that they have reviewed the system records and ensures that the water system complies with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed Availability Notification For Public Water (form) for approval. The director will approve the completed form if:

1. The applicant and the authorized representative met all the criteria listed on the form.

2. The purveyor of the water system has the approval from DOH or the department to provide water to the building.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.080 Determining adequacy of water supply for of building permit applications proposing to create a new public water system.
Prior to director approval of evidence of an adequate water supply, an applicant proposing to create a new public water system must comply with:

A. Provisions of the Whatcom County Coordinated Water System Plan.

B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.

C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.090 Determining adequacy of water supply for building permit applications proposing to use a well to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must:

1. Notify the director of the intent to use a well.
2. Request that the director conduct a site inspection and approve the proposed well site.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well location the applicant shall submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

B. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.100 Determining adequacy of water supply for building permit applications proposing to use a well to serve two single-family dwellings or two single-family living units.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a well to serve two single-family dwellings or two single-family living units, the applicant must:

1. Notify the director of the intent to use a well or wells.

2. Request that the director conduct a site inspection and approve the proposed well sites.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well locations the applicant shall submit a completed Water Availability Notification Non-Group B – 2 Home Well form (as amended) and all required documents for each well to the director for approval.
D. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

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24.11.110 Determining adequacy of water supply for building permit applications proposing to use a spring to serve one single-family dwelling unit or one single-family living unit.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:

1. Notify the director of the intent to use a spring.
2. Provide information to the director showing that they cannot drill an adequate well on their property.
3. Request that the director conduct a site inspection and approve the proposed location of the spring.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location the director will deny the application and give the reason for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification Private – 1 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

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24.11.120 Determining adequacy of water supply for building permit applications proposing to use a spring to serve two single-family dwelling units or two single-family living units.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:

1. Notify the director of the intent to use a spring.

2. Provide information to the director showing that an adequate well cannot be drilled on their property.

3. Request that the director conduct a site inspection and approve the proposed location of the spring.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location, the director will deny the application and give the reasons for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification – 2 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:

1. The applicant met all the criteria listed on the form.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring or spring sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.130 Determining adequacy of water supply for building permit applications proposing to use surface water, sea water or rainwater for one or two single-family dwelling units or two single-family living units.
A. The director shall not approve use of surface water, sea water, or rainwater as evidence of an adequate water source unless the applicant:

1. Cannot obtain water from an existing public water supply.

2. Cannot use an approved source of groundwater from a well.

3. Could only use contaminated groundwater.

B. Prior to director approval of evidence of adequate water supply the applicant must:
1. Meet all applicable requirements for surface water, sea water or rainwater treatment design, maintenance and operation contained in Whatcom County health and human services Water Availability for a Private Surface Water Source (as amended) Notification as determined by the director.

2. Provide evidence of legal availability of water for the proposed project per WCC 24.11.060. The surface water site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

3. Meet all other state and local regulations.

4. Sign and have recorded with the Whatcom County auditor's office the following documents:

   a. A document stating which contaminate the untreated source water exceeded.

   b. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Surface Water Source (as amended), and secures a potable water supply for the building.

   c. A document stating that the applicant has installed a treatment system according to the design reviewed by the director and treated water sample results that verify system performance.

   d. A document stating that the applicant agrees to adhere to the operation, maintenance, and monitoring plan for the designed treatment system.

   e. A document stating that the applicant understands that the obligation to comply with treatment system design, installation, operation and monitoring lies with the applicant and not Whatcom County.

   f. When the public system is available, any person obtaining water from contaminated source must provide current test results showing water treatment is adequately maintaining water quality below maximum contaminant levels (MCL). If the quality does not meet the MCL, the applicant is required to hook up to a public system.

24.11.140 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use an existing public water system.

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:
1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:

   a. Must indicate that the water system will provide water to each proposed lot.

   b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed form or letter to determine the availability of adequate water. The director will make a determination of adequate water when:

   1. The applicant and the authorized representative meet all the criteria listed on the form.

   2. The purveyor of the water system has the approval from DOH or the department to provide water to the short subdivision, long subdivision or binding site plan, except for Group A water systems the following conditions also apply:

      a. DOH has issued a green operating permit to the purveyor; or

      b. DOH has determined that the purveyor significantly complies with Chapter 246-290 WAC

   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.150 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use a new public water system.
Prior to director approval of availability of an adequate water supply where the applicant proposes to create a new public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must comply with:

A. Provisions of the Whatcom County Coordinated Water System Plan.

B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.

C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.160 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:

1. Notify the director of the intent to use a private well or wells.

2. Request that the director conduct a site inspection and approve the proposed well sites.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.

D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on the form.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.170 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.
A. The applicant shall create a Group B Public water supply as defined in Chapter 246-291 WAC when WCC Title 21 requires the applicant to provide public water service to each lot. This includes a water system where one well services two lots.

B. Prior to director approval of availability of an adequate water supply where the applicant proposes to use one well to service two lots of a short subdivision or long subdivision when public water is not required the applicant must:

1. Notify the director of the intent to use a well or wells.

2. Request that the director conduct a site inspection and approve the proposed well sites.

C. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
D. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.

E. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on each of the forms.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
WHATCOM COUNTY COUNCIL AGENDA BILL
NO. 2017-086

CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to:
---|---|---|---|---|---
Originator: | Twh | 02/10/2017 | | 02/21/2017 | Introduction
Division Head: | | | | 03/07/2017 | Hearing
Dept. Head: | | | | |
Prosecutor: | | 02/13/17 | | |
Purchasing/Budget: | | | | |
Executive: | | 2/13/17 | | |

TITLE OF DOCUMENT:
Ordinance to increase ALS Transport Fees consistent with BLS rate increase and annual CPI.

ATTACHMENTS:

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.)

Executive Louws requests Council approval of the proposed fee increases for ALS Ambulance Transport fees.

COMMITTEE ACTION: |

COUNCIL ACTION:

2/21/2017: Introduced

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. _________

Ordinance Establishing charges/fees for providing Advanced Life Support (ALS) Ambulance Transport Services in Whatcom County

WHEREAS, in June 2012, the Whatcom County Council and the Bellingham City Council passed a Joint Resolution of the City of Bellingham and Whatcom County Adopting the Jointly Recommended Business Model for County Wide Emergency Medical (EMS); and

WHEREAS, the June 2012 Joint Resolution called for establishment of an EMS Oversight Board ("EOB") and a Technical Advisory Board ("TAB"); and

WHEREAS, RCW 52.12.131 conveys the authority for any fire protection district which provides emergency medical services, to establish and collect reasonable charges/fees for these services in order to reimburse the district for its costs of providing emergency medical services; and

WHEREAS, Whatcom County contracts with the City of Bellingham and Fire Protection District No. 7 for the provision of Advanced Life Support (ALS) transport and emergency medical services; and

WHEREAS, the City of Bellingham has increased their Basic Life Support Transport Fees consistent with an annual CPI rate increase; and

WHEREAS, Whatcom County is responsible for setting the ALS Fees; and

WHEREAS, the EOB approved for recommendation to County Council the ALS fees outlined in Exhibit A including the inclusion of an annual rate adjustment based on the CPI-U for greater Seattle area and consistent with the rate adjustment used for BLS rates; and
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Advanced Life Support (ALS) Ambulance Transport Services Fees to be charged by agencies under contract with Whatcom County are increased from the current amounts shown in Exhibit A, to the amounts recommended by EOB as shown in the right-hand column of Exhibit A; and

BE IT FURTHER ORDAINED these changes will be deemed operative within ten (10) calendar days from the signing of this Ordinance.

ADOPTED this ____ day of March, 2017.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Daniel L. Gibson

Jack Louws, County Executive

( ) Approved ( ) Denied

Date Signed: __________________________
Exhibit A

EMS MEDIC TRANSPORT FEES
Proposed Increases

<table>
<thead>
<tr>
<th>Service</th>
<th>District 7 Current Fee</th>
<th>Bellingham Fire Current Fee</th>
<th>Recommended By EOB</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALS 1</td>
<td>$750.</td>
<td>$750.</td>
<td>$766.</td>
</tr>
<tr>
<td>ALS 2</td>
<td>$950.</td>
<td>$950.</td>
<td>$970.</td>
</tr>
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</table>

ALS ambulance fees will be adjusted annually, on January 01, based on the previous 12 month average October to October CPI-U for greater Seattle area, but shall not be decreased. Rates will be rounded to the nearest whole dollar.

Service Description

**Advanced Life Support (ALS) 1:** An ALS1 level of service is defined as including an ALS assessment OR the provision of at least one ALS intervention. Must be staffed with at least one paramedic or AEMT.

**Advanced Life Support (ALS) 2:** An ALS2 level of service is defined to include an ALS assessment AND the administration of at least three medications OR three administrations of the same qualifying medication OR the provision of at least one of the following procedures: manual defib/cardioversion; endotracheal intubation; central venous line; cardiac pacing; chest decompression; surgical airway; intraosseous line.

Service description and delivery for this document will be concurrent with:
CMS Manual System, Publication 100-02 Medicare Benefit Policy.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
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<th>Assigned to</th>
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<td>2/9/17</td>
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<td>Purchasing/Budget:</td>
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<td>2/14/17</td>
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**EXECUTIVE:**

FEB 14 2017
WHATCOM COUNTY COUNCIL

**TITLE OF DOCUMENT:** Resolution to sell Tax-Title property by public auction Reg. #TR2017-01

**ATTACHMENTS:** Map

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

The Property Management Committee recommends the sale by negotiation pursuant RCW 36.35.15(2), when the county legislative authority determines that it is not practical to build on the property due to the physical characteristics of the property or legal restrictions on construction activities on the property. Subject to a covenant to bind.

Parcel # 400527-318181-0000 / PID 143658
PARADISE LAKES COUNTRY CLUB DIVISION NO 1 TRACT A-EXCEPT THAT PORTION LYING EASTERLY OF LINE DESCRIBED AS FOLLOWS-BEGINNING AT NORTHWEST CORNER OF LOT 37 SAID PLAT-THEN CONTINING NORTH 02 DEGREES 02'00" WEST ALONG PROJECTED OF WEST LINE OF SAID LOT 37 30 FEET TO SOUTH LINE OF LOT 20 SAID PLAT-TERMINUS OF HEREBIN DESCRIBED LINE TOWNSHIP 40 RANGE 05E SECTION 27

For no less than taxes, interest, penalties and foreclosure costs of $2,004.38

**COMMITTEE ACTION:**


**COUNCIL ACTION:**

2/21/2017: Introduced

**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.

TO SELL COUNTY TAX TITLE PROPERTY

REQUEST NO. TR2017-01

WHEREAS, RCW 36.35.120 allows the County to sell real estate acquired by tax foreclosure where it is found to be in the best interest of Whatcom County to sell the same; and,

WHEREAS, the Whatcom County Property Management Committee recommends that the resolution be passed to effectively meet the legal requirement for the disposal; and,

WHEREAS, RCW 36.35.120 requires the Council to establish the minimum price for said unit of property and to determine whether or not a contract will be allowed, or if it will be a cash price; and,

WHEREAS, the Whatcom County Code as well as the state law allows the County to reserve from the sale coal, oil, gas, gravel, mineral, ores, fossils, timber or other resources if the Council finds that it is in the best interest to reserve these;

NOW, THEREFORE, BE IT RESOLVED that it is in the best interest of the County to sell:

Parcel # 400527-318181-0000 / PID 143658
PARADISE LAKES COUNTRY CLUB DIVISION NO 1 TRACT A-EXCEPT THAT PORTION LYING EASTERLY OF LINE DESCRIBED AS FOLLOWS-BEGINNING AT NORTHWEST CORNER OF LOT 37 SAID PLAT-THEN CONTINUING NORTH 02 DEGREES 02'00" WEST ALONG PROJECTED OF WEST LINE OF SAID LOT 37 30 FEET TO SOUTH LINE OF LOT 20 SAID PLAT-TERMINUS OF HEREIN DESCRIBED LINE TOWNSHIP 40 RANGE 05E SECTION 27

For no less than taxes, interest, penalties and foreclosure costs of $2,004.38 to the highest and best bidder;

BE IT FURTHER RESOLVED that said price shall not be allowed under contract and shall be paid in either cash, certified check, or money order to the Whatcom County Treasurer at the time of sale; and,
BE IT FURTHER RESOLVED that said parcels shall be sold subject to restrictive
covenants allowing for imposition of Community Association fees, if any, as set forth in
Whatcom County Resolution No. 88-37; and,

BE IT FURTHER RESOLVED that this sale transfer to the owners all coal, oil,
gas, gravel, minerals, ores, fossils, timber or other resources on or in said land and the
right to mine for and remove the same in conformity with zoning regulations in force and
effect; and,

BE IT FURTHER RESOLVED that the Whatcom County Treasurer is hereby
directed to sell such property at not less than a certified price and said sale shall take
place in accordance with the duties as established in RCW 36.35.120.

APPROVED this _____ day of __________________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair

APPROVED AS TO FORM:

Civil Deputy Prosecuting Attorney
### WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
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<tr>
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<tr>
<td>Executive:</td>
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**TITLE OF DOCUMENT:**
Appointment Portage Bay Shellfish Protection District, Applicant Michael Shepard

**ATTACHMENTS:**
Application

<table>
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<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>Yes</td>
<td>NO</td>
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</tbody>
</table>

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
The Portage Bay Shellfish Protection District Advisory Board advise the County Council on the proposed actions and operations relating to the restoration of water quality in the Porage Bay watershed. Applicant: Michael Shepard

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
2/21/2017: Introduced

- 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).
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 Michael
Last Name Shepard
Date 2/8/2017
Street Address 2516 Kulshan Street
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 3605941784
Secondary Telephone Field not completed.
Email Address michaelshepard@gmail.com

Step 2
<table>
<thead>
<tr>
<th>1. Name of Board or Committee</th>
<th>Portage Bay Shellfish Protection District Advisory Committee</th>
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<tr>
<td>2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?</td>
<td>Yes</td>
</tr>
<tr>
<td>3. Which Council district do you live in?</td>
<td>District 2</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>
</tr>
<tr>
<td>6. Have you ever been a member of this Board/Commission?</td>
<td>No</td>
</tr>
<tr>
<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>Michael Alvarez Shepard CV.pdf</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 faculty member of two mostly online graduate programs at Goucher College. The first is a Master's in Environmental Studies and the second is a Master's in Cultural Sustainability. I teach courses on Environmental Governance, Environmental Science, Environment and Community and Anthropology. I am also a Research Associate at Western Washington University's Center for Pacific Northwest Studies. I have a BA in Environmental and Indigenous Studies, and an MA and PhD in Anthropology. I specialize in intersections between environmental and cultural sustainability. I have particular expertise in Salish Sea water quality, habitat restoration, PNW treaty rights, natural resource management and Native language preservation. I currently serve on the Board of Directors for the Kulshan Community Land Trust.</td>
</tr>
</tbody>
</table>
9. Please describe why you're interested in serving on this board or commission

I have lived in Bellingham since 1997. While public understanding of water quality issues has increased over the years, it is clear that substantial work is still needed to improve regional marine ecological sustainability. I am interested in working to improve the water quality and habitat of the Salish Sea. Doing this supports vital marine fisheries industry in our County and maintains treaty based rights of tribal communities. The health of shellfish harvesting sites like, Portage Bay, are indicators of larger water quality metrics in both the Salish Sea and the Nooksack River. I believe that my background in environmental governance and cultural sustainability are applicable to this advisory council. My extensive connections in local government and current board of directors experience makes me able to quickly assume the responsibilities of this committee.

References (please include daytime telephone number):

Dean Fearing, Executive Director Kulshan Community Land Trust 360.671.5600
Tom Walker, Academic Director Goucher College Master's in Environmental Studies Program 410.337.6447

Signature of applicant: Michael A Shepard

Place Signed / Submitted: Bellingham, WA

Email not displaying correctly? View it in your browser.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<td>SM</td>
<td>2/22/17</td>
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<td>March 7, 2017</td>
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**RECEIVED**

**FEB 28 2017**

**WHATCOM COUNTY COUNCIL**

**TITLE OF DOCUMENT:** Appointment to the Whatcom County Parks & Recreation Commission

**ATTACHMENTS:** Application for appointment from Sonja Max

<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>
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<tr>
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<td>( ) Yes</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.)

County Executive Jack Louws requests confirmation of his appointment of Sonja Max to fill the District At Large position on the Parks and Recreation Commission.

**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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</thead>
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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
Sonja

Last Name
Max

Date
2/15/2017

Street Address
914 12th St

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
206-331-0348

Secondary Telephone
Field not completed.

Email Address
max.sonja@gmail.com

1. Name of Board or Committee
Parks and Recreation Commission

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

   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

   Please see attachment

9. Please describe why you're interested in serving on this board or commission

   Please see attachment

References (please include daytime telephone number):

   April Claxton, Recreation Northwest: 360-223-5262 Todd Elsworth, Recreation Northwest: 360-739-8458 Doug Nathe, City of Bellingham Public Works: 360-296-4559

Signature of applicant:

   Sonja Max

Place Signed / Submitted

   Bellingham, WA
Sonja Max

Application for Whatcom County Parks & Recreation Commission

Working at a design agency for over 10 years was instrumental in developing project management and presentation skills, as well as learning to think strategically for clients and their brands. For the past couple years I have expanded upon these management and planning skills by acquiring and restoring a prominent historic building in the City of Bellingham. This entails working with the City, utility companies, architects, contractors, state historical commissions, and future tenants to develop plans and a space that will be an asset to the community as the future home of a non-profit performing arts center.

When not working on this restoration project, I am an avid cyclist (mountain biking, road riding, commuting and long-distance gravel touring), hiker, kayaker and cross-country skier. I have participated in the Ski to Sea race multiple years on car-free teams; I regularly race in the Bellingham Traverse; I volunteer for Ride Run and Dig (RRAD) to support youth mountain bike and trail building activities; I have led wellness, nutrition and cooking classes at the Community Food Co-op, Bellingham Athletic Club and the YMCA.

My family background also includes being co-steward of a large tract of land in Northern California. My brother and I have maintained over a thousand acres of beautiful forest that was passed down to us. We are currently engaged in a sustainable timber management plan, with an eye toward putting a conservation easement on much of the property. To say the least, I have an immense appreciation for natural beauty and understand the need to foster coexistence between wild areas and human recreation and use.

I appreciate the incredible outdoor opportunities Whatcom County has to offer, and would like to start becoming an active steward of this land, as well as give back to my community by protecting and helping manage these valuable resources. I am a strong advocate for multi-use trail systems, parks and wild places that offer the public a chance to enjoy the outdoors safely and easily. I am also in the process of becoming a board member for Recreation Northwest to expand this desire to connect our community with the natural world. Seeking these opportunities reflects my gratification of working in teams, where the net result is bigger than any one contributor could achieve alone.

Day-to-day operational skills, budgeting proficiency, and the ability to plan and envision future spaces and projects coupled with my love for local parks seems like a great fit with the Whatcom County Parks Commission. I would be honored to serve on the Commission and genuinely hope to get the opportunity to do so.

WORK HISTORY

2015 - present  Restoring Cascade Laundry Building in Bellingham
  Position: building owner, project coordinator, contractor's assistant. Includes lease negotiations with tenants, working with city and state officials for permits and historical tax credits, and striving to maintain a sustainable process by salvaging/re-using materials, insulating, heating and lighting with an eye toward energy conservation, and setting in place a plan for a solar array to help power the building.
2011 - 2015  Sonja Max, MS, RD  
Position: private practice dietitian consulting with clients for a wide variety of health conditions, weight loss and disease prevention. Included public talks and classes on healthy cooking and eating.

1997 - 2009  Hornall Anderson Design Works, Seattle, WA  
Position: senior designer and art director in a high-paced design, strategy and marketing agency with a concentration in packaging and corporate brand identity.

EDUCATION

2010  Bastyr University, Kenmore, WA; MS in nutrition

1997  University of Washington, Seattle, WA; BFA in graphic design, minor in mathematics

1992  Healdsburg High School, Healdsburg, CA
ATTACHMENTS: Applications for Appointment from Kristi Roberts and Matthew McDermott

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 appointment of both Kristi Roberts and Matthew McDermott to the Whatcom County Agricultural Advisory Committee.
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
Last Name
Date
Street Address
City
Zip
Do you live in & are you registered to vote in Whatcom County?
Do you have a different mailing address?
Primary Telephone
Secondary Telephone
Email Address
1. Name of Board or Committee
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
3. Which Council district do you live in?
4. Are you a US citizen?
5. Are you registered to vote in Whatcom County?

Kristi
Roberts
2/8/2017
3653 Lindsay Road
Everson
98247
Yes
Field not completed.
3605104763
3605104763
kristi@growingwashington.org
Agricultural Advisory Committee
Yes
District 4
Yes
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

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

Although educated in History, I am currently employed as an agriculturalist in upper Whatcom county. I have worked professionally in this field for 5 years and have experience with community-led projects centered around agriculture. I have participated in various events and will continue to expand my knowledge, network, and career in agriculture.

9. Please describe why you’re interested in serving on this board or commission

I am interested in participating in the growth of sustainable agriculture and would like to represent a growing population of women farmers in our society. Studies show that the face of agriculture is changing, as more and more small-scale, diverse organic row crop farmers enter the scene. According to the USDA, women account for 30% of farmers, with larger percentages in the western regions. In the past 40 years, the number of women who held shares or operated farms has tripled. Moreover, my experience working in a diverse, WSDA and USDA certified organic farm has given me a perspective on agriculture that could help diversify policy towards a growing demand on local foods and market preferences towards small-scale farms.

References (please include daytime telephone number):

Gabby Santerre (206) 458-0264 Judy Kirkhuff (253) 951-2491 Simon Davis-Cohen (503) 756-7019

Signature of applicant: Kristi Roberts

Place Signed / Submitted Everson, WA
Kristi Roberts
Versatile, Multi-faceted, Inspired, Growing

EXPERIENCE

_Growing Washington — CSA Farm Manager_
June 2012 - PRESENT
Oversee a highly diverse and complex organic farm that hosts a 100% local box program with over 14,000 weekly members in the Puget Sound. Additional experience managing farmers markets and day-to-day operations. Responsible for purchasing various seasonal food on a weekly basis from up to 50 separate farms and businesses from the Puget Sound. In charge of staffing for internal support crew. Hands-on knowledge of outdoor cultivation and sustainable agriculture.

_Western Washington University — Graduate Research Assistant_
September 2011 - June 2012
Preparing digital archival documents using various technical databases and programs. Researching documents to be used for the university's heritage displays. Creating digital and online content.

_ Initiate for Rural Innovation and Stewardship — Outreach Coordinator_
September 2010 - June 2011
This position was served as a commitment with AmeriCorps. On the job training consisted of collecting materials to be used in documentary on regional food systems. Position included implementation of archival methods of photographic material, interviewing community members, and forming community-minded events to support project.

EDUCATION

_Western Washington University, Bellingham, WA — Masters of Arts_
September 2011 - June 2013
Held focus on modern cultural history, which has taught me to be detail oriented, focused, and eloquent. Highly skilled communicator with working knowledge of complex data systems.

SKILLS

Working outdoors in incremental weather with physically challenging demands.

Leading large teams of diverse individuals.

Building rapport between various organizations and agriculturalists.

Extensive knowledge of complex software, seasonal produce, and business complexities.

Projects

"Foodways and Byways" A community project that showcased a regional food system.

"The Jocassee Gorge Project" Student Research Assistant.

"Women in Agriculture" Guest speaker and participator in ongoing event at WWU.

"Education & Agriculture Together" Guest Board Member.

LANGUAGES

Fluent and Eloquent English.
Basic Spanish.

3653 Lindsay Road
Everton, WA 98247
(360) 510-4763
rbrtskrst@gmail.com
Clemson University, Clemson, SC — Bachelor’s of Arts
August 2006 - May 2010
Majored in history, minored in Anthropology. Developed excellent writing, research, and communication skills.
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
Matthew

Last Name
McDermott

Date
2/9/2017

Street Address
3825 Cabrant 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
530-717-7224

Secondary Telephone
Field not completed.

Email Address
matthew@cloudmountainfarmcenter.org

1. Name of Board or Committee
Agricultural Advisory Committee

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
Yes

3. Which Council district do you live in?
District 3

4. Are you a US citizen?
Yes

5. Are you registered to vote in Whatcom County?
Yes
6. Have you ever been a member of this Board/Commission? No

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education Field not completed.

9. Please describe why you’re interested in serving on this board or commission Field not completed.

References (please include daytime telephone number):

Tom Thornton: 360-815-4150 Chris Benedict: 607-342-3113

Signature of applicant: Matthew McDermott

Place Signed / Submitted Cloud Mountain Farm Center
MATTHEW MCDERMOTT
3825 Cabrant Rd., Everson, WA 98247 • (530) 717-7224
eyzalive@yahoo.com

EDUCATION
2012 Michigan State University
M.S. Community, Agriculture & Resource Studies
Specialization in Ecological Food and Farm Systems East Lansing, MI

2009 Center for Agroecology and Sustainable Food Systems
Ecological Horticulture Certificate Santa Cruz, CA

2008 Merritt College/Oakland Permaculture Institute
Permaculture Design Certificate Oakland, CA

2001 University of Colorado
B.A. Applied Economics Boulder, CO

EXPERIENCE
2016 – Present Cloud Mountain Farm Center
Food Production Manager Everson, WA
- Manage production of orchard, vineyard, and annual cropping systems, including IPM program, fertility, and crop trials
- Collaborate on educational offerings of 9-month internship program
- Coordinate farm incubator program consisting of 5 budding farm businesses

2012 – 2016 Seattle Tilth Association
Farm and Program Manager Seattle, WA
- Manage multi-site incubator program serving 28 immigrant, refugee, and limited resource individuals; 38 production acres of vegetables, livestock and perennials
- Collaborate on the planning and delivery of 20-week organic farm education program and ongoing technical assistance for participating farmers
- Manage team of 4 staff, 2 ongoing contractors and 2 interns; a team which coordinates two farm sites and a food hub that supplies a 300 member CSA, farm stands and restaurant accounts
- Manage the development of new farm sites and relationships with stake holders

2011 – 2012 Michigan State University & Kellogg Biological Station
Research Assistant East Lansing, MI
- Through farmer interviews, collected data regarding the understanding of the association between nitrogen fertilizer and global warming impacts
- Gathered nitrogen fertilizer application data and researched corresponding environmental quality impacts
- Collected temperature data for winter hoophouse vermicomposting system at the MSU Student Organic Farm
2010 - 2012  
**Slow Lane Farm**  
*Farm Operator*  
- Developed 1 acre, organic mixed vegetable market-farm  
- Practiced organic soil management, crop fertility, and pest management  
- Designed and built rainwater harvest system coupled with drip irrigation  
- Sold produce through 17-week farmer’s market and local restaurant accounts  

2007 – 2009  
**Community Energy Services**  
*Project Manager*  
- Performed energy audit of small & medium commercial business’, schools, and organizations  
- Designed cost effective, energy efficient measures – lighting and refrigeration as primary with solar PV as secondary  
- Managed full scope of implemented projects – contractor work, change orders, and inspection  
- Researched emerging technologies – costs, simple payback, and practical application  

2004 – 2007  
**Bay Area Discovery Museum**  
*Manager of Educational Staff*  
- Hired, trained, managed and provided leadership for a team of 12 full-time and part-time educational facilitators  
- Coordinated daily operations of museum visitor programs  
- Managed volunteer efforts for festival events  

2002 – 2003  
**Peace Corps/L’Ecole des Paradis des Indiens**  
*Teacher/Woodworker*  
- Taught fundamental woodworking skills at rural primary school  
- Collaborated with beekeeping cooperative to provide uniform Langstroth hives  
- Managed daily operations of shop – hand tool care, diesel generator maintenance, and wood inventory  

**OTHER FARM-RELATED EXPERIENCE**  

2010  
**Good Neighbor Farm – Organic winery**  
*Laborer*  
- Pruning and weed management  
- Organic spray applications  
- Miscellaneous tractor work  

2010  
**Nine Bean Rows Farm – Organic CSA & bakery**  
*Laborer*  
- Hoophouse management of mixed vegetable crops – bed preparation, transplanting/sowing, weeding, harvest  
- CSA share organization – packing and distribution  

2009  
**Woodleaf Farm – Organic orchard**  
*Laborer*  
- Tree pruning and transplanting
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**RECEIVED**

FEB 28 2017
WHATCOM COUNTY COUNCIL

**TITLE OF DOCUMENT:** Project Budget Amendment #1 for the Courthouse Building Envelope Project.

**ATTACHMENTS:** Ordinance, Memo, Budget Supplemental

**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 authorization to amend the Courthouse Building Envelope Project Budget to include additional funding of $2,427,809 to cover the scheduled maintenance and repairs costs over the next two years.

**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.
ORDINANCE NO. __________

AMENDMENT NO. 1 TO ORDINANCE NO. 2014-075 ESTABLISHING THE COURTHOUSE BUILDING ENVELOPE FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR THE COURTHOUSE BUILDING ENVELOPE PROJECT

WHEREAS, a contract with HKP Architects, LLP was entered into for the purposes of completing a conditional survey of the above-grade exterior envelope of the existing courthouse building; and

WHEREAS, the results of the survey determined the best course of action to be a comprehensive courthouse building maintenance schedule that would include several repairs to the exterior including, removal and replacement of the existing roof, replacement of single pane windows, replacement of cracked bricks, and cleaning the existing Exterior Insulation and Finish Systems (EIFS); and

WHEREAS, over the next two years the scheduled maintenance and repair costs are projected to be $2,427,809; and

WHEREAS, continued funding for this project is available from Real Estate Excise Tax Fund I (REET I) and the Public Utilities Improvement Fund (EDI).

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance 2014-075 is hereby amended by adding $2,427,809 of expenditure authority, as described in Exhibit A, to the original project budget of $250,000, for a total amended project budget of $2,677,809.

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:

Daniel L. Krist
Civil Deputy Prosecutor

( ) Approved   ( ) Denied

Jack Louws, County Executive
Date: ____________________________
EXHIBIT A

COURTHOUSE BUILDING ENVELOPE PROJECT

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MEMORANDUM

To: Whatcom County Council Members
From: Mike Russell, Facilities Manager
Subject: Amendment #1 to the Courthouse Building Envelope Project Budget
Date: February 16, 2017

Requested Action:
We are asking the Council to approve the Courthouse Building Envelope Project Ordinance amendment to allow for the maintenance repair costs scheduled through the next two years as described in the multi-year maintenance plan.

Background and Purpose:
On November 25, 2014 the Whatcom County Council authorized the creation of the Courthouse Building Envelope Project funded through the Real Estate Excise Tax I. A contract with HKP Architects, LLP was entered into for the purposes of completing a conditional survey of the above-grade exterior envelope of the existing courthouse building and the results of the survey determined a multi-year repair and maintenance plan. Over the next two years the scheduled maintenance and repair costs are projected to be $2,427,809.

Project Budget Amendment #1 amends the project budget to include additional funding of $2,677,809.

Funding Amount and Source:
REET 1 $1,675,188
EDI $ 752,621
$2,677,809
Supplemental Budget Request

Administrative Services  Facilities Management

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<td>359100</td>
<td>Michael Russell</td>
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Expenditure Type: One-Time  Year 1  2017  Add'l FTE  □  Add'l Space  □  Priority  1

Name of Request: Courthouse Exterior Repair & Maintenance Schedule

Department Head Signature (Required on Hard Copy Submission)  Date: 2.22.17

Costs:

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Request Total: $0

1a. Description of request:
Implementing a maintenance schedule for the Courthouse Building Repair
1. Prioritization of maintenance needs for the building.
2. Scheduling projects by priority, emphasizing life/safety issues as priority number 1.
3. Determining the best and appropriate remedy for each repair
4. Assigning those repairs in a 10 year schedule based on priority
5. Assigning construction costs for each repair.
6. Assigning "soft costs" to the construction costs to define the project cost.
7. Factor in escalation costs for multi-year project.
8. Calculating annual budget based on priority assignment of projects.

1b. Primary customers:
Whatcom County Employees and Citizens utilizing the public courthouse.

2. Problem to be solved:
In 2014, HKP Architects, LLP was contracted to provide a conditional survey of the above-grade exterior envelope of the existing courthouse building. The results of that survey have determined a comprehensive courthouse building maintenance schedule that will include several repairs to the courthouse exterior including roof, window, cracked brick in the faux exterior, exterior insulation and finish systems (EIFS) cleaning, EIFS painting, flashing and sealing joints.

Anticipated cost and project schedule:

2017  Re-roof roof, remove existing roof, install new roof membrane
      Replace single pane windows
      Replace cracked bricks
      Cost:  $927,065*

2018  Install proper flashing at elevator lobby windows
      Clean existing EIFS, paint
      Remove and install new flashing at EIFS parapets
      Remove and reapply sealant around existing windows, sills & brick panels
      Apply masonry sealant & repellant at all brick every 3 years
      Cost:  $1,500,744*

*Includes Facilities staff time dedicated to project

Friday, February 17, 2017  Rpt: Bpt Suppl Regular

411
### Supplemental Budget Request

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The multi-year schedule will allow the county to complete the necessary repairs to the courthouse exterior in a methodical and efficient manner while reducing and eliminating potential hazards, preserving the structure and maintaining a balanced budget.

**3a. Options / Advantages:**

The HKP Architects report recommended a complete renovation or replacement of the building. Either remedy would be cost prohibitive and neither are feasible to pursue at this time. Alternatively, a more cost effective solution in forming a multi-year maintenance and repair schedule is proposed. This comprehensive schedule will repair the exterior damage to the courthouse skin and maintain those repairs into the future ultimately reducing hazard risks while preserving and extending the life of the building.

**3b. Cost savings:**

The building replacement or repair cost is estimated at approximately $34 million for a single project, and the specific repair projects identified over the next 10 years are totaling approximately $8-$10 million.

**4a. Outcomes:**

1. A detailed maintenance schedule of repair projects.
2. Projects scaled by level of priority and severity including costs estimates
3. Facilities oversight of schedule and contract obligations
4. Timely completion of scaled repairs within budget

**4b. Measures:**

Facilities oversight of schedule, completion of projects and contractual obligations.

**5a. Other Departments/Agencies:**

Not immediately. However, construction repairs and work may impact those departments that occupy all or a portion of the building interior space adjacent to the exterior walls. Additionally, interior departmental spaces may be impacted due to potential noise and environmental impacts during construction.

**5b. Name the person in charge of implementation and what they are responsible for:**

Michael Russell

**6. Funding Source:**

- REET I 69%
- EDI 31%
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**TITLE OF DOCUMENT:** 2017 Supplemental Budget Request #3

**ATTACHMENTS:** Ordinance, Memoranda & Budget Modification Requests

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<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>(X ) NO</th>
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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.)

Supplemental #3 requests funding from the General Fund:

1. To appropriate $10,500 in the Sheriff’s Department to fund traffic safety equipment from grant proceeds.
2. To appropriate $9,600 in the Sheriff’s Department to fund community relations consultant from donation proceeds.

From the Road Fund:

3. To appropriate $135,000 to fund Road Fund portion of Level of Service Analysis of Lummi Island Ferry.

From the Countywide Emergency Medical Services Fund:

4. To appropriate $1,237,021 to adjust EMS budget as a result of levy passage.

From the Conservation Futures Fund:

5. To appropriate $172,000 to fund Williams 2 and Servid-Williams PDR requests.

From the Ferry Fund:

6. To appropriate $300,000 to fund Level of Service Analysis for the Lummi Island Ferry.

From the Equipment Rental & Revolving Fund:

7. To appropriate $240,000 to fund additional capital replacement funds for vehicles.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:
PROPOSED BY: Executive  
INTRODUCTION DATE: 3/7/17

ORDINANCE NO.  
AMENDMENT NO. 3 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:

<table>
<thead>
<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriff</td>
<td>20,100</td>
<td>(20,100)</td>
<td>-</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>20,100</td>
<td>(20,100)</td>
<td>-</td>
</tr>
<tr>
<td>Road Fund</td>
<td>135,000</td>
<td>-</td>
<td>135,000</td>
</tr>
<tr>
<td>Countywide Emergency Medical Services Fund</td>
<td>1,237,021</td>
<td>(5,722,733)</td>
<td>(4,485,712)</td>
</tr>
<tr>
<td>Conservation Futures Fund</td>
<td>172,000</td>
<td>(82,500)</td>
<td>89,500</td>
</tr>
<tr>
<td>Ferry Fund</td>
<td>300,000</td>
<td>(135,000)</td>
<td>165,000</td>
</tr>
<tr>
<td>Equipment Rental &amp; Revolving</td>
<td>240,000</td>
<td>-</td>
<td>240,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>2,104,121</td>
<td>(5,960,333)</td>
<td>(3,856,212)</td>
</tr>
</tbody>
</table>

In addition, Exhibit C Authorized Positions in the 2017-2018 Budget Ordinance should be amended to provide for the following FTE changes:
- Add 1 FTE EMS Administrator in Executive – Non Departmental
- Add 1 FTE Administrative Assistant in Executive – Non Departmental
- Close .5 FTE Nutritionist in Health

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:

Jack Louws, County Executive

Date: ________________________
### WHATCOM COUNTY

#### Summary of the 2017 Supplemental Budget Ordinance No. 3

<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund traffic safety equipment from grant proceeds.</td>
<td>10,500 (10,500)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund community relations consultant from donation proceeds.</td>
<td>9,600 (9,600)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total General Fund</strong></td>
<td></td>
<td>20,100 (20,100)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Road Fund</strong></td>
<td>To fund Road Fund portion of Level of Service Analysis of Lummi Island Ferry.</td>
<td>135,000</td>
<td></td>
<td>135,000</td>
</tr>
<tr>
<td><strong>Countywide Emergency Medical Services Fund</strong></td>
<td>To adjust EMS budget as a result of levy passage.</td>
<td>1,237,021 (5,722,733)</td>
<td>(4,485,712)</td>
<td></td>
</tr>
<tr>
<td>Conservation Futures Fund</td>
<td>To fund Williams 2 and Servid-Williams PDR requests.</td>
<td>172,000 (82,500)</td>
<td>89,500</td>
<td></td>
</tr>
<tr>
<td>Ferry Fund</td>
<td>To fund Level of Service Analysis for the Lummi Island Ferry.</td>
<td>300,000 (135,000)</td>
<td>165,000</td>
<td></td>
</tr>
<tr>
<td>Equipment Rental &amp; Revolving</td>
<td>To fund additional capital replacement funds for vehicles.</td>
<td>240,000</td>
<td></td>
<td>240,000</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td></td>
<td>2,104,121 (5,960,333)</td>
<td>(3,856,212)</td>
<td></td>
</tr>
</tbody>
</table>
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: February 10, 2017
SUBJECT: Supplemental Budget ID# 2248
WASPC Traffic Safety Equipment Grant 2017

The attached Supplemental Budget requests budget authority to purchase traffic safety equipment with grant funds from Washington Association of Sheriffs & Police Chiefs.

Background and Purpose
The Washington Association of Sheriffs & Police Chiefs (WASPC) approved a Traffic Safety Equipment Grant of $10,500 to purchase traffic safety equipment: $5,000 for 5 radars; $2,000 for 6 rear antenna; and $3,500 for 7 portable breath-alcohol testing devices.

Equipment purchased will be used to support statewide traffic safety initiatives and will allow patrol units to increase their ability to enforce traffic violations.

Funding Amount and Source
Total estimated cost for purchase of this equipment is $11,765.

Washington Association of Sheriffs & Police Chiefs will provide federal Traffic Safety Equipment Grant funds of $10,500 originating from U.S. Department of Transportation, State and Community Highway Safety Program, CFDA# 20.600.

Additional funds of $1,265 required for this purchase will come from existing Sheriff’s Office budget.

Please contact Undersheriff Jeff Parks at extension 6610 if you have any questions.

Thank you.
Supplemental Budget Request

Sheriff Operations

Supp'ID # 2248  Fund 1  Cost Center 1003512001  Originator: Dawn Pierce

Expenditure Type: One-Time  Year 1  2017  Add'l FTE  □  Add'l Space  □  Priority 1

Name of Request: WASPC Traffic Safety Equipment Grant 2017

X

Department Head Signature (Required on Hard Copy Submission)  Date 2/12/17

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4333.2062</td>
<td>Traffic Safety</td>
<td>($10,500)</td>
</tr>
<tr>
<td></td>
<td>6510</td>
<td>Tools &amp; Equip</td>
<td>$10,500</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:
The Washington Association of Sheriff's & Police Chiefs (WASPC) approved a Traffic Safety Equipment Grant in the amount of $10,500 to purchase traffic safety equipment: $5,000 for 5 radars, $2,000 for 5 rear antenna, and $3,500 for 7 portable breath-alcohol testing devices.

1b. Primary customers:
The Sheriff's Office and citizens of Whatcom County

2. Problem to be solved:
Budget authority is needed to purchase traffic safety equipment authorized by WASPC and funded by Traffic Safety Equipment Grant.

3a. Options / Advantages:
Grant funds were awarded to purchase specific equipment listed in description.

3b. Cost savings:
Cost savings of $10,500.

4a. Outcomes:
Equipment received as a result of this grant will be used as part of the traffic safety program and will be distributed as part of the agency's commitment to traffic safety and active traffic enforcement. Purchase of this equipment will allow patrol units to increase their ability to enforce traffic violations.

4b. Measures:
Reports describing the use of the equipment and related enforcement activities will be submitted to WASPC by October 15, 2017.

5a. Other Departments/Agencies:
N/A

5b. Name the person in charge of implementation and what they are responsible for:
N/A

6. Funding Source:
Federal funds of $10,500 will be provided by Washington Association of Sheriff's & Police Chiefs Traffic Safety Equipment Grant. Funds originate from the U.S. Department of Transportation, State and Community Highway Safety Program, CFDA# 20.600.
January 31, 2017

Sheriff Bill Elfo
Whatcom County Sheriff’s Office
311 Grand Avenue
Bellingham, WA 98225

Dear Sheriff Elfo,

Thank you for applying for a WASPC Traffic Safety Equipment Grant. We are pleased to inform you that your agency has been approved to receive $10,500.00 to purchase the following equipment: (5) Radars $1,000.00 ea.; (5) Rear Antenna $400.00 ea.; and (7) Fst’s $500.00 ea.

The Federal Identification number for this grant is CFDA# 20.600. Invoices must be submitted to WASPC no later than May 5, 2017. Any invoices not received by the deadline will not be reimbursed and the award money will be forfeited. Please note: WASPC is responsible for the amount of your grant award only. Any expense in excess of the grant award must be paid by your agency.

A report is required for the Traffic Safety Equipment Grant funds awarded to your department. The 2016-2017 Traffic Safety Equipment Grant reports are due by October 15, 2017. Failure to report will result in denial of 2017 – 2018 grant funds. Your agency is responsible for subscribing to the following commitments:

- Support statewide/national traffic safety initiatives, projects, and programs
- Report grant results to WASPC in a timely manner
- Subscribe and commit to aggressive traffic enforcement

Online report forms and A-19 reimbursement forms can be found at www.waspc.org/trafficsafety.

Thank you for your dedication to traffic safety in the State of Washington. If you have any questions, please contact Nancy Morris at (360) 486-2387. If you would like more information regarding state or federal traffic safety grant funding, please contact the Washington Traffic Safety Commission at (360) 725-9896.

Sincerely,

Mitch Barker
Executive Director
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: February 22, 2017
SUBJECT: Supplemental Budget # 2256
         Community Relations Consultant 2017

The attached supplemental budget requests revenue and expenditure authority for a community relations consultant for the Whatcom County Sheriff’s Office.

Background and Purpose
Members of minority communities may occasionally be reluctant to report crime to law enforcement due to trust issues. The Whatcom Community Foundation will provide $9,600 to support a community relations consultant to assist with (1) improving communications, trust, and relationships between the Sheriff’s Office and various minorities and underserved communities and (2) to provide on-going training to deputies and staff.

Funding Amount and Source
Whatcom Community Foundation will provide $9,600.

Please contact Undersheriff Jeff Parks at extension 6610 if you have any questions.

Thank you.
Supplemental Budget Request

Sheriff Administration

Supp1 ID # 2256 Fund 1 Cost Center 2900 Originator: Dawn Pierce

Expenditure Type: One-Time Year 1 2017 Add'l FTE Add'l Space Priority 1

Name of Request: Community Relations Consultant 2017

Department Head Signature (Required on Hard Copy Submission) Date

X

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>4367.1000</td>
<td>Donations</td>
<td>($9,600)</td>
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<tr>
<td>6610</td>
<td>Contractual Services</td>
<td>$9,600</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:
The Whatcom Community Foundation will provide $9,600 to support a community relations consultant for the Whatcom County Sheriff's Office. The community relations consultant will assist with (1) improving communications, trust, and relationships between the Sheriff's Office and various minorities and underserved communities and (2) provide on-going training to deputies and staff.

1b. Primary customers:
Whatcom County minority communities and members of the Sheriff's Office.

2. Problem to be solved:
Members of minority communities may be reluctant to report crime to law enforcement due to trust issues.

3a. Options / Advantages:
Providing this service in concert with other law enforcement agencies.

3b. Cost savings:

4a. Outcomes:
Increased trust and communication between minority communities and law enforcement.

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:
Whatcom Community Foundation Grant.

Wednesday, February 22, 2017
Rpt: Rpt Suppl Regular
Supplemental Budget Request

Public Works Administration

Fund 108  Cost Center 10895  Originator: Roland Middleton

Expenditure Type: One-Time  Year 1 2017  Add'l FTE  Add'l Space  Priority 1

Name of Request: Companion to Ferry Operations Supplement 2017-2254

X
Department Head Signature (Required on Hard Copy Submission)  Date

2/22/17

Costs:

<table>
<thead>
<tr>
<th>Object</th>
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<th>Amount Requested</th>
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<tbody>
<tr>
<td>8351.444</td>
<td>Operating Transfer Out</td>
<td>$135,000</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td>$135,000</td>
</tr>
</tbody>
</table>

1a. Description of request:

Per WCC 10.34.030 the Whatcom County Ferry Operations are subsidized 45% by the Road Fund. Therefore substantial additions to the Ferry Operating budget require additional road fund contribution to comply with the funding split. The ferry request 2017-2254 for $300,000 covers a proposed Level of Service Analysis for the Whatcom Ferry Operations. The $135,000 is the additional burden to the road fund due to the additional spending.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

Public Works Staff and LIFAC are responsible for implementing this through the Ferry Fund.

6. Funding Source:

Road Fund Balance

Tuesday, February 21, 2017
MEMORANDUM

To: Whatcom County Council Members
From: Tyler Schroeder, Deputy Executive
Subject: EMS Levy Budget Adjustments
Date: February 16, 2017

Requested Action:
We are asking the Council to approve the EMS budget adjustments resulting from the passage of the EMS Levy. The first half of the levy is due April 30, 2017.

Background and Purpose:
On November 16, 2017 the Whatcom County voters approved the EMS Levy Ballot Measure. This supplemental adds the tax revenue, removes fire department/district payment for BLS dispatches and adds an EMS Administrator, Administrative assistant, office supplies and ER&R. Additionally, the supplemental adjusts the EMS contract amounts for the ALS providers.

Funding Amount and Source:
The EMS Fund is being adjusted to include increased revenue through current year collections resulting from the passage of the EMS Levy.
## Supplemental Budget Request

**Non-Departmental**

<table>
<thead>
<tr>
<th>Supp ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>2249</td>
<td>130</td>
<td>130100</td>
<td>M Caldwell</td>
</tr>
</tbody>
</table>

**Expenditure Type:** One-Time  
**Year 1:** 2017  
**Priority:** 1

**Name of Request:** EMS Budget Adjustments

**Department Head Signature (Required on Hard Copy Submission)**  
**Date:** 2.21.17

### Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
<tbody>
<tr>
<td>4311.1000</td>
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<tr>
<td>4337.0002</td>
<td>Other</td>
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<tr>
<td>6110</td>
<td>Regular Salaries &amp; Wages</td>
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<tr>
<td>6210</td>
<td>Retirement</td>
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<td>6230</td>
<td>Social Security</td>
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<tr>
<td>6245</td>
<td>Medical Insurance</td>
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<tr>
<td>6255</td>
<td>Other H&amp;W Benefits</td>
<td>$1,901</td>
</tr>
<tr>
<td>6259</td>
<td>Worker’s Comp-Interfund</td>
<td>$745</td>
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<tr>
<td>6269</td>
<td>Unemployment-Interfund</td>
<td>$120</td>
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<tr>
<td>6320</td>
<td>Office &amp; Op Supplies</td>
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<tr>
<td>6429</td>
<td>Fuel-Interfund</td>
<td>$1,000</td>
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<tr>
<td>6780</td>
<td>Travel-Educ/Training</td>
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<td>8869.501</td>
<td>Equip Rental-ER&amp;R</td>
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<td>7210</td>
<td>Intergov Prof SvcS</td>
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<tr>
<td>7210</td>
<td>Intergov Prof SvcS</td>
<td>$405,425</td>
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<tr>
<td>7210</td>
<td>Intergov Prof SvcS</td>
<td>$163,214</td>
</tr>
<tr>
<td>7220</td>
<td>Intergov Subsidies</td>
<td>$208,532</td>
</tr>
<tr>
<td>7410</td>
<td>Equipment-Capital Outlay</td>
<td>$35,000</td>
</tr>
<tr>
<td>8301</td>
<td>Operating Transfer In</td>
<td>$1,666,667</td>
</tr>
</tbody>
</table>

**Request Total:** ($4,485,712)

### 1a. Description of request:

Per the adopted EMS plan, this suplemental:
- adds the tax levy revenue  
- removes fire department/districts payment for BLS dispatches  
- adds an EMS administrator and vehicle for 8 mos  
- adds an administrative assistant for 6 mos  
- adds office supplies, training allowance, fuel and ER&R expenses  
- adjusts the EMS contract amount effective May 1st to pay the increased per unit cost for Bellingham and Fire District 7  
- pays a separate amount to Bellingham for EMS 1 unit (supervisory unit)  
- reimburses Fire Districts 4, 11 and 16 for local lost levy amounts due to passage of the countywide levy  
- removes the budget for 2/3rds of the General Fund annual transfer effective May 1st.

### 1b. Primary customers:

*Friday, February 17, 2017*
Supplemental Budget Request

Non-Departmental

Fund 130  Cost Center 130100  Originator: M Caldwell

Whatcom County EMS system providers, Whatcom County, and citizens of Whatcom County.

2. Problem to be solved:
This budget supplemental adjusts the EMS budget for passage of the levy.

The successful EMS levy allows for the recruitment and hiring of an EMS Administrator as recommended through the EMS Funding Work Group. The EMS Administrator will provide governance, administration, responsibility, and authority in the joint Whatcom County EMS system. The system requires a single point of contact and representation. This position will administer and oversee the system and be the executive and legislative point of contact.

3a. Options / Advantages:
The Funding Work Group Administration Committee examined and rated 4 Governance Models. The governance models were examined for challenges, risks and benefits in financial, operational legal and long-term structure of EMS administration. Several comparable county EMS systems were analyzed for most efficient governance/administration model. After review and comparison, the County Department Model was recommended. In this model funds from an EMS levy are allocated via contracts between the department and service providers. The Governance Model employs an EMS Administrator who is responsible for developing service contracts for ALS providers and other EMS services that function within the system. The EMS Administrator can provide impartial oversight of financial, operational, and legal matters while the considering the long-term objectives of the system.

3b. Cost savings:
N/A

4a. Outcomes:
A full time EMS Administrator will provide the administrative oversight and guidance necessary to support the EMS system. The EMS Administrator is responsible for facilitating Contract Management, System Performance, and Strategic Initiatives and can provide impartial oversight of financial, operations, and legal matters while considering the long term objectives of the system.

4b. Measures:
The EMS Administrator will provide systemwide oversight and serve as the Executive and Legislative point of contact.

5a. Other Departments/Agencies:
Bellingham Fire Department, Fire Protection District 7 and Sheriff's Division of Emergency Management

5b. Name the person in charge of implementation and what they are responsible for:
The Executive in collaboration with the Sheriff and Deputy Director Gargett has proposed housing the new EMS Administrator in the Whatcom Unified Emergency Coordination Center (WUECC). This location provides an opportunity for increased synergy between first responder agencies while accommodating the need for a new and centralized office space.

6. Funding Source:
EMS Levy tax collection

Friday, February 17, 2017

Rpt: Rpt Suppl Regular
425


MEMORANDUM

TO: Honorable Whatcom County Council Members
    The Honorable Jack Louws, Whatcom County Executive

THROUGH: Sam Ryan, Director

FROM: Mark Personius, Assistant Director PDS; Karin Beringer, Planner

DATE: February 17, 2017

RE: Resolution and Supplemental Budget Request for Williams 2 and Servid-Williams Conservation Easements

Introduction

The Whatcom County Purchase of Development Rights (PDR) Program was initiated in September of 2001. The program has successfully purchased 118 development rights on approximately 826 acres. The Purchase of Development Rights Oversight Committee recommended the purchase of two additional development rights on the 19.4 acre Williams 2 property, and the 14.48 acre Servid-Williams property. A supplemental budget request in the amount of $172,000 is proposed, which will allow for this purchase to take place (see below for details). The action requested is to authorize purchase based on the contingencies included in the purchase and sale agreement. Attached to this memo is the supplemental budget request.

Background and Purpose

The Williams 2 and Servid-Williams properties, located West of Nooksack, off of Tom Road, in unincorporated Whatcom County, are the seventeenth and eighteenth purchases under the County's Agricultural Purchase of Development Rights Program. The properties are actively farmed, used for the production of diversified vegetables and grains. This supplemental budget request totaling $172,000 provides for the cost of easement purchases and other associated costs (please refer to the table below).

After the purchases have been approved and completed, Whatcom County will issue a reimbursement request of $82,500 to the Whatcom Community Foundation (WCF) through their Sustainable Whatcom Fund. Therefore, the final Whatcom County budget request will be $89,500.

The total purchase price for the existing developments rights on the farms is $165,000, and is acceptable to the owners. The value is derived by an appraisal completed by a professional appraiser. Fifty percent or $82,500 of the easement purchase price will be reimbursed by the WCF Sustainable Whatcom Fund. The
matching funds are from a 2015 Cooperative Agreement with Whatcom County (Whatcom County Contract number 201510003).

**Williams 2 and Servid-Williams PDR Supplemental Budget Request**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Price for Development Rights</td>
<td>$165,000</td>
</tr>
<tr>
<td>Closing Costs</td>
<td>$7,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$172,000</strong></td>
</tr>
</tbody>
</table>

WCF program match to be reimbursed $82,500

Whatcom County - Conservation Futures Fund $89,500

**Request Summary**

This request is consistent with Resolution 2016-029 which authorizes the Executive to enter into a purchase and sale agreement on these properties, provided:

a. Appraisals are completed and conservation easements are drafted which meet the requirements of both the Whatcom County Purchase of Development Rights program, and;

b. Landowners have agreed to the offer price and conservation easement conditions.

Commitments are in place for all of the above provisions related to the Williams 2 and Servid-Williams easement purchases.

The purchase and sale agreement includes the understanding that the seller accepts the appraised value, accepts the terms and conditions contained in the conservation easement, and understands that this purchase is contingent on receiving matching funds from Whatcom Community Foundation (WCF). It obligates both parties to act on the agreement within 90 days of signature. With the exception of approving the supplemental budget request, no further action will be required for the purchase of this conservation easement if all the terms of the purchase and sale agreement are met.

Upon county budget authorization, final purchase of the Williams 2 and Servid-Williams farm property conservation easements will be completed.

Please contact Planner _Karin Beringer_ at (360) 778-5956 if you have any questions or concerns regarding the terms of this request.
Supplemental Budget Request

Planning & Development Services

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>175</td>
<td>17550</td>
<td>Mark Personius/Karin Bering</td>
</tr>
</tbody>
</table>

Expenditure Type: One-Time
Year 1 2017
Add'l FTE Add'l Space Priority 1

Name of Request: Williams 2 & Servid Farmland Preservation PDR

Department Head Signature (Required on Hard Copy Submission)

Date 2-22-17

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>4367.1000</td>
<td>Donations</td>
<td></td>
<td>($82,500)</td>
</tr>
<tr>
<td>7320</td>
<td>Land</td>
<td></td>
<td>$172,000</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$89,500</td>
</tr>
</tbody>
</table>

1a. Description of request:
The proposed budget amendment is for the purchase of development rights on the Williams 2 and Williams 3 farms. Almost 34 acres will be under perpetual conservation easements which will be monitored by Whatcom Land Trust. The Easement limits the uses on the property to soil based agriculture.

1b. Primary customers:
The community at large benefits from this program due to the permanent protection of the land for farming purposes. This area will never be developed with additional housing and will stay in low-service cost status in perpetuity. Multiple benefits to agriculture, wildlife, water quality and stormwater retention are among the benefits for the community.

2. Problem to be solved:
The primary focus of the Purchase of Development Rights Program is to permanently protect prime/productive agricultural land from conversion to non-agricultural uses. This property is prime and is located in an area targeted for agricultural land preservation by the Agricultural Advisory Committee.

3a. Options / Advantages:
The Agricultural Advisory Committee has considered the PDR program an integral component of any overall agricultural protection strategy. The Growth Management Act requires the protection of resource lands. This is one of several efforts the County is making to comply with the state requirement. Zoning and Open Space Taxation are other programs currently employed by Whatcom County to protect agricultural land. TDRs are contemplated in the future. PDR’s are valuable partly because they are the only action currently available for the County to achieve permanent protection on agricultural lands.

3b. Cost savings:
Savings are difficult to quantify. Studies indicate that resource lands are the lowest cost properties for community services. Other savings are based on the benefits of not converting the property to some more intensive use. Water quality degradation, excessive stormwater runoff and increased costs for roads and other service provisions are eliminated when conservation easements establish a permanent agricultural development pattern in a given area. Maintaining a critical mass of viable agricultural land – especially land with water rights as this has – also helps support the agriculture economy.

4a. Outcomes:
The PDR program originally targeted 10,000 acres for purchase. Since that time the Council endorsed a “Rural Land Study” that has targeted some 25,000 acres of agricultural lands within rural zoned land that they would like to see with additional protection. This additional acreage will require significant increase in funding for the PDR program as well as the development of additional innovative techniques. The addition of these farms to the PDR land base will occur, if funded, by the end of April.
Supplemental Budget Request

<table>
<thead>
<tr>
<th>Planning &amp; Development Services</th>
<th>Planning</th>
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<tbody>
<tr>
<td><strong>Suppl ID #</strong> 2253</td>
<td><strong>Fund</strong> 175</td>
</tr>
</tbody>
</table>

4b. Measures:
The easement on these farms will be purchased with assistance from a Title company through a typical closing process. The successful closing of the easement purchases marks the outcome of this specific request.

5a. Other Departments/Agencies:
This project is a joint project which involves the Whatcom Community Foundation (WCF) (partial funding), the Whatcom Land Trust (on-going monitoring/enforcement responsibilities) and Whatcom County – PDR program administration/funding.

5b. Name the person in charge of implementation and what they are responsible for:
The Whatcom Land Trust will be responsible for the long-term monitoring under the terms of the conditions in the conservation easement and based on the contract that they have with Whatcom County.

6. Funding Source:
Conservation Futures Fund (as requested) and an existing contract with Whatcom Community Foundation (WCF) for $82,500. WCF will reimburse up to their contract amount after purchase. Therefore the total coming out of Conservation Futures will be $89,500.
### WHATCOM COUNTY COUNCIL AGENDA BILL 2016-245

<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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### TITLE OF DOCUMENT:
Resolution Affirming the PDR Oversight Committee Ranking and Authorizing Whatcom County Purchase of Development Rights Administrator and Whatcom County Executive to Proceed with the Acquisition Process for PDR Applications

### ATTACHMENTS:
Memo and Attachment A, Resolution, Purchase of Development Rights 2016 Applicant Ranking list (Exhibit 1) and (Exhibit 2)

### 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.)

As required by the WCC 3.25A - Purchase of Agricultural Development Rights Ordinance, applications submitted by landowners interested in participating in the PDR program were reviewed for program eligibility and ranked pursuant to the PDR Guidelines Document, Ranking Criteria, by the PDR Oversight Committee. The ranking by the PDR Oversight Committee is now being submitted to Council. County Council needs to review the ranking as submitted by the Oversight Committee and affirm or modify that ranking list and authorize the PDR Administrator and County Executive to proceed with the acquisition process.

### COMMITTEE ACTION:
8/9/2016: Presented and Forwarded to Council for approval

### COUNCIL ACTION:
8/9/2016: Approved 7-0, Res. 2016-029

### Related County Contract #:

### Related File Numbers:

### Ordinance or Resolution Number:
Res. 2016-029

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 # 2016-029

AFFIRMING THE PDR OVERSIGHT COMMITTEE RANKING AND AUTHORIZING WHATCOM COUNTY PURCHASE OF DEVELOPMENT RIGHTS ADMINISTRATOR AND WHATCOM COUNTY EXECUTIVE TO PROCEED WITH THE ACQUISITION PROCESS FOR 2016 APPLICATIONS

WHEREAS, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring “open space land, farm and agricultural land, and timber land, and a significant Conservation Futures fund balance is available for additional farm land protection efforts;” and

WHEREAS, Ordinance #2002-054 adopted Whatcom County Code Title 32-A that authorized the creation of a Purchase of Development Rights (PDR) program that offers voluntary farm agreements that include the purchase of agricultural conservation easements on farmable land within Whatcom County, and

WHEREAS, Ordinance #2002-054 and WCC 3.25A established a Purchase of Development Rights Oversight Committee to provide review and assistance to the PDR Administrator, and

WHEREAS, The Whatcom County Council adopted the PDR Guidelines Document through Resolution #2002-040 which includes specific direction for program administration and conservation easement acquisitions, and

WHEREAS, The Purchase of Development Oversight Committee met on July 22, 2016 to develop a ranking of all applications received to date and forwarded that ranking to Council; and

WHEREAS, Council, pursuant to PDR Guidelines Document, must affirm or modify the properties as submitted by the PDR Oversight Committee, and

WHEREAS, Council has reviewed the application ranking and background materials at a public meeting, with input by County staff and PDR Oversight Committee members, and

WHEREAS, Council has determined the ranking in accordance with their policy priorities and the requirements of Title 3.25A and the PDR Guidelines Document, and
WHEREAS, Council passed resolution 2015-032 authorizing the PDR Administrator to acquire title and appraisal services for all 2015 applicants, and

WHEREAS, The PDR Administrator has acquired appraisal services for all properties listed in this Exhibit 1

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that:

1. The PDR Oversight Committee and Administrator proceed with the acquisition of conservation six (6) easements in the order of the approved ranking (Exhibit 1) pursuant to the process outlined in the PDR Guidelines Document.

2. The Executive is authorized to enter into Purchase and Sale Agreements (for the six easements listed in Exhibit 1), provided:
   a. Appraisals are completed and conservation easements are drafted which meet the requirements of the Whatcom County Purchase of Development Rights program, and
   b. Landowners have agreed to the offer price and conservation easement conditions.

3. The PDR Oversight Committee and Administrator proceed with the acquisition of title search and appraisal services in the order of the approved ranking (Exhibit 2) pursuant to the process outlined in the PDR Guidelines Document.

4. Expenditure of Conservation Futures Funds are authorized to cover expenses associated with purchase of conservation easements, including title search and insurance, appraisal services and Whatcom Land Trust fees.

APPROVED this 9th day of August, 2016

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown Davis, Council Clerk

APPROVED as to form:

Karen A. Fraser
Civil Deputy Prosecutor
1. **Cougar Creek Ranch**
   - Number of Points: 68.60
   - Type of Farm: Currently contains pigs, poultry, sheep, corn silage, seed potatoes, and raspberries
   - Zoning District: AG
   - Property Size: 157.76 acres
   - Preliminary Estimate of Potential Development Rights: 3

Cougar Creek Ranch consists of the original homestead purchased by the current land owner/steward’s great-great grandfather in 1894. Currently the farm is leased out to several local farm businesses supporting seed potatoes, corn silage, and raspberry production for many years. The current owner/steward is gradually taking over management of the entire farm. He is expanding production of meat poultry, hogs, and sheep, and has an interest in moving into beef production as well. This property is crossed by Wiser Lake Creek (previously Cougar Creek) and provides significant habitat opportunities for anadromous fish.

2. **Squalicum Ranch**
   - Number of Points: 57.63
   - Type of Farm: Supports beef cattle and dairy goats, with pasture and hay ground
   - Zoning District: Rural Forestry, R5
   - Property Size: 174.46 acres
   - Preliminary Estimate of Potential Development Rights: 10

Squalicum Ranch has supported beef cattle production for many years and has been in the Foster family for over 50 years. This property protects a significant piece of the shore on Squalicum Lake as well as one of the main tributaries of Squalicum Creek. Property contains 66.5% prime soils and 30% soils of statewide significance. Additionally the property contains a significant forested section that serves to provide wildlife habitat and generate firewood and forestry potential for the property owner.

3. **Matheson (Sandra)**
   - Number of Points: 56.44
   - Type of Farm: Currently used for grazing and holding beef cattle
   - Zoning District: AG
   - Property Size: 17.9 acres
   - Preliminary Estimate of Potential Development Rights: 3

This property is part of Matheson Farms which grows beef cattle, much of which is sold to Whatcom County consumers. This property was owned and farmed by the applicant’s parents as a working dairy farm. It has 100% prime soils and is located near the Guide Meridian with high pressure to convert to non-agricultural uses. There are currently no structures on the property and with hay and pasture it supports healthy cattle year round.
4. Williams 2 (Justin)

- Number of Points: 53.19
- Type of Farm: Currently in grain production, no house
- Zoning District: AG
- Property Size (approximate acres): 19.5
- Preliminary Estimate of Potential Development Rights: 1

This farm is located on Tom Road just north of Nooksack in the AG Zone. The property consists of 100% NRCS Prime soils, as well as having all soils on the property identified as APO soils by the County’s APO overlay. The entire property is in agricultural production. Currently, the property produces grain. There is neither home nor outbuildings on the property.

5. Servid-Williams (Justin and Leslie)

- Number of Points: 52.75
- Type of Farm: Vegetable and grain
- Zoning District: AG
- Property Size: 14.48
- Preliminary Estimate of Potential Development Rights: 1

This farm is located on Tom Road just north of Nooksack in the AG Zone. The property consists of 100% NRCS Prime soils, as well as having all soils on the property identified as APO soils by the County’s APO overlay. The entire property is in agricultural production. Currently, the property produces grain and garlic. There is neither home nor outbuildings on the property. This property is located immediately adjacent to the South of the Williams 2 property.

6. Grubbs (Sam and Donna)

- Number of Points: 52.10
- Type of Farm: Mixed vegetable and beef cattle
- Zoning District: R5
- Property Size: 19.7
- Preliminary Estimate of Potential Development Rights: 3

This farm, named Bellingham Country Gardens is located at the intersection of Kelly and Sand Roads. This property has supported cow-calf operations for many years and now also supports a diversified u-pick vegetable operation run by current owners. Property contains 100% prime soils and is bordered by Anderson Creek which is home to anadromous fish and is currently receiving improvements and restoration on other sections of the creek. One home and agricultural outbuildings currently exist on the property.
2016 Applications supported by PDR Oversight Committee
Whatcom County Agricultural Purchase of Development Rights Program
' Exhibit 2

1. Bar (Harbinder and Jag)
   - Number of Points: 70.27
   - Type of Farm: Raspberry
   - Zoning District: R5
   - Property Size: 78.1
   - Preliminary Estimate of Potential Development Rights: 14

   The Bar Brothers farm is located on Sand Road and is a raspberry operation. The property has one house and adjacent agricultural buildings. The property is zoned R5 and has the potential for 14 additional development rights to be removed through an easement.

2. Greenwood (Michael)
   - Number of Points: 68.07
   - Type of Farm: Supports dairy operation with pasture and hay ground
   - Zoning District: R5
   - Property Size: 93.77
   - Preliminary Estimate of Potential Development Rights: 16

   The Greenwood property is part of a complex of applicants to the PDR Program that are contiguous. The complex consists of Greenwood, Carbee, and Grubbs. Mr. Greenwood recently purchased the property and leases it out to Mr. Carbee for support of Mr. Carbee’s replacement heifer operation.

3. Carbee (Harold and Etta)
   - Number of Points: 62.59
   - Type of Farm: Replacement heifer operation
   - Zoning District: R5
   - Property Size: 73.31
   - Preliminary Estimate of Potential Development Rights: 13

   This property is located near the corner of Kelly and Sand Roads in the same area as Grubbs and Greenwood. The property is used as a replacement heifer operation for a local dairy. The property is on Anderson Creek and has a large buffer along the creek bank.

4. Sidhu (Hardev and Harpreet)
   - Number of Points: 47.44
   - Type of Farm: Raspberry
   - Zoning District: R10
   - Property Size: 40
   - Preliminary Estimate of Potential Development Rights: 4

   This farm is located to the East of the City of Lynden. The Sidhu’s have approximately half of the property in raspberry production. The remainder of the property has excellent wildlife habitat values as forested wetland.
MEMORANDUM

To: The Honorable Jack Louws, Whatcom County Executive, and Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Director

From: Roland Middleton, L.E.G., Special Programs Manager

Date: February 21, 2017

RE: 2017 Supplemental Budget Request (2017-2254)
   – Lummi Island ferry LOS
   2017 Supplemental Budget Request (2017-2255)
   – Road fund companion to ferry funding request

Requested Action
Whatcom County Public Works Department requests authorization for $300,000 of expenditure authority to fund an alternatives analysis study that assists in the development of a new level of service for the Lummi Island Ferry System.

Project Background
Following direction from the Whatcom County Council on February 21, 2017, the Lummi Island Ferry Advisory Committee (LIFAC) and Whatcom County Public Works Department are soliciting a Request For Qualifications to complete an alternatives analysis, establish preliminary costs, and develop funding recommendations for a new level of service by the Lummi Island Ferry System. The consultant will schedule to meet with LIFAC on a monthly basis to provide input on the direction and measured goals of the report/recommendation. This analysis implements Comprehensive Plan policy 6C-9.

Funding Amount and Source
The estimate for this effort is $280,000. This alternatives analysis is an operating expense and will be funded through fare box revenues, consistent with WCC 10.34.030.

Please contact Roland Middleton at extension 6212, if you have any questions or concerns regarding this topic.
Supplemental Budget Request

Public Works

Ferry & Docks

Supp ID # 2254

Fund 444

Cost Center 444100

Originator: Roland Middleton

Expenditure Type: One-Time

Year 1 2017

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Level of Service Analysis - Lummi Island Ferry

Department Head Signature (Required on Hard Copy Submission) 2/22/17

Costs:

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1a. Description of request:

Professional Services contract to complete an alternatives analysis for the level of service provided by the Lummi Island Ferry System.

1b. Primary customers:

The Lummi Island community, the Lummi Island Ferry Advisory Committee (LIFAC) and the Whatcom County Council.

2. Problem to be solved:

Resolution 2017-012 established new level of service goals for the Lummi Island Ferry System. This request funds a professional service contract that analyzes alternatives which meet the approved goals, while implementing Comprehensive Plan policy 6C-9.

Comprehensive Plan policy 6C-9: Conduct a ferry feasibility study to inform the next annual Comprehensive Plan update so that sufficient planning, engineering, design and cost detail is available to use in competing for grants and other sources of funding for a replacement ferry. LIFAC should provide input on the scope of work and any consultants or vendors retained, as well as reviewing and providing input on key milestones.

3a. Options / Advantages:

A Professional Services contract will complete the analysis in the stated time-frame of the resolution.

3b. Cost savings:

N/A

4a. Outcomes:

The action plan includes an analysis of the level of service alternatives (vessel, infrastructure and amenities); planning level costs; and potential funding sources. The scheduled completion is June 30, 2018.

4b. Measures:

LIFAC is an integral partner in the completion of the action plan. The successful action plan will be recommended by LIFAC for adoption by the Whatcom County Council.

5a. Other Departments/Agencies:

N/A

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

Wednesday, February 22, 2017
## Supplemental Budget Request

<table>
<thead>
<tr>
<th>Public Works</th>
<th>Ferry &amp; Docks</th>
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</thead>
<tbody>
<tr>
<td><strong>Fund</strong> 444</td>
<td><strong>Cost Center</strong> 444100</td>
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</table>

Whatcom County Ferry Operations. Per WCC 10.34.030 Operations are 55% funded by fare box receipts. The remaining 45% is covered through operating subsidies from the Road Fund.
MEMORANDUM

To: The Honorable Jack Louws, County Executive

Through: Jon Hutchings, PW Director

From: Eric Schlehuber, Equipment Services Manager

Subject: 2017 Supplemental Budget Request- Supp ID#2238

Date: February 13, 2017

Enclosed for your review and signature is a supplemental budget request for the ER&R Fund No. 501 in the amount of $240,000.

- Requested Action
Public Works requests that the County Executive and County Council authorize a supplemental budget request in the amount of $240,000 in the ER&R Fund No. 501 to appropriate capital vehicle and equipment replacement funds for replacements in 2016 that were not able to be completed by year end, unanticipated M&O water tank replacement and a correction to fund the upgrades approved on ASR #2017-5543 (Parks).

- Background and Purpose
The attached report details the capital funds necessary to complete the purchase and replacements of the indicated vehicles and equipment. This is due to timing and workload several purchases were not able to be completed by year end 2016, unanticipated water tank replacement and a correction to fund the upgrades approved on ASR #2017-5543. A 2017 supplemental budget is required to complete these purchases.

- Funding Amount and Source
The supplemental budget request would be funded by the ER&R fund balance and the individual departments ER&R vehicle and equipment equity in the amount of $240,000.

Please contact me at extension 6405 if you have any questions or concerns regarding this request.
Supplemental Budget Request

Public Works

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<td>Eric Schlehuber</td>
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Expenditure Type: One-Time  Year 1  2017  Add'l FTE □  Add'l Space □  Priority 1

Name of Request: Appropriate capital replacement funds for vehicles

X

Department Head Signature (Required on Hard Copy Submission)  Date  2/14/17

Costs:

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<th>Object Description</th>
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<td>Request Total</td>
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1a. Description of request:

Appropriate capital replacement funds in 2017 for 2016 vehicle & equipment replacements that were not able to be completed before year end 2016 for three sign truck replacements, unanticipated replacement of an Road-M&O truck mounted 3300 gallon water tank, insufficient budget to award the sole bid response for a mid-sized SUV for PDS and a correction to fund the approved upgrades on Parks ASR#2017-5543.

1b. Primary customers:

Road-M&O, Planning & Development Services and Parks.

2. Problem to be solved:

Capital replacements from 2016 were not able to be completed before year end and this will appropriate funding in 2017 to complete these replacements purchases as well as an unanticipated replacement.

3a. Options / Advantages:

N/A

3b. Cost savings:

N/A

4a. Outcomes:

With approval this will replace the vehicles and equipment on the attached detailed capital replacements list.

4b. Measures:

When complete.

5a. Other Departments/Agencies:

Yes. If replacements are not completed in a timely fashion the chance for vehicle and equipment breakdowns and downtime may increase.

5b. Name the person in charge of implementation and what they are responsible for:

N/A

6. Funding Source:

ER&R departmental vehicle equity/ER&R fund balance.
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TITLE OF DOCUMENT: Resolution and Public Hearing regarding Community Development Block Grant funding applications.

ATTACHMENTS: Memo from County Executive; Memo from Opportunity Council; CDBG Public Hearing handout; Resolution and Certification of Compliance.

<table>
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<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( X ) Yes</th>
<th>( ) NO</th>
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<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( X ) NO</td>
<td>Requested Date: March 21, 2017</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.)

The Opportunity Council (OC) is on the state Community Development Block Grant (CDBG) list of 2017 Public Services Grant recipients, which is a State formula grant in the amount of $125,253 for distribution to the tri-county area of Whatcom, Skagit and Island Counties. Also, the OC is eligible to apply for a General Purposes Grant for an amount of $500,000. In order to apply for the funding, the OC is required to submit applications through their local jurisdiction, Whatcom County. The public services grant funding is intended to fund new or expanded direct services for persons with low- and moderate- incomes in Island, San Juan and Whatcom Counties. And the General Purposes grant funding is intended to support OC’s Housing Rehabilitation Program. In both cases, OC will act as Subrecipient of the funding, and Whatcom County will be the lead agency in the grant application process.

Public Hearing Notice language:

NOTICE IS HEREBY GIVEN that a public hearing will be held by the Whatcom County Council in the Council Chambers, Whatcom County Courthouse, 311 Grand Avenue, Bellingham, on Tuesday, March 21, 2017 at 7:00 p.m. The purpose of the public hearing is to review community development and housing needs, inform citizens of the availability of funds and eligible uses of the state Community Development Block Grant (CDBG), and receive comments on proposed activities, particularly from lower income persons residing in Whatcom County. $125,253 is proposed to be available to Whatcom, Skagit and Island Counties, through the Opportunity Council, to fund public services that principally benefit low- and moderate-income persons. Additionally, up to $1-million may be available to the County on a statewide competitive basis to fund public facility, community facility, economic development and affordable housing projects. Comments on the county’s and Opportunity Council’s past performance and use of both their 2016 CDBG Public Services Grant and their 2014 Housing Rehab grant will also be received. A Resolution will be reviewed, which would authorize the County Executive to submit two applications to the State of Washington for this funding. The draft grant applications, including an overview of the proposed public services, will be available for review at the Whatcom County Executive’s office, Suite 108, 311 Grand Avenue, Bellingham, after April 7, 2017. Comments may also be submitted in writing to the Whatcom County Council until the public hearing has been closed.

COMMITTEE ACTION: [Blank]

COUNCIL ACTION: [Blank]

Related County Contract #: [Blank] Related File Numbers: [Blank] Ordinance or Resolution Number: [Blank]

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: Whatcom County Council Members
From: Jack Louws, County Executive
Subject: CDBG Grant Applications for:
   1) 2017 Public Services Grant, and
   2) 2017 General Purposes Grant (for Housing Rehabilitation Program)
Date: February 24, 2017

We have been contacted by the Opportunity Council (OC) regarding acting as the lead agency to apply for two grants from Washington State Department of Commerce: 1) a 2017 Public Services (Formula) Grant, and 2) a General Purposes Grant for housing rehab projects. The first grant will support new or expanded direct services for persons with low and moderate incomes in the Whatcom, Skagit and Island County area. The second grant will support the Housing Rehabilitation Program for the same target population.

Through subrecipient agreements with the County, OC will administer the two grants and oversee the distribution of services. The public services grant amount allocated to the tri-county area is $125,253. And the second grant, for housing rehab, will be for $500,000.

I am supporting these applications and recommending to the Council that they be submitted to Washington State Department of Commerce. As part of the application process for both grant programs, we are required to conduct a public hearing in order to receive public input on the use of CDBG funds and to inform the public on the nature of these funding opportunities. As lead agency for these pass-through grants, the County Council is required to sign a Resolution in support of the two applications. We have drafted the Resolution per CDBG guidelines and it is attached.

Thank you for your consideration of this matter. If you have any questions, please don’t hesitate to contact me.

/Enclosures
# 2016-17 CDBG Funding Cycles

|----------|----------|----------|----------|----------|----------|----------|----------|-----------|----------|----------|----------|----------|

### 2017 General Purpose Grants
(construction, acquisition, local assistance and planning-only)
- **March 15th**: application materials available
- **June 1st**: applications due
- **September**: awards announced

### 2017 Housing Enhancement Grants
- **July 1st**: applications accepted until April 30, 2018 with the Housing Trust Fund application while funds are available

### 2016 Imminent Threat Grants
- **July 1st**: applications accepted until June 30, 2017 to address unanticipated public health & safety emergencies while funds are available

### 2016 Economic Opportunity Grants
- Applications accepted until June 30, 2017 while funds are available

### 2017 Public Services Grants
- **February 3rd**: application materials available
- **April 7th**: applications due
- **July 1st**: awards begin

Application materials are available on the CDBG website at: [www.commerce.wa.gov/cdbg](http://www.commerce.wa.gov/cdbg) or by calling (360) 725-5020
Memorandum

Date:  February 23, 2017

To:  Jack Louws
     Whatcom County Executive

From:  John Davies
        Director, Home Improvement Department
        Opportunity Council

Re:  CDBG Home Repair application for funding

Dear Mr. Louws,

The Opportunity Council (OC) respectfully requests Whatcom County’s assistance and support in application for $500,000 in CDBG Home Repair funding. If awarded these funds, over the 3-year grant period, will provide deferred loans and grants for needed home repairs to approximately 30 low-income homeowners living in Whatcom, Island and San Juan Counties. The Opportunity Council role is to determine income eligibility and work on behalf of the homeowner(s) to develop the scope of work, solicit bids, coordinate the project and ensure quality in accordance with established guidelines of the funding.

The Opportunity Council has successfully delivered this program in the past and is currently finishing up a 3-year CDBG grant awarded in 2014 for similar purposes. These funds help ensure preservation and durability of homes and the health and safety of families in our community.

Thank you for consideration of this request.

Sincerely,

John Davies

Community Action

A Community Action Agency
serving Whatcom, Island and
San Juan Counties since 1965

Whatcom County
1111 Cornwall Ave., Suite C
Bellingham, WA 98225
(360) 734-5121
(800) 649-5121
Fax (360) 671-0541

Island County
1791 NE 1st Ave.
PO. Box 922
Oak Harbor, WA  98277
(360) 679-6577
(800) 317-5427
Fax (360) 679-2440

San Juan County
(800) 649-5121

www.oppco.org
RESOLUTION NO_____

APPLICATION FOR A COMMUNITY DEVELOPMENT BLOCK GRANTS (CDBG)

WHEREAS, Whatcom County is authorized to apply to the state Department of Commerce for a Community Development Block Grant (CDBG); and

WHEREAS, Whatcom County has identified a community development and housing priority need for which to seek CDBG funding and is preparing to submit 2 applications to the State Department of Commerce for funding assistance; and

WHEREAS, it is necessary that certain conditions be met to receive CDBG funds;

NOW, THEREFORE, be it resolved that Whatcom County authorizes submission of the following applications to the state Department of Commerce: 1) one request for up to $126,253 and any amended amounts to fund public service activities in coordination with the Opportunity Council; and 2) one request for up to $500,000 and any amended amounts to fund housing rehabilitation activities in coordination with the Opportunity Council, and certifies that, if funded, it:

Will comply with applicable provisions of Title I of the Housing and Community Development Act of 1974, as amended, and other applicable state and federal laws;

Has provided and will provide opportunities for citizen participation that satisfy the CDBG requirements of 24 CFR 570.486;

Will not use assessments against properties owned and occupied by low- and moderate-income persons or charge user fees to recover the capital costs of CDBG-funded public improvements from low- and moderate-income owner-occupants;

Has established or will establish a plan to minimize displacement as a result of activities assisted with CDBG funds; and assist persons actually displaced as a result of such activities, as provided in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;

Has provided technical assistance to citizens and groups representative of low- and moderate-income persons that request assistance in developing proposals;
Will provide opportunities for citizens to review and comment on proposed changes in the funded project and program performance;

Will conduct and administer its program in conformance with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, will affirmatively further fair housing (Title VIII of the Civil Rights Act of 1968); and

Has adopted (or will adopt) and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and has adopted (or will adopt) and implement a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction, in accordance with Section 104(1) of the Title I of the Housing and Community Development Act or 1974, as amended;

Certifies to meeting the National Environmental Policy Act (NEPA) through a determination the CDBG-funded public services will not have a physical impact or result in any physical changes and are exempt under 24 CFR 58.34(a), and are not applicable to the other requirements under 24 CFR 58.6; and are categorically exempt under the State Environmental Policy Act (SEPA) per WAC 197-11-305 (2); and

Whatcom County designates Jack Louws, County Executive, as the authorized Chief Administrative Official and authorized representative to act in all official matters in connection with these applications and Whatcom County’s participation in the Washington State CDBG Program.

APPROVED this _____ day of ____________, 2017.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

[Signature]
Civil Deputy Prosecutor
## DRAFT ANNUAL BUDGET (July – June)

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<tr>
<th>COST CATEGORIES</th>
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<td>Staffing</td>
<td>$ 98,889</td>
<td>Staffing to provide resource information and referral services to LMI individuals in Whatcom and Island counties. The Whatcom County staffing expense will include resource and referral specialist at the East Whatcom Regional Resource Center. Island county staffing will include homeless housing specialist. This budget item includes both salary and fringe benefits.</td>
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<tr>
<td>Goods and services</td>
<td>$ 11,693</td>
<td>Goods and services include office supplies, office space costs for Island county staff, and recruitment/training expenses for the East Whatcom Regional Resource Center. In San Juan County, contracts will be established with three Community Resource Centers to provide information and referral services.</td>
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<td>Travel</td>
<td>$ 1,753</td>
<td>Mileage and vehicle costs to travel to rural communities</td>
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<td>Indirect Costs</td>
<td>$ 12,918</td>
<td>Federally approved indirect rate</td>
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<td><strong>TOTAL</strong></td>
<td>$125,253</td>
<td>Cannot exceed the total grant amount minus the county administration budget.</td>
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<td>Up to $3,500 per year can be allocated from the total grant amount for county administration costs.</td>
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Attachment #1 – Scope of Work & Budget

SCOPE OF WORK

A. Service Programs

NOTE: List the specific public service activities from the CDBG application’s Project Description & Low- and Moderate-Income Benefit Table, or reference the CDBG application’s Project Description & Low- and Moderate-Income Benefit Table.

CDBG Whatcom Narrative:
In Whatcom County, CDBG funds will support services and activities in East Whatcom County, a region of Whatcom County that includes many low-income residents in a geographically remote and underserved rural community. Services will be provided and coordinated by Opportunity Council information and referral specialist at the East Whatcom Regional Resource Center. The primary activities will be connecting low to moderate income community members with services including early childhood education, food resources, and energy assistance programs.

CDBG Island County Narrative:
In Island County, CDBG funds will increase capacity to serve low-income households including housing support services. This funding supports current homeless housing and prevention screening, qualifying and enrolling clients in services such as access to health care insurance enrollment, Basic Food and other supportive programs as well as conducting homeless outreach activities. This service center, located in Oak Harbor, will also engage and refer to other local service providers to serve homeless, veterans and those with mental health and chemical dependency issues.

CDBG San Juan Narrative:
CDBG Public Services grant will provide support to the three Community Resource Centers on San Juan, Orcas and Lopez Islands in San Juan County. The geography and limited transportation systems in San Juan County create a significant challenge in providing services to low-income households. The Community Resource Centers are the conduit that connects people to services on each of the islands and the mainland as well. Opportunity Council will contract for information and referral services with each Community Resource Center so residents can access housing, food, energy assistance, and employment opportunities.
**TITLE OF DOCUMENT:** An Ordinance authorizing interfund loans to finance cash flow for stormwater capital project budgets.

**ATTACHMENTS:** No 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.)

Executive Louws requests Council authorization for the Treasurer to make inter-fund loans from the REET II Fund to Stormwater Capital Project Funds for cash flow purposes.
Date:  
Jack Louws, Executive

( ) Approved ( ) Denied

Chairman

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY, WASHINGTON

WHATCOM COUNTY COUNCIL

ATTEST:

ADOP TED this day of ___, 20__

FUND WILL BE PROVIDED TO THE COUNTY COUNCIL ANNUALLY,

BE IT FURTHER ORDAINED: A REPORT OF ALL NEW INTERFUND LOANS FROM THE REET II

WHEREAS, THE REET II FUND IS THE APPROPRIATE SOURCE TO PROVIDE CASH-FLOW LOANS FOR

STORMWATER CAPITAL PROJECT FUNDS.

WHEREAS, THE REET II FUND IS THE APPROPRIATE SOURCE TO PROVIDE CASH-FLOW LOANS FOR

STORMWATER CAPITAL PROJECT FUNDS.

WHEREAS, FROM TIME TO TIME DUE TO THE PROCESSING TIME REQUIRED TO RECEIVE GRANT

FUNDS TO FACILITATE PROJECT ACCOUNTING AND

WHEREAS, MULTIPLE-YEAR STORMWATER CAPITAL PROJECTS ARE BUDGETED IN CAPITAL PROJECT

ORDINANCE NO.

INTRODUCTION DATE: 03/07/17

PROPOSED BY: Executive
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<td>3/7/17</td>
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<td>2/22/2017</td>
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**TITLE OF DOCUMENT:**
Minor 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

**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 requires a minor amendment to section .160 – Operation and maintenance. The amendment requires homeowners found to have submitted a false report in which an O&M evaluation was not completed or the system status was misrepresented when in fact it is in failure must have all subsequent O&M evaluations completed by a licensed O&M 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:**

**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](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: February 23, 2017

Whatcom County Health Department (WCHD) is proposing a minor amendment to WCC 24.05. The proposed amendment clarifies expectations for homeowners performing their own on-site sewage system (OSS) operation and maintenance (O&M) evaluation. WCHD staff will continue to perform follow-up audit inspections to verify results of homeowner evaluations. Homeowners found to have submitted a false report in which an evaluation was not completed or the system status was misrepresented when in fact it is in failure will be required to have a licensed O&M specialist perform subsequent 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 Growth Management Act (GMA) requirements to protect water availability or water quality.” Elements of the County’s comprehensive plan are implemented through Whatcom County Code (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 by providing increased assurance of proper homeowner inspections. 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. _______

MINOR 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, additional assurance of proper homeowner inspection is necessary; and

WHEREAS, in response to the Court’s decision, homeowners found to have submitted a false report in which an evaluation was not completed or the system status was misrepresented when in fact it is in failure will be required to have
subsequent evaluations performed by an operation and maintenance professional
licensed by the Health Department; and

WHEREAS, the proposed amendment to WCC 24.05.160 as outlined in exhibit A of
this ordinance, provides 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: ______________________
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 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;

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;

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 drain fields;

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.

1. OSS owners found to have a submitted a false report in which an evaluation was not completed or the system status was misrepresented when in fact it is in failure shall have their homeowner certification revoked and must have all subsequent evaluations performed by a licensed O&M specialist.

2. The health officer shall perform random audits of homeowner evaluations to ensure compliance. OSS evaluations must be completed by a licensed O&M specialist if the OSS owner does not permit an audit inspection.

D. 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.

E. 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).
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.

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