

WHATCOM COUNTY COUNCIL AGENDA BILLNO. 2017-068

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:					
Division Head:					
Dept. Head:	<i>WCCO</i>	<i>03.15.17</i>			
Prosecutor:					
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT:**Departmental Updates to Council****ATTACHMENTS:**

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

Should Clerk schedule a hearing? () Yes (x) NO
 Requested Date:

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


Council Reporting Schedule - 2017

2/21/2017: Public Works, Health & Safety - Public Works
 3/7/2017: Finance & Admin Services - HR & Finance / Public Works, Health & Safety - Sheriff's Office
 3/21/2017: Finance & Admin Services - Info Technology - Natural Resources - WSU Ext.
 4/4/2017: Planning & Development - PDS
 5/2/2017: Public Works, Health & Safety - Public Defender
 5/16/2017: Finance & Admin Services - Finance / Public Works, Health & Safety - District Court Probation
 5/30/2017: Natural Resources - Parks & Recreation / Finance & Admin Services - Prosecuting Attorney
 6/13/2017: Public Works, Health & Safety - Juvenile Court
 6/27/2017: Public Works, Health & Safety - Public Works
 7/11/2017: Finance & Admin Services - Facilities
 7/25/2017: Public Works, Health & Safety - District Court
 8/8/2017: Finance & Admin Services - IT
 9/12/2017: Public Works, Health & Safety - Public Works / Finance & Admin Services - HR/Finance
 9/26/2017: Planning & Development - PDS
 10/10/2017: Public Works, Health & Safety - Superior Court
 10/24/2017: Natural Resources - Parks & Recreation
 11/8/2017: Public Works, Health & Safety - Public Works / Finance & Admin Services - Facilities
 11/21/2017: Finance & Admin Services - Finance
 12/5/2017: Finance & Admin Services - IT

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 BILLNO. **2017 - 112**

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:		3/15/2017		3/21/2017	Nat Res Committee
Division Head:					
Dept. Head:		3.15.17			
Prosecutor:					
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT:

WSDOFW briefing on new HPA legislation

ATTACHMENTS:

SEPA review required? () Yes () NO	Should Clerk schedule a hearing ? () Yes () NO Requested Date:
SEPA review completed? () Yes () NO	

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

Washington State Fish & Wildlife briefing on proposed new Hydraulic Project Approval legislation

COMMITTEE ACTION:**COUNCIL ACTION:****Related County Contract #:****Related File Numbers:****Ordinance or Resolution
Number:**

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WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-018 H

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Nan Kallunki	<i>msk</i>	03/09/2017	<div style="text-align: center;"> <p>RECEIVED</p> <p>MAR 14 2017</p> <p>WHATCOM COUNTY COUNCIL</p> </div>	03/21/2017	Council Committee of the Whole (Executive Session)
Division Head Karen S. Goens	<i>KSG</i>	03/09/2017			
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive: <i>MS</i>	<i>[Signature]</i>	3/13/17			
TITLE OF DOCUMENT: N/A					
ATTACHMENTS: None					
SEPA review required? () Yes (<input checked="" type="checkbox"/>) NO SEPA review completed? () Yes (<input checked="" type="checkbox"/>) NO			Should Clerk schedule a hearing? () Yes (<input checked="" type="checkbox"/>) 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.) Update on negotiations and strategy planning discussion regarding collective bargaining (per RCW 42.30.140(4)(a)).					
COMMITTEE ACTION:			COUNCIL ACTION:		
Related County Contract #:		Related File Numbers:		Ordinance or Resolution Number:	
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WHATCOM COUNTY COUNCIL AGENDA BILL

2017-017

NO. _____

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	TwH	02/10/2017		03/21/2017	Finance Committee
Division Head:					
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive:	MS	3/13/17			

TITLE OF DOCUMENT:**Presentation of Small Business Development Center (SBDC) 2016 year end results.****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.)

Presentation of Small Business Development Center results for 2016 by SBDC president, CJ Seitz .

COMMITTEE ACTION:**COUNCIL ACTION:****Related County Contract #:****Related File Numbers:****Ordinance or Resolution Number:**

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WHATCOM COUNTY COUNCIL AGENDA BILLNO. 2017-068

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:					
Division Head:					
Dept. Head:	<i>WCCO</i>	<i>03.15.17</i>			
Prosecutor:					
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT:**Departmental Updates to Council****ATTACHMENTS:**

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

Should Clerk schedule a hearing? () Yes (x) NO
 Requested Date:

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

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COMMITTEE ACTION:**COUNCIL ACTION:****Related County Contract #:****Related File Numbers:****Ordinance or Resolution Number:**

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CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	Twh	02.16.17	<div style="text-align: center;"> RECEIVED FEB 28 2017 WHATCOM COUNTY COUNCIL </div>	03.07.17	Intro
Division Head:				03.21.17	Finance/Council
Dept. Head:					
Prosecutor:	LG	02/22/17			
Purchasing/Budget:	WJR	2/23/17			
Executive: TK		2-22-17			
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: 3/7/2017: Introduced 7-0		
Related County Contract #:		Related File Numbers:		Ordinance or Resolution Number:	
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PROPOSED BY: Executive
INTRODUCTION DATE: 03/07/2017

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:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

() Approved () Denied



Civil Deputy Prosecutor

Jack Louws, County Executive
Date: _____

EXHIBIT A

COURTHOUSE BUILDING ENVELOPE PROJECT

Project Budget		Current project budget	Amendment #1	Total Amended
Expenditures	Account Description	<u>Ord. 2014-075</u>	<u>Ord. 2014-075</u>	<u>Project Budget</u>
	6630 Professional Services	\$250,000	\$0	\$250,000
	7060 Repairs & Maintenance	\$0	\$2,427,809	\$2,427,809
		<u>\$250,000</u>	<u>\$2,427,809</u>	<u>\$2,677,809</u>
Revenues				
	8301.326 REET I Transfer	\$250,000	\$1,675,188	\$1,925,188
	8301.332 Public Utilities Improvement Fund	\$0	\$752,621	\$752,621
		<u>\$250,000</u>	<u>\$2,427,809</u>	<u>\$2,677,809</u>

**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

County Courthouse
311 Grand Avenue, Suite #108
Bellingham, WA 98225-4082



Jack Louws
County Executive

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	<u>\$ 752,621</u>
	\$2,677,809

Supplemental Budget Request

Administrative Services

Facilities Management

Suppl ID # 2250

Fund 359

Cost Center 359100

Originator: Michael Russell

Expenditure Type: One-Time

Year 1 2017

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Courthouse Exterior Repair & Maintenance Schedule

X

Department Head Signature (Required on Hard Copy Submission)

Date

2-22-17

Costs:	Object	Object Description	Amount Requested
	7060	Repairs & Maintenance	\$2,427,809
	8301	Operating Transfer In	(\$1,675,188)
	8301	Operating Transfer In	(\$752,621)
	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 & repellent at all brick every 3 years

Cost: \$1,500,744*

*Includes Facilities staff time dedicated to project

Friday, February 17, 2017

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Administrative Services

Facilities Management

Suppl ID # 2250

Fund 359

Cost Center 359100

Originator: Michael Russell

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 volving 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%

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	MDC	2/23/17	<div style="text-align: center;"> RECEIVED FEB 28 2017 WHATCOM COUNTY COUNCIL </div>	03/07/17	Intro
Division Head:				03/21/17	Finance Committee; Council
Dept. Head:					
Prosecutor:	KNE	2/23/17			
Purchasing/Budget:	MDC	2/23/17			
Executive:	KL	2.28.17			
TITLE OF DOCUMENT: 2017 Supplemental Budget Request #3					
ATTACHMENTS: Ordinance, Memoranda & Budget Modification Requests					
SEPA review required? () Yes (X) NO SEPA review completed? () Yes (X) NO			Should Clerk schedule a hearing? () Yes (X) NO Requested Date:		
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:		
			3/7/2017: Introduced 7-0		
Related County Contract #:		Related File Numbers:		Ordinance or Resolution Number:	

**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:

Fund	Expenditures	Revenues	Net Effect
Sheriff	20,100	(20,100)	-
Total General Fund	20,100	(20,100)	-
Road Fund	135,000	-	135,000
Countywide Emergency Medical Services Fund	1,237,021	(5,722,733)	(4,485,712)
Conservation Futures Fund	172,000	(82,500)	89,500
Ferry Fund	300,000	(135,000)	165,000
Equipment Rental & Revolving	240,000	-	240,000
Total Supplemental	2,104,121	(5,960,333)	(3,856,212)

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:

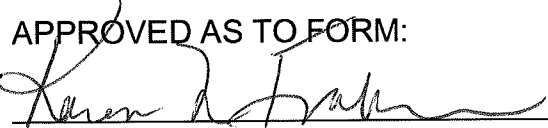
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

() Approved () Denied


Civil Deputy Prosecutor

Jack Louws, County Executive

Date: _____

WHATCOM COUNTY				
Summary of the 2017 Supplemental Budget Ordinance No. 3				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Sheriff	To fund traffic safety equipment from grant proceeds.	10,500	(10,500)	-
Sheriff	To fund community relations consultant from donation proceeds.	9,600	(9,600)	-
Total General Fund		20,100	(20,100)	-
Road Fund	To fund Road Fund portion of Level of Service Analysis of Lummi Island Ferry.	135,000	-	135,000
Countywide Emergency Medical Services Fund	To adjust EMS budget as a result of levy passage.	1,237,021	(5,722,733)	(4,485,712)
Conservation Futures Fund	To fund Williams 2 and Servid-Williams PDR requests.	172,000	(82,500)	89,500
Ferry Fund	To fund Level of Service Analysis for the Lummi Island Ferry.	300,000	(135,000)	165,000
Equipment Rental & Revolving	To fund additional capital replacement funds for vehicles.	240,000	-	240,000
Total Supplemental		2,104,121	(5,960,333)	(3,856,212)

WHATCOM COUNTY
SHERIFF'S OFFICE

BILL ELFO
SHERIFF

PUBLIC SAFETY BUILDING
311 Grand Avenue
Bellingham, WA 98225-4078
(360) 676-6650



JEFF PARKS
UNDERSHERIFF
ART EDGE
CHIEF DEPUTY
DOUG CHADWICK
CHIEF DEPUTY
STEVE COOLEY
CHIEF INSPECTOR
WENDY JONES
CHIEF OF CORRECTIONS

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

RECEIVED

FEB 13 2017

JACK LOUWS
COUNTY EXECUTIVE

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

Status: Pending

Sheriff

Operations

Suppl 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

Costs:	Object	Object Description	Amount Requested
	4333.2062	Traffic Safety	(\$10,500)
	6510	Tools & Equip	\$10,500
	Request Total		\$0

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.

WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS

3060 Willamette Drive NE Lacey, WA 98516 ~ Phone: (360) 486-2380 ~ Fax: (360) 486-2381 ~ Website: www.waspc.org

Serving the Law Enforcement Community and the Citizens of Washington

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/traffic-safety.

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,

A handwritten signature in black ink, appearing to read "M. Barker".

Mitch Barker
Executive Director

President
KEN HOHENBERG
Chief—Kennewick

DUSTY PIERPOINT
Chief—Lacey

JOHN SNAZA
Sheriff—Thurston County

President Elect
BRIAN BURNETT
Sheriff—Chelan County

BONNIE BOWERS
Chief—Anacortes

MARK COUEY
Director—OIC
Special Investigations Unit

Vice President
KEN THOMAS
Chief—Kent

Executive Board
STEVE STRACHAN
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Memorandum

RECEIVED

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: February 22, 2017
SUBJECT: Supplemental Budget ID# 2256
Community Relations Consultant 2017

FEB 22 2017

JACK LOUWS
COUNTY EXECUTIVE

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

Status: Pending

Sheriff

Administration

Suppl 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

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4367.1000	Donations	(\$9,600)
	6610	Contractual Services	\$9,600
	Request Total		\$0

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.

Supplemental Budget Request

Status: Pending

Public Works

Administration

Supp'l ID # 2255

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



2/22/17

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351.444	Operating Transfer Out	\$135,000
	Request Total		\$135,000

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

Rpt: Rpt Suppl Regular



M

EMORANDUM

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

Suppl ID # 2249 Fund 130 Cost Center 130100 Originator: M Caldwell

Expenditure Type: One-Time Year 1 2017 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: EMS Budget Adjustments

X

Department Head Signature (Required on Hard Copy Submission)

Date

2.21.17

Costs:	Object	Object Description	Amount Requested
	4311.1000	Current Year Collections	(\$7,743,128)
	4337.0002	Other	\$353,728
	6110	Regular Salaries & Wages	\$92,296
	6210	Retirement	\$12,940
	6230	Social Security	\$7,061
	6245	Medical Insurance	\$15,253
	6255	Other H&W Benefits	\$1,901
	6259	Worker's Comp-Interfund	\$745
	6269	Unemployment-Interfund	\$120
	6320	Office & Op Supplies	\$10,000
	6429	Fuel-Interfund	\$1,000
	6780	Travel-Educ/Training	\$4,000
	6869.501	Equip Rental-ER&R	\$2,320
	7210	Intergov Prof Svcs	\$277,214
	7210	Intergov Prof Svcs	\$405,425
	7210	Intergov Prof Svcs	\$163,214
	7220	Intergov Subsidies	\$208,532
	7410	Equipment-Capital Outlay	\$35,000
	8301	Operating Transfer In	\$1,666,667
	Request Total		(\$4,485,712)

1a. Description of request:

Adjust EMS budget for passage of levy. First half of levy due April 30, 2017.

Per the adopted EMS plan, this supplemental:

- 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

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Non-Departmental

Suppl ID # 2249 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 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 accomodating the need for a new and centralized office space.

6. Funding Source:

EMS Levy tax collection

EMS

Fund	Cost Center	Object Account	Sub Account	Account Description	2017	Adjustments	2017 Adjusted
00130	130100	4000		Revenues	-		-
00130	130100	4311	1000	Current Year Collections	-	7,743,128	7,743,128
00130	130100	4313	1500	Special Purpose Tax	2,534,519		2,534,519
00130	130100	4337	0002	Othr-Dispatch Reimbrsmnt	353,728	(353,728)	-
00130	130100	4342	2100	Emergency Medical Svcs	2,300,000		2,300,000
00130	130100	4361	1100	Investment Interest	1,379		1,379
00130	130100	6110		Wages	-	(92,296)	(92,296)
00130	130100	6210		Retirement	-	(12,940)	(12,940)
00130	130100	6230		Social Security	-	(7,061)	(7,061)
00130	130100	6245		Medical Ins	-	(15,253)	(15,253)
00130	130100	6255		Other H&W	-	(1,901)	(1,901)
00130	130100	6259		Workers Comp	-	(745)	(745)
00130	130100	6269		Unemployment	-	(120)	(120)
00130	130100	6320		Office & Op Supplies	-	(10,000)	(10,000)
00130	130100	6429		Fuel	-	(1,000)	(1,000)
00130	130100	6869	501	ER&R	-	(2,320)	(2,320)
00130	130100	6780		Travel - Educ/Training	-	(4,000)	(4,000)
00130	130100	7210		Intergov Prof Svcs-4 mos old	(5,101,095)	3,400,730	(1,700,365)
00130	130100	7210		Intergov Prof Svcs-8mos new	-	(3,677,944)	(3,677,944)
00130	130100	7210		Intergov Prof Svcs-8mos new EMS1	-	(405,425)	(405,425)
00130	130100	7210	001	Intergov Prof Svcs-FD7-4 mos old	(1,594,151)	1,062,767	(531,384)
00130	130100	7210	001	Intergov Prof Svcs-FD7-8 mos new	-	(1,225,981)	(1,225,981)
00130	130100	7210	004	Intergov Prof-WhatComm	(1,010,652)	(208,532)	(1,010,652)
00130	130100	7210		Intergov Subsidies	-	(35,000)	(35,000)
00130	130100	7410		Equipment - Vehicle	-		-
00130	130100	8301		Operating Transfer In	2,500,000	(1,666,667)	833,333
					(16,272)	4,485,712	4,469,440



MEMORANDUM

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

THROUGH: Sam Ryan, Director

FROM: Mark Personius, Assistant Director PDS; *WIP*
Karin Beringer, Planner I *KB*

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

Purchase Price for Development Rights	\$ 165,000
Closing Costs	\$ 7,000
<hr/>	
TOTAL	\$ 172,000
<hr/>	
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

Status: Pending

Planning & Development Services

Planning

Suppl ID # 2253

Fund 175

Cost Center 17550

Originator: Mark Personius/Karin Bering

Expenditure Type: One-Time

Year 1 2017

Add'l FTE ☐

Add'l Space ☐

Priority

1

Name of Request: Williams 2 & Servid Farmland Preservation PDR

X

J. E. Ryan

2-22-17

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4367.1000	Donations	(\$82,500)
	7320	Land	\$172,000
	Request Total		\$89,500

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.

Friday, February 17, 2017

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Planning & Development Services

Planning

Suppl ID # 2253

Fund 175

Cost Center 17550

Originator: Mark Personius/Karin Bering

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.

Friday, February 17, 2017

Rpt: Rpt Suppl Regular

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2016-245

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	KB	July 28, 2016	<div style="text-align: center;"> <p>RECEIVED</p> <p>AUG 02 2016</p> <p>WHATCOM COUNTY COUNCIL</p> </div>	Aug 9, 2015	Nat. Resources Comm/ Council
Division Head:	WP	7-29-16			
Dept. Head:	SR	7-29-16			
Prosecutor:	WPF	7/29/16			
Purchasing/Budget:					
Executive: <i>tlh</i>		8.1.16			

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)

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.)

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.

PROPOSED BY: _____ Planning
INTRODUCTION DATE: _____

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

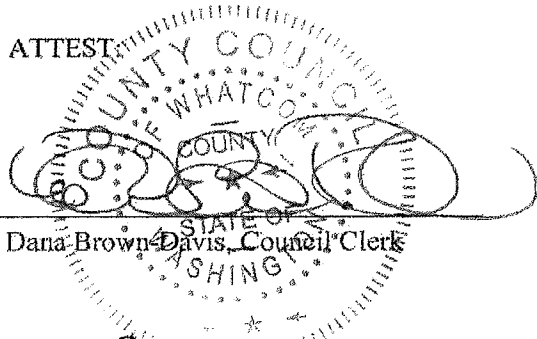
NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that:

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

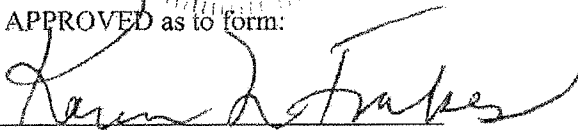
ATTEST



Dana Brown-Davis, Council Clerk


Barry Buchanan, Council Chair

APPROVED as to form:


Civil Deputy Prosecutor

2016 Applications supported by PDR Oversight Committee
Whatcom County Agricultural Purchase of Development Rights Program
Exhibit 1

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. Brar (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 Brar 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 *JH*

From: Roland Middleton, L.E.G., Special Programs Manager *RM*

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

Status: Pending

Public Works

Ferry & Docks

Suppl 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

X

Department Head Signature (Required on Hard Copy Submission)

Date

2/22/17

Costs:	Object	Object Description	Amount Requested
	6630	Professional Services	\$300,000
	8301.108	Operating Transfer In	(\$135,000)
	Request Total		\$165,000

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

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Public Works

Ferry & Docks

Suppl ID # 2254

Fund 444

Cost Center 444100

Originator: Roland Middleton

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.



M E M O R A N D U M

To: The Honorable Jack Louws, County Executive

Through: Jon Hutchings, PW Director *JH*

From: Eric Schlehuber, Equipment Services Manager *ES*

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

Status: Pending

Public Works

Equipment Services

Suppl ID # 2238

Fund 501

Cost Center 501100

Originator: Eric Schlehuber

Expenditure Type: One-Time

Year 1 2017

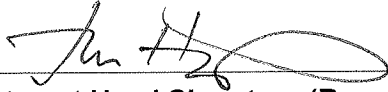
Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Appropriate capital replacement funds for vehicles

X



2/14/17

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7410	Equipment-Capital Outlay	\$240,000
	Request Total		\$240,000

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.

			Budget	
Department	Fund	Asset To Be Replaced	Year	Cost
Equipment Rental and Revolving Fund Vehicle & Equip Replacement and Additions to the Fleet				
M&O	ER&R	2009 Ford F350 4x4 Ext Cab Sign Truck with Service Body	2017	\$ 60,000
M&O	ER&R	2008 Ford F350 4x4 Ext Cab Sign Truck with Service Body	2017	\$ 60,000
M&O	ER&R	2008 Ford F350 4x4 Ext Cab Sign Truck with Service Body	2017	\$ 60,000
M&O	ER&R	2004 Water Tank on Truck #290	2017	\$ 45,000
P&DS	ER&R	2004 Chevrolet Blazer 4x4	2017	\$ 5,000
PARKS	ER&R	2001 Dodge Ram 2500 4x4 upgrade per ASR#2017-5543	2017	\$ 5,000
PARKS	ER&R	2002 Honda 4120 Mower upgrade per ASR#2017-5543	2017	\$ 5,000
Total				\$ 240,000

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	TwH	02.23.17	<div style="text-align: center;"> RECEIVED FEB 28 2017 WHATCOM COUNTY COUNCIL </div>	03.07.17	Intro
Division Head:				03.21.17	Finance
Dept. Head:				3/21/17	Council
Prosecutor:	DL	02/27/17			
Purchasing/Budget:	WDE	2/23/17			
Executive:	TL	2.28.17			
TITLE OF DOCUMENT: An Ordinance authorizing interfund loans to finance cash flow for stormwater capital project budgets.					
ATTACHMENTS: No 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.)					
<p>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.</p>					
COMMITTEE ACTION:			COUNCIL ACTION: 3/7/2017: Introduced 7-0		
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. _____
AN ORDINANCE AUTHORIZING INTERFUND LOANS
TO FINANCE CASH FLOW FOR STORMWATER CAPITAL PROJECT BUDGETS

WHEREAS, multi-year stormwater capital projects are budgeted in capital project funds to facilitate project accounting; and

WHEREAS, from time to time due to the processing time required to receive grant reimbursements, stormwater capital project funds need a temporary loan for cash-flow purposes; and,

WHEREAS, the REET II Fund is the appropriate source to provide cash-flow loans for stormwater capital project funds,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council: The Whatcom County Treasurer is hereby authorized to make inter-fund loans from the REET II Fund to Stormwater Capital Project Funds for cash flow purposes. The loans shall not exceed \$1,000,000 per project and shall not be for a term exceeding three years. No interest shall be charged on the loans.

BE IT FURTHER ORDAINED, A report of all new interfund loans from the REET II Fund will be provided to the County Council annually.

ADOPTED this ____ day of _____, 20____.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Chairman

APPROVED AS TO FORM:

() Approved () Denied

Daniel L. Gibson
Civil Deputy Prosecutor

Jack Louws, Executive

Date: _____

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. _____

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
John N. Thompson Originator:	JNT	2/27/2017	<div style="text-align: center;"> RECEIVED MAR 14 2017 WHATCOM COUNTY COUNCIL </div>	March 21, 2017	Finance; Council as BOS
Gary Stoyka Division Head:	<i>ms</i>	3/7/17			
Jon Hutchings Dept. Head:	<i>jt</i>	3/8/17			
Daniel Gibson Prosecutor:	<i>dg</i>	03/09/17			
Marianne Caldwell Purchasing/Budget:	MDC	3/3/17			
Jack Louws Executive: <i>TL</i>	<i>AL</i>	3/13/17			

TITLE OF DOCUMENT:

Sub-award agreement between The Nature Conservancy and Whatcom County Flood Control Zone District to support Deming Levee setback construction and the lower Nooksack River geomorphic assessment.

ATTACHMENTS:

1. Scope of Work

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.)

This sub-award agreement between The Nature Conservancy and Whatcom County Flood Control Zone District provides NOAA grant funds to support construction of Deming Levee Setback and preparation of a detailed geomorphic assessment of the Lower Nooksack River from near Deming downstream to Bellingham Bay.

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.



RECEIVED

MAR 9 - 2017

MEMORANDUM

JACK LOUWS
COUNTY EXECUTIVE

TO: The Honorable Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Paula Harris, River & Flood Manager
Gary Stoyka, Natural Resources Manager

RE: Sub-Award of NOAA Grant Funding through The Nature Conservancy to Support Deming Levee Setback Construction and the Lower Nooksack River Geomorphic Assessment

DATE: March 6, 2017

Enclosed are two (2) originals of a sub-award agreement between The Nature Conservancy and Whatcom County Flood Control Zone District (FCZD) for your review and signature.

▪ **Background and Purpose**

The Nature Conservancy obtained a grant through the National Oceanic and Atmospheric Administration (NOAA) to support floodplain management and habitat restoration activities. This sub-award of NOAA funds will support construction of the Deming Levee Improvement project and a detailed geomorphic assessment of the lower Nooksack River from Deming downstream to Bellingham Bay. The assessment will provide information to be used in updating the floodplain management plan to more comprehensively integrate the needs of salmon habitat recovery and floodplain agriculture with flood hazard reduction. The geomorphic assessment has been contracted under a separate agreement (WCC 201701006).

▪ **Funding Amount and Source**

The sub-award is for \$250,000 and the expenditure authority was included in the 2017 FCZD budget. Of this amount, \$200,000 is allocated to provide reimbursement for construction of the Deming Levee Improvement project and \$50,000 is available for reimbursement of geomorphic assessment expenses. After the first year, an additional \$50,000 may be provided for the assessment if our progress is acceptable to the granting agency.

Please contact Paula at extension 6285, if you have any questions or concerns regarding the terms of this agreement.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

201703003

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River & Flood
Contract or Grant Administrator:	Paula J. Harris, River & Flood Manager
Contractor's / Agency Name:	The Nature Conservancy

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐
 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): WA-S-161130-011 CFDA#: 11.463

Is this contract grant funded?
 Yes ☐ No ☐ If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Contract
 Yes ☐ No ☒ If yes, RFP and Bid number(s): _____ Cost Center: 169104

Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional. | <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). |
| <input type="checkbox"/> Contract work is for less than \$100,000. | <input type="checkbox"/> Work related subcontract less than \$25,000. |
| <input checked="" type="checkbox"/> Contract work is for less than 120 days. | <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. |
| <input type="checkbox"/> Interlocal Agreement (between Governments). | |

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ 250,000
 This Amendment Amount:
 \$ _____
 Total Amended Amount:
 \$ _____

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

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

Summary of Scope:

This sub-award agreement between The Nature Conservancy and Whatcom County Flood Control Zone District will support construction of habitat elements of the Deming Levee Setback project and preparation of the Lower Nooksack River geomorphic assessment in support of an update to the Comprehensive Flood Hazard Management Plan.

Term of Contract: March 22, 2017 Expiration Date: January 31, 2018

Contract Routing:	1. Prepared by: <u>John N. Thompson</u>	Date: <u>2/27/2017</u>
	2. Attorney signoff: <u>D Gibson</u>	Date: <u>3/3/17</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>3/3/17</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: <u>3-9-17</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

COUNTY ORIGINAL

WHATCOM COUNTY
CONTRACT NO.
201703003



Protecting nature. Preserving life.

SUBAWARD
between
THE NATURE CONSERVANCY ("TNC")
and
Whatcom County Flood Control Zone District ("Awardee")
(a U.S. Subrecipient)

Subaward Number: WA-S-161130-011
TNC Project ID: P104038
TNC Award ID: A103546
Subaward Start Date: March 22, 2017
Subaward Expiration Date: January 31, 2018
Subaward Amount: \$250,000.00
Awardee Indirect Rate Allowed: 0%
Awardee Match: \$500,000.00
Awardee DUNS: 060044641
Federal Award Identification Number: NA16NMF4630307
Federal Award Date (signature date of authorized official): 7/15/2016
Federal Award Amount to TNC: \$896,655.00
Federal Awarding Agency: NOAA
Contact Information of Federal Award Official: Jessica Berrio; Jessica.berrio@noaa.gov; (301) 427-8654
Federal Award Indirect Cost Rate: TNC NICRA (FY17 22.5%)
CFDA Number and Name: 11.463 Habitat Conservation
FFATA Reportable: Yes
Research and Development (R&D): No

The TNC representatives for this project are:
Jenny Baker for Project Manager/Technical Direction:
Senior Restoration Manager
410 N 4th Street, Mt Vernon, WA 98273
jbaker@tnc.org
360-419-7022

Anne H. Hughes TNC's Grants Specialist for
financial/administrative matters:
Grants Specialist
74 Wall St, Seattle, WA 98121
ahammerhughes@tnc.org
206-343-4344 ext 302

The Awardee's representatives for this project are:
Paula Harris for Project Manager/Technical Direction:
River and Flood Manager
322 N Commercial St Suite 120, Bellingham, WA 98225
PHarris@co.whatcom.wa.us
360-778-6285

Randy Rydel for financial/administrative matters:
Administrative Contact
322 N Commercial St Suite 120, Bellingham, WA 98225
rrydel@co.whatcom.wa.us
360-778-6217

This Subaward (the "Agreement") is being entered into by and between TNC and the Awardee, each of which is sometimes referred to in this Agreement as a "Party", in order for Awardee to complete the Deming Levee Setback and Nooksack Geomorphic Assessment (the "Project") and they agree as follows:

1. **Background and Prime Award.** TNC and NOAA ("Prime Funder") entered into *grant agreement number NA16NMF4630307*, under which Prime Funder has made an award to TNC (the "Prime Award"). Under the terms of this Agreement, TNC subawards funds to Awardee for use in carrying out the Project. Although the funds to be provided to Awardee under this Agreement (the "Subaward Funds") will come ultimately from Prime Funder, Awardee acknowledges that Prime Funder is not a Party to this Agreement, and shall have no obligations directly to Awardee under this Agreement. Notwithstanding the above, Awardee shall be subject to and shall comply with the terms and conditions contained in the Prime Award which are applicable to the Awardee, which are attached hereto as **Attachment E** and incorporated herein by reference.
2. **Subaward Term.** The term of this Agreement (the "Subaward Term") shall begin on March 22, 2017 the "Start Date") and shall expire on January 31, 2018 (the "Expiration Date"), unless the Subaward Term is extended or earlier terminated in accordance with this Agreement. The Awardee may incur pre-award costs starting January 1, 2017, provided the following conditions are both met:
 - (a) such costs are included in the attached budget; and
 - (b) this Agreement is executed by all parties no later than March 30, 2017.
3. **Subaward Amount and Budget.** TNC hereby subawards funds to Awardee, as follows:
 - (a) Awardee shall receive an amount not to exceed \$250,000.00 to be paid out of the funds provided to TNC under the Prime Award, and to be disbursed in accordance with the budget which is attached hereto as **Attachment A** (the "Budget"), which is incorporated herein by this reference. TNC shall not be obligated to pay Awardee for any amounts not shown in the Budget.
 - (b) Notwithstanding the above, the Awardee is authorized to reallocate funds between direct cost categories up to 10% of the total approved budget. Revisions in excess of this limit require prior written approval from TNC. TNC's Project Manager and Grants Specialist for the Subaward must be informed in writing of all reallocations.
 - (c) As reflected in the Budget, Awardee shall also provide a total of \$500,000 in cash or in-kind match for the Project.
 - (d) TNC shall have no obligation to disburse funds to Awardee under this Agreement, except to the extent that funds are actually disbursed to TNC under the Prime Award.
 - (e) None of the Subaward Funds may be used as match to other U.S. Federal awards.
 - (f) Any Subaward Funds not used during the Subaward Term shall be returned to TNC no later than 30 calendar days after the final financial report is submitted.
4. **Scope of Work.** Awardee shall work on the Project as described in the scope of work which is attached hereto as **Attachment B**.
5. **Reports.** Awardee shall immediately notify TNC of any financial or programmatic deviations from the scope of work set out in Attachment B. Awardee shall submit financial report(s) and performance report(s) as follows according to the Reporting Due Dates chart below:

REPORTING DUE DATES	
Interim Performance Reports	Due each March 31, covering the period September 1 - February 28(9) Due each September 30, covering the period March 1 – August 31
Final Performance Report	Due not later than 45 days from the end date, covering the entire Subaward Term
Interim Financial Reports/Invoices	Due each March 31, covering the period September 1 - February 28(9) Due each September 30, covering the period March 1 – August 31
Final Financial Report/Final Invoice	Due not later than 45 days from the end date covering the entire Subaward Term

Reports shall include:

- (a) Interim Performance Reports to describe activities conducted for the reporting period using the Performance Report Form provided electronically as **Attachment C**. The Interim Performance Reports shall include, at a minimum:
 - Narrative description of work completed during the reporting period.
 - Problems, delays, or adverse conditions that could materially impair meeting the objectives or timelines of the scope of work.
 - Favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated.
- (b) Final Performance Report to describe the final outcome of the accomplishments using the Performance Report Form provided electronically as **Attachment C**.
- (c) Interim Financial Reports/Invoices on Funds Expended: Awardee shall use the report format provided electronically as **Attachment D**.
- (d) Final Financial Report using report provided as **Attachment D** and marked as final must be so designated.

All Performance Reports and supporting materials shall be submitted to TNC's Project Manager and Grants Specialist at the email addresses specified above.

All Financial Reports shall be signed by the Awardee's Project Manager and Financial Representative and submitted to TNC's Project Manager and Grants Specialist at the email addresses above.

6. **Disbursements and Accounting**. The Awardee shall separately account for payments received under this Subaward in its accounting records. Disbursements shall be made to Awardee no more frequently than semi-annually, based upon receipt of a complete and accurate Financial Report for the applicable period, **Attachment D** Awardee Financial Report and/or Awardee's standard invoice format. Payments will be sent to Awardee in the form of a check payable to Awardee. A completed W-9 must be submitted with the first request for payment to Awardee. Failure to provide information required by this Agreement may delay payment. Approval of any advance payment shall be made at the sole discretion of TNC.

7. **Award Administration** The Awardee agrees to comply with the following provisions:

Both 2 CFR 200 ("Uniform Guidance") and the Prime Funder's implementation thereof found at 2 CFR § 1327.101 are hereby incorporated by reference.

8. **Procurement Procedures**. Awardee shall use its own documented procurement procedures for the purchase of goods and services which must reflect applicable Country, State and/or local laws and regulations unless such procurement procedures conflict with the Uniform Guidance or the Prime Funder's implementation thereof, in which case Awardee shall follow the applicable Uniform Guidance or Prime Funder implementation requirements.

9. **Title to and Use of Equipment and Supplies.** Except as otherwise provided in the Prime Award, title to any equipment and/or supplies purchased with Subaward Funds shall be held in the name of Awardee subject to the following: (a) TNC shall have a free, irrevocable license to use such equipment and/or supplies during the Subaward Term; and (b) the Prime Funder shall have a free, irrevocable license to use such equipment and/or supplies in accordance with the Prime Award or applicable law. The ultimate disposition of all such equipment and supplies shall be governed by the terms of the Prime Award and other applicable laws. Awardee shall work with TNC's Grant Specialist to determine appropriate disposition.

10. **Title to and Use of Work Products and Data.** Except to the extent otherwise provided in the Prime Award, title to any and all work product, including but not limited to reports, samples of any kind, studies, photographs, drawings, calculations, designs, diagrams, maps, surveys, data, database records, computer programs, and any other items created, produced, or developed by Awardee using Subaward Funds, whether or not such work product constitutes intellectual property (collectively, along with all supporting data and material, the "Work Product") shall vest in Awardee. Awardee hereby grants to TNC and to Prime Funder an irrevocable, non-exclusive, royalty-free, perpetual license to use, reuse, print, reprint, publish, republish, reproduce, or otherwise disseminate, sublicense or distribute all or any portion of the Work Product as TNC or the Prime Funder may deem appropriate from time to time in furthering their missions. Neither TNC nor Prime Funder shall be required to notify Awardee or obtain any form of permission or consent from Awardee to use the Work Product in accordance with this section. Awardee shall provide TNC with complete copies of the Work Product. Upon request by TNC, Awardee shall provide each Prime Funder with complete copies of the Work Product.

11. **Accounts, Audits and Records.** Awardee agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired using Subaward Funds (collectively "Records") to the extent and in such detail as will properly reflect all costs and expenses for which reimbursement is claimed. Unless such period is extended by TNC, the Records shall be maintained for a period of three years after the Final Financial Report is submitted by TNC to the Prime Funder, except that if applicable, Awardee shall maintain all Records for equipment purchased with Subaward Funds for three years after the final disposition of such equipment. Awardee shall provide timely and unrestricted access to its books and accounts, files and other Records with respect to the Project for inspection, review and audit by TNC and each Prime Funder, and their authorized representatives. Upon inspection, review or audit, if TNC disallows any costs claimed by Awardee related to this Agreement, Awardee shall be responsible for reimbursing TNC for any of those costs related to the work Awardee has performed.

If Awardee has a single audit performed in accordance with Uniform Guidance, the Awardee must electronically submit (within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period) to the Federal Audit Clearinghouse (FAC) the data collection form and the reporting package. The collection form must be obtained from the FAC webpage. The reporting package must include the Financial Statements and Schedule of Expenditures of Federal awards, the summary schedule of prior audit findings, the auditors reports and a corrective action plan. If Awardee does not submit the form and package within the required timeframe, TNC will perform additional monitoring of the award.

12. **Safety Provisions.** Awardee agrees to comply with any and all safety provision contained in the Prime Award. *"The [Awardee] must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The [Awardee] must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award."*

In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the [Awardee] to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the [Awardee] to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken."

13. **Announcements and Acknowledgments.** All public announcements or news stories concerning the Project which Awardee may wish to release shall be subject to the prior approval of TNC, and shall (if TNC so requires) indicate the participation of TNC and the Prime Funder(s) in the funding of the Project.

In the event Awardee mentions the Project in any publications, scholarly articles, symposia, trade association events or other similar communications, Awardee agrees to acknowledge the support of TNC and each Prime Funder for the Project, as follows:

"This project was made possible through support provided by the National Oceanic and Atmospheric Administration Restoration Center and The Nature Conservancy, under the terms of Grant Agreement # NA16NMF4630307. The content and opinions expressed herein are those of the author(s) and do not necessarily reflect the position or the policy of such agency or The Nature Conservancy, and no official endorsement should be inferred."

Additionally, the Awardee will coordinate with TNC on outreach plans, events, products, and media coverage associated with the project. Please coordinate with the TNC Project indicated in this agreement. Awardee shall provide copies of final outreach products, website mentions, press materials, photos, etc. via the progress reports to TNC, or when available throughout the award period. Awardee shall provide TNC with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by TNC. Awardee may use NOAA's outreach and communications guidance found at: <http://www.habitat.noaa.gov/funding/applicantresources.html> under 'Outreach Resources.'

14. **Liability and Indemnification.** The work done by or for Awardee using the Subaward Funds shall be performed entirely at the risk of Awardee. Awardee shall be solely responsible for, and for the payment of any and all claims with respect to, any loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of its work, and Awardee shall indemnify and defend TNC and each Prime Funder, and each of the officers, directors, employees, and agents of TNC and Prime Funder (in each case, an "Indemnified Party") against, and shall hold each Indemnified Party harmless of and from, any and all claims, liabilities, losses, costs, damages, and other expenses of any kind or nature whatsoever (including, but not limited to, attorneys' fees and expenses, as well as costs of suit, which any Indemnified Party may incur as a result of or in connection with the Project, or which may cause TNC to be in default under the Prime Award.

15. **Insurance.** Throughout the Agreement Term, Awardee shall maintain the following insurance policies:

(1) **Liability Insurance.** Comprehensive commercial general liability insurance for all of its activities and those of its agents and employees, applying to personal injury, bodily injury, and property damage, and including broad form contractual liability coverage, with a combined single limit of liability of not less than \$2,000,000, which shall include coverage for contractual liability coverage specifically covering this Agreement.

(2) **Worker's Compensation Insurance.** Worker's compensation insurance for all of Awardee's employees, in compliance with all applicable laws.

(3) **Vehicle Liability Insurance.** Comprehensive vehicle liability insurance for owned, non-owned, and hired vehicles, applying to personal injury, bodily injury and property damage, with a combined single limit of liability of not less than One Million Dollars (\$1,000,000) per occurrence.

The insurance requirements may be met by the Awardee providing certificates of coverage through the Washington Governmental Entities Pool, for the Whatcom County Flood Control Zone District, and the Washington Counties Risk Pool for Whatcom County and by providing a confirmation from the Whatcom County Human Resources Department that Whatcom County is self-insured for Workers' Compensation. These are provided in Attachment H.

Upon request, Awardee shall name TNC and Prime Funder as an additional insured. Awardee shall also provide TNC and each Prime Funder with thirty (30) days written notice prior to cancellation, termination, alteration, or material change to such policy and shall provide TNC and Prime Funder assurances as to the timely acquisition of replacement insurance.

16. **Non-Discrimination.** Awardee agrees to abide by U.S. laws with regard to non-discrimination against U.S. citizens or legal residents employed using Subaward Funds.

17. Compliance with Applicable Laws, Jurisdiction and Venue Awardee agrees that it will use the Subaward Funds in compliance with all applicable antiterrorist financing and asset control laws, regulations, rules and executive orders, including but not limited to the USA Patriot Act of 2001 and Executive Order 13224. Additionally, the Awardee represents, warrants, and agrees that, in connection with the transactions contemplated by this Agreement: (a) the Awardee can lawfully work in the United States; (b) the Awardee shall obtain, at its own expense (except to the extent otherwise explicitly stated in this Award) any permits or licenses required for the Awardee's services under this Agreement; and (c) the Awardee shall comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the State of Washington and any other jurisdiction(s) in which the Awardee is organized or authorized to do business, including but not limited to any applicable anti-bribery statutes, which are applicable to the work to be done by the Awardee under this Award (in each case, an "**Applicable Law**"). The Awardee shall not take any actions that might cause TNC to be in violation of any of such Applicable Laws. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Agreement, the Parties agree that litigation shall be conducted in a court in the State of Washington with subject matter jurisdiction and that that they are subject or will make themselves subject to personal jurisdiction in that court.

18. Lobbying with Federal Funds Certification.

Awardee certifies, to the best of Awardee's knowledge and belief that:

(a) no U.S. Federal appropriated funds have been paid or will be paid by Awardee or on behalf of Awardee to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any U.S. Federal contract, the making of any U.S. Federal grant, the making of any U.S. Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any U.S. Federal contract, grant, loan, or cooperative agreement; and

(b) if any funds other than U.S. Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the underlying U.S. Federal award, Awardee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(i) The Awardee shall require that the language of this certification be included in the award documents for all subawards/subcontracts under this Agreement and that all Awardees shall certify and disclose accordingly.

(ii) Awardee shall not use any portion of the Subaward Funds to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code and related regulations.

19. Mandatory Disclosures

Awardee must disclose in a timely manner in writing to TNC all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this Agreement.

Disclosures must be sent to:

The Nature Conservancy's Ethics and Compliance Office by e-mailing **compliance@tnc.org** or by contacting the Conservancy's Chief Ethics & Compliance Officer:

The Nature Conservancy
Attention: Chief Ethics & Compliance Officer
4245 N. Fairfax Drive
Arlington, VA 22203

20. Miscellaneous Provisions.

(a) Use of Names/Logos. Neither Party shall use the name or logo of the other Party or of any Prime Funder in any way without prior written consent from the owner of that name or logo.

(b) Assignment. None of the rights or obligations of Awardee under this Agreement may be assigned or delegated by Awardee in whole or in part without the prior written consent of TNC. Except to the extent set forth in the approved scope of work and the Budget, Awardee may not subcontract or subaward any portion of the Project without the prior written consent of TNC. If subcontracting/subawarding is permitted, Awardee shall consult with the TNC Grants Specialist listed above in this Agreement to determine which provisions of this Agreement and/or the Prime Award, must be included in the subcontract/subaward, and the proper method of their inclusion.

(c) Termination.

This Agreement may be terminated prior to the expiration of the Subaward Term under the following conditions:

- (1) If the Prime Funder terminates the Prime Award, this Agreement shall be terminated automatically as of the termination date of the Prime Award. TNC shall notify Awardee of such termination as soon as is reasonably practicable.
- (2) TNC or Awardee shall have the right to terminate this Agreement without cause by giving TNC or Awardee 30 days' written notice.
- (3) If, in the judgment of TNC, Awardee defaults in performance of any of its obligations under this Agreement, whether for circumstances within or beyond the control of Awardee, TNC may immediately terminate this Agreement by written notice to Awardee.

In the event of any early termination of this Agreement, Awardee shall take all necessary action to cancel outstanding commitments relating to the work which was to be paid from Subaward Funds. If TNC terminates this Agreement as the result of Awardee's breach of this Agreement, TNC may recover damages resulting from such breach and/or the termination of this Agreement. Subject to receiving payment from Prime Funder, TNC shall pay any obligations which were reasonably incurred by Awardee in accordance with this Agreement prior to the effective date of termination; however, TNC may offset any damages incurred against such payment.

(d) No Agency. No legal partnership or agency is established by this Agreement. Neither Party is authorized or empowered to act as an agent, employee or representative of the other, nor transact business or incur obligations in the name of the other Party or for the account of the other Party, and neither Party shall be bound by any acts, representations, or conduct of the other Party.

(e) Notices. All notices and demands of any kind which may be required in connection with this Agreement shall be in writing, and shall be served personally, by registered or certified mail, return receipt requested or by electronic mail with "read receipt" to the representatives of each Party noted on Page 1 of this Subaward (except for notices required under Section 20. If the names, titles, or addresses of such representatives change for any reason, each Party shall notify the other immediately of such change and provide updated contact information.

(f) Due Diligence TNC may request copies of documents to ensure that Awardee meets TNC's criteria for this Agreement and that Awardee meets appropriate standards of capacity and financial accountability.

(g) Agreement. The terms of this Agreement, including any attachments hereto, are intended by the Parties as a final expression of their agreement and constitute the complete and exclusive statement of its terms. This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by all of the parties hereto, or their successors in interest. This Agreement may be executed in multiple counterparts, and each executed counterpart of this Agreement shall be deemed an original for all purposes. Electronic signatures, digital signatures, fax signatures, and scanned signatures are acceptable for this Agreement in compliance with the Uniform Electronic Transactions Act (UETA).

(h) Precedence. In the event of any contradiction between or among the terms of this Agreement, the Prime Award, or any applicable law, the contradiction shall be resolved by giving precedence to the terms of the following, in the following order:

- (1) The applicable law, including Uniform Guidance
- (2) The Prime Funder's implementation of the Uniform Guidance at 2 CFR 1327.101;
- (3) The Prime Award;
- (4) This Agreement.

21. **Closeout:** Awardee will be notified and instructed by TNC if they must complete any additional forms for closeout of this Subaward.

In witness whereof, the undersigned have executed this Agreement as of the date first above written.

The Nature Conservancy,
a District of Columbia non-profit corporation

By: _____
(signature)
Name: _____
Title: _____
Date: _____

Whatcom County Flood Control Zone District

By: See attached WCFCZD signature page
(signature)
Name: _____
Title: _____
Date: _____

List of Attachments

- ☐ Attachment A: Budget
- ☐ Attachment B: Scope of Work
- ☐ Attachment C: Performance Report Format
- ☐ Attachment D: Approved Financial Reporting Form
- ☐ Attachment E: Prime Award Provisions
- ☐ Attachment F: FFATA reporting
- ☐ Attachment G: Contractual terms and conditions for subcontractors
- ☐ Attachment H: Awardee's Insurance Certificates

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:

 3/8/17
Jon Hutchings Date
Public Works Department Director

Approved as to form:

Daniel L. Gibson
 Daniel Gibson Date
 Chief Civil Deputy Prosecuting Attorney

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____

Jack Louws, Whatcom County Executive, acting for the Whatcom County Flood Control Zone District Board of Supervisors

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 2017, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

Attachment A
Budget

	YEAR 1 Subaward	Match
a. PERSONNEL		
b. FRINGE BENEFITS		
c. TRAVEL		
d. EQUIPMENT		
e. SUPPLIES		
f. CONTRACTUAL	\$250,000	\$500,000
g. CONSTRUCTION		
h. OTHER		
subtotal	\$250,000	\$500,000
Indirect		
TOTAL	\$250,000	\$500,000

Attachment B
Scope of Work

Task 1 - Deming Levee Setback Construction

Background:

The Nooksack River is the fourth largest watershed in the Puget Sound. From its headwaters, the watershed drains an area of approximately 835 square miles before entering the marine waters of Bellingham Bay. The Nooksack River, its tributaries and adjacent independent coastal streams represent 1,437 miles of habitat which either bear, or could bear, salmonids. The Nooksack support ten salmonid species including ESA-listed populations of Chinook salmon, steelhead, and bull trout. All species use the mainstem Nooksack River to fulfill their life history needs. Whatcom County Flood Control Zone District is seeking construction funding for the Deming floodplain restoration project implementation in 2017.

The proposed project reconnects a tributary channel and historic channel area that were disconnected when the existing substandard berm was constructed, and enables reconnection of river floodplain and established riparian forest and improved side channel development over time, directly addressing Chinook and steelhead habitat needs. An alternatives analysis has been completed, construction-ready plans are in-hand, and permits are nearing final approval. The project will construct a short setback levee so that the current substandard berm can degrade over time allowing reconnection of five acres of historic Nooksack River floodplain and re-establishment of a riparian forest. An opening in the berm and a new channel will be created to connect a small tributary and associated wetland to the existing Nooksack River side channel, and large woody debris will be installed in the tributary. This will provide 625 linear feet of stream channel and 0.4 acres of wetland that will provide off-channel rearing and flood refugia for juvenile salmonids. Riparian areas disturbed during construction will be replanted with native conifers, improving riparian function and edge habitat.

The setback levee will be an improved structure that allows more floodwater conveyance in the mainstem of the Nooksack River and is less likely to overtop or breach into the town of Deming. Installation of a gate will also limit the current 4x4 and ORV activity on the site which is damaging riparian and wetland areas and impacting water quality.

Goal:

Restore floodplain function on five acres of historic Nooksack River floodplain and restore tributary connectivity and fish habitat while reducing flood risk to the community of Deming.

Objectives:

- Remove a portion of existing levee to restore fish passage and connectivity to 625 feet of Marshall Hill Creek and five acres of Nooksack River floodplain.
- Construct a setback levee to maintain or improve flood protection to key public and tribal infrastructure in Deming.
- Install multiple log structures to improve habitat diversity and complexity in creek and side-channel rearing habitats.
- Install gate to prevent ORV and 4x4 access that degrade water quality and riparian and wetland habitats.

Outcomes:

- Reconnect 5 acres of historic floodplain through levee removal and setback that restores critical floodplain habitat while reducing flood risks to the town of Deming
- Restore 625' of tributary habitat and 0.4 acres of wetland to provide off channel salmon rearing and refugia

Scope of Work:

Whatcom County Public Works will develop a bid package including the final plans and specifications, advertise the request for bids and award the bid to the lowest responsible bidder. The Construction Contractor that is hired to construct this project will complete the work tasks listed by WSDOT (Washington State Department of Transportation) Standard Specification or Special Provisions number:

Site Preparation, Temporary Facilities

- 1-05 CONTRACTOR SURVEYING
- 1-09 MOBILIZATION (5%)
- 1-10 PROJECT TEMPORARY TRAFFIC CONTROL
- 2-01 CLEARING AND GRUBBING
- 2-02SP DECOMMISSION OBSERVATION WELL

Earthwork (Levee Construction)

- 2-03SP GENERAL EXCAVATION INCL. HAUL(Levee Construction)
- 2-03SP REMOVAL OF GENERAL EXCAVATION INCL. HAUL
- 2-03SP ONSITE LEVEE SELECT FILL
- 2-03SP IMPORTED LEVEE SELECT FILL
- 2-03SP COMMON FILL
- 2-03SP GRAVEL BORROW
- 2-03SP DEWATERING
- 2-12SP CONSTRUCTION GEOSYNTHETIC
- 8-15SP HEAVY LOOSE RIPRAP
- 8-15 QUARRY SPALLS

Stream Construction and Restoration

- 2-03SP GENERAL EXCAVATION INCL. HAUL(Stream Construction)
- 3-05SP STREAMBED COBBLES
- 6-04SP LARGE WOODY DEBRIS
- 6-04SP BRUSH PILES
- 6-04SP SNAGS

Temporary Erosion and Sediment Control

- 8-01 EROSION AND WATER POLLUTION CONTROL
- 8-01 SPCC PLAN
- 8-01 STABILIZED CONSTRUCTION ENTRANCE
- 8-01 HIGH VISIBILITY SILT FENCE
- 8-01 ENVIRONMENTAL COMPLIANCE LEAD

Miscellaneous

- 9-16SP ACCESS CONTROL GATE

Deliverables:

- Record drawings will be completed noting as-built elevations, structure locations, and any changes from the original plan set.
 - Due January 31, 2018
- Final project memorandum signed by the Project Engineer and or Construction Consultant declaring that the project was constructed and completed in accordance with the construction plans and specifications. This memorandum will also include photos taken to document important phases of construction.
 - Due January 31, 2018

Task 1 cost (NOAA portion, year 1): \$200,000

Anticipated project schedule:

Calendar year	2016	2017				2018				2019		
Federal quarter	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
construction												
as-builts complete												
project management												

Task 2 – Geomorphic Assessment

Background:

While the upper Nooksack watershed is mostly in private, state, or federally managed forest, the lower portion of the watershed is largely rural, but more heavily developed than the upper reaches, with farms, rural residences, and small communities dominating the landscape. As such, there are multiple community interests and priorities along the Nooksack floodplain including salmon recovery, flood risk reduction, water quality, and agricultural operability and viability. In an effort to coordinate these community interests, a planning effort is underway to integrate multiple priorities and create a roadmap for achieving wins for all stakeholders. One of the data gaps is a comprehensive detailed geomorphic assessment. Geomorphic analysis has been completed on portions of the Lower Nooksack River. Additional work is needed to complete assessments on reaches lacking this analysis and to compile all the analyses into a single set of products.

Geomorphic analysis is a critical component in comprehensive river planning, providing a context within which the effects of existing hydro-modifications can be better understood and constraints to habitat can be identified. It also provides a context for evaluating potential flood hazard reduction strategies to ensure they can be effective in reducing flood risk and do not continue to degrade the system. The next phase of planning for the lower Nooksack River will be to update the comprehensive flood hazard management plan in a manner that integrates salmon habitat protection and restoration goals while also addressing the needs of the agricultural community, as most of the Nooksack River floodplain is currently used for agriculture.

Goal:

Fill a critical knowledge gap identified as a barrier to advancing salmon recovery and flood hazard management in the lower Nooksack watershed.

Objectives:

- Complete a geomorphic assessment of the lower Nooksack River to create an understanding of river processes, anthropogenic impacts, and geomorphic thresholds that may affect the ability to restore properly functioning habitat and reduce flood risk.
- Provide a final report, GIS files, and other products suitable to incorporate the geomorphic assessment into updated salmon recovery planning, flood hazard planning, and an integrated floodplain vision and 10-year plan

Outcomes:

- Advance multiple benefit project planning by filling a key knowledge gap that is currently a barrier to advancing floodplain project identification and design – a geomorphic assessment of the Nooksack River.

Scope of Work:

Whatcom County Public Works will oversee and manage the geomorphic assessment project, including hiring a consultant to complete the technical work described below. Tasks 2.1 through 2.4 will be completed in year one (by December 31, 2017). Completion of other tasks will be contingent on additional funds and time.

Task 2.1 – Project Kick-Off

Hold a project kick-off meeting and initial field review to clarify scoping elements, discuss supporting data sources, coordinate with other projects gathering similar data, refine the project schedule and gain overall site familiarity. This task includes a meeting with agencies and others holding data.

Completion date: February 1, 2017

Task 2.2 - Data Compilation

Compile and summarize existing data; identify gaps in historical imagery and other key data sets and fill the gaps as possible. Identify sources of potential supporting data and request data as appropriate.

Completion date: March 3, 2017

Task 2.3 – Geomorphic Analysis

Perform a baseline geomorphic evaluation of the project reach with a focus on remote analysis using aerial photos, lidar, and other mapping layers to document rates and patterns of geomorphic change. This task includes stakeholder meeting #1.

Completion date: July 1, 2017

Task 2.4 – Evaluate Additional Geomorphic Parameters to Support Habitat Assessment

Evaluate key geomorphic parameters (e.g. role of large wood in shaping channel, history of wood management, persistence of wood) that link the geomorphology to current habitat forming processes. Information will inform habitat assessment to be done separately and habitat protection and restoration priorities. This task will be included in stakeholder meeting #1

Completion date: July 1, 2017

Task 2.5 – Technical Assistance

The County may call upon the Contractor to perform specific professional services to support the geomorphic assessment process as needed. Anticipated services will likely include:

- Additional analysis to respond to stakeholder input
- Attendance and participation in additional stakeholder meetings beyond those identified in this scope of work to present additional analysis.

Completion date: December 31, 2018

Task 2.6 – Integration of Results with Flood Control Strategies

Evaluate flood control strategies and how they influence geomorphic processes and salmon habitat parameters. Consider anticipated geomorphic trajectories at specific sites and for broader floodplain management. Provide recommendations to modify existing flood infrastructure to achieve ecological gain and to reduce maintenance requirements while retaining flood hazard management functions and achieving system resilience. This task includes stakeholder meeting #2.

Completion date: December 1, 2018

Task 2.7 – Reporting

Prepare and present a draft report at stakeholder meeting #3. Receive comments and make revisions as necessary. Prepare and present a final report and final GIS and other digital products at stakeholder meeting #4. This task may include up to two additional stakeholder meetings if necessary.

Completion date: December 31, 2018

Year 1 Deliverables:

- Technical memo documenting baseline geomorphic evaluation.
 - Due September 30, 2017

Year 2 Deliverables (contingent on year 2 funding and subaward extension):

- Agency and stakeholder meeting summaries
- Copies of presentations to stakeholders.
- Draft & Final consultant report

Task 2 cost (NOAA portion, year 1): \$50,000

Anticipated project schedule:

Calendar year	2016	2017				2018				2019		
Federal quarter	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
baseline tech memo												
stakeholder meetings												
final report												

Attachment C
Performance Report Formats

1) Performance Report Format for Deming (Full copy sent electronically with the award)

Subaward Number: WA-S-161130-011

Reporting Period Covered:

Project Manager:



Performance Progress Report
NOAA Restoration Center, Office of Habitat Conservation

1. Federal Agency to Which Report is Submitted NOAA National Marine Fisheries Service		2. Award or Subaward Number NA16NMF4630307		3. Federal Program Officer - Name Hydrologic Reconnection	
Project Information					
4. Project Name Accelerating Recovery across Puget Sound- Deming				5. Recipient or Subrecipient Organization The Nature Conservancy	
7. Award or Project Period Dates		8. Reporting Period Dates		6. Is this the final report? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Start Date Sep 1, 2016	End Date Aug 30, 2019	Start Date Sep 1, 2016	End Date Sep 30, 2016	9. Report Frequency <input type="checkbox"/> annual <input checked="" type="checkbox"/> semi-annual <input type="checkbox"/> other <input type="checkbox"/> quarterly	
Project Information		10. Main Project Contact - Name Alayna Cullen		11. Main Project Contact - Title and Organization Grants Specialist, TNC	
		12. Main Project Contact - Email alayna.cullen@tnc.org		13. Main Project Contact - Phone Number (206) 436-6234	
		14. Project City Puget Sound		15. Project State WA <input checked="" type="checkbox"/>	
		16. Number of Project Sites One <input checked="" type="checkbox"/>			
17a. Project Site Coordinates (decimal degrees)		Latitude	Longitude	18. Project Landowner Permission Received <input type="checkbox"/> Yes <input type="checkbox"/> No	
Monitoring Information		19. Monitoring Contact - Name		20. Monitoring Contact - Title and Organization	
		21. Monitoring Contact - Email		22. Monitoring Contact - Phone Number	
		23. Monitoring Level <input checked="" type="checkbox"/> Tier I <input type="checkbox"/> Tier II <input type="checkbox"/> None			
24. List of Target Species			25. List of Project Partners		
26. Problem the Project Addresses					
27. Other Attachments (see instructions)					

The information collected in this form will be used to administer and evaluate coastal and marine habitat restoration projects. Public reporting burden for this collection of information is estimated to average 6 hrs per response for semi-annual reports and 9 hrs 45 mins for final reports, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Program Manager, NOAA Community-based Restoration Program, 1315 East West Hwy, FHCS, Silver Spring, MD 20910.

No confidentiality is provided because no proprietary or confidential information is requested.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a valid OMB Control Number.

OMB Control No. 0648-0472 Expiration Date: 10/31/2018

2) Performance Report Format for the Geomorphic Assessment

Subaward Number: WA-S-161130-011

Reporting Period Covered:

Project Manager:

This report can be as brief as one page as long as you can provide progress on requested information. For each reporting period please report on your progress for the following performance measures:

Nooksack- Complete a geomorphic assessment	Y/N					
Nooksack- Incorporate the geomorphic assessment into local plans	# of plans incorporated into					
Nooksack- integration of climate information into flood risk planning	Y/N					

In addition, the items listed below should be addressed in your report as appropriate:

- Compare actual accomplishments to the objectives;
 - Set out the reasons why goals were not met, if appropriate;
 - Analyze and explain cost overruns or high unit costs; and
 - Provide information of significant developments
1. What work was accomplished for this reporting period?
 2. If a problem was encountered, what action was taken to correct it?
 3. What work is projected for the new reporting period?
 4. Is the project work on schedule?
 5. Does the project funding rate support the work progress? Report as percent spent of budgeted amounts.
 6. Is there a change in principal investigator?
 7. Will the project take longer than the approved project period? If so, have you formally requested an amendment in writing?

Please reference the Subaward project number on your report and on all correspondence.

Attachment D
Approved Financial Reporting Form
FORM A - CONSOLIDATED FINANCIAL REPORT

NAME OF ORGANIZATION : Whatcom County Public Works COUNTRY: USA
Deming Levee Setback and
PROJECT NAME: Nooksack Geomorphic SITE: WA
REPORT PERIOD: 01/01/2017-01/01/2018 AWARD #: WA-S-161130-011

Prior period adjustments require a detailed explanation in the notes section provided below.
Fill in the yellow shaded areas only.

TNC-FUNDED EXPENSES						
CATEGORIES	Budget (A)	Prior Period Expenses (B)	Prior Period Adjustments (C)	Current Period Expenses (D)	TOTAL LOP Expenses to Date (E=B+C+D)	Balance (F= A-E)
A. PERSONNEL					-	-
B. FRINGE BENEFITS	-				-	-
C. TRAVEL					-	-
D. EQUIPMENT	-				-	-
E. SUPPLIES					-	-
F. CONTRACTUAL	250,000.00				-	250,000.00
G. CONSTRUCTION	-				-	-
H. OTHER	-				-	-
I. TOTAL DIRECT COSTS	250,000.00	-	-	-	-	250,000.00
J. INDIRECT COSTS					-	-
K. TOTALS	250,000.00	-	-	-	-	250,000.00
PERCENTAGE OF BUDGET SPENT					0%	

MATCH EXPENSES						
CATEGORIES	Budget (A)	Prior Period Expenses (B)	Prior Period Adjustments (C)	Current Period Expenses (D)	TOTAL LOP Expenses to Date (E=B+C+D)	Balance (F= A-E)
A. PERSONNEL					-	-
B. FRINGE BENEFITS					-	-
C. TRAVEL					-	-
D. EQUIPMENT					-	-
E. SUPPLIES					-	-
F. CONTRACTUAL					-	-
G. CONSTRUCTION	500,000.00				-	500,000.00
H. OTHER					-	-
I. TOTAL DIRECT COSTS	500,000.00	-	-	-	-	500,000.00
J. INDIRECT COSTS					-	-
K. TOTALS	500,000.00	-	-	-	-	500,000.00
PROJECT TOTALS	750,000.00	-	-	-	-	750,000.00

OTHER SOURCES OF INCOME			
	Prior Period LOP INCOME (A)	Current Period INCOME (B)	TOTAL LOP INCOME (C= A+B)
GROSS PROGRAM INCOME			-
INTEREST			-
TOTAL	0.00	0.00	0.00

Explanation of Prior Period Adjustments:

NAME AND TITLE - PROJECT COORDINATOR

NAME AND TITLE - FINANCE DIRECTOR

SIGNATURE - PROJECT COORDINATOR

SIGNATURE - FINANCE DIRECTOR

DATE OF SIGNATURE

DATE OF SIGNATURE

Note: LOP means Life of Project.

NAME OF ORGANIZATION: **Whatcom County Public Works** COUNTRY: **USA**
 PROJECT NAME: **Deming Levee Setback and Nooksac** SITE: **WA**
 REPORT PERIOD: **01/01/2017-01/01/2018** AWARD #: **WA-S-161130-011**

Fill in the yellow shaded areas only.

	LINE	Prior Period Expenses	Current Expenses	Cumulative
TOTAL EXPENSES	1	-	-	-
TNC SHARE OF EXPENSES	2	-	-	-
SUBAWARDEE SHARE OF EXPENSES (MATCH)	3	-	-	-
TOTAL TNC FUNDS RECEIVED TO DATE	4			
REQUESTED TNC FUNDS (Line 2 - Line 4)	5			-

NAME AND TITLE - PROJECT COORDINATOR

NAME AND TITLE - FINANCE DIRECTOR

SIGNATURE - PROJECT COORDINATOR

SIGNATURE - FINANCE DIRECTOR

DATE OF SIGNATURE

DATE OF SIGNATURE

Attachment E:
Prime Award Provisions for TNC Subawards

Laws, Regulations, Orders

The [Awardee] is required to comply with national policy requirements consistent with 2 C.F.R. Sec. 200.300 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section K. The [Awardee] will ensure that implementation of the project will meet all Federal laws and regulations by obtaining all Federal, state, and local permits and consultations applicable to the project prior to expenditure of award funds for those activities requiring permits and consultations. This includes, but is not restricted to, consultations required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act, and Coastal Zone Management Act. The [Awardee] will be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact their [TNC Project Manager] if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.

In addition, Awardee must comply with the following laws, regulations and/or orders:

1. Subpart C of 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)
2. All contracts made by the non-Federal entity under the Federal award must contain the applicable provisions set out at 2 C.F.R. Part 200, Appendix II, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards"
3. In accordance with 2 C.F.R. § 200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms"), the non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus areas firms are used when possible. For further information visit MBDA's website at <http://www.mbda.gov>.
4. The non-Federal entity, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DOC and/or other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
5. **Monitoring and Data Sharing**
To evaluate project implementation quality and effectiveness, and learn from this restoration project(s), the Recipient will execute appropriate project monitoring with guidance from NOAA. As the project proceeds, NOAA's substantial involvement will include further coordination to execute implementation, basic effectiveness monitoring, and potentially more detailed effectiveness monitoring, if applicable. The Recipient will collaborate with NOAA to identify monitoring elements such as parameters, methods, sampling duration and frequency, and post-implementation targets. NOAA's involvement will also include ongoing coordination on data management, analyses, and dissemination of results. The Recipient will develop a data/information sharing plan, and submit appropriate monitoring information with progress reports, as well as at other appropriate times. Templates for the data/information sharing plan and other monitoring related guidance are provided at <http://www.habitat.noaa.gov/funding/applicantresources.html>. Environmental data and information collected and/or created under this grant/cooperative agreement will be made visible, accessible and independently understandable to users in a timely manner (typically no later than two (2) years after the data are collected or created) free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy or by security requirements.
 - The data/information sharing plan (and any subsequent revisions or updates) will be made publicly available by NOAA on our website at time of award and, thereafter, will be posted by the Recipient with any published data.
 - Environmental data and information produced under this award and made available to the public must be accompanied by the following statement: "These environmental data and related items of information have not been formally disseminated by NOAA, and do not represent and should not be construed to represent any agency determination, view, or policy."

- NOAA may at its own discretion, use information from the data/information sharing plan to produce a formal metadata record and include that metadata in a catalog to indicate the pending availability of new data.
 - Failing to share environmental data and information in accordance with the submitted data/information sharing plan may lead to disallowed costs and be considered by NOAA when making future award decisions.
6. **Outstanding NEPA Documentation and Restricted Availability of Funds**
By accepting this award, the [Awardee] agrees to assist and cooperate with NOAA Fisheries [and TNC] in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. For purposes of NEPA compliance, Phase 1 of the project includes project design, permitting, outreach, and baseline monitoring. The activities for which work can proceed will have no significant individual or cumulative adverse effects on the environment. The [Awardee] will not expend any funds for Phase 2 project implementation which includes [dike and levee removal and associated engineering] until impacts have been assessed, and NEPA compliance documentation has been completed by NOAA.
 7. **Verification of Permits and Consultations**
Verification of permits and regulatory compliance related to this project must be presented to [TNC's Project Manager who will provide to] the NOAA Technical Monitor prior to project implementation. The [Awardee] should provide a list of Federal, tribal, state, and local permits acquired for this project by email or letter to [TNC's Project Manager who will provide to] the NOAA Technical Monitor.
 8. **Invasive Species Control**
Pursuant to Executive Order # 13112, Recipients of NOAA funding cannot implement any actions that are likely to cause or promote the introduction or spread of invasive species, and should provide for restoration of native species and habitat conditions in ecosystems that have been invaded. NOAA Recipients are expected to take positive steps to prevent the introduction of invasive species, provide for control of invasive species, and minimize the economic, ecological, and human health impacts that invasive species cause. Where possible and/or practicable, Recipients should also respond rapidly to and control populations of invasive species in an environmentally sound manner, promote public education on invasive species, and conduct post-construction monitoring to ensure that impacts on native species did not occur (as applicable). NOAA can provide additional guidance on the detection, control and prevention of invasive species impacts upon request.

Attachment F
FFATA REPORTING FORM

Prime Grant Recipients awarded a new U.S. Federal grant greater than or equal to \$25,000 as of October 1, 2010 are subject to the U.S. Federal Funding Accountability and Transparency Act (FFATA) subaward reporting requirements as outlined in the Office of Management and Budget's guidance issued August 27, 2010.

To assist The Nature Conservancy (TNC) in complying with this regulation, we request that all entities that will be involved in a proposed subaward with TNC complete this form. Submit the completed form to **the Grants Specialist identified on page 1.**

If your organization does not already have a Data Universal Numbering System (DUNS) number (Section II.B.1), you will need to go to the U.S. Central Contractor Registration site: <https://www.bpn.gov/ccr/default.aspx> and click on the quick link to "request DUNS number". The registration is free and available to all businesses required to register with the U.S. Federal government for contracts or grants.

I. PRIME AWARD INFORMATION *(to be completed by TNC staff)*

1. FEDERAL AWARD IDENTIFIER NUMBER (FAIN)	NA16NMF4630307
2. FEDERAL AGENCY NAME	NOAA
3. PRINCIPAL PLACE OF PERFORMANCE	Washington
4. CFDA NUMBER	11.463
5. AWARD TITLE	Accelerating Recovery across Puget Sound
6. TOTAL FEDERAL FUNDING AMOUNT	\$896,655.00
7. DATE AWARD SIGNED	7/15/2016

II.A. SUBAWARD INFORMATION *(to be completed by TNC staff)*

1. SUBAWARD ORGANIZATION NAME	Whatcom County Flood Control Zone District
2. SUBAWARD NUMBER	WA-S-161130-011
3. AMOUNT OF SUBAWARD – federal portion only	\$250,000.00
4. DATE SUBAWARD SIGNED	
5. SUBAWARD PROJECT DESCRIPTION	Deming Levee Setback and Nooksack Geomorphic Assessment

B. SUBAWARDEE INFORMATION *(to be completed by subawardee staff)*

1. DUNS NUMBER	060044641
2. ORGANIZATION NAME	Whatcom Co.Flood Control Zone Dist.
3. "DOING-BUSINESS-AS" (DBA) NAME (if applicable)	N/A
4. SUBAWARDEE PARENT DUNS # (if applicable)	
5. ADDRESS	
Street Address (1)	322 N.Commercial St., Ste 120
Street Address (2)	
Street Address (3)	
City	Bellingham
State	WA
Country	USA

Zip+4 (n/a for non-U.S. locations)	98225-4042
6. SUBAWARD PRINCIPAL PLACE OF PERFORMANCE	
City (or County)	Whatcom County
State	WA
Country	USA
Zip+4 (n/a for non-U.S. locations)	98244

C. COMPENSATION DATA - THRESHOLD QUESTIONS *(to be completed by subawardee staff):*

	Yes	No
1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (1) 80 percent or more of your annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?		X
2. Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports (e.g., Form 990) filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?		X

D. COMPENSATION DATA *(to be completed by subawardee staff)*

If you answered Yes to Question C.1. and No to Question C.2., please provide the names and total compensation of the top five highly compensated officials of your organization. Total compensation is defined at 2 CFR Part 170.330.

Otherwise, proceed to Section E.

EMPLOYEE NAME	DOLLAR AMOUNT
1.	
2.	
3.	
4.	
5.	

E. I certify that the above information is accurate and complete for our organization. I understand that the information provided on this form is required by FFATA, and will be reported on the ffrs.gov website and the USASpending.gov public website.

SIGNATURE:

Name of Entity: _____

Signature: _____

Person signing for entity: _____

Title: _____

Date: _____

Exhibit G
Standard Contractual Terms and Conditions

- 1. Conflict of Interest Determination.** Contractor represents that to the best of its knowledge the information it has provided on TNC's Disclosure Form, now or up to two years prior to the commencement date of this Contract, is true and correct.
- 2. Independent Contractor.** The parties intend this Contract to create an independent contractor-client relationship and Contractor is solely responsible for the conduct and control of the Services and fulfilling its duties and obligations under this Contract. Contractor is not an agent or employee of TNC, and no joint venture or principal-agent relationship exists. Contractor and its employees, if applicable, are not entitled to any of the benefits that TNC provides for its employees. Neither TNC nor Contractor will have any right, power, or authority by virtue of this Contract to create any obligation, express or implied, on behalf of the other.
- 3. Performance of Work.** Contractor represents that it is qualified and willing to perform the Services in accordance with the highest standards of Contractor's profession or craft. Contractor will not be paid for any Services found by TNC to be unsatisfactory.
- 4. Assignment; Subcontract.** Contractor must not assign this Contract or subcontract any portion of the Services without TNC's prior written consent, which may be withheld in TNC's sole discretion.
- 5. Termination; Remedies.** TNC may terminate this Contract at any time, in its sole discretion, upon two (2) weeks' notice to Contractor. Should this occur, Contractor must cease all work immediately upon receipt of the termination notice and TNC will pay Contractor for the Services that have been satisfactorily completed, as determined by TNC, as of the termination date. In addition, if Contractor defaults in the performance of any duty, obligation, or covenant under this Contract, whether for circumstances within or beyond Contractor's control, or if TNC determines at any time that the Services cannot be performed in accordance with applicable law and/or TNC's policies and standard operating procedures, then TNC may immediately terminate this Contract by notice to Contractor. Should termination occur as a result of Contractor's default, TNC may, without limiting any other remedies available to it under applicable law, recover damages from Contractor resulting from Contractor's default and may offset any amounts payable to Contractor against such damages. TNC will pay to Contractor any remaining balance of such payable amounts.
- 6. Liability; Indemnification; Insurance.** Contractor acknowledges and agrees that it is performing the Services entirely at its own risk, and agrees to indemnify, defend, and hold TNC and its directors, officers, employees and agents harmless from and against any and all liabilities, demands, damages, claims, losses, costs, or expenses, including reasonable attorneys' fees, to the extent that they arise out of or result, directly or indirectly, from the negligence, misconduct, breach of warranty, representation, or covenant, or any act or omission by Contractor or any of its employees or agents (including any permitted subcontractors) in performing the Services. Contractor's indemnity and defense obligations under this Contract will survive for a period of three (3) years after the expiration or earlier termination of this Contract with respect to any matters that occurred, or rights that accrued, prior to such expiration or earlier termination. Contractor must also ensure subcontractors carry, throughout the term of this Contract, one or more insurance policies providing: (a) workers' compensation insurance, as and to the extent required by applicable law; (b) commercial liability insurance written on an occurrence basis, with a liability limit of at least \$1,000,000 per occurrence; (c) motor vehicle liability insurance, covering all owned and non-owned vehicles used in performing the Services, with a liability limit of at least \$500,000 per occurrence; and (d) if subcontractor is providing consulting services, professional liability insurance written on an occurrence basis. Subcontractor's policy(ies) must be primary insurance to any other valid and collectible insurance available to TNC with respect to any claim arising out subcontractor's performance of the Services. If requested by TNC, subcontractor must have TNC named as an additional insured on subcontractor's commercial liability insurance policy on a primary, non-contributory basis and provide TNC with evidence that the required coverage is in effect before any work under the Contract commences.

7. Intellectual Property Rights.

- A. Works Made for Hire. With the exception of works that are original to or otherwise owned by Contractor prior to the commencement date of this Contract, all right, title, and interest, including copyright, in any reports, studies, photographs, software (including programming codes), drawings, designs, writings, or other works or documents produced in performing the Services, along with all related drafts, versions, and other material created as part of the Services (collectively the "Works"), are "works made for hire" as defined under the copyright laws of the United States. To the extent that any of the Works are not works made for hire, Contractor, through this Contract, unconditionally assigns to TNC and its successors and assigns all right, title, and interest, including copyright and other intellectual property rights, in and to the Works in all media (whether now known or later developed) throughout the world in perpetuity. Contractor further assigns to TNC all rights in any supporting data and material used in creating the Works, if and to the extent that the copyright is not held by others. Contractor also grants to TNC a worldwide, non-exclusive, royalty-free, perpetual license to use any works created or otherwise owned by Contractor prior to the commencement date of this Contract that are used to produce, or are otherwise incorporated into, the Works.
- B. Delivery of Works and Other Documentation. Upon request from TNC, Contractor must deliver to TNC (i) all tangible copies (including digital copies) of the Works or any portion of the Works, supporting data, or material not previously delivered to TNC, and (ii) any further documentation of TNC's ownership of the Works as provided under this Contract as may be requested by TNC.
- C. Authorized Use by Contractor. Contractor may use the Works, supporting data and material only with TNC's prior written consent, and any such use must include an acknowledgment that the Works, supporting data, and material used are the property of TNC. Unless otherwise provided in this Contract, to the extent that any portion of the Works consists of research reports or studies, Contractor may use, publish or distribute that portion of the Works in academic papers and scientific or academic journals, with or without co-authors, provided that Contractor acknowledges that funding for such research reports or studies was provided by TNC.
- D. Warranty. Contractor warrants to TNC and covenants that (i) the Works will be original to Contractor alone and will not infringe the intellectual property rights of others, and (ii) to the extent that the Works contain any intellectual property owned by others, Contractor has been authorized, by license or otherwise, to assign to TNC the rights described in this Contract.
- 8. Use of TNC Name and Logo.** Contractor must not use TNC's name, logo or other intellectual property in any manner, whether in conjunction with the Services or otherwise, except (a) to the extent reasonably necessary in order to perform the Services; (b) in order to deliver invoices or other notices to TNC; and (c) if and to the extent otherwise explicitly stated in this Contract.
- 9. Confidential Information.** In performing the Services, Contractor might have access to materials, data, strategies, trade secrets, proprietary information, systems, or other information relating to TNC and its programs that are intended for internal use only. Contractor must not, without TNC's prior written consent, use, publish, or divulge any such information to any person, firm, or corporation, or use it in any advertising or promotion regarding Contractor or Contractor's services, unless required to do so by law or by a court of competent jurisdiction or if such information becomes part of the public domain. Contractor must return to TNC promptly upon completion of the Services any and all TNC confidential information Contractor has in its possession.
- 10. Taxes.** Contractor is responsible for filing and paying its own taxes and for complying with the requirements of any applicable tax laws. TNC will not withhold or pay on behalf of Contractor or any of its employees any U.S. Federal, state, or local income tax or payroll tax of any kind.
- 11. Compliance with Laws.** Contractor represents, warrants and agrees as follows, wherever applicable to the performance of the Services: (a) Contractor can lawfully work in the United States; (b) Contractor will obtain, at its own expense (except to the extent otherwise explicitly stated in this Contract) any permits or licenses required to perform the

Services; and (c) Contractor will comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the state(s) in which the Services are performed (and the state in which the TNC Business Unit set forth on the first page of this Contract is located, if different), and any other U.S. jurisdiction(s) in which Contractor is organized or authorized to do business. Contractor must not take any actions that might cause TNC to be in violation of any such laws.

12. Notices. Any formal notice, request, or demand made by one of the parties pursuant to this Contract (each, a "Notice") must be in writing and given to the respective named contact above by at least one of the following delivery methods, unless another form of delivery is explicitly required elsewhere in this Contract: (a) in person, (b) certified mail (return receipt requested, postage prepaid), (c) nationally recognized next day delivery service, or (d) electronic mail ("email"). A Notice will be deemed given: (1) immediately, if delivered in person; (2) if sent by certified mail, on the earlier to occur of: (i) the date of first attempted delivery; or (ii) the third business day after being deposited in the mail; (3) if sent by next day delivery service, on the following business day; and (4) if sent by email, on the date it is transmitted, unless the transmission is completed on a non-business day or after 5:00 p.m. in the recipient's time zone, in either of which cases it will be deemed given on the next following business day.

13. Binding Effect; Amendments. This Contract will become binding when signed by both parties. This Contract supersedes all prior or contemporaneous communications and negotiations, both oral and written, and constitutes the entire agreement between the parties relating to the activities described in this Contract. No amendment will be effective except in writing signed by both parties.

14. Governing Law; Forum. This Contract and claims relating to this Contract, whether based on contract, tort, or other law, will be interpreted, construed and governed by the laws of the state in which the TNC Business Unit set forth on the first page of this Contract is located (excluding such state's choice of law principles, if any), and such other U.S. laws as are applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Contract, the parties agree that litigation will be conducted in the state in which the TNC Business Unit set forth on the first page of this Contract is located.

15. Severability; No Waiver. If any provision of this Contract is found to be invalid by a court of competent jurisdiction, the other provisions will not be affected by that finding. No delay in exercising any right or remedy under this Contract will constitute a waiver of that right or remedy or of any other right or remedy under this Contract or under applicable law.

16. Joint and Several Liability. If two or more persons or entities are identified as Contractor in this Contract, their obligations under this Contract are and will be joint and several.

17. Counterparts; Facsimile Signatures. This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which, taken together, constitute the complete Contract. Facsimile or scanned signatures on this Contract and any related documents, and digital or electronic signatures where authorized under applicable law, will be fully binding for all purposes under this Contract, although any documents that are to be recorded must be executed by both parties with original signatures (and delivered promptly to the party responsible for recording).

18. Compliance with Anti-Terrorism Laws. Contractor must not use any funds received under this Contract in violation of any applicable antiterrorist financing and asset control laws, regulations, rules and executive orders, including the USA Patriot Act of 2001 and Executive Order 13224.

U.S. Government Laws and Regulations

U.S. GOVERNMENT LAWS AND REGULATIONS. *The Contractor understands that this Contract will be funded by U.S. Government funding and that the Contractor shall be responsible for ensuring that all work/travel is carried out in compliance with any pertinent regulations and laws including but not limited to those listed below.*

A. RECORD RETENTION. Financial records, supporting documents, statistical records, and all other records pertinent to this Contract shall be retained by the Contractor for a period of three years from the date of submission of the final expenditure report. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

B. ACCESS TO RECORDS. The Conservancy, the U.S. Federal entity providing the funding from which this Contract will be paid, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of timely and unrestricted access to any books, documents, papers, and other records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, copies, and transcriptions. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

C. DEBARMENT CERTIFICATION. The Contractor certifies, by signature on this Contract, that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any U.S. Federal department or agency. Where the Contractor is unable to certify to this statement, the Contractor shall attach an explanation to this Contract, and, at the Conservancy's option, this Contract shall become null and void.

D. CONTRACTOR LIABILITY. The Contractor assumes sole responsibility for reimbursement to the Conservancy or the U.S. Federal Government, whichever is appropriate, of a sum of money equivalent to the amount of any expenditures disallowed should the funding agency or any authorized agency rule, through audit exception or some other appropriate means, that expenditures from funds allocated to the Contractor were not made in compliance with applicable cost principles and regulations of the funding agency, or the provisions of this Contract.

E. ENERGY EFFICIENCY. The Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the relevant state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S. 6201).

F. EQUAL EMPLOYMENT OPPORTUNITY. The Contractor must comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity" and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

G. PROHIBITION AGAINST DISCRIMINATION. The contractor and all covered subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 29 CFR Part 741, Appendix A to Subpart A, 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

H. WHISTLEBLOWER RIGHTS. (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

I. BYRD RULE ANTI-LOBBYING AMENDMENT. The Contractor certifies, to the best of the Contractor's knowledge and belief that:

1. No U.S. Federal appropriated funds have been paid or will be paid, by the Contractor or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any U.S. Federal contract, the making of any U.S. Federal grant, the making of any U.S. Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any U.S. Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than U.S. Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the underlying U.S. Federal award, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Contractor shall require that the language of this certification be included in the award documents for all subawards/subcontracts under this Contract and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

J. COPELAND ANTI-KICKBACK ACT. The Contractor shall comply with the Copeland Anti-Kickback Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

K. DAVIS-BACON ACT. The Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141 – 3144 and

3146 – 3148) and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

L. MINIMUM WAGE REQUIREMENT. With the exception of workers exempted from this requirement by 29 C.F.R. Part 10, all hourly/nonexempt employees directly working on this contract must be paid at least \$10.10 minimum wage. In addition, workers performing "support services" in connection with this contract who are hourly/nonexempt workers must be paid at least \$10.10 an hour.

M. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. The Contractor shall comply the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704.), as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

N. GUARANTEES AND BONDING. The Contractor shall follow its own bid guarantee, performance bond, and payment bond requirements.

O. GUARANTEES AND BONDING. In situations where the Conservancy does not examine the Contractor's bid guarantee and bonding requirements and has not notified the Contractor that the U.S. Federal Government's interest is adequately protected, the Contractor shall comply with OMB Circular A-110, Sec. 48(c).

P. CLEAN AIR ACT. The Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

Records documenting compliance with the above good faith efforts shall be retained in accordance with Section "A" above.

BINDER

(Summary of Coverage)

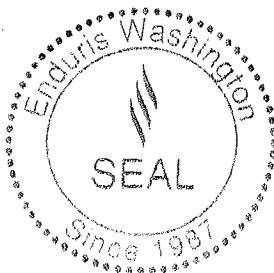
MEMBER: Whatcom Co Flood Control Zone District
322 N Commercial St Ste 120
Bellingham, WA 98225-4042


Memorandum # 2017-00-483

This is to certify that the Memorandum of Coverage has been issued to the Member named above for the period indicated.

EFFECTIVE: September 1, 2016 to September 1, 2017

COVERAGE:	LIMIT	DEDUCTIBLE
Comprehensive General Liability		
General Liability	\$20,000,000	\$1,000
Professional Liability	\$20,000,000	\$1,000
Personal Liability	\$20,000,000	\$1,000
Auto Liability		
Combined Single Limit	\$20,000,000	\$1,000
Hired and Non-Owned Auto Coverage	\$20,000,000	\$1,000
Temporary Substitute Auto Coverage	\$20,000,000	\$1,000
Public Officials Errors and Omissions Liability		
Each Wrongful Act	\$20,000,000	\$1,000
Aggregate Per Member	\$20,000,000	\$1,000
Terrorism Liability		
Terrorist Liability	\$500,000	\$1,000
Aggregate for Pool; distribution per Enduris Board	\$1,000,000	\$1,000
Cyber Coverage		
Aggregate Per Member	\$2,000,000	20% Co Pay*
* Co Pay may be waived as per Memorandum of Coverage		
Employment Practices Liability		
Aggregate Per Member	\$20,000,000	20% Co Pay*
* Co Pay may be waived as per Memorandum of Coverage		
Crime Blanket Coverage with Faithful Performance of Duty		
Per Occurrence	\$2,500	\$1,000
Aggregate	\$2,500	\$1,000
Identity Fraud Expense Reimbursement	\$25,000	N/A
Property/Mobile Equipment/Boiler and Machinery		
Property	Replacement Cost Per Enclosed Schedule	
Mobile Equipment	Replacement Cost Per Enclosed Schedule	
Boiler & Machinery	Replacement Cost Per Enclosed Schedule	




Authorized Representative
Chief Operating Officer
August 26, 2016


WASHINGTON

1610 S. Technology Blvd. Ste 100 - Spokane Washington - 99224
Tel. (509) 838-0910 - Toll Free (800) 462-8418 - Fax (509) 747-3875

MEMORANDUM OF LIABILITY COVERAGE ("MLC")

FOR THE

WASHINGTON COUNTIES RISK POOL ("WCRP") JOINT SELF-INSURANCE LIABILITY PROGRAM

DECLARATIONS

1. **MLC NUMBER:** 1617-RISKPOOL-WCCO
2. **MLC PERIOD:** From 12:00:01 a.m. on October 1, 2016
until 12:00:01 a.m. on October 1, 2017
3. **MEMBER COUNTY:** Whatcom County
C/o County Council
311 Grand Ave, Suite 105
Bellingham, Washington 98225
4. **LIMIT OF LIABILITY
COVERAGE:** \$10,000,000 each **occurrence**
5. **DEDUCTIBLE:** \$100,000 each **occurrence**
6. **COVERAGES:** The joint self-insurance liability coverage as is afforded by this MLC is only for the coverages that are indicated below. WCRP's liability under this MLC shall be subject to all terms and conditions herein and any endorsements attached.
- a. **Bodily injury**
 - b. **Personal injury**
 - c. **Property damage**
 - d. **Errors and omissions**
 - e. **Advertising Injury**
7. **DEFINITION OF TERMS:** Terms appearing in bold type in the provisions of this MLC shall be interpreted only as defined in Section 6, DEFINITIONS.
8. **MLC COMPOSITION:** This MLC consists of this Declarations page, the Coverage Form and applicable endorsements.

Dated this 28th day of September, 2016.

WASHINGTON COUNTIES RISK POOL

By: Keith W. Goehner
Keith Goehner, Py2017 President

Whatcom County Administrative Policy

Administering Workers' Compensation - AD143500Z

Effective Date: 9/13/02

This policy applies to all employees (except Public Works Ferry employees), outside work crews, and volunteers. For the purpose of this policy, the term "outside work crew" refers to offenders performing community service under the direction of the Sheriff's Office or Parks Department.

1. Whatcom County Complies with RCW 51 for Industrial Insurance

2. Whatcom County Self-Insures its Workers' Compensation Program

Whatcom County will self-insure its workers' compensation program in compliance with RCW 51.14.020. Whatcom County will provide the same benefits as the Washington State Department of Labor and Industries.

3. Employees Injured on the Job Make Report Immediately

If an employee is injured on the job, he or she will immediately report the incident to his or her immediate supervisor. The employee will also complete a Self-Insurer Accident Report (SIF-2) for every medically treated injury or illness. PRO AD243500A

4. Whatcom County Contracts Claims Administrator Services

Whatcom County will contract with a qualified firm to provide administrative services for claims, loss control, and to serve as liaison with the Department of Labor and Industries. Only Whatcom County will make workers' compensation discretionary decisions.

5. A.S. Human Resources Representative Coordinates Workers' Compensation and Family Medical Leave

If an employee misses more than three days of work due to a workers' compensation claim, the employee's Administrative Services (A.S.) Human Resources Representative will follow federal law and apply the Family Medical Leave Act (FMLA) rules for that employee.

6. Whatcom County Allows Paid Leave to Augment Time Loss Payments

An employee who is eligible for time loss may use his or her paid leave accruals for the portion of pay not provided under the Washington State time loss formula. (See also: POL AD131501Z Reporting and Collecting Payroll Overpayments and Underpayments)

Whatcom County will not compensate an employee more during a period of time loss than he or she would receive if not on workers' compensation leave. The only exception occurs when a holiday falls during a period of time loss.

Third Party Administrator for Workers Comp is:

Eberle Vivian
206 Railroad Ave.
Kent, WA 98032

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-105

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Paula Harris	AH	3-7-17	<div style="text-align: center;"> <p>RECEIVED</p> <p>MAR 14 2017</p> <p>WHATCOM COUNTY COUNCIL</p> </div>	03/21/17	Finance, Council (WCFCZDBS)
Division Head: Gary Stoyka	ms	3-7-17			
Dept. Head: Jon Hutchings	AH	3/8/17			
Prosecutor: Dan Gibson	dlg DG	03/06/17			
Purchasing/Budget: Brad Bennett	Bb	03/07/17			
Executive: Jack Louws	JL	3/13/17			

TITLE OF DOCUMENT:

FMAG Hazard Mitigation Grant Agreement with the Washington State Military Department

ATTACHMENTS:

Cover Memo

WA State Department – Hazard Mitigation Grant Agreement #D16-014

Signature Authorization Form

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.)

This Hazard Mitigation Grant Program agreement for Phase 1 provides for state and federal funding for voluntary acquisition of up to five flood-prone residential properties in Marietta and the removal of all associated structures. The grant agreement provides for the reimbursement of 87.5% of the project cost and is contingent upon FEMA award.

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 Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Paula Harris, River & Flood Manager
Gary Stoyka, Natural Resources Manager

RE: Hazard Mitigation Grant Agreement for Acquisition of Flood-Prone Properties in Marietta – Phase 1

DATE: March 6, 2017

RECEIVED

MAR 9 - 2017

JACK LOUWS
COUNTY EXECUTIVE

Enclosed are three (3) original agreements for Phase 1 of a Hazard Mitigation Grant Program (HMGP) grant between the Whatcom County Flood Control Zone District (FCZD) and the Washington State Military Department, and two (2) signature authorization forms for your review and signature.

▪ **Background and Purpose**

The Lower Nooksack River Comprehensive Flood Hazard Management Plan, adopted in 1999 by the FCZD Board of Supervisors, recommends acquisition of flood-prone properties in Marietta as they become available. As part of the fire disaster declaration in 2015, Whatcom County became eligible for public assistance funding from the Fire Management Assistance Grant Program (FMAG) through the Federal Emergency Management Agency's (FEMA) Hazard Mitigation Grant Program (HMGP). Phase 1 of this HMGP agreement provides for state and federal funding for voluntary acquisition of five flood-prone properties in Marietta and the removal of all associated structures. A second phase of the project, pending additional environmental review, may include an additional property and funding which will be brought forward at a future date. In accordance with FEMA requirements, deed restrictions will be placed on the properties to ensure they remain in open space in perpetuity. The grant provides for the reimbursement of 87.5% of the project cost.

▪ **Funding Amount and Source**

Total funding for Phase 1 of this project is \$342,737.00. The grant agreement provides for the reimbursement of 87.5% of the project cost with \$257,052.75 from federal funds through FEMA, matched by \$42,842.00 of state funds through the Washington State Military Department and \$42,842.25 of FCZD funds. This project is included in the 2017 FCZD budget.

Due to time sensitivities on one of the properties for acquisition, FEMA award and execution of this grant agreement are moving forward in parallel. As a result, this agreement is contingent upon FEMA award. No work can be done, or reimbursed, until the County has been notified of FEMA award. FEMA award is anticipated to occur alongside or soon after the execution of this agreement.

Please contact Paula at extension 6285, if you have any questions or concerns regarding the terms of this agreement.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

201703004

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River & Flood
Contract or Grant Administrator:	Paula Harris
Contractor's / Agency Name:	Washington State Military Department

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐
 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): D16-014 CFDA#: 97.039 (HMGP)

Is this contract grant funded? Yes ☐ No ☐ If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Contract _____
 Yes ☐ No ☐ If yes, RFP and Bid number(s): _____ Cost Center: 716002

Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

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

Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>342,737</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>342,737</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies or equipment included approved in the budget. 4. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
--	--

Summary of Scope: This Hazard Mitigation Grant Program agreement provides for state and federal funding for voluntary acquisition of five flood-prone properties in Marietta and the removal of all associated structures. The grant provides for the reimbursement of 87.5% of the \$342,737 total project cost with \$257,052.75 from federal funds through the Federal Emergency Management Agency matched by \$42,842.00 of state funds through the Washington State Military Department and \$42,842.25 from Whatcom County Flood funds.

Term of Contract: Fixed	Expiration Date: 11/18/2019
-------------------------	-----------------------------

Contract Routing:	1. Prepared by: <u>BJF</u>	Date: <u>3/6/17</u>
	2. Attorney signoff: <u>Daniel L. Gibson</u>	Date: <u>03/06/17</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>03/07/17</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: <u>3-9-17</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

SIGNATURE AUTHORIZATION FORM

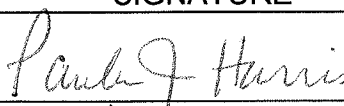

WASHINGTON STATE MILITARY DEPARTMENT
Camp Murray, Washington 98430-5122

Please read instructions on reverse side before completing this form.

NAME OF ORGANIZATION Whatcom Flood Control Zone District	DATE SUBMITTED
PROJECT DESCRIPTION Marietta Acquisition - FMAG Hazard Mitigation Grant	CONTRACT NUMBER D16-014

1. AUTHORIZING AUTHORITY		
SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	Jack Louws	Whatcom County Executive for the Whatcom County Flood Control Zone District Board of Supervisors

2. AUTHORIZED TO SIGN CONTRACTS/CONTRACT AMENDMENTS		
SIGNATURE	PRINT OR TYPE NAME	TITLE
	Jack Louws	Whatcom County Executive for the Whatcom County Flood Control Zone District Board of Supervisors
	Tyler Schroeder	Whatcom County Deputy Executive for the Whatcom County Flood Control Zone District Board of Supervisors

3. AUTHORIZED TO SIGN REQUESTS FOR REIMBURSEMENT		
SIGNATURE	PRINT OR TYPE NAME	TITLE
	Paula J. Harris	River & Flood Manager
	Jon Hutchings	Public Works Director

INSTRUCTIONS FOR SIGNATURE AUTHORIZATION FORM

This form identifies the persons who have the authority to sign contracts, amendments, and requests for reimbursement. It is required for the management of your contract with the Military Department (MD). Please complete all sections. One copy with original signatures is to be sent to MD with the signed contract, and the other should be kept with your copy of the contract.

When a request for reimbursement is received, the signature is checked to verify that it matches the signature on file. **The payment can be delayed if the request is presented without the proper signature.** It is important that the signatures in MD's files are current. Changes in staffing or responsibilities will require a new signature authorization form.

1. **Authorizing Authority.** Generally, the person(s) signing in this box heads the governing body of the organization, such as the board chair or mayor. In some cases, the chief executive officer may have been delegated this authority.
2. **Authorized to Sign Contracts/Contract Amendments.** The person(s) with this authority should sign in this space. Usually, it is the county commissioner, mayor, executive director, city clerk, etc.
3. **Authorized to Sign Requests for Reimbursement.** Often the executive director, city clerk, treasurer, or administrative assistant have this authority. It is advisable to have more than one person authorized to sign reimbursement requests. **This will help prevent delays in processing a request if one person is temporarily unavailable.**

If you have any questions regarding this form or to request new forms, please call your MD Program Manager.

SIGNATURE AUTHORIZATION FORM

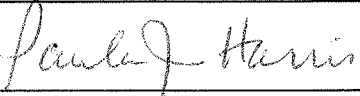

WASHINGTON STATE MILITARY DEPARTMENT
Camp Murray, Washington 98430-5122

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SIGNATURE	PRINT OR TYPE NAME	TITLE
	Jack Louws	Whatcom County Executive for the Whatcom County Flood Control Zone District Board of Supervisors
	Tyler Schroeder	Whatcom County Deputy Executive for the Whatcom County Flood Control Zone District Board of Supervisors

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	Jon Hutchings	Public Works Director

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If you have any questions regarding this form or to request new forms, please call your MD Program Manager.

Washington State Military Department HAZARD MITIGATION GRANT AGREEMENT FACE SHEET

1. Subrecipient Name and Address: Whatcom County Flood Control Zone District 322 N. Commercial St., Suite 120 Bellingham, WA 98225		2. Total Grant Amount: \$342,737.00 F, S, L up to \$257,052.75 F; \$42,842.00 S; \$42,842.25 L		3. Grant Number: D16-014	
4. Subrecipient Contract, phone/email: Paula J. Harris, P.E., River & Flood Manager pharris@co.whatcom.wa.us / 360-778-6285		5. Grant Start Date: TBD		6. Grant End Date: November 18, 2019	
7. Department Program Manager, phone/email: Tim Cook, (253) 512-7072 tim.cook@mil.wa.gov		8. Data Universal Numbering System (DUNS): 060044641		9. UBI # (state revenue): 371-010-246	
10. Funding Authority: Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)					
11. Funding Source Agreement #: FM-5109-WA...		12. Program Index # 76411(Fed) / 76211(State)		13. Catalog of Federal Domestic Asst. (CFDA) # & Title: 97.039 (HMGP)	
14. Total Federal Award Amount:		15. Federal Award Date:		16. TIN or SSN: 91-6001383	
17. Service Districts: (BY LEGISLATIVE DISTRICT): 42nd (BY CONGRESSIONAL DISTRICT): 1st		18. Service Area by County(ies): Whatcom County		19. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____	
20. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other _____			21. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency		
22. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____			23. Contractor Type (check all that apply): <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER		
24. PURPOSE/DESCRIPTION: <u>This agreement is contingent upon FEMA award, and the period of performance will be determined by FEMA. No work can be done, or reimbursed, until the county has been notified of FEMA award by either email or letter from EMD.</u> FEMA's Hazard Mitigation Grant Program provides grants for mitigation planning and cost-effective mitigation actions after a Presidential disaster declaration to reduce the risk of loss of life and property damage in future disasters. Title: <u>Marietta Acquisition Project- Phase 1.</u> The purpose of this Agreement is to provide funds to the SUBRECIPIENT for the herein proposed project as noted in Statement of Work and/or Description of the Project (Attachment 3), Project Development Schedule (Attachment 4), Project Budget (Attachment 5), and the FEMA approved project application, each of which are incorporated herein by this reference. The DEPARTMENT is the Recipient and Pass-through Entity of the 2015 FMAG-HMGP Pilot for FM-5109-WA Goodell Fire, Marietta Acquisition Project- Phase 1, and FEMA State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to the DEPARTMENT for use of Federal award funds provided under this Agreement and the associated matching funds.					
IN WITNESS WHEREOF, the DEPARTMENT and SUBRECIPIENT acknowledge and accept the terms of this Agreement, exhibits, references and attachments hereto and have executed this Agreement as of the date and year written below. This Agreement Face Sheet; Special Terms & Conditions (Attachment 1); General Terms and Conditions (Attachment 2); Statement of Work and/or Description of Project (Attachment 3); Project Development Schedule (Attachment 4); Project Budget (Attachment 5); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:					
1. Applicable Federal and State Statutes and Regulations		5. Special Terms and Conditions			
2. DHS Standard Terms and Conditions		6. General Terms and Conditions, and,			
3. Presidential Declaration, FEMA State Agreement, and other associated documents		7. Other provisions of the contract incorporated by reference.			
4. Statement of Work and/or Project Description as outlined in FEMA approved Project Application					
WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:			FOR THE SUBRECIPIENT:		
Signature _____ Date _____			See below		
Richard A. Woodruff, Contracts Officer Washington State Military Department			Signature _____ Date _____		
Brian E. Buchholz (signature on file 7/29/2016) Assistant Attorney General			Jack Louws Whatcom County Executive for the Whatcom County Flood Control Zone District Board of Supervisors		
			APPROVED AS TO FORM:		
			See below		
			Date _____		

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:

 3/8/17
 Department Director Date

Approved as to form:

Daniel L. Gibson 03/09/17
 Daniel L. Gibson, Chief Civil Deputy Prosecuting Attorney Date

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____

Jack Louws, Whatcom County Executive for the Whatcom County Flood Control Zone District Board of Supervisors

STATE OF WASHINGTON)
) ss
 COUNTY OF WHATCOM)

On this _____ day of _____, 2017, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

**Washington State Military Department
SPECIAL TERMS AND CONDITIONS**

ARTICLE I. KEY PERSONNEL:

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		MILITARY DEPARTMENT	
Name	Paula J. Harris, P.E.	Name	Tim Cook
Title	River & Flood Manager	Title	State Hazard Mitigation Officer
E-Mail	<u>pharris@co.whatcom.wa.us</u>	E-Mail	<u>tim.cook@mil.wa.gov</u>
Phone	360-778-6285	Phone	253-512-7072
Name	Jon Hutchings (alternate)	Name	David Spicer
Title	Public Works Director	Title	Hazard Mitigation Coordinator
E-Mail	<u>jhutchings@co.whatcom.wa.us</u>	E-Mail	<u>david.spicer@mil.wa.gov</u>
Phone	360-778-6200	Phone	253-512-7082
Name		Name	
Title		Title	
E-Mail		E-Mail	
Phone		Phone	

ARTICLE II ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements, and program guidance identified or referenced in this Agreement and the informational documents published by FEMA applicable to the Presidential Disaster Declaration including, but not limited to, all criteria, restrictions, and requirements of the "FEMA State Agreement" published by FEMA and the federal regulations commonly applicable to FEMA grants, all of which are incorporated herein by reference.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold the DEPARTMENT, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR HAZARD MITIGATION GRANTS:

The following requirements apply to all FEMA Hazard Mitigation Grants administered by the DEPARTMENT.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. The SUBRECIPIENT must make a case-by-case determination whether each agreement it makes for the disbursement of HMGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.330.

2. PROJECT FUNDING

The DEPARTMENT will administer the 2015 FMAG-HMGP Pilot, FM-5109-WA Goodell Fire, and will pass through the federal match (and commit the available state match). The SUBRECIPIENT will commit the required local match.

- a. The total cost of the project (total project cost) for the purposes of this Agreement is **\$342,737.00** dollars; PROVIDED that, if the total cost of the project when completed, or when this Agreement is terminated, is actually less than above, the actual cost shall be substituted herein.
- b. The value of the contributions by the SUBRECIPIENT to the project shall be **\$42,842.25** dollars, or **12.5** percent, at minimum, of the total project cost. The SUBRECIPIENT's contributions may be cash or in-kind, must be from a non-federal source, must be reasonable, allowable and allocable, and must comply with all Federal requirements and regulations.
- c. When the DEPARTMENT enters into an agreement with the Federal Emergency Management Agency (FEMA) to contribute federal funds to this project, that federal contribution will be **\$257,052.75** dollars, or **75** percent of the total project cost, whichever is less.
- d. The value of the contributions by the DEPARTMENT to the project shall be **\$42,842.00** dollars, or **12.5** percent, at minimum, of the total project cost. The DEPARTMENT's contributions must be from a non-federal source and must comply with all Federal requirements and regulations.
- e. The DEPARTMENT shall not be obligated to pay any amount beyond that set out in Subsections c and d above, unless that additional amount has been approved in advance by both the DEPARTMENT and SUBRECIPIENT and is incorporated by written amendment into this Agreement.
- f. A written amendment will be required if the SUBRECIPIENT expects cumulative transfers between project budgets, as identified in the Project budget (Attachment 5) and the Statement of Work and/or description of Project (Attachment 3), to exceed 10% of the Grant Agreement Amount. Any changes to project budgets other than in compliance with this paragraph will not be reimbursed.

3. GRANT AGREEMENT PERIOD

Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall only be those after the obligation of federal funds on **TBD** and shall terminate on **November 18, 2019**. This period shall be referred to herein as the Grant Agreement Period and/or Period of Performance, unless expressly stated otherwise. Costs incurred during the Grant Agreement Period shall include pre-award costs authorized in writing by FEMA as well as eligible costs incurred after the effective date of the Grant Agreement Period and before termination.

- a. The SUBRECIPIENT shall complete the project as described in the FEMA approved project application **FM-5109-2-R** incorporated in and made a part of this Agreement by reference, and as described in Attachments 3, 4, and 5. In the event of extenuating circumstances, the SUBRECIPIENT may request, in writing, that the DEPARTMENT extend the deadline for Grant Agreement completion. The DEPARTMENT may, in its sole discretion, extend the deadline only by written amendment to this Agreement and contingent upon FEMA approval.
- b. No expenditure made, or obligation incurred, before or after the Grant Agreement Period shall be eligible, in whole or in part, for grant funds with the exception of pre-award costs authorized in writing by FEMA. In addition to any remedy the DEPARTMENT may have under this Agreement, the amounts set out in Article II, section A.2 **Project Funding**, above, may be reduced to exclude any such expenditure from participation.
- c. Failure to complete the project in a timely manner, as outlined in Attachment 4, is a material breach of this Agreement for which the DEPARTMENT is entitled to termination or suspension under Attachment 2, section A.36.

4. REIMBURSEMENT AND BUDGET REQUIREMENTS

The DEPARTMENT, using disaster funds from PL 93-288, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and the State of Washington, for the Hazard Mitigation Grant Program, shall issue payments to the SUBRECIPIENT as follows:

- a. All payment requests shall be made to the SUBRECIPIENT upon submission and approval of eligible, reimbursable work completed and billed on an A-19, form, State of Washington Invoice Voucher Distribution. Approval is subject to receipt of acceptable documentation by the DEPARTMENT, to include, but not limited to, copies of receipts for all goods and services purchased, copies of invoices from contractors and subcontractors for work completed, and copies of timesheets for staff involved with the project, sign-in/sign-out sheets for donated personnel and/or volunteer time spent on the project, and documentation to support other in-kind contributions.
- b. The DEPARTMENT reserves the right to withhold disbursement of up to 10 percent of the total project cost, as specified in Article II, Section A.2.f Project Funding, to the SUBRECIPIENT until the project has been completed and given final approval by the DEPARTMENT.
- c. Final Payment: Final payment of any remaining, or withheld, funds will be made within 60 days after submission by the SUBRECIPIENT of the final report, final A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT.
Final payment by the DEPARTMENT also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.
- d. Within the total Grant Amount of this Agreement, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.
- e. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Amount of this Agreement.
- f. For travel costs, SUBRECIPIENTS shall comply with 2 CFR 474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by DEPARTMENT's Key Personnel.
- g. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the SUBRECIPIENT consistent with record retention requirements of this Agreement, and be made available upon request by the DEPARTMENT, and local, state, or federal auditors.
- h. The SUBRECIPIENT will submit reimbursement requests to the DEPARTMENT by submitting a properly completed State A-19 Invoice Form, Interagency Electronic Funds Transfer, or Agency/Business invoice with support documentation detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted by email to both the DEPARTMENT's Hazard Mitigation Program Coordinator and the Program Manager no later than the due dates listed within the Grant Timeline (Attachment 4), but not more frequently than monthly.
- i. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the DEPARTMENT within 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.
- j. If applicable, no costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its contractor, or any non-federal entity to which the SUBRECIPIENT makes a subaward, and is invoiced by the vendor.

- k. Failure to timely submit complete reports and reimbursement requests as required by this Agreement (including but not limited to those reports in the Project Development Schedule Attachment 4) will prohibit the SUBRECIPIENT from being reimbursed until such complete reports and reimbursement requests are submitted and the DEPARTMENT has had reasonable time to conduct its review. Final reimbursement requests will not be approved for payment until the SUBRECIPIENT is current with all reporting requirements contained in this Agreement.
- l. SUBRECIPIENTS shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose.

The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

5. REPORTING REQUIREMENTS

In addition to the reports as may be required elsewhere in this Agreement, the SUBRECIPIENT shall promptly prepare and submit the following reports to the DEPARTMENT's Key Personnel:

- a. Quarterly progress reports, no later than the 15th day following the end of the fiscal quarter, indicating the status of the project, to include a brief narrative on progress during the quarter. The report shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project, and whether cost under runs or over runs are expected. In addition, the SUBRECIPIENT should note any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by the DEPARTMENT.
- b. A final report when the project is completed, prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project. The report shall account for all expenditures not previously reported and shall include a summary for the entire project.
- c. The SUBRECIPIENT shall submit a quarterly progress report describing current activities as outlined in the Timeline.
- d. The SUBRECIPIENT shall submit a Final Report with final reimbursement no later than 45 days after Agreement End Date.
- e. The SUBRECIPIENT shall also comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note), and complete and return to the DEPARTMENT the FFATA Form located at <http://mil.wa.gov/emergency-management-divison/grants/requiredgrantforms>; which is incorporated by reference and made a part of this Agreement.

6. PROCUREMENT

The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, **Attachment 2, A.11.**

- a. For all sole source contracts expected to exceed \$150,000, the SUBRECIPIENT must submit to the DEPARTMENT for pre-procurement review and approval the procurement documents, such as requests for proposals, invitations for bids and independent cost estimates. This requirement must be passed on to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving sole source justifications of any non-federal entity to which the SUBRECIPIENT makes a subaward.

7. TIME EXTENSIONS

A time extension request for Agreement completion must be submitted by the SUBRECIPIENT to the DEPARTMENT no later than 60 days before the end of the Period of Performance. A time extension request must be in writing and identify the project, the reason the project will not be completed within the approved Period of Performance, a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to timely submit a complete time extension request may result in denial of the time extension and loss of funding for the project.

8. SUBRECIPIENT MONITORING

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT'S monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to the DEPARTMENT 2 CFR Part 200 Subpart F Audit Certification Form" located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> with the signed Agreement and each fiscal year thereafter until the Agreement is closed, which is incorporated by reference and made a part of this Agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. review of financial and performance reports;
 - ii. monitoring and documenting the completion of Agreement deliverables;
 - iii. documentation of phone calls, meetings, e-mails, and correspondence;
 - iv. review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement work plan, budget, and federal requirements;
 - v. observation and documentation of Agreement related activities, such as exercises, training, funded events, and equipment demonstrations;
 - vi. on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan.

9. CLOSE-OUT

To initiate close-out, the SUBRECIPIENT is required to certify in writing the date completed and total amount expended on the project on FINAL PROJECT REPORT form to the DEPARTMENT. After receipt of the FINAL PROJECT REPORT form, the DEPARTMENT will conduct a site inspection and review supporting documentation for compliance with the requirements of the Agreement.

Prior to project close-out, the SUBRECIPIENT shall provide the DEPARTMENT with acceptable documentation supporting compliance with the Agreement. General documentation supporting compliance with the Agreement typically includes, but is not limited to, the following:

- Photographs of the structures or properties involved in the project **prior** to project implementation **and after** project implementation.
- Digital geospatial coordinates (latitude and longitude) for each structure with an accuracy of ± 20 meters (64) feet.

- Certificate of occupancy or equivalent documentation from the appropriate regulatory authority for each structure to certify it is code-compliant.
- Certification that the SUBRECIPIENT has met the environmental and historic preservation conditions of the grant award as described in this Agreement.
- Copies of all compliance and consultation documentation required by the grant award as described in the Agreement (e.g., coastal zone management consistency determination from Department of Ecology).
- Copies of all documentation related to inspection for and removal and disposal of asbestos and other hazardous materials from each property.

Specific additional documentation requirements for projects to acquire properties for open space include, but are not limited to, the following:

- Signed Statement of Voluntary Participation from owner of each acquired property.
- Documentation of dates of acquisition and structure demolition or removal from property for each property.
- Copy of recorded open space deed restrictions for each acquired property.
- Copy of AW-501 form filed with National Flood Insurance Program for each acquired repetitive loss property.
- Documentation of consultation with Army Corps of Engineers and State Department of Transportation regarding future use of each property.

Specific additional documentation requirements for projects to elevate structures above the base flood elevation include, but are not limited to, the following:

- Photographs of the structures prior to elevation, and front, rear and side photos post-elevation.
- Copies of the pre-project elevation certificate for each structure, or documentation of methodology used to calculate the first-floor elevations.
- Copies of the post-project elevation certificate for each structure.
- Copies of certificate of occupancy for each elevated structure to certify that it is code compliant.
- Certification by an engineer, floodplain manager or other senior official of the SUBRECIPIENT that each completed structural elevation is in compliance with local ordinances and National Flood Insurance Program regulations and technical bulletins.
- Copy of AW-501 form filed with National Flood Insurance Program for each elevated repetitive loss property.
- Copies of proof of flood insurance for each elevated structure.
- Copies of the recorded deed restriction related to maintenance of flood insurance for each property within the Special Flood Hazard Area.

The DEPARTMENT will consult with the SUBRECIPIENT regarding other documentation requirements of the Agreement throughout the Period of Performance.

The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of all mitigation grant funds for six years following the closure of this grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

10. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All SUBRECIPIENTS must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that SUBRECIPIENTS of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving

Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

11. ADDITIONAL SPECIAL CONDITIONS

- a. Construction Documents, Contracts, Change Orders
 - i. Construction Document Approval: The SUBRECIPIENT agrees to submit one copy of all construction plans and specifications to the DEPARTMENT for review and approval prior to solicitation of bids for construction. Review by the DEPARTMENT will be for compliance with the terms of this Agreement.
 - ii. Construction Contracts: Construction contracts shall be awarded through a process of competitive bidding, if required by federal, state and local law and in compliance with applicable procurement requirements of 44 CFR Part 13, section 13.36. Copies of all bids and contracts awarded shall be submitted to the DEPARTMENT upon request. Where all bids are substantially in excess of project estimates, the DEPARTMENT may, by notice in writing, suspend the project for determination of appropriate action, which may include termination of the Agreement.
 - iii. Construction Change Order: All change orders must be in writing and shall be submitted to the DEPARTMENT. The SUBRECIPIENT shall pay any increase in the cost of the project as the result of a change order, unless the DEPARTMENT has agreed to the change with a written amendment to this Agreement.

12. EQUIPMENT AND SUPPLY MANAGEMENT

- a. If applicable, SUBRECIPIENTS and any non-federal entity to which the SUBRECIPIENT makes a subaward shall comply with 2 CFR 200.318 – 200.326, to include but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the SUBRECIPIENT, or a recognized non-federal entity to which the SUBRECIPIENT has made a subaward, for which a contract or other means of legal transfer of ownership is in place.
 - ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the SUBRECIPIENT's inventory system.
 - iii. Equipment records shall include: a description of the property; the manufacturer's serial number, model number, or other identification number; the source of the equipment, including the Federal Award Identification Number (FAIN); Catalogue of Federal Domestic Assistance (CFDA) number; who holds the title; the acquisition date; the cost of the equipment and the percentage of Federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the property.
 - iv. The SUBRECIPIENT shall take a physical inventory of the equipment and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those

shown in the records shall be investigated by the SUBRECIPIENT to determine the cause of the difference. The SUBRECIPIENT shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

- v. The SUBRECIPIENT shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The SUBRECIPIENT shall develop appropriate maintenance schedules and procedures to ensure the equipment and supplies are well maintained and kept in good operating condition.
 - vi. The SUBRECIPIENT must obtain and maintain all necessary certifications and licenses for the equipment.
 - vii. The SUBRECIPIENT shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated and a report generated and sent to the Department.
 - viii. If the SUBRECIPIENT is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return.
 - ix. If, upon termination or at the Grant Agreement End Date, there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value which will not be needed for any other Federal award, or when original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, the SUBRECIPIENT must comply with following procedures:
 - a) The SUBRECIPIENT may retain the supplies for use on other non-Federal related activities or sell them, but must compensate the Federal sponsoring agency for its share.
 - b) The SUBRECIPIENT must dispose of equipment as follows:
 - i). Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the SUBRECIPIENT with no further obligation to the awarding agency.
 - ii). Items of equipment with a current per-unit fair market value of more than \$5,000 may be retained or sold and the SUBRECIPIENT shall compensate the Federal-sponsoring agency for its share.
 - x. Records for equipment shall be retained by the SUBRECIPIENT for a period of six years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the SUBRECIPIENT until all litigation, claims, or audit findings involving the records have been resolved.
- b. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.
 - c. Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.
 - d. As a SUBRECIPIENT of federal funds, the SUBRECIPIENT must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the SUBRECIPIENT makes a subaward of federal award funds under this Agreement.

B. DHS FFY15 STANDARD TERMS AND CONDITIONS

As a SUBRECIPIENT of HMGP funding, the SUBRECIPIENT shall comply with all applicable FEMA/DHS terms and conditions of the FEMA Award Letter and its associated documents for DHS, which are incorporated in and made a part of this Agreement.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Mitigation Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the following terms will have the meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"DEPARTMENT"** means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the DEPARTMENT, or any of the officers or other officials lawfully representing that Department. DEPARTMENT is a recipient of a federal award directly from a federal awarding agency and is pass-through entity making a subaward to a subrecipient under this Agreement.
- b. **"SUBRECIPIENT"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the DEPARTMENT. However, the definition of "subrecipient" is the same as in 2 CFR 200.93 for all other purposes. "
- c. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities, and policies.
- d. **"Project"** shall mean those activities as described in the FEMA approved project application (insert application number), which are incorporated in and made a part of this Agreement by reference, and as described in Attachments 3, 4, and 5.
- e. **"PL"** – is defined and used herein to mean the Public Law.
- f. **"CFR"** – is defined and used herein to mean the Code of Federal Regulations.
- g. **"OMB"** – is defined and used herein to mean the Office of Management and Budget.
- h. **"WAC"** – is defined and used herein to mean the Washington Administrative Code.
- i. **"RCW"** – is defined and used herein to mean the Revised Code of Washington.

A.2 ADVANCE PAYMENTS PROHIBITED

The DEPARTMENT shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. The SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services.

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUBRECIPIENT. No other understandings or agreements, written or oral, shall be binding on the parties.

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The SUBRECIPIENT must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.5 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The DEPARTMENT relies upon the SUBRECIPIENT's application in making its determinations as to eligibility for, selection for, and scope of funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

A.6 ASSURANCES

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the SUBRECIPIENT certifies that the SUBRECIPIENT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The SUBRECIPIENT shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at <http://mil.wa.gov/emergency-management-divison/grants/requiredgrantforms>. Any such form completed by the SUBRECIPIENT for this Agreement shall be incorporated into this Agreement by reference.

Further, the SUBRECIPIENT agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The SUBRECIPIENT certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUBRECIPIENT may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) maintained by the federal government. The SUBRECIPIENT also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/>). The SUBRECIPIENT also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List (<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUBRECIPIENT will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act

of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the SUBRECIPIENT, its contractors or the DEPARTMENT may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The SUBRECIPIENT is responsible for all costs or liability arising from its failure, and that of its contractors, to comply with applicable laws, regulations, executive orders, OMB Circulars, or policies.

A.10 CONFLICT OF INTEREST

No officer or employee of the DEPARTMENT; no member, officer, or employee of the SUBRECIPIENT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the SUBRECIPIENT who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement. The SUBRECIPIENT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.11 CONTRACTING & PROCUREMENT

a. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2CFR Part 200.318 General procurement standards through 200.326 Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the SUBRECIPIENT under this Agreement must include the following provisions, as applicable:

1) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor must be prohibited from inducing, by any means, any person employed in the construction,

completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

11) Notice of Federal awarding agency requirements and regulations pertaining to reporting.

12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.

13) Access by the DEPARTMENT, the SUBRECIPIENT, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

14) Retention of all required records for six years after the SUBRECIPIENT has made final payments and all other pending matters are closed.

15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

b. The DEPARTMENT reserves the right to review the SUBRECIPIENT procurement plans and documents, and require the SUBRECIPIENT to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326/. The SUBRECIPIENT must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the SUBRECIPIENT and DEPARTMENT to make a determination on eligibility of project costs.

c. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the SUBRECIPIENT's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the DEPARTMENT or as required to comply with the state Public Records Act, other law or court order.

A.13 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the Contractor and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.14 DUPLICATION OF BENEFITS

The SUBRECIPIENT agrees that the mitigation grant funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same purpose from any other source. The SUBRECIPIENT will pursue full payment of eligible insurance benefits for properties covered in a project under this Agreement. The SUBRECIPIENT will repay any mitigation grant funds that are duplicated by other benefits, funds, or insurance proceeds.

A.15 HAZARDOUS SUBSTANCES

The SUBRECIPIENT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The SUBRECIPIENT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the SUBRECIPIENT has as to the presence of any hazardous substances at the proposed development/construction project site. The SUBRECIPIENT will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70.105D.020 (10).

A.16 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the SUBRECIPIENT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the SUBRECIPIENT, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the SUBRECIPIENT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the SUBRECIPIENT, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the SUBRECIPIENT, or SUBRECIPIENT's agents or employees.

Insofar as the funding source, the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

A.17 LIMITATION OF AUTHORITY – Authorized Signature

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature representative and the Authorized Signature representative of the SUBRECIPIENT or Alternate for the SUBRECIPIENT, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the SUBRECIPIENT shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the DEPARTMENT may unilaterally reduce the scope of work and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the SUBRECIPIENT an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the DEPARTMENT has no obligation to do so.

A.19 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the SUBRECIPIENT.

A.20 NONDISCRIMINATION

The SUBRECIPIENT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.21 NOTICES

The SUBRECIPIENT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.22 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/ HEALTH ACT (OSHA/WISHA)

The SUBRECIPIENT represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the SUBRECIPIENT's performance under this Agreement. To the extent allowed by law, the SUBRECIPIENT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the SUBRECIPIENT to so comply.

A.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT. The SUBRECIPIENT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.24 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.25 PRIVACY

Personal information collected, used or acquired in connection with this agreement shall be used solely for the purposes of this agreement. SUBRECIPIENT and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law or court order. SUBRECIPIENT agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The SUBRECIPIENT agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the SUBRECIPIENT's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.26 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.27 PUBLICITY

The SUBRECIPIENT agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUBRECIPIENT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT.

The SUBRECIPIENT may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CDR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.28 RECAPTURE PROVISION

In the event the SUBRECIPIENT fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws and/or the provisions of the Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the SUBRECIPIENT of funds under this recapture provision shall occur within 30 days of demand.

In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs and expenses thereof, including attorney fees from the SUBRECIPIENT.

A.29 RECORDS

- a. The SUBRECIPIENT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUBRECIPIENT's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The SUBRECIPIENT's records related to this Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUBRECIPIENT with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the SUBRECIPIENT for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUBRECIPIENT's normal working day.
- d. The SUBRECIPIENT shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.30 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the DEPARTMENT undertakes to assist the SUBRECIPIENT with the project/statement of work/work plan (project) by providing Federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the SUBRECIPIENT. The DEPARTMENT undertakes no responsibility to the SUBRECIPIENT, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the SUBRECIPIENT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the SUBRECIPIENT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The SUBRECIPIENT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUBRECIPIENT in connection with the project.

The SUBRECIPIENT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.31 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.32 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities, as SUBRECIPIENTS of a federal award, that expend \$750,000 or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than \$750,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a State, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or SUBRECIPIENT.

SUBRECIPIENTS that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The SUBRECIPIENT has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200 Subpart F.

The SUBRECIPIENT shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records.

The SUBRECIPIENT is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The SUBRECIPIENT must respond to DEPARTMENT requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the SUBRECIPIENT all disallowed costs resulting from the audit.

Once the single audit has been completed and it includes any audit findings, the SUBRECIPIENT must send a full copy of the audit to the DEPARTMENT and its corrective action plan no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to:

Contracts Office

**Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

If SUBRECIPIENT claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT fiscal year(s) to the address listed above.

The DEPARTMENT retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The SUBRECIPIENT shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENTS failure to comply with said audit requirements may result in one or more of the following actions in the DEPARTMENT's sole discretion:

a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.33 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The SUBRECIPIENT, and/or employees or agents performing under this Agreement are not employees or agents of the DEPARTMENT in any manner whatsoever. The SUBRECIPIENT will not be presented as nor claim to be an officer or employee of the DEPARTMENT by reason of this Agreement, nor will the SUBRECIPIENT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the SUBRECIPIENT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Agreement.

A.34 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the SUBRECIPIENT shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the SUBRECIPIENT or its staff required by statute or regulation that are applicable to Agreement performance.

A.35 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the SUBRECIPIENT may terminate this Agreement by providing written notice of such termination to the DEPARTMENT's Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the DEPARTMENT, in its sole discretion and in the best interests of the State of Washington, may terminate this Agreement in whole or in part by providing ten (10) calendar days' written notice, beginning on the second day after mailing to the SUBRECIPIENT. Upon notice of termination for convenience, the DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.36 TERMINATION OR SUSPENSION FOR CAUSE

In the event the DEPARTMENT, in its sole discretion, determines the SUBRECIPIENT has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUBRECIPIENT unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the DEPARTMENT has the right to immediately suspend or terminate this Agreement in whole or in part.

The DEPARTMENT may notify the SUBRECIPIENT in writing of the need to take corrective action and provide a period of time in which to cure. The DEPARTMENT is not required to allow the SUBRECIPIENT an opportunity to cure if it is not feasible as determined solely within the DEPARTMENT's discretion. Any time allowed for cure shall not diminish or eliminate the SUBRECIPIENT liability for damages or otherwise affect any other remedies available to the DEPARTMENT. If the DEPARTMENT allows the SUBRECIPIENT an opportunity to cure, the DEPARTMENT shall notify the SUBRECIPIENT in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the DEPARTMENT, or if such corrective action is deemed by the DEPARTMENT to be insufficient, the Agreement may be terminated in whole or in part.

The DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the SUBRECIPIENT, if allowed, or pending a decision by the DEPARTMENT to terminate the Agreement in whole or in part.

In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the SUBRECIPIENT: (1) was not in default or material breach, or (2) failure to perform was outside of the SUBRECIPIENT's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.37 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Agreement, the SUBRECIPIENT shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the DEPARTMENT may require the SUBRECIPIENT to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the DEPARTMENT shall pay to the SUBRECIPIENT agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the DEPARTMENT prior to the effective date of Agreement termination, and the amount agreed upon by the SUBRECIPIENT and the DEPARTMENT for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the DEPARTMENT, (iii) other work, services and/or equipment or supplies which are accepted by the DEPARTMENT, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUBRECIPIENT for termination. The DEPARTMENT may withhold from any amounts due the SUBRECIPIENT such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUBRECIPIENT shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the SUBRECIPIENT under the orders and sub-contracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the Agreement had been completed, would have been required to be furnished to the DEPARTMENT;
- f. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT in compliance with all contractual requirements; and

- g. Take such action as may be necessary, or as the DEPARTMENT may require, for the protection and preservation of the property related to this Agreement which is in the possession of the SUBRECIPIENT and in which the DEPARTMENT has or may acquire an interest.

A.38 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUBRECIPIENT is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The SUBRECIPIENT may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.39 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The SUBRECIPIENT, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

A.40 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

STATEMENT OF WORK AND/OR DESCRIPTION OF PROJECT

SUBRECIPIENT: Whatcom County Flood Control Zone District
 PROJECT TITLE: Marietta Acquisition- Phase 1

The purpose of this project is for Whatcom County Flood Control Zone District to acquire the following properties and convert them to Open Space in perpetuity, per 44 CFR Part 80 requirements:

- 1845 Marine Drive (Boyd)
- 1809 Marine Drive (Artuner)
- 1822 Marine Drive (Artuner)
- 1826 Marine Drive (Artuner)
- Anthony property on Marine Drive (no street address).

This constitutes Phase 1 of the Marietta Acquisition project funded under FM-5109-WA. The second phase, pending FEMA award, will include a final property acquisition (1855 Marine Drive- Artuner). That property is NOT included in this Scope of Work, as additional environmental assessments are required prior to FEMA award.

Phase 2 award will be covered under a separate contract with its own Scope of Work and Budget.

The goal of the project is to remove people and property from an area that is subject to frequent inundation and significant flood damages. Deed restrictions will be applied to all acquired properties, per 44 CFR Part 80 to prohibit future redevelopment ensuring future flood damages and flood insurance claims will not occur on the properties.

The activities covered under this Scope of Work include acquisition of the five (5) above-noted properties, demolition of structures and removal of infrastructure on these sites, and restoration of sites to a natural state in perpetuity.

A specific and more detailed scope of work is found in the FEMA approved Project Application FM-5109-2-R, which is incorporated herein by reference. Note that the application includes both Phase 1 and Phase 2 work. Only the Phase 1 related work identified in the application is pertinent to this contract.

Whatcom County Flood Control Zone District Agrees To:

1. Comply with the terms of this Agreement and all Attachments, including but not limited to, accomplish tasks and conditions outlined in the Statement of Work And/Or Description of Project-Attachment 3, comply with the Project Development Schedule-Attachment 4, and comply with the Project Budget-Attachment 5.
2. Submit quarterly reports that cover the previous three months no later than the 15th of the following month (or the next work day) in January, April, July and October until all requirements are fulfilled. Quarterly reports are required regardless of the level of work completed during the reporting period. Quarterly reports must include sufficient narrative to determine the degree to which the project has been implemented, the estimated time for completion, and significant developments such as delays or adverse conditions that might raise costs or delay completion, as well as favorable conditions allowing lower costs or earlier completion. Failure of the SUBRECIPIENT to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments until a complete quarterly report is received by the DEPARTMENT.
3. Submit pen-and-ink signed, approved invoice vouchers (state form A-19) for eligible, reimbursable work completed, no more frequently than monthly and no less frequently than quarterly. Each billing must identify the task(s) completed and any other funding identification pertinent to the task(s), including match. Supporting documentation is required for all costs, to include tracking of staff time spent on the project through timesheets or other documentation approved by the DEPARTMENT; dated invoices from all

contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation tracking in-kind contributions of personnel, equipment and supplies, if used on the project. Project costs must be tracked and reported by approved budget cost categories as found in Project Budget, Attachment 5. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19, along with documentation to substantiate all project costs.

4. Return by DEPARTMENT staff of invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation to staff within 15 calendar days of the staff's written request for additional documentation to support the reimbursement request.
5. Submit a signed final project report before final reimbursement is made by the DEPARTMENT.
6. PROGRAMMATIC, ENVIRONMENTAL AND HISTORIC PRESERVATION CONDITIONS

In completing this project, the SUBRECIPIENT must adhere to the following programmatic, environmental and historic preservation conditions:

- a. Scope of Work Change: Requests for changes to the Scope of Work after grant award are permissible as long as they do not change the nature or total project cost of the activity, properties identified in the application, the feasibility and effectiveness of the project, or reduce the Benefit Cost Ratio below 1.0. Requests must be supported by adequate justification, including a description of the proposed change; a written explanation of the reason or reasons for the change; an outline of remaining funds available to support the change; and a full description of the work necessary to complete the activity.
A proposed change to the approved Scope of Work (as presented in the FEMA approved project application) must be submitted to the DEPARTMENT and FEMA in advance of implementation for re-evaluation for compliance with National Environmental Policy Act (NEPA) and other Laws and Executive Orders. Prior approval for a change to the approved Scope of Work must be obtained from the DEPARTMENT and FEMA before the change is implemented. Failure to obtain prior approval for a revised Scope of Work could result in ineligibility of resulting costs.
- b. Comply with all applicable federal, state and local laws and regulations. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding provided by this Agreement.
- c. Ensure that all completed work is in compliance with applicable state and local buildings codes and flood damage prevention legislation.
- d. Monitor site work during ground-disturbing activities for evidence of potential archaeological resources that are uncovered. SUBRECIPIENT must halt the project in the event historically or archaeologically significant materials or sites (or evidence thereof) are discovered. By way of example, such evidence may include, but is not limited to, artifacts such as arrowheads, bone fragments, pottery shards, and features such as fire pits or structural elements. All reasonable measures must be taken to avoid or minimize harm to such resources until such time as the SUBRECIPIENT notifies the DEPARTMENT, and FEMA, in consultation with the State Historic Preservation Officer (SHPO) and appropriate Native American tribes, determines appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act. In addition, upon discovery of human skeletal remains, the SUBRECIPIENT is required by state law to notify the county coroner and local law enforcement in the most expeditious manner possible and to immediately stop any activity which may cause further ground disturbance.
- e. Determine the presence of hazardous materials and/or toxic waste, and identifying, handling, managing, abating and disposing of such materials in accordance with the requirements and to the satisfaction of the governing local, state and federal agencies, including but not limited to the Washington Department of Ecology. Such materials may include, but are not limited to, asbestos, lead-based paint, propane cylinders, sand blasting residue, discarded paints and solvents, cleaning chemicals, containers of pesticides, lead-acid batteries, items containing chlorofluorocarbons (CFCs), motor oil and used oil filters, and unlabeled tanks or containers.
- f. Conduct work during the non-flood season as determined by the local floodplain administrator. However, should construction be required during the flood season, as determined by the local floodplain administrator, all construction equipment shall be staged in an area not susceptible to flood events or be readily transportable out of the floodplain to minimize flood damage.

- g. Dispose of all debris at an approved and permitted location. No debris shall be temporarily staged or disposed of in a floodplain and/or a wetland.
- h. Confirm with the State Department of Ecology whether this project will require a consistency determination under the Coastal Zone Management Act. If required, the SUBRECIPIENT shall obtain and comply with all requirements of the determination prior to starting the project.
- i. Select, implement, monitor, and maintain Best Management Practices (BMPs) to control soil erosion and sedimentation, reduce spills and pollution, and provide habitat protection. The acquisition site shall be stabilized from erosion and silt laden runoff by implementing these BMPs and securing the site from transient vehicle access. Any excavation and/or grading shall be done within and/or adjacent to the existing building footprint area and not beyond undisturbed portions of the site.
- j. Resubmit the project to the DEPARTMENT and FEMA prior to implementation if any in-water work will occur or if any work will occur below the ordinary high water mark of any water resource in the area, so further coordination/consultation can take place with the National Marine Fisheries Service (NMFS) to determine whether appropriate measures have been taken to ensure the project is in compliance with the Endangered Species Act.
- k. Resubmit the project to the DEPARTMENT and FEMA for re-evaluation for compliance with national environmental policies if the "Project Limits" (including clearing, excavation, temporary staging, construction, and access areas) extend into: 1) an area not previously identified for environmental and historic preservation review, or 2) previously undisturbed ground. Additionally, all work on the project in these areas must stop until this re-evaluation is completed.
- l. National Historic Preservation Act Section 106 requirement: All proposed repair and construction activities on buildings listed in or eligible for the National Register of Historic Places (historic properties) should be done in-kind to match existing materials and form. In-kind means that the result of the proposed activities will match all physical and visual aspects of existing historic materials, including form, color and workmanship. In-kind mortar also will match the strength and joint tooling of existing historic mortar.
- m. (Additional requirements as noted by FEMA in grant award document).
- n. Cost overruns in excess of the approval budget are fully the responsibility of the SUBRECIPIENT, including those costs resulting from a change in the Scope of Work. The project must remain cost effective (i.e., Benefit Cost Ratio of 1.0 or greater) in the event of cost overrun.
 A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, FM-5109-WA, Goodell Fire.
 A request for additional funds must be fully documented and justified.

7. SPECIAL FLOOD HAZARD AREA REQUIREMENTS

Pursuant to the Flood Disaster Protection Act of 1973, those structures that remain in the Special Flood Hazard Area (SFHA) after the implementation of the mitigation project, flood insurance must be maintained for the life of the structure. The SFHA is defined as the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year.

The following National Flood Insurance Program Eligibility Requirements contained in the 2013 Hazard Mitigation Assistance Unified Guidance apply to any project involving the alteration of existing structures, to include Mitigation Reconstruction projects that are sited within an SFHA.

- a. When the project is implemented, all structures that will not be demolished or relocated out of the SFHA must be covered by a National Flood Insurance Program (NFIP) flood insurance policy to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular property, whichever is less.
- b. The SUBRECIPIENT (or property owner) must legally record with the county or appropriate jurisdiction's land records agency a notice that includes the name of the current property owner (including book/page reference to record of current title, if readily available), a legal description of the property, and the following notice of flood insurance requirements as identified on page 44 of the 2013 Hazard Mitigation Assistance Unified Guidance:

"This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. § 5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with

respect to this property in the event of a flood disaster. The Property Owner is also required to maintain this property in accordance with the floodplain management criteria of 44 CFR § 60.3 and City/County Ordinance.”

- c. Copies of the recorded notices for each property will be provided to the DEPARTMENT at project closeout.

8. PROVISIONS APPLYING ONLY TO ACQUISITION OF PROPERTIES FOR OPEN SPACE

- a. The SUBRECIPIENT must ensure that prospective participants are informed in writing that property owner participation in this acquisition program is voluntary and that the SUBRECIPIENT will not use its eminent domain authority to acquire the property for the project purposes should negotiations fail.

Copies of the Statement of Voluntary Participation signed by each participating property owner will be provided to the DEPARTMENT by project close-out.

- b. The SUBRECIPIENT agrees that land acquired for open space purposes under this grant will be restricted in perpetuity to open space uses and will be unavailable for the construction of flood damage reduction levees, transportation facilities, and other incompatible purposes and agrees to comply with the requirements of 44 CFR Part 80 Property Acquisition and Relocation for Open Space.
- c. The SUBRECIPIENT agrees to prepare, execute and record Deed Restrictions for each affected property utilizing the current Model Deed Restriction provided on the FEMA website or available from the DEPARTMENT.

Copies of the recorded deed and attached deed restrictions for each property will be provided to the DEPARTMENT by project close-out.

- d. The SUBRECIPIENT accepts all of the requirements of the deed restriction governing the use of the land.
- e. The SUBRECIPIENT ensures that, prior to acquisition of the property, in consultation with the U.S. Army Corps of Engineers, it has addressed and considered the potential future use of these lands for the construction of flood damage reduction levees, has rejected consideration of such measures in the future in the project area, and instead has chosen to proceed with acquisition of permanent open space.

Documentation of this consultation and the SUBRECIPIENT's consideration of this issue will be provided to the DEPARTMENT by project close-out.

- f. The SUBRECIPIENT must, prior to acquisition of the property, consult with the Washington State Department of Transportation to ensure that no future planned improvements or enhancements are under consideration that will affect the proposed project area.

Documentation of this consultation will be provided to the DEPARTMENT by project close-out.

- g. The SUBRECIPIENT will remove existing buildings from acquired properties within 90 days of settlement. The SUBRECIPIENT will provide confirmation to the DEPARTMENT as to the date of demolition of each structure included in the project in its quarterly reports, as well as confirmation that the property has been returned to "natural" or park/open space condition.

The SUBRECIPIENT will provide digital latitude and longitude coordinates and digital photographs of each property site after project implementation to the DEPARTMENT by project close-out.

- h. The SUBRECIPIENT agrees to complete FEMA Form AW-501, NFIP Repetitive Loss Update Worksheet for each property identified on FEMA's Repetitive Loss list to document completion of mitigation on the property. The form is available on FEMA's Web site or available from the DEPARTMENT.

The SUBRECIPIENT will provide a copy of the completed form to the DEPARTMENT by project close-out.

- i. The SUBRECIPIENT agrees to comply with the requirements of 44 CFR § 80.19 Land Use and Oversight, which are incorporated into these conditions by reference. These requirements include, but are not limited to, the following (which are described further in the 2015 Hazard Mitigation Assistance Unified Guidance and the Addendum to the 2013 Hazard Mitigation Assistance Unified Guidance which are incorporated herein by reference):

1. Restriction on future disaster assistance for damages to the property.

2. Lists of allowable open space uses as well as uses generally not allowed on acquired open space land.
3. Provision for salvage of pre-existing structures and paved areas.
4. Requirements pertaining to future transfer of property interest.
5. Requirement for SUBRECIPIENT monitoring and inspection of the acquired property at least every 3 years. The SUBRECIPIENT will provide the DEPARTMENT with a report on the result of the inspection within 90 days of the inspection.
6. Provisions for enforcement of violation of open space requirements.

The Military Department Agrees To:

1. Provide staff coordination and input regarding grant administration for funding and technical assistance for project and reviews for mitigation construction projects, as necessary.
2. Except as otherwise provided in Article II, A.4, of this Agreement, reimburse Whatcom County Flood Control Zone District within 30 days of receipt and approval of signed, dated invoice voucher(s) (state form A-19) with sufficient documentation of costs to include completion of tasks to date and dated invoices for goods and services purchased. Costs must be categorized according to the budget item and cost classification shown in the Project Budget, Attachment 5. The DEPARTMENT will return invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation within 15 calendar days of the DEPARTMENT's written request for additional documentation to support the reimbursement request.
3. Coordinate with the staff of Whatcom County Flood Control Zone to schedule any sub-recipient monitoring, site visits or final inspections by DEPARTMENT staff.

PROJECT DEVELOPMENT SCHEDULE

SUBRECIPIENT: Whatcom County Flood Control Zone District
 PROJECT TITLE: Marietta Acquisition- Phase 1

DESCRIPTION OF ACTIVITY/TASK	SCHEDULED COMPLETION DATE
Appraisals	2 months
Negotiate purchase agreements	24 months
Archaeological reviews	1 month
Hazmat Assessments	4 months
Closing / Finalizing Purchases	6 months
Demolition bid & award	2 months
Demolition	3 months
Site restoration	3 months
<p style="text-align: center;">Total Time Required to Complete This Project: 36 months</p> <p>The above completion dates are estimates only and subject to change based upon actual work conditions. Schedule revisions will be communicated promptly to EMD. This Attachment may be updated as needed.</p>	
Quarterly Reports Due on Project Progress, Final Project Report and all documentation, site visits and inspections.	<p>April 15, 2017 July 15, 2017 October 15, 2017 January 15, 2018 April 15, 2018 July 15, 2018 October 15, 2018 January 15, 2019 April 15, 2019 July 15, 2019 October 15, 2019 January 15, 2020 (Final Report)</p>

PROJECT BUDGET


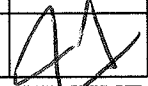
SUBRECIPIENT: Whatcom County Flood Control Zone District
 PROJECT TITLE: Marietta Acquisition- Phase 1

<i>APPROVED BUDGET CATEGORY</i>	<i>ESTIMATED COST</i>
Admin costs, legal expenses, etc.	\$46,000
Land, structures, ROW, appraisals	\$154,737
Project inspection fees	\$26,000
Site work	\$13,500
Demolition and Removal	\$75,000
Pre-Award Costs	\$27,500
TOTAL	\$342,737.00
<p>Tracking and Reporting Project Costs: Project expenses for which reimbursement is sought must be tracked and reported by approved budget cost categories, above. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19. Supporting documentation of all costs shall include, but not be limited to: tracking of staff time spent on the project through timesheets or other similar documentation; dated invoices from contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation of in-kind contributions of personnel, equipment and supplies.</p> <p>Final Payment: Final payment of any remaining, or withheld, funds will be made upon submission by the SUBRECIPIENT within 60 days of completion of the project of the final report and an A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT. Final payment also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.</p>	

A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the ceiling for this FMAG-HMGP Pilot program, FM-5109-WA, Goodell Fire. A request for additional funds must be fully documented and justified.

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-106

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Nan Kallunki	NSK	03/09/2017	<div>RECEIVED</div> <div>MAR 14 2017</div> <div>WHATCOM COUNTY COUNCIL</div>	03/21/2017	Finance / Council
Division Head Karen S. Goens	YSS	03/09/2017			
Dept. Head:					
Prosecutor:	DL	03/09/17			
Purchasing/Budget:					
Executive: 		3/13/17			
TITLE OF DOCUMENT: Collective Bargaining Agreement Between Whatcom County and Washington State Nurses Association January 1, 2017 – December 31, 2018					
ATTACHMENTS: 1. Memorandum to County Council 2. Collective Bargaining Agreement					
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: <i>(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.)</i> Implements a two-year successor agreement to one expiring December 31, 2016 for Health Department employees represented by the Washington State Nurses Association.					
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 .					



Karen Sterling Goens
Manager

MEMO TO: Councilmembers Barbara Brenner, Rud Browne, Barry Buchanan, Todd Donovan, Ken Mann, Satpal Sidhu and Carl Weimer

CC: Jack Louws, County Executive

FROM: Nan Kallunki, HR Associate Manager

DATE: March 10, 2017

SUBJECT: Washington State Nurses Association 2017-2018 Collective Bargaining Agreement

We completed negotiations for a successor agreement to the September 15, 2015 through December 31, 2016 collective bargaining agreement for employees represented by the Washington State Nurses Association. The successor agreement represents 11 Public Health Nurses and Nurse Supervisors.

The County negotiating team is pleased to have reached an agreement within authority consistent with the wage and medical benefit package offered for other non-interest arbitration bargaining unit employees. Below is a summary of key changes included in the new agreement:

Contract Terms	Agreement
ARTICLE 11– COMPENSATION AND RATES OF PAY	Effective first full pay period in January, each wage step of the 2016 salary matrix increases by 2.25% for 2017 and 2.5% for 2018. Adds out of class pay for nurses who orient and train new hires. Adds additional compensation for nurses with relevant advanced degree.
ARTICLE 14– HIRING AND PROMOTION	Changes language to reflect change to job on-line postings.
ARTICLE 23 – GROUP INSURANCE	County contribution for plan year 2017 is \$1,234.80 and 2018 is \$1,297.00.
ARTICLE 25– DURATION	Two year agreement – Jan 1, 2017 through December 31, 2018
PILOT PROGRAM - REDUCED SCHEDULE	Creates a one year Pilot Program to explore allowing some 1.0 FTE staff to work 0.9 FTE with pro-rated benefits if there is no effect on operational needs of the department.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

201703006

Originating Department:	Administrative Services
Division/Program: (i.e. Dept. Division and Program)	Human Resources (HR)
Contract or Grant Administrator:	Nanette Kallunki, HR Associate Manager
Contractor's / Agency Name:	Collective Bargaining Agreement between Whatcom County and Washington State Nurses Association

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ☒ No ☐ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: _____
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes ☐ No ☒ If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded? Yes ☐ No ☒ If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Yes ☐ No ☒ If yes, RFP and Bid number(s): _____ Contract _____
Cost Center: _____

Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

☒ Professional services agreement for certified/licensed professional.

☐ Contract work is for less than \$100,000. ☐ Contract for Commercial off the shelf items (COTS).

☐ Contract work is for less than 120 days. ☐ Work related subcontract less than \$25,000.

☐ Interlocal Agreement (between Governments). ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments): \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies or equipment included approved in the budget. 4. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
This Amendment Amount: \$ _____	
Total Amended Amount: \$ _____	

Summary of Scope:
2017-2018 Collective Bargaining Agreement between Whatcom County and the Washington State Nurses Association.

Term of Contract: Two Years	Expiration Date: December 31, 2018
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Contract Routing:

1. Prepared by: Nan Kallunki <i>mk</i>	Date: 3/10/17
2. Attorney signoff: _____	Date: 3/9/17
3. AS Finance reviewed: _____	Date: _____
4. IT reviewed (if IT related): N/A	Date: _____
5. Contractor signed: _____	Date: _____
6. Submitted to Exec.: _____	Date: 3-10-17
7. Council approved (if necessary): _____	Date: _____
8. Executive signed: _____	Date: _____
9. Original to Council: _____	Date: _____

COUNTY ORIGINAL



COLLECTIVE BARGAINING AGREEMENT

By and Between

WHATCOM COUNTY, WASHINGTON

and

WASHINGTON STATE NURSES ASSOCIATION

January 1, 2017 – December 31, 2018

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COLLECTIVE BARGAINING AGREEMENT
By and Between
WHATCOM COUNTY, WASHINGTON
and
WASHINGTON STATE NURSES ASSOCIATION

PREAMBLE

This Agreement is by and between Whatcom County, hereinafter referred to as the "County," and the Washington State Nurses Association, hereinafter referred to as the "Association." The purpose of this Agreement is to facilitate the achievement of the mutual goal of providing quality community public health services, efficiently and economically, by establishing standards of wages, hours, and other conditions of employment, and to provide an orderly system of employer, employee relations.

ARTICLE 1 - RECOGNITION

1.1 Recognition. The County recognizes the Association as the sole collective bargaining agent representing all full-time and part-time employees working in the collective bargaining unit certified by the Public Employment Relations Commission in Case No. 2704-E-80-522 in those job classifications listed in Addendum A as they currently exist or as they may be amended during the life of this Agreement. Excluded from the bargaining unit are temporary full- or part-time help hired for periods of less than 1040 hours in a calendar year to meet the transient needs of the County with the understanding that employment will be terminated when the County determines the need for temporary help is over. A temporary employee may not be employed by the County for more than 1040 hours in a calendar year.

1.2 Unilateral Changes. The County agrees not to unilaterally change the working conditions, wages, or benefits of bargaining unit employees during the term of this Agreement. This section shall not be a waiver of RCW 41.56 rights. Changes made pursuant to a contractual provision shall not constitute a unilateral change.

1.3 Bargaining Unit Work. Existing bargaining unit work shall be performed by bargaining unit employees. When a new classification is created, the Association will continue to be recognized as the exclusive bargaining representative for employees performing traditional bargaining unit work, unless they are bona fide supervisory or administrative/management positions.

ARTICLE 2 - MEMBERSHIP AND UNION RIGHTS

2.1 Fair Share Membership. It shall be a condition of employment that all employees covered by this Agreement who are members of the Association in good standing on the date this Agreement is executed shall remain members in good standing and those who are not members on the date this Agreement is executed shall, on or after the thirtieth (30th) day following the date this Agreement is executed become and remain members in good standing

in the Association. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on or before the thirtieth (30th) day following the beginning of such employment, become and remain members in good standing in the Association. Tender of the Association's periodic dues and initiation fees uniformly required as a condition of acquiring or obtaining such membership shall, for the purpose of this Article, be considered membership in the Association.

2.2 Religious Objections. In order to provide bargaining unit employees the right of non-association with the Association because of the employee's belief in bona fide religious tenets or teachings of a church or religious body of which such employee is a member, which has historically held conscientious objections to joining or financially supporting a labor organization shall not be required to join or financially support the Association, but in the alternative, shall be required to pay a monthly amount equal to the Association membership fee to a non-religious charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. These religious objections and decisions as to which fund will be used must be documented and declared in writing.

2.3 Dues Deduction. The County agrees to deduct Association dues from each employee's wages if the employee so desires. The County shall submit the dues to the address and name provided by the Association.

The Association and all bargaining unit employees agree to indemnify and hold harmless the County from any and all liability resulting from such deduction.

2.4 Access to Premises. The business representative authorized by the Association shall have access to the office during business hours, providing he or she does not interfere or cause employees to neglect their work.

2.5 Negotiations. Two employees of the bargaining unit shall be allowed paid time off for contract negotiation purposes. If the negotiations continue beyond the employees' regular workday, such employee shall not receive any pay beyond their regular work hours for participating in the negotiations. One additional bargaining unit employee elected to serve on the negotiating committee will, subject to operating efficiency, be released (without pay) from work to attend scheduled negotiating meetings. Such employee may use vacation or personal days to cover time spent at negotiating meetings.

2.6 Bulletin Board. The County shall provide bulletin board space for the use by the Association in areas accessible to members of the bargaining unit.

2.7 Meeting Rooms. The County shall make available to the Association, meeting space, rooms, etc., for the purpose of County-related contract administration and bargaining activities, and where such activities would not interfere with the normal work of the County, provided that bargaining unit employees who attend such meetings shall be on their own time. Upon request, the Association shall use the procedures for requesting space specified in County Policy AD118005Z.

2.8 Distribution of Agreement. The Association will provide copies of this Agreement and related materials to the County for distribution to new employees.

2.9 Rosters. The County agrees to provide the Association and the local unit chairperson with an Excel Spreadsheet attachment to an email on a monthly basis with a complete list of employees covered by this Agreement, as well as employees who have been terminated or have resigned since the last report, including termination/resignation dates. The list will include name, home address, home telephone number, employee number, title, range, step, hourly rate of pay, actual FTE, and division seniority date for each employee listed. The Union shall indemnify the County for any claims arising from the requirement to supply the foregoing information.

ARTICLE 3 - MANAGEMENT RIGHTS

The County retains all rights except as those rights are limited by the express provisions of this Agreement. Nothing anywhere in this Agreement shall be construed to impair the rights of the County to conduct all its business and all particulars except as expressly and specifically modified in this Agreement.

ARTICLE 4 - HOURS OF WORK AND OVERTIME

4.1 Work Schedule. The work schedule shall be set by the County as provided herein. The basic work week shall be forty (40) hours, Monday through Friday. The basic workday will be eight (8) hours. Special programs or unusual circumstances may necessitate work on other days; in such instances, the work week shall be five (5) days out of a seven (7) day period; provided the County shall notify employees at least one week prior to changing their work schedules. Nothing in this Article shall prevent the Health Director from changing work schedules, on a temporary basis, in the event of a bona fide public health emergency, as determined by the Director.

4.1.1 Modifications. Any change to employees' Section 4.1 work schedule shall be mutually agreed upon between the Association and the Executive or designee except in case of an emergency as provided by POL AD110010Z. Such agreed upon modifications to the workweek which result in a reduction of hours shall not be construed to be a "layoff" as provided in Article 16.

4.1.2 Work in Pt. Roberts. Employees who are required by the County to cross the border to Pt. Roberts to perform work will cooperate with their supervisor to adjust their schedule within the week to avoid the payment of overtime. Both parties recognize there may be circumstances where overtime work is unavoidable.

4.2 Overtime. All work performed in excess of the basic workday or scheduled workweek shall be compensated at time and one-half the regular straight-time hourly rate of pay. Payment for such hours worked shall be in wages or in equivalent compensatory time, in accordance with Section 4.9 below. All overtime must be approved in advance by the employee's supervisor, provided that the parties agree to continue the existing practice of allowing nurses to take flex time off at straight-time under circumstances where the employee alters the daily work schedule to accommodate operating needs.

4.3 Pyramiding. The hour requirements referred to above shall in no manner

constitute a guarantee, nor shall there be any pyramiding of overtime.

4.4 Alternative Scheduling. The County and the Association agree to continue alternative scheduling by mutual agreement (see LOU, item #6) between the Association and the Executive or designee. Such Agreement will provide for no reduction in the effective service to the public and will insure that critical service days are adequately covered by the remaining personnel. The parties will agree to a schedule that does not increase the County's compensation costs and that recognizes the impact of employee illnesses and vacations.

4.5 Flex Time. Upon employee request for a change of schedule and by mutual agreement between the employee and the department head or designee, "flex time" may be used for periodic personal employee matters, to make up doctor or dental appointments, to attend meetings or to perform work on behalf of the County. Such agreements shall provide for no reduction in service to the public and must not increase the County's compensation costs.

4.6 Emergency Callbacks. Emergency callbacks will be compensated at a minimum of two (2) hours to be compensated at time and one-half (1-1/2). When an employee is recalled to work from vacation, the employee shall be guaranteed a minimum of four (4) hours at the overtime rate and no deduction will be made from the employee's vacation balance for a day when the employee is recalled.

4.6.1 Telephonic Response. Employees authorized by their department head or designee to telephonically respond to emergencies, and who do respond between the hours of 9:00 p.m. and 6:00 a.m. shall receive one (1) hour minimum pay per incident at the rate of time and one half.

4.7 Reporting Pay. An employee who reports for work at the time scheduled by the County shall be entitled to pay for the full scheduled workday, even if the County is unable to provide work on the day they report. This reporting pay guarantee does not apply if the County notifies the employee prior to the start of his/her regularly scheduled shift not to report for work through any reasonable communication, taking into consideration the method of communication and the timing of the communication, such as electronically, voicemail, email, radio or television announcements, or in person.

4.8 Absence Due to Adverse Weather. Absence from work due to an employee's inability to report for scheduled work because of severe inclement weather, conditions caused by severe inclement weather or other unusual emergency conditions shall be charged to one of the following in sequential order, unless the employee wishes to designate a specific alternative option:

- a. Compensatory time.
- b. Any accrued vacation leave.
- c. Personal Holiday.
- d. Leave without pay.

An employee has the option of taking leave without pay, instead of having the lost

time charged against accruals, provided the departmental payroll clerk is notified before the payroll cutoff date.

Employees approved for flex time under Section 4.5 may use flex time under this section.

4.9 Compensatory Time. Compensatory time may be substituted for payment of one and one-half times the regular hourly pay rate for overtime work, by mutual agreement between the employee and the County, under the following conditions:

4.9.1. Accrual. The employee must request compensatory time in lieu of overtime pay. The County may grant the request, but shall not impose compensatory time upon any employee who has not requested it. Employees requesting compensatory time shall have such request granted up to an accrual of twenty-four (24) hours per calendar year. An employee may accrue no more than 80 hours of compensatory time. Any compensatory hours which would be above the 80 hour limit will be paid. Compensatory time is accrued at the rate of one and one-half hours for each hour of overtime worked.

4.9.2 Usage. An employee will be allowed to use the compensatory time within a reasonable period of time mutually acceptable to the employee and supervisor, so long as such use does not unduly disrupt the operations of the County.

4.9.3 Cashout. By mutual agreement between the employee and County, the employee may cash out accrued compensatory time at the end of each calendar year. The payment shall be calculated on the basis of the employee's regular hourly rate at the time payment is received. Upon termination of employment, an employee shall be paid for unused accrued compensatory time at the employee's current regular hourly rate.

4.10 Breaks. Breaks include two paid fifteen (15) minute rest breaks. A thirty (30) to sixty (60) minute lunch period on the employee's time beginning no earlier than two (2) hours and no later than five (5) hours after the start of the shift or as otherwise required/permitted by law. Employees not able to take a rest or lunch break shall notify their supervisor as soon as possible. Rest and lunch breaks may, at the employee's option, be intermittent. The thirty minute lunch period must be by mutual agreement of the employee and his/her supervisor, except in the case of alternative schedules where service needs must be met. Lunch and rest breaks may not be accumulated or not taken in order to shorten the workday or workweek. Section 4.2 of this agreement shall apply when an employee is not able to take a rest break.

ARTICLE 5 – HOLIDAYS

5.1 Eligibility Criteria. All full-time and part-time (.5 FTE or above) employees are eligible for holiday pay. To receive holiday pay, an employee must have been in paid status, or on approved voluntary unpaid furlough, the scheduled work day before and after the holiday. "Paid status" is defined as payment of wages for work performed, vacation or accrued sick leave, or other paid leave including income for industrial injury not to exceed twelve (12) calendar months.

5.1.1 Employees Working Less Than 1.0 FTE. Part-time employees are eligible for holiday pay on a pro-rated basis in relation to their currently assigned, but no more than their budgeted full-time equivalency (FTE).

5.2 Holiday Schedule. The following days shall be considered as holidays with pay under the terms of this Agreement:

New Year's Day	Veteran's Day
Martin Luther King's Birthday	Thanksgiving Day
President's Day	The day after Thanksgiving Day
Memorial Day	The Day before Christmas
Independence Day	Christmas
Labor Day	Personal Holiday

5.2.1 Holiday Timing. If a holiday falls on a Saturday, it shall be observed the preceding Friday; if it falls on a Sunday, it shall be observed the following Monday.

5.3 Holiday Pay. Holiday pay shall be at the employee's regular rate of pay regardless of which day it may fall on.

5.3.1 Working a Holiday. If an employee works on a holiday, he or she shall receive one and one-half (1-1/2) times the regular rate of pay for all hours actually worked. Double time shall be paid for time worked by an employee for all hours beyond the regular work day on a recognized holiday.

5.4 Personal Holiday. Each employee shall receive one personal holiday each calendar year which may be taken by the employee when the schedule is approved by the County. Scheduling for the Personal Holiday must be approved by the County. The personal holiday must be taken during the calendar year and cannot be cashed out upon separation.

5.4.1 Personal Holiday for New Hires. New hires must have been on the County's payroll three (3) calendar months of 80 compensated hours prior to utilizing the personal holiday.

5.4.2 Employees Working Less Than 1.0 FTE. The personal holiday for employees working less than an assigned eight (8) hour schedule shall be prorated based on their currently assigned, but no more than their budgeted full time equivalency (FTE) on January 1 of the calendar year.

ARTICLE 6 – VACATIONS

6.1 Eligibility Criteria. Eligible employees shall accrue vacation on a calendar month basis. All full-time and part-time employees regularly scheduled to work at least 80 hours per month are eligible to accrue vacation, provided employees must receive compensation each month, as defined in Article 23.3.

6.1.1 New Employees. New employees may use accrued vacation beginning the first pay period following completion of six months of initial employment.

6.2 Accrual. The amount of vacation earned for each calendar month shall be determined by the number of years of continuous service completed by the employee immediately prior to the commencement of the calendar month in accordance with the following chart:

During the Following Years of Service	Hours of Vacation (based on 1.0 FTE)
0-1 years	6.67 hours
2 years	7.34 hours
3 years	8.00 hours
4 years	10.00 hours
5-7 years	11.34 hours
8-9 years	12.00 hours
10 years	13.34 hours
11 years	14.00 hours
12 years	14.67 hours
13 years	15.34 hours
14 years	16.00 hours
15 years	16.67 hours

6.2.1 Employees Working Less Than 1.0 FTE. Employees working less than a full-time schedule shall accrue paid vacation based upon their currently assigned, but no more than their budgeted full-time equivalency (FTE).

6.2.2 Maximum Accrual & Carryover. Employees may accrue and carry forward a maximum of 240 hours vacation on the last pay period of any calendar year. Unused vacation in excess of 240 hours shall be forfeited with the following exceptions: an employee whose timely vacation request is denied due to the County's needs, shall be allowed to carry over vacation in excess of the 240 maximum for up to twelve months.

6.3 Scheduling. The County reserves the right at all times to restrict the taking of vacations during peak workload periods or determining the number of employees that may be on vacation at any one time for operational efficiency.

6.3.1 Vacation Requests. Requests for leave shall be in writing and approved in advance in writing by the employee's supervisor. In the event of conflicts between the employee's requests for leave, the employee first requesting leave shall prevail. Vacation may be taken with the County's approval.

6.4 Vacation Pay. All vacation pay shall be based on the employee's regular rate of pay in effect during the time he or she takes a vacation. If a holiday recognized by the Agreement falls on a normal working day during which the employee is on vacation the holiday shall not be counted against the employee's vacation account.

6.5 Termination. An employee who voluntarily terminates or is terminated for cause shall be compensated for any vacation earned, which they are eligible to take, but not already taken.

6.5.1 457 Contribution. An employee may elect to contribute cashout to a 457 plan if election is made at least two pay periods prior to termination.

ARTICLE 7 – SICK LEAVE

7.1 Eligibility Criteria. To be eligible to accrue sick leave as provided herein, employees must receive compensation each month, as defined in Article 23.3.

7.2 Accrual Rate. Cumulative sick leave shall accrue, to all full-time and part-time employees who are regularly scheduled to work at least 80 hours per month and who are compensated at least eighty (80) hours in one (1) calendar month of employment, in the amount of eight (8) hours for each month of employment to a maximum of nine hundred and sixty (960) hours except as noted in section 7.2.3.

7.2.1 Employees Working Less Than 1.0 FTE. Part-time employees accrue sick leave on a pro-rated basis in relation to their currently assigned, but no more than their budgeted full-time equivalency (FTE).

7.2.2 Accrual During Paid Leaves. Sick leave shall continue to accrue during paid leaves of absence as long as eligibility criteria is met.

7.2.3 Maximum Accrual & Additional Accrual. An employee who has accrued nine hundred and sixty (960) hours of sick leave on December 31 of any year, shall be allowed to accrue up to one thousand and fifty-six (1,056) hours of sick leave during the year immediately subsequent. These additional hours of accrual may not be cashed out. The employee's total accrual reverts back to no more than nine hundred and sixty (960) hours at the end of the year.

7.3 Sick Leave Usage. Conditions under which an employee is to be paid sick leave are limited to the following:

7.3.1 Personal Use. While the employee personally is disabled because of his or her illness, pregnancy, or injury, while receiving preventive health care, or when an employee whose exposure to contagious disease, as determined by the Health Officer, would jeopardize the health of fellow workers or the public should he or she attend work as scheduled.

7.3.2 Use to Care for Others. An employee may use sick leave to care for the child of the employee with a health condition that requires treatment or supervision if the child is either under eighteen years of age or older but incapable of self-care because of mental or physical disability; for the care of an adult child who doesn't have a mental or physical disability (40-hour maximum per calendar year); or for the care of an employee's spouse, state registered domestic partner, parent, parent-in-law, or grandparent with a serious health condition or an emergency condition. Family members are as defined in RCW 49.12.

7.3.3 Proof of Illness. The County reserves the right to require a doctor's statement or other verification that the employee was ill while on sick leave, or that the illness of the employee's spouse, state registered domestic partner, parent-in-law, grandparent, or child was sufficiently serious to require the employee to be in attendance.

7.3.4 Sick Leave Sharing Program. The County agrees to allow a yearly donation of twenty-four (24) hours under the County's Sick Leave Sharing Program.

7.3.5 Return Rights From Leave of Absence. Employees on extended leave of absence because of illness or injury shall retain the right to return to their original position for a period of one year from the last day for which they have received compensation.

7.3.6 On-The-Job Injury. An employee may use sick leave to offset loss of wages when he or she is injured on the job and is collecting time loss compensation.

7.3.7 Excess Sick Leave Contributions. Employees with at least 960 hours in their sick leave bank at the beginning and end of the calendar year (or at the beginning of a calendar year and upon termination in that same year) shall receive a Retirement Health Savings (RHS) contribution based upon additional hours accrued during that year: Hours accrued (to a maximum of 48) minus hours used, multiplied by 25%, multiplied by hourly rate at year-end, equals RHS contribution.

7.4 Unused Sick Leave. Any employee shall be entitled to cash upon termination in the amount of twenty-five percent (25%) of their sick leave bank at the time of termination; provided, however, such employee has given at least thirty (30) days' notice prior to termination; and provided further, that this section shall not apply to any employee terminated for cause.

7.4.1 457 Contribution. An employee may elect to contribute cashout to a 457 plan if election is made at least two pay periods prior to termination.

ARTICLE 8 - LEAVES OF ABSENCE

8.1 Jury Duty & Civil Leave. Civil leave with pay shall be allowed to permit an employee to serve as a juror or to testify in any federal, state or municipal court when a subpoena compels such testimony and such testimony is in connection with a matter in which Whatcom County is a party. An employee must notify the immediate supervisor prior to taking civil leave and show proof of compulsion. When an employee receives any payment for serving as a juror or witness, such payments must be paid to the County.

8.2 Military Leave. Compensation and benefits during periods of military leave shall be as outlined in state law, USERRA and County policy. Employees must notify his or her supervisor and Human Resources upon notice or receipt of orders requiring an employee to be absent from their job.

8.3 Maternity Leave. Maternity leave shall be granted to any employee for pregnancy and its ending. The provisions of this Section shall be applied consistent with the provisions of RCW 9.02.100 et seq. as amended. Employees on maternity leave not eligible for FMLA shall use their accrued sick leave and vacation leave. Unless the birth mother chooses to invoke FMLA, a birth mother's period of temporary pregnancy-related disability shall not be deducted from the FMLA leave entitlement. If additional leave is required, it shall be without pay, for a total of six (6) months, at the discretion of and with prior written approval of the

Health Director and Executive or designee. Normally, there would be no extension beyond six (6) months, but under extraordinary circumstances, this period may be extended an additional six (6) months at the discretion of the County. The County may require the employee to submit a letter from her physician stating the date she can return to work without impairing her health. The employee is entitled to return to her former or equivalent position. If leave pursuant to this provision would also qualify as leave under any federal or state statute, including the Federal Family and Medical Leave Act or any applicable Washington state statutes, the period of leave will apply toward the employee's entitlement to leave under any applicable statute.

8.4 Other Leaves of Absence. Any employee may be granted leave of absence without pay for a period of six (6) months at the discretion of and with prior written approval of the Health Director and the Executive or designee. Under special circumstances, the period may be extended an additional six (6) months at the discretion of the County. No leave of absence shall be taken unless the employee has first expended compensatory time, accumulated vacation leave, personal holiday and sick leave, if allowable; provided, this prohibition may be waived upon application to, and at the discretion of, the Executive or designee.

8.5 Return From Leave. Upon return from any authorized leave of absence with pay an employee shall be entitled to the former position or similar position, and there shall be no reduction in seniority, status, or pay. Seniority shall not be credited for leaves of absence without pay. An employee during a leave of absence may continue medical, dental, or life insurance benefits provided such employee makes satisfactory arrangements for payment of such premiums.

8.6 Professional Leave. The County reserves the right to determine the type and amount of professional training the nurses shall receive with pay; provided, that at least four (4) days per nurse per year with pay will be provided to allow employees to attend such professional work related conferences and training programs.

Any employee may be granted an unpaid leave of absence for up to one (1) year for educational purposes not leading to a master's degree, or up to two (2) years for programs leading to a master's degree. All educational leave will be granted only at the discretion of and with prior written approval of the County. The further education sought must be related to the profession of the employee and provide skills that can be utilized by the County. Two (2) months prior to the termination of leave, the employee must confirm in writing to the County the intention to return to work. The employee is entitled to return to her/his former or equivalent position. Seniority shall not accrue during the unpaid leave.

8.7 Domestic Violence Leave. The County provides unpaid leave to employees who are victims of, or who are family members of victims of domestic violence, sexual assault, or stalking, or consistent with the requirements of the Washington Domestic Violence Leave Law (RCW 49.76). Employees can substitute accrued paid leave for unpaid leave.

8.8 Failure to Return. Failure to return from an authorized leave of absence may be grounds for discipline up to and including discharge.

ARTICLE 9 - BEREAVEMENT LEAVE

If an employee suffers a death in the immediate family, the employee shall be allowed not more than five (5) days (up to 40 hours) off without loss in pay for bereavement in the death of a spouse, state registered domestic partner, child or parent (including step), of the employee or spouse. Three (3) days off without loss of pay shall be allowed for other immediate family members. Other immediate family members are defined to be: brothers, sisters, grandchildren or grandparents of either the employee or the employee's spouse, including step. In the event of a funeral or other memorial occurring as a result of the death of a current, lawful brother or sister-in-law, the affected employee may have up to eight (8) hours of paid time off to attend the funeral or memorial.

For the purposes of bereavement leave only, a "day" is defined as the number of hours an employee is assigned to work for the requested days off (not to exceed forty (40) hours). Employees working less than an assigned eight (8) hour schedule shall receive bereavement leave benefits based on their current assignment, but no more than their budgeted full time equivalency. Employees desiring additional days off without pay or using accrued leave shall make a written request through his or her department head or designee for approval by the County.

ARTICLE 10 - FAMILY LEAVE

10.1 Family Leave. The County will comply with all state and federal laws and regulations, as amended, regarding family and medical leave, including military family leave entitlements and will make copies of the statutes and regulations available upon request. Employees are not required to use accrued vacation time or sick leave before commencing unpaid family leave. Beginning January 1, 2006, once an employee has used a total of twelve (12) work weeks of unpaid FMLA, while employed by Whatcom County, all available accruals must be exhausted during any future FMLA leave before taking unpaid leave.

10.2 Physician Certifications. The County may require physician certifications as permitted by law.

ARTICLE 11 - COMPENSATION AND RATES OF PAY

11.1 Salary Schedules. All bargaining unit employees shall be classified pursuant to Addendum A and paid pursuant to Addendum B, which are made a part of this Agreement by reference. Effective the first full pay period of 2017, each step in all ranges of the 2016 hourly matrix shall be increased by 2.25%

Effective the first full pay period in 2018, each step in all ranges of the 2017 hourly matrix shall be increased by 2.5%

11.2 Longevity Pay. Effective January 1, 2009, longevity was eliminated as a separate compensation item and was added to the base wage where it shall be increased automatically as future wage increases occur. The Parties agree for comparability purposes, this collective bargaining agreement provides such longevity as an element of wages.

11.3 Premiums

11.3.1 Certification or Advanced Degree. Nurses certified by a nationally recognized specialty nursing association (such as American Nurses Credentialing Center, Certification Board of Infection Control and Epidemiology, or the International Board of Certified Lactation Consultant Examiners) and who utilize such certification because of their employment assignment with the Health Department will be designated as Public Health Nurse (Certified) and paid at the appropriate range (consistent with Section 13.4). A Master's Degree in Nursing or Public Health from an accredited college may be substituted for the certification by a nationally recognized specialty nursing association

11.3.2 Orientation. A Public Health Nurse (range 47 and 48) with relevant experience who is assigned to provide orientation and training to a newly hired nurse, or nurse who accepts a position in, or transfers to another program, shall be paid an additional one dollar (\$1.00) per hour while providing orientation or training. The length of the assignment shall be determined by the nurse's Manager.

11.4 Probation. Employees shall be on probation during their first six (6) months of employment. Probationary periods can be extended up to six (6) months with mutual agreement by the Association and the Executive or designee provided the Local Unit Chairperson or designee is notified at least ten (10) calendar days prior to the end of the probationary period.

11.5 Step Increases. Step increases are awarded per Addendum B (based on satisfactory performance) on the first day of the month in which the employee's anniversary/step date falls.

11.6 Electronic Contact. The parties agree that a public health emergent situation may be identified by the Director, or designee, as requiring a bargaining unit member with specific expertise which is otherwise not readily available to remain in electronic contact with the Department. During such periods, assigned employees shall receive \$8.70 per day. Whenever employees respond electronically pursuant to this article, they will also be compensated the amount set out in Article 4.6.1 – Telephonic response. When employees respond in person, they will also be compensated per Article 4.6 – Emergency Callbacks. To the extent reasonable and practical, employees shall respond electronically as opposed to in person.

ARTICLE 12 - NO STRIKE - NO LOCKOUT

There shall be no work stoppage, slowdown, picketing, boycott, sympathy strike, refusal to cross a picket line, or lockout concerning matters covered by the Agreement for its duration. Any action of the County in closing operations during a riot or civil commotion, for the protection of the property, shall not be deemed a lockout. Notwithstanding the foregoing, it shall not be considered grounds for discipline or discharge for employees to observe a lawful picket line, except when the Health Director has directed a member of the bargaining unit to cross the picket line to perform duties immediately and directly necessary for the protection of public health.

ARTICLE 13 - CLASSIFICATIONS

13.1 Higher Classification. When an employee works in a higher classification for five (5) or more working days, such employee shall be paid at the higher rate of pay.

13.1.1 Training. Section 13.1 shall not apply to employees being trained for the calendar month in a higher classification. During such training, employees shall not be paid above their regular rate of pay.

13.2 Lower Classification. An employee may be temporarily assigned the duties of a lower classification without suffering a reduction in pay.

13.3 New Classification. The County shall give the Association thirty (30) days notice of new classifications. The County shall place employees in a pay range that is consistent with their duties, responsibilities and job content. Disputes regarding proper pay range placement shall be subject to negotiations.

13.4 Split Classifications. Bargaining unit employees who are budgeted to work in more than one classification covered by the collective bargaining agreement shall be paid at the applicable rate for the number of hours worked in each classification. Employees will be compensated for accrual usage and cashout based on their FTE assignment in each classification.

ARTICLE 14 - HIRING AND PROMOTIONS

14.1 Job Vacancies. Whenever it is necessary to fill position vacancies, the following procedure shall be followed:

14.1.1 Job Postings. When vacancies or new jobs occur in positions covered by this Agreement, the County shall email the designated department contacts that the job is vacant and the specific details will be available on the County's internal website. The designated department contact shall electronically distribute or physically post the email notification for six (6) working days in a manner and in places conspicuous to employees in the bargaining unit. The County agrees it will continue to make job postings accessible to employees away from the job site.

14.1.2 Expedited Posting. Once all employees in the unit have expressed on a "sign-off sheet" that they are not interested in the position, the posting period is over. An expedited posting will only be for six (6) working days or less.

14.1.3 Preference Filling Vacancies. Preference in filling vacancies and new positions created during the term of this Agreement will be given regular employees having the necessary qualifications, except as restricted by the Layoff and Recall Article of this Agreement. Preference in hiring shall mean that qualified regular employees who apply for such position shall be considered first, and applications from outside the bargaining unit will be considered only if the County decides not to make a selection from employee applicants.

14.2 Promotions. Except for supervisory positions (which the County may fill in

accordance with its sole judgment) promotions will be based on meeting of stated qualifications, job knowledge, past performance and seniority. Where stated qualifications, job knowledge and past performance of applicants are relatively equal, seniority will apply.

14.3 Placement On Salary Schedule.

14.3.1 Promotion. In the event of a promotion an employee shall move to the closest step in the new salary range which awards at least a five percent (5%) increase (but no higher than the top step) over the original salary. The promotion date shall then become the future date for step increases. Movement to the next higher step follows twelve (12) months' service in the new range. All promotions are subject to a four (4) calendar month evaluation period (six (6) calendar months for supervisory positions).

14.3.2 Reclassification. In the event of a reclassification upward, an employee shall move to the closest step in the new salary range which awards at least a five percent (5%) increase (but no higher than the top step) over the original salary. The reclassification date shall then become the future date for step increases.

14.3.3 Position Realignment. The Union may petition the County by August 15 of any year to be effective the following January 1st, for the realignment of positions that meet the conditions defined in this Section. No position shall be realigned more than once during the term of this Agreement. "Realignment" shall mean "change in wage range with no change in duties." For positions to be reviewed the petition must demonstrate at least four (4) matches of the bargaining unit position duties, method of compensation and qualifications to the same position duties, method of compensation, and qualifications in comparable counties or health districts and have an hourly wage that is under the average hour wage of the comparable counties' or health districts positions by at least five (5) percent. Comparable counties or health districts are: Benton, Cowlitz, Kitsap, Skagit, Thurston, Yakima. All comparable counties or health districts where matches exist must be used. Comparisons will be based on the top step hourly wage. Petitions, except those using AWC salary survey data, shall include position job descriptions and wage tables for the comparison counties used in the petition. Once the County determine the data submitted supports the petition that a position requires realignment, affected employees in the position will be placed in a new higher range (one range higher but not more than the top step of the new range or the top step of the top range) in their current step. The effective date of the realignment shall become the step increase date.

14.3.3.1 Additional Considerations. In the administration of section 14.3.3 – Position Realignment, in the event the County identifies a position as one with documented local recruitment and/or retention difficulties then secondary comparables based on closed geographical and sociological issues may be considered.

14.3.4 Temporary License. For employees promoted under a temporary license, the date the employee began performing duties under the temporary license will be the date of reference for step increases, rather than the date of permanent licensure. If the employee is promoted under a temporary license, the employee will receive fifty percent (50%) of the increased rate of pay during the period the employee is working under the

temporary license and receive the other fifty percent (50%) of the increased rate of pay upon permanent licensure.

14.3.4.1 Rate for Stipulated Positions. Except as indicated above, graduate ARNPs, Public Health Nurses and Registered Nurses shall be paid two point five percent (2.5%) under the applicable Step 1 rate pending permanent licensure.

14.4 Ability to Cross Border. Employees must maintain the ability to cross the Canadian border if they are assigned to a position which may at any time require crossing the Canadian border. In the event U.S. employees are required to provide documents crossing the border where the cost to the employee would exceed \$100, the County and Association agree to meet and bargain the impact on employees.

ARTICLE 15 - EMPLOYMENT PRACTICES

15.1 Non-discrimination. The County and the Association shall comply with all applicable federal, state, and local laws prohibiting discrimination in employment, except as provided in Article 2, Union Security and applicable law as provided in RCW 41.56. Where the masculine or feminine gender is used in this Agreement, it is used solely for the purpose of illustration and shall not be construed to indicate the sex of any employee or job applicant.

15.2 Discipline and Discharge. The County shall take no adverse action against any employee including discipline, discharge or suspension without just cause, provided that a probationary employee (as defined in Section 11.4) may be summarily discharged.

15.2.1 Representation. Employees shall have the right to Association representation at any meeting regarding the discussion of possible disciplinary action affecting the employee. If the employee desires Association representation, said employee shall be provided reasonable time to arrange for Association representation. Prior to such meeting, the supervisor involved shall notify the employee of his or her right to such representation.

15.3 Mileage Allowance. The County agrees to reimburse employees for mileage based on Internal Revenue Service guidelines for the use of their own vehicle while on official County business.

15.4 Personnel Files. The employees covered by this Agreement may examine their personnel files.

15.5 Performance Standards. Any performance standards used to measure the performance of employees shall be fair, just and reasonable and uniformly applied throughout the Department.

15.6 Electronic Funds Transfer. All regular employees shall authorize paycheck deposit by electronic funds transfer (EFT) within thirty (30) days of employment.

15.6.1 Changes. Changes to a different institution or account require four (4) weeks notice and can be made no more than once per calendar quarter. The Executive or

designee may grant exceptions.

15.6.2 Emergency Cessation. Employees may temporarily stop EFT in emergency situations with at least seven (7) calendar days notice before a scheduled payday. Employees must restart the EFT within three months. The Executive or designee may grant exceptions.

15.6.3 Implementation. Employees providing documentation of their inability to open a checking and/or savings account may have this requirement waived.

ARTICLE 16 - LAYOFF AND RECALL

16.1 Seniority. The County and the Association agree that seniority (defined as length of continuous service in the Department) shall govern in layoff and recall procedures (i.e., the least senior employee shall be laid off first); provided, that the remaining employees are qualified to perform the available work. This Article shall not apply to any probationary employee. Except as provided in Section 4.1.1, the above procedure shall apply in cases of reduction of hours of any job as well as layoff.

16.2 Notice. Employees shall be given written notice of their pending layoff at least fifteen (15) calendar days in advance of their layoff date. The County agrees that in the event of a layoff or reduction of hours within the bargaining unit, the County will notify the Association to discuss the procedure to be utilized.

16.3 Loss of Seniority. An employee shall lose seniority under this Agreement for the following reasons:

- a. Voluntary termination.
- b. Discharge for cause.
- c. Failure to return to work if first offer of recall to a comparable position is refused.
- d. Layoff for a period exceeding twenty-four (24) months.

16.4 New Employees. No new employees shall be hired by the County until all available employees placed on layoff who are qualified to perform the duties of the vacant position have been offered the position.

16.5 Recall. An offer of reemployment shall be in writing and sent by registered or certified mail to the employee.

16.6 Recall Rights. Employees recalled from layoff shall not forfeit previously accumulated seniority, or unpaid accrued sick leave. Vacation shall begin accruing at the same rate of accrual as at the time the layoff occurred.

ARTICLE 17 - CONFERENCE COMMITTEE

The County and the Association agree to establish a joint Conference Committee consisting of up to three (3) representatives of the unit, including the Association representative, and up to three (3) representatives of the County, including a representative from Administrative Services – Human Resources. The purpose of this Committee is to discuss matters of concern to employees or the County. The Committee shall function in an **advisory** capacity rather than a decision-making capacity and shall be for the purpose of discussing matters of concern to employees or the County and issue resolution. When either party desires to call a meeting of the Committee, they will inform the other party (including the Association representative and Human Resources) in writing, at least one (1) week in advance, stating the subjects they wish to discuss. Discussions shall not be considered commitments on the part of either party unless confirmed as an agreement in writing and signed by the Association and the County.

ARTICLE 18 - RETIREMENT

All employees shall be covered by the Washington State Department of Retirement Systems in accordance with applicable law.

ARTICLE 19 - GRIEVANCE PROCEDURE

19.1 Procedures. Working days as used in this Article shall be defined as Monday through Friday, excluding paid holidays. Probationary employees shall not be entitled to utilize this Grievance Procedure for any disciplinary actions that are taken by the County. Grievances may be heard on work time where practical and feasible.

The Association shall notify the County as to the identity of the Local Unit Chairperson. The Local Unit Chairperson shall be allowed to administer the terms of this Agreement and investigate grievances on work time where practical and feasible.

Throughout the procedures as set forth in this Article, grievances may be presented by employees, and/or Local Unit Chairperson and/or Association representatives. Grievances of general concern to the bargaining unit may be initiated at Step 2 of this Article.

In the event of any dispute arising as to the interpretation or application of this Agreement, it shall be handled in the following manner:

Step 1 Complaint

The employee and/or the Local Unit Chairperson shall put the complaint in writing and present it to his or her immediate supervisor within fifteen (15) working days after the employee should have been reasonably aware of the alleged contract violation, or it shall be considered null and void. Every effort shall be made to settle the complaint at this level. If it is not resolved within five (5) working days after submission, the matter may proceed to Step 2.

Step 2 Grievance

The employee, within the next ten (10) working days shall present it personally, or through his or her Association representative, to the Human Resources Manager or designee. If not resolved at this level within the next twenty (20) working days, the Association may refer the dispute to final and binding arbitration as provided below.

19.2 Arbitration. Upon receipt by either the Association or the County of a written request for arbitration of a dispute which has been processed in accordance with the procedures set forth above, representatives of the County and the Association shall attempt to agree upon an arbitrator. In the event no agreement has been reached on the selection of an arbitrator within ten (10) working days from the receipt of the request for arbitration, the Federal Mediation and Conciliation Service shall be requested to submit a list of eleven (11) qualified arbitrators from which list the arbitrator shall be selected by alternately striking one name from the list until only one (1) name shall remain. A hearing shall be conducted by the arbitrator as soon thereafter as is practicable. The decision of the arbitrator shall be rendered within thirty (30) calendar days after the close of the hearing and such decision shall be final and binding upon all parties. Any decision rendered shall be within the scope of this Agreement and shall not add to or subtract from any of the terms of the Agreement. In all matters submitted to arbitration each party to the arbitration shall bear the entire cost of its own witnesses and representatives. The cost of the arbitrator and all other mutually incurred expenses of the arbitration shall be borne equally by the parties.

19.3 Time Limits. Time limits referred to in this Article must be strictly adhered to, but may be waived by mutual agreement in writing. It is the intent of the parties that all procedures set forth herein shall be complied with as expeditiously as practicable.

ARTICLE 20 - SUBORDINATION OF AGREEMENT

It is understood that the parties hereto and the employees of the County are governed by the provisions of applicable federal and state law. When any provisions thereof are in conflict with, or are different than the provisions of this Agreement, the provisions of said federal or state law are paramount and shall prevail.

ARTICLE 21 - SAVINGS CLAUSE

If any article of this Agreement or any addenda thereto is held invalid by operation of law or by an tribunal of competent jurisdiction, or if compliance with, or enforcement of, any article is restrained by such tribunal, the remainder of this Agreement and addenda shall not be affected thereby, and the parties shall enter immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article.

ARTICLE 22 - CONTRACTING OUT

22.1 Bargaining Unit Work. All bargaining unit work of the County shall be performed by bargaining unit employees except where it can be clearly demonstrated that the required expertise is not available, or when work required for special projects of limited duration cannot be performed without excessive overtime hours, or when the County does not own the equipment necessary to perform the work or such equipment owned by the

County is not currently available, or when the production schedule for completion of the work could not be met utilizing currently employed employees on a straight-time basis. The County will not subcontract work normally performed by bargaining unit employees if, at the time the work is initially to be subcontracted, employees are on layoff who are entitled to recall to positions which normally perform such work or the subcontracting would result in the layoff of employees who normally perform such work.

22.2 Contracting Out. Except in emergency situations, if the County proposes to contract out bargaining unit work as described above, the reasons for doing so shall be supplied to the Association with ample time (30 days) for discussion of such decision.

ARTICLE 23 - GROUP INSURANCE

23.1 Health & Welfare. The County agrees to make monthly contributions for employees, their spouses and dependents towards the following plans.

- a) Medical – Whatcom County Self-Insured Cap Plan
- b) Dental – Washington Counties Insurance Fund (WCIF) Standard Plan – Option 3
- c) Vision – WCIF Standard Vision Care Plan

23.1.1 Life Insurance. The County agrees to pay the entire employee only premium for life insurance through a carrier to be selected by the County providing the equivalent of one year's base salary to a maximum of \$50,000 of coverage.

23.1.2 Long-Term Disability. The County agrees to pay the entire employee premium for long-term disability insurance coverage for eligible bargaining unit employees through a carrier to be selected by the County for a plan comparable to the current benefit level.

23.1.3 Disputes. The County and the Association agree that any dispute over a denial of coverage under the Whatcom County Self-Insured Medical Plan may be appealed, through Human Resources to the County Executive or designee for final resolution.

23.1.4 Change or Modification of Plans. Except as otherwise provided herein, the County and the Association agree that carriers may be changed, or benefits modified upon mutual agreement.

23.2 Medical Plans Contributions.

23.2.1 Medical Plans and Contributions. For plan year 2017, the County shall fund the self-insured Medical Plan at \$1,234.80 per month for each eligible employee for full family medical coverage. For Plan Year 2018, the County shall fund the self-insured Medical Plan at \$1,297.00 per month for each eligible employee for full family medical coverage. Employees will elect their next year's plan choice during an open enrollment period in November.

23.2.1.1 2000 Medical Plan (Non-Qualified High Deductible Plan). For plan years 2017 and 2018, employees may elect a Non-Qualified High Deductible plan with

no payroll deduction. This is the default medical plan.

23.2.1.2 Qualified High Deductible Medical Plan (QHDHP) and Health Savings Account. For plan years 2017 and 2018, employees may elect to participate in the Qualified High Deductible Medical Plan (QHDHP) with no payroll deduction. Employees may be enrolled in a Health Savings Account (HSA), if they are otherwise qualified to have such an account. The County will contribute one-time seed money in 2017 or 2018 to a voluntary HSA, a total of \$1,250 per employee if signing up as an employee only **OR** \$2,500 for an employee plus dependents. Fifty percent (50%) of the annual HSA contribution amount will be funded in January and the balance will be contributed in equal monthly installments throughout the remaining months of the year. Health Savings Account contributions for part-time employees will be pro-rated based on currently assigned, but not more than their budgeted FTE.

23.2.1.1.1. Employee Health Savings Account (HSA) Contributions. Qualified employees enrolled in the County Health Savings Account are also eligible to contribute to this HSA through payroll deduction.

23.2.1.1.2 New Hires. New hires that choose the Qualified High Deductible Plan (QHDHP) will be eligible to establish a HSA, if they are otherwise qualified to have such an account. The County will contribute one-time seed money to a voluntary HSA, a total of up to \$1,000 for an employee signing up as an employee only **OR** up to \$2,000 for an employee if also signing up to cover dependents. Fifty percent (50%) will be contributed the first paycheck they are eligible for medical benefits and enrolled in the HSA with either \$45.45 (employee only) **OR** \$90.91 (employee plus dependents) contributed by the County throughout the remaining months of the year. Health Savings Account contributions for part-time employees will be pro-rated based on currently assigned, but not more than their budgeted FTE.

23.2.1.3 Optional Contributory Medical Plan. For plan years 2017 and 2018, employees may elect to buy-up to the optional Contributory Plan via authorized monthly payroll deduction as set forth in the Summary of Medical Plan Changes published prior to open enrollment for the next plan year. Should the County's Benefit Consultant's Renewal Projection for 2017 or 2018 be more than the amounts set forth in Article 23.2.1.), modifications to the plan will be made to the plan per section 23.2.5 – Medical Schedule of Benefits.

23.2.3 Self-Insured Medical Plan. If the County provides the Self-Insured Medical Plans on a different basis to any other employee(s) in the County, represented or unrepresented, excluding binding interest arbitration groups, upon written request by the Association, the County shall agree to good faith bargaining regarding the Self-Insured Medical Plans being offered to bargaining unit employees on the same basis.

23.2.4 Medical Schedule of Benefits. The schedule of benefits for the Self-Insured Medical Plans may require modification during the life of the agreement in order that coverage can be provided within the County's and Employee's contribution amount as established above. The parties agree that at any time the County may change the schedule of benefits in order to be legally compliant with applicable law or changes in plan administrator or administration. The parties agree the County is not required to enhance

the Cap plan.

23.2.5 Dental, Vision, LTD and Life Insurance. The County agrees to pay the appropriate monthly premium amounts and such increases as required to maintain the dental, vision, LTD and life benefits listed above.

23.3 Eligibility. Contributions will begin on the first of the month following one (1) calendar month of 80 compensated hours of employment. The term compensation as used herein is defined to be payment of wages for work performed, vacation, accrued sick leave, or other paid leave; provided that said work, vacation and/or other paid leave must equal or exceed payment for 80 hours in a calendar month. Income resulting from an industrial injury to a maximum of twelve months from the date of the injury shall be credited as compensation.

23.3.1 Scheduling Quirk. If an employee fails to receive compensation in any month for 80 hours as required by Article 5, 6, and 7 of the Agreement, and the failure is due to a quirk in scheduling and through no fault of the employee, the individual nevertheless shall be considered eligible for all applicable benefits during the month in question.

23.4 Flex 125. All members of the bargaining unit will be eligible to participate in the County's Flexible Spending Account Plan (Flex 125 Plan).

23.5 Medical Advisory Committee. In the event the Cap Medical Plan is to be modified pursuant to Section 23.2.4 – Medical Schedule of Benefits, the County shall convene the Medical Advisory Committee. The Association shall be given advance notice of such meeting and the union representative and one (1) bargaining unit member, designated by the union, shall be afforded the opportunity to attend and participate in the Medical Advisory Committee meeting. The Medical Advisory Committee shall not replace the parties' RCW 41.56 obligations. The County intends (but does not guarantee data availability) to review medical utilization cost and medical benefits beginning in July of each year in preparation for Cap plan choices for the following year.

23.6 Retirement Health Savings Plan. The County agrees to make available to bargaining unit members a Retirement Health Savings Plan in accordance with and as allowed by IRS regulations.

ARTICLE 24 - INDEMNIFICATION

The County agrees to hold harmless employees for all damages, including attorney fees, which they may suffer as a result of lawsuits commenced against them arising out of their activities which are within the scope of their employment for Whatcom County. Should the employee's actions be outside the scope of their employment, or the allegations contained in the complaint allege actions which, if proven, would be outside the scope of their employment; or be intentional torts, then the County will not pay that judgment. In addition, the employee will hire counsel. Whatcom County will compensate the employee for that counsel on a reservation of rights basis. This means, if the allegation contained in the complaint is proven then the County will not pay the judgment and the employee will be responsible for reimbursing the County for its attorneys' fees. However, should the allegation of intentional tort not be proven but merely negligence, then the County will pay the judgment

and will not seek reimbursement for the attorney fees.

ARTICLE 25 - DURATION

This Agreement shall be effective on January 1, 2017 except for those provisions of the Agreement which have been assigned other effective dates as herein set forth, and shall remain in full force and effect to and including the 31st of December, 2018. At least sixty (60) days prior to the first day of January 2019, either party shall file written notice with the other of its desire to amend, modify, or terminate this Agreement.

This Agreement contains the entire understanding and agreement between the parties. Changes to this Agreement, whether by addition, deletion, amendment or modification, must be reduced to writing and executed by both the County and the Association.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 4th day of April, 2017.

WASHINGTON STATE NURSES
ASSOCIATION

 3/8/17
Negotiating Team Member

 3/8/17
Negotiating Team Member


WSNA Nurse Representative



WSNA Labor Representative

WHATCOM COUNTY

Whatcom County Executive
Jack Louws

DATE COUNCIL APPROVED:

APPROVED AS TO FORM:


Daniel L. Gibson
Chief Civil Deputy Prosecutor

**ADDENDUM A
TO THE AGREEMENT
by and between
WHATCOM COUNTY, WASHINGTON
and
WASHINGTON STATE NURSES ASSOCIATION**

Position Title Index

Range	Position
52	P.H. Nurse Supervisor
51	Nurse Practitioner
49	P. H. Nurse II
48	P. H. Nurse (Certification or Advanced Degree per Section 11.3.1
47	P.H. Program Coordinator
47	P.H. Nurse
40	Registered Nurse
36	Care Coordinator
24	Licensed Practical Nurse
23	Community Health Outreach Worker
24	Medical Assistant

ADDENDUM B – Wages

Wage Matrix Ranges 23 - 40 (WSNA)

2017 Hourly Matrix - Effective January 2017 (+2.25%)

Range	12 months of service to move to next step									36 months of service to move to next step (36 months at step 10 required to move to step 11)					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
23	\$15.21	\$15.96	\$16.72	\$17.52	\$18.38	\$19.27	\$20.28	\$21.05	\$21.09	\$21.16	\$21.25	\$21.37	\$21.53	\$21.67	\$21.82
24	\$16.30	\$17.04	\$17.80	\$18.63	\$19.49	\$20.40	\$21.48	\$22.29	\$22.32	\$22.41	\$22.50	\$22.61	\$22.76	\$22.92	\$23.06
33	\$18.87	\$19.75	\$20.72	\$21.75	\$22.79	\$23.90	\$25.09	\$26.04	\$26.07	\$26.15	\$26.25	\$26.36	\$26.51	\$26.67	\$26.81
36	\$19.98	\$20.92	\$21.96	\$23.06	\$24.17	\$25.34	\$26.57	\$27.59	\$27.62	\$27.70	\$27.80	\$27.90	\$28.06	\$28.21	\$28.35
40	\$21.92	\$23.01	\$24.15	\$25.32	\$26.55	\$27.84	\$29.19	\$30.30	\$30.33	\$30.41	\$30.50	\$30.62	\$30.77	\$30.92	\$31.07

2017 Monthly Matrix - For Reference Purposes Only

Range	12 months of service to move to next step									36 months of service to move to next step (36 months at step 10 required to move to step 11)					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
23	\$2,637	\$2,767	\$2,897	\$3,037	\$3,186	\$3,340	\$3,515	\$3,649	\$3,655	\$3,668	\$3,683	\$3,703	\$3,731	\$3,755	\$3,781
24	\$2,825	\$2,953	\$3,085	\$3,229	\$3,378	\$3,536	\$3,724	\$3,863	\$3,869	\$3,884	\$3,901	\$3,919	\$3,945	\$3,973	\$3,997
33	\$3,272	\$3,424	\$3,592	\$3,770	\$3,951	\$4,142	\$4,349	\$4,513	\$4,518	\$4,533	\$4,550	\$4,569	\$4,595	\$4,623	\$4,647
36	\$3,463	\$3,627	\$3,806	\$3,997	\$4,189	\$4,392	\$4,606	\$4,783	\$4,788	\$4,801	\$4,818	\$4,837	\$4,865	\$4,891	\$4,915
40	\$3,800	\$3,988	\$4,185	\$4,388	\$4,602	\$4,825	\$5,060	\$5,252	\$5,257	\$5,270	\$5,287	\$5,307	\$5,333	\$5,360	\$5,386

Wage Matrix Ranges 47 - 52 (WSNA)

2017 Hourly Matrix - Effective January 2017 (+2.25%)

Range	12 months of service to move to next step									36 months of service to move to next step (36 months at step 10 required to move to step 11)					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
47	\$29.94	\$31.44	\$33.00	\$34.57	\$35.89	\$37.27	\$38.99	\$40.46	\$40.50	\$40.58	\$40.67	\$40.81	\$40.97	\$41.12	\$41.27
48	\$31.29	\$32.78	\$34.35	\$35.91	\$37.25	\$38.64	\$40.38	\$41.89	\$41.93	\$42.01	\$42.11	\$42.23	\$42.39	\$42.54	\$42.70
49	\$31.97	\$33.57	\$35.27	\$36.92	\$38.32	\$39.78	\$41.60	\$43.17	\$43.21	\$43.30	\$43.40	\$43.51	\$43.66	\$43.83	\$43.98
51	\$33.98	\$35.58	\$37.27	\$39.00	\$40.44	\$41.95	\$43.79	\$45.45	\$45.48	\$45.59	\$45.67	\$45.79	\$45.95	\$46.10	\$46.25
52	\$33.75	\$35.45	\$37.18	\$38.94	\$40.43	\$41.98	\$43.89	\$45.56	\$45.60	\$45.68	\$45.77	\$45.90	\$46.06	\$46.20	\$46.37

2017 Monthly Matrix - For Reference Purposes Only

Range	12 months of service to move to next step									36 months of service to move to next step (36 months at step 10 required to move to step 11)					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
47	\$5,190	\$5,449	\$5,721	\$5,992	\$6,221	\$6,459	\$6,759	\$7,014	\$7,020	\$7,034	\$7,049	\$7,073	\$7,101	\$7,127	\$7,153
48	\$5,423	\$5,681	\$5,953	\$6,225	\$6,457	\$6,698	\$6,999	\$7,261	\$7,267	\$7,282	\$7,299	\$7,319	\$7,347	\$7,373	\$7,401
49	\$5,542	\$5,819	\$6,113	\$6,400	\$6,642	\$6,895	\$7,211	\$7,483	\$7,490	\$7,505	\$7,522	\$7,542	\$7,568	\$7,596	\$7,622
51	\$5,890	\$6,167	\$6,459	\$6,761	\$7,010	\$7,271	\$7,591	\$7,877	\$7,883	\$7,902	\$7,916	\$7,937	\$7,965	\$7,991	\$8,017
52	\$5,851	\$6,145	\$6,444	\$6,750	\$7,008	\$7,276	\$7,608	\$7,898	\$7,903	\$7,918	\$7,933	\$7,956	\$7,983	\$8,008	\$8,037

Wage Matrix Ranges 23 - 40 (WSNA)

2018 Hourly Matrix - Effective January 2018 (+2.5%)

Range	12 months of service to move to next step									36 months of service to move to next step (36 months at step 10 required to move to step 11)					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
23	\$15.59	\$16.36	\$17.13	\$17.96	\$18.84	\$19.75	\$20.79	\$21.58	\$21.61	\$21.69	\$21.78	\$21.90	\$22.06	\$22.21	\$22.36
24	\$16.71	\$17.46	\$18.25	\$19.09	\$19.97	\$20.91	\$22.02	\$22.85	\$22.88	\$22.97	\$23.07	\$23.18	\$23.33	\$23.49	\$23.64
33	\$19.35	\$20.25	\$21.24	\$22.30	\$23.36	\$24.50	\$25.72	\$26.69	\$26.72	\$26.81	\$26.91	\$27.02	\$27.17	\$27.34	\$27.48
36	\$20.48	\$21.45	\$22.50	\$23.64	\$24.77	\$25.97	\$27.24	\$28.28	\$28.31	\$28.39	\$28.49	\$28.60	\$28.77	\$28.92	\$29.06
40	\$22.47	\$23.58	\$24.75	\$25.95	\$27.21	\$28.54	\$29.92	\$31.06	\$31.09	\$31.17	\$31.26	\$31.39	\$31.54	\$31.69	\$31.85

2018 Monthly Matrix - For Reference Purposes Only

Range	12 months of service to move to next step									36 months of service to move to next step (36 months at step 10 required to move to step 11)					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
23	\$2,703	\$2,836	\$2,970	\$3,113	\$3,266	\$3,424	\$3,603	\$3,741	\$3,746	\$3,760	\$3,775	\$3,796	\$3,824	\$3,849	\$3,876
24	\$2,896	\$3,027	\$3,163	\$3,309	\$3,462	\$3,624	\$3,817	\$3,960	\$3,966	\$3,981	\$3,998	\$4,017	\$4,044	\$4,072	\$4,097
33	\$3,353	\$3,510	\$3,681	\$3,865	\$4,050	\$4,246	\$4,458	\$4,626	\$4,631	\$4,647	\$4,664	\$4,683	\$4,710	\$4,738	\$4,763
36	\$3,550	\$3,718	\$3,901	\$4,097	\$4,294	\$4,502	\$4,721	\$4,902	\$4,908	\$4,921	\$4,938	\$4,958	\$4,986	\$5,013	\$5,038
40	\$3,895	\$4,088	\$4,290	\$4,498	\$4,717	\$4,946	\$5,186	\$5,383	\$5,389	\$5,402	\$5,419	\$5,440	\$5,467	\$5,494	\$5,520

Wage Matrix Ranges 47 - 52 (WSNA)

2018 Hourly Matrix - Effective January 2018 (+2.5%)

Range	12 months of service to move to next step									36 months of service to move to next step (36 months at step 10 required to move to step 11)					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
47	\$30.69	\$32.22	\$33.83	\$35.43	\$36.79	\$38.20	\$39.97	\$41.48	\$41.51	\$41.60	\$41.69	\$41.83	\$41.99	\$42.15	\$42.30
48	\$32.07	\$33.60	\$35.20	\$36.81	\$38.19	\$39.61	\$41.39	\$42.94	\$42.97	\$43.06	\$43.16	\$43.28	\$43.45	\$43.60	\$43.77
49	\$32.77	\$34.41	\$36.15	\$37.85	\$39.28	\$40.77	\$42.64	\$44.25	\$44.29	\$44.38	\$44.48	\$44.60	\$44.76	\$44.92	\$45.08
51	\$34.83	\$36.47	\$38.20	\$39.98	\$41.45	\$43.00	\$44.89	\$46.58	\$46.62	\$46.73	\$46.81	\$46.93	\$47.10	\$47.25	\$47.41
52	\$34.60	\$36.34	\$38.11	\$39.91	\$41.44	\$43.03	\$44.99	\$46.70	\$46.74	\$46.82	\$46.91	\$47.04	\$47.21	\$47.35	\$47.53

2018 Monthly Matrix - For Reference Purposes Only

Range	12 months of service to move to next step									36 months of service to move to next step (36 months at step 10 required to move to step 11)					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
47	\$5,320	\$5,585	\$5,864	\$6,142	\$6,377	\$6,621	\$6,928	\$7,189	\$7,195	\$7,210	\$7,226	\$7,250	\$7,279	\$7,306	\$7,332
48	\$5,558	\$5,824	\$6,102	\$6,380	\$6,619	\$6,865	\$7,174	\$7,443	\$7,449	\$7,464	\$7,481	\$7,502	\$7,531	\$7,557	\$7,586
49	\$5,680	\$5,965	\$6,266	\$6,560	\$6,808	\$7,067	\$7,391	\$7,670	\$7,678	\$7,693	\$7,710	\$7,731	\$7,758	\$7,786	\$7,813
51	\$6,037	\$6,321	\$6,621	\$6,930	\$7,185	\$7,452	\$7,781	\$8,074	\$8,080	\$8,099	\$8,114	\$8,135	\$8,164	\$8,191	\$8,217
52	\$5,997	\$6,298	\$6,606	\$6,918	\$7,184	\$7,458	\$7,798	\$8,095	\$8,101	\$8,116	\$8,132	\$8,154	\$8,183	\$8,208	\$8,238

ADDENDUM C **WSNA ALTERNATIVE WORK SCHEDULE REQUEST**

Employee Name: _____

Position: _____

% Full-Time Equivalency (FTE): _____

Please itemize below the schedule you would like to request. This schedule must be mutually agreed upon with your supervisor and have the approval of your supervisor, division manager, director or designee as well as Human Resources. Per Article 4.4 - Alternative Scheduling of the collective bargaining agreement, the requested schedule must not create a reduction in the effective hours of service to the public, critical service days must be adequately covered by the remaining personnel, and this schedule must not increase the department's compensation costs. Once a schedule is agreed upon and been approved, there will be no floating or changing of flex days unless approved by the supervisor to recognize the impact of employee illnesses and vacations. Approval of this request is not a guarantee by the County this schedule will be continued if changes need to be made in order to maintain service to the public or to meet other criteria in Article 4.4. Both parties recognize that alternative schedules are a benefit and must be worked as scheduled.

The schedule submitted below will be utilized to designate a Fair Labor Standards Act (FLSA) work week which is defined as 7 consecutive days with work weeks not to exceed 40 hours per week. Once an FLSA work week is agreed upon and approved there will be no changing of that work week or flex day. Mutually agreed upon adjustments by the employee and supervisor of hours within a work day may be made as long as the adjustment takes place within the same FLSA work week.

Payroll Week	Day	Actual Time at Work (e.g.: 8:00am – 5:00pm)	Time of lunch break (e.g.: noon)	Length of Lunch Break (e.g.: 1 hour)	Total # of Hours Worked per Day
Week #1	Sunday				
	Monday				
	Tuesday				
	Wednesday				
	Thursday				
	Friday				
	Saturday				
	Total Per Week				
Week #2	Sunday				
	Monday				
	Tuesday				
	Wednesday				
	Thursday				
	Friday				
	Saturday				
	Total Per Week				

	Signature	Date
Employee		
Supervisor		
Division Manager		
Director or Designee		
Human Resources		

ADDENDUM D
COLLECTIVE BARGAINING AGREEMENT
LETTER OF UNDERSTANDING
By and Between
WASHINGTON STATE NURSES ASSOCIATION
and
WHATCOM COUNTY

This is to confirm the following agreements reached during the recent negotiations and is attached to the WSNA collective bargaining agreement identified as "August 6, 2013 through December 31, 2014":

1. Shift Differential. If during the term of the Agreement the County implements a second and/or third shift, it will notify the Association in advance and upon request will meet and bargain about the appropriate shift differential payments for such shifts.

2. Drug Testing. Upon request by the County during the term of the contract, the Association shall meet and enter into negotiations on an alcohol and drug free workplace policy, including drug testing.

3. Benefits Eligibility Requirements. The new eligibility requirement of 80 hours compensated in Article 23, Group Insurance, is not applicable to any employee eligible for group insurance benefits on August 9, 1994.

4. Leaves of Absence. Leaves of Absence without pay may be granted by the Department Head for periods of five or less work days per calendar year. The employee will not be required to have used all paid time off prior to the granting of such leave. Requests for such leave must be made in writing with the period of leave and flex time reconciliation being specified and approved in writing.

5. Alternative Schedules – Existing Practice. The existing process for Alternative Scheduling incorporates the following conditions.

Staff may vary their time from the basic workday or workweek by written mutual agreement between the Director or designee and the employee. Alternative schedules cannot create a situation where the criteria in Article 4.4 is not met nor can the employee work more than:

- 1) 40 hours in a basic workweek (unless written designation of pay weeks is requested and approved per Alternative Work Schedule Request form – Addendum C)
- 2) 80 hours in a pay period, or
- 3) 10 hours in a workday.

Altering schedules for personal or work reasons must have the approval of the employee's supervisor in accordance with Article 4.5 Flex Time.

It is anticipated that alternative schedules currently worked by employees will be continued; however both parties recognize that schedules may need to be changed in order to maintain service to the public or to meet other criteria in Article 4.4. Both parties recognize that alternative schedules are a benefit and must be worked as scheduled.

Addendum E
LETTER OF UNDERSTANDING
JOB SHARE AGREEMENT
WSNA COLLECTIVE BARGAINING AGREEMENT

This Letter of Understanding regarding Job Share Agreements is by and between Whatcom County, hereafter called "the County" and the Washington State Nurses Association, hereinafter called "the Association" regarding and attached to the WSNA Collective Bargaining Agreement identified as "August 6, 2013 through December 31, 2014.

The purpose of this Letter of Understanding is to confirm our understanding and agreement that two employees may request a job share arrangement. Job share agreements shall not increase personnel costs for the County nor shall they unduly increase administrative burdens for the department or the County. Should the County approve the request, it is understood the employees would be voluntarily electing to share a 1.0 FTE (40 hours per week) position and that the County will not exceed the equivalent of one set of Health & Welfare benefits (medical, dental, vision, life and long-term disability) subject to the following conditions:

VOLUNTARY JOB SHARE AGREEMENT

This fully executed Agreement must be in place prior to commencement of Job Share

JOB SHARE POSITION:	POSITION ID:
DEPARTMENT:	SUPERVISOR:
PARTICIPANT A:	PARTICIPANT B:
HOURS/MONTH:	HOURS/MONTH:
Health & Welfare Benefits <input type="checkbox"/> Yes <input type="checkbox"/> No	Health & Welfare Benefits <input type="checkbox"/> Yes <input type="checkbox"/> No

Agreement.

- Participants acknowledge they have voluntarily elected to equally share a 1.0 FTE position and agree to the conditions outlined in this Agreement.
- Participants together perform the duties of a full-time position. Total hours worked for both will not exceed an average of 173.33 regular hours per month (1.0 budgeted FTE), unless additional hours are designated as extra help hours.

Health & Welfare Benefits.

- Participants are eligible to receive employee-only medical, life and long-term disability coverage as well as family dental and vision benefits, provided they meet eligibility requirements. Should an employee desire family medical coverage, contributions shall be deducted from paychecks.
- Participants who initially opt out of health & welfare benefits for dependents may enroll at a later date if a COBRA qualifying event occurs or during the month of November may elect coverage beginning the following January 1. In these situations, the eligibility

requirements of each benefit plan must be met before coverage becomes effective.

- Participants who elect medical coverage for dependents may elect during the month of November to drop coverage effective the following January 1.
- The County will make contributions to the appropriate health & welfare plans on behalf of employees who are regularly scheduled to work and who are compensated for at least eighty (80) hours per month.
- Participants who have not previously been on health and welfare benefits must meet eligibility requirements in the WSNA Agreement to be eligible for health and welfare benefits coverage. Employees whose health and welfare benefits are being reinstated will be subject to the waiting periods specified in plan documents.

PARTICIPANT ELECTIONS

CHOICES	PARTICIPANT A (initial choice below)	PARTICIPANT B (initial choice below)
I elect medical coverage for my dependents and I will be obligated to pay via payroll deduction the amount established by the County for this coverage.		
I opt out of medical coverage for my dependents.		

Other Benefits.

- Each participant will accrue and use vacation and sick leave based on their agreed upon 0.5 FTE position. Participants can use accrued vacation or sick leave only for days and hours they are regularly scheduled to work.
- Each participant will receive four hours of holiday pay for each holiday where they meet the eligibility criteria in the WSNA Agreement, and each participant will receive four hours of personal holiday each calendar year. During weeks when a holiday occurs, participants must work with their supervisor to assure the required number of hours will be worked and/or compensated that week.
- Accruals will not exceed 0.5 FTE regardless of the number of hours worked. If additional hours are worked, employees will receive compensatory time per the WSNA Agreement.
- Any additional leave (bereavement, etc.) will be no more than one-half the time (in hours) allowed in the WSNA Agreement or state or federal law.
- Participants individually accrue and have full use of seniority rights allowed under the WSNA Agreement.
- To be eligible for leave under the federal Family Medical Leave Act (FMLA), 1250 hours of time must be actually worked during the twelve months prior to the requested leave. Participants understand by entering this Agreement, they are likely forfeiting rights to FMLA.

- Since the 1.0 FTE position is Washington State Department of Retirement Systems eligible, participants and the County will contribute to the retirement system.

Compensation.

- Participants will be paid the appropriate hourly rate for actual hours worked. They will be eligible for step increases based on their individual anniversary date in the position.

Schedules and Breaks.

- Participants' work schedules must be approved by, and may be changed by, their supervisor as provided herein. Article 4.1 "Work Schedule" shall apply except as modified by this Job Share Agreement. It is understood that a job share participant is not routinely required to cover for the other job share participant for vacations and sick leave. However, in the event of an extended absence of one job share participant, the other participant may be required to work extra hours, up to 40 per week, in order to assure the work of the position is completed. In such circumstances, the County will, when circumstances permit, explore other staffing measures to reduce the impact on the affected participant.
- Notwithstanding Article 4.10, "Breaks", participants are allowed one paid fifteen (15) minute rest break during each four-hour work period after no more than three hours of work, and during each day where they work five (5) or more hours, they are entitled to an unpaid lunch break of thirty (30) to sixty (60) minutes.

Termination of Job Share.

- Participants understand that if one participant leaves his or her job share position, a new job share agreement must be executed. Upon separation or movement of a job share participant, the County will first offer the 1.0 FTE position to the remaining incumbent. If the participant declines the 1.0 FTE position and desires to continue in a job share arrangement and the department concurs, he or she understands that, during the period of vacancy for the other half of the job share, the remaining participant may be required to work extra hours, up to 40 per week, in order to assure the work of the position is completed. No other terms or conditions of this Agreement will change.

Each Job Share Agreement will require signatures of Participant A, Participant B, the Department Head, and the WSNA Representative. The County or the Association may, at any time, cancel this agreement after thirty (30) days written notice.

**LETTER OF UNDERSTANDING
BY AND BETWEEN
WASHINGTON STATE NURSES ASSOCIATION
AND
WHATCOM COUNTY**

**GRANDFATHERING PROVISION FOR ADJUSTING COMPENSATORY
TIME FOR LESS THAN 1.0 FTE WORKING EXTRA HOURS**



This Letter of Understanding is entered into between Whatcom County, ("the County") and Washington State Nurses Association, ("the Union.") During the negotiation process for the 2017-2018 Collective Bargaining Agreement, the parties agreed to strike Section 5.3.2 and Section 6.4.1 of the 2016-2017 Agreement under the condition the County grandfather these provisions as they relate to Joni Hensley, the only employee affected by the deletion.

Section 5.3.2 and Section 6.4.1 provided for an adjustment to an employee's compensatory time bank, in lieu of adjustments to vacation and holiday accruals, for any employee regularly scheduled to work less than 1.0 FTE who, from time to time, may work extra hours.

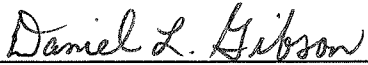
The parties agree that as long as Ms. Hensley remains in the 0.9 FTE position pursuant to the WSNA Alternate Work Schedule Request of September 4, 2008, the County will continue to make quarterly adjustments to her compensatory time bank as follows:

1. In months when Ms. Hensley works more than 0.9 FTE, the extra hours worked in a month will be multiplied by a factor of 0.096. This factor is calculated by dividing Ms. Hensley's maximum vacation accrual rate (16.67 hours per month) by the total hours available to work in a month (173.33). The maximum number of hours added to her compensatory time bank will not exceed 1.67 hours per month.
2. If Ms. Hensley works more than 0.9 FTE in a month when there is a holiday, the extra hours worked will be multiplied by a factor of 0.046. This factor is calculated by dividing the maximum hours available to work in a month (173.33) by the number of total holiday hours. A maximum of 0.8 hours will be added to her compensatory time bank for each holiday in the month at her regular rate of pay.

This Letter of Understanding applies to Ms. Hensley only and will not be considered precedent setting to any other matter or concern under the Washington State Nurses Association Collective Bargaining Agreement.

Name	Signature	Date
Washington State Nurses Association		
Karen Goens, HR Manager		3/9/2017
Jack Louws, County Executive		

Approved as to Form:


Daniel L. Gibson
Chief Civil Deputy Prosecuting Attorney


Date

**LETTER OF UNDERSTANDING
BY AND BETWEEN
WASHINGTON STATE NURSES ASSOCIATION
AND
WHATCOM COUNTY**

PILOT PROGRAM FOR 0.9 FTE SCHEDULE

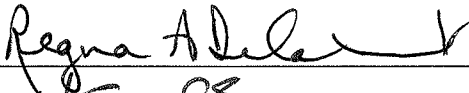

This Letter of Understanding is entered into between Whatcom County, hereinafter referred to as "the County" and Washington State Nurses Association, hereinafter referred to as "the Union" for the purpose of setting forth the terms and conditions of establishing a one-year Pilot Program to determine the feasibility of allowing a limited number of employees within the bargaining unit to work a 0.9 FTE schedule.

The County recognizes the possibility that working less than full time may bring higher levels of job satisfaction as well as improve morale, attendance and productivity. The Union desires less than full time employment for a better work-life balance.

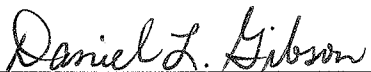
The parties, therefore, agree to the following:

1. Within two (2) months after ratification of the 2017-2018 Collective Bargaining Agreement, the County will convene the WSNA Conference Committee pursuant to Article 17 to establish criteria for this Pilot Program.
2. The Committee will develop guidelines for the Pilot Program and establish criteria for measurable results.
3. The number of employees allowed to participate in the Pilot Program will be limited to a number established by the Conference Committee to ensure there is no effect on the operational needs of the department.
4. Conference Committee members will participate in the creation and monitoring of measurable outcomes, including, but not limited to, productivity and job satisfaction.
5. While participating in the Pilot Program, employee benefits will be pro-rated based on a 0.9 FTE basis. This means the employee will contribute 10% of the County's cost for medical, dental, and vision coverage.
6. If, from time to time, a participating employee works hours in excess of 0.9 FTE, the employee will not be entitled to receive additional employee benefits, leave accruals, or holiday pay.
7. If an employee elects to return to a full-time schedule, the employee waives the opportunity to further participate in the Pilot Program. The employee will provide notice at least 30 days prior to converting back to full-time status.
8. At the end of the Pilot Program, the parties will meet and discuss outcomes. Employees will revert to their former 1.0 FTE status unless the County, the Union, and the participating employees mutually agree to extend the Pilot Program.

9. The parties anticipate the Pilot period will be approximately one year, but the Health Department reserves full discretion to end the Pilot within 30 days' written notice to the participants. The Pilot Program is in collaboration with Public Health, Human Resources and the Union.

Name	Signature	Date
Washington State Nurses Association		
Regina Delahunt, Health Director		3/10/2017
Karen Goens, HR Manager		3/9/2017
Jack Louws, County Executive		

Approved as to Form:


Daniel L. Gibson
Chief Civil Deputy Prosecuting Attorney


Date

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-100

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	JT	3/7/17	<div style="text-align: center;"> <p>RECEIVED</p> <p>MAR 14 2017</p> <p>WHATCOM COUNTY COUNCIL</p> </div>	3/21/17	Finance/Council
Division Head:	ASD	3/8/17			
Dept. Head:	RHD	3/8/17			
Prosecutor:	AB	3-9-17			
Purchasing/Budget:	BB	3/14/17			
Executive:	ALP	3/14/17			

TITLE OF DOCUMENT: Interagency Agreement between Whatcom County and North Sound Behavioral Health Organization

ATTACHMENTS:

1. Info sheet
2. Executive Memo
3. 2 copies of Contract

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.)

This contract provides funding to provide access to treatment and recovery for individuals with opioid and intravenous drug use dependency.

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 CONTRACT INFORMATION SHEET

Whatcom County Contract No.

201703009

Originating Department:	Health		
Program/Project: (i.e. Dept. Division and Project)	Human Services		
Contract or Grant Administrator:	Jackie Mitchell		
Contractor's / Agency Name:	North Sound Behavioral Health Organization		
Is this a New Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____			
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If No, include WCC: _____ (see Whatcom County Codes 3.06.010A, 3.08.090M and 3.08.100A)	
Is this a grant agreement? Yes <input type="checkbox"/> No <input type="checkbox"/>	If yes, grantor agency contract number(s):	BHO-WHATCOM CO-SABG - 16-17	CFDA#: 93.959
Is this contract grant funded? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, Whatcom County grant contract number(s): _____			
Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____		Contract Cost Center: 124100	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form.			
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract work is for less than 120 days. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.			
Contract Amount:(sum of original contract amount and any prior amendments): \$ 75,000		Contracts that require Council Approval (incl. agenda bill & memo)	
This Amendment Amount: \$ _____		<ul style="list-style-type: none"> Professional Services Agreement above \$20,000. Bid is more than \$50,000. Professional Service Contract Amendments that have an increase greater than \$20,000 and other contracts with a cumulative increase greater than \$50,000. 	
Total Amended Amount: \$ _____		RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.	
Summary of Scope: This 10 month contract provides funding to provide access to treatment and recovery for opioid and intravenous drug use dependency.			
Term of Contract: 10 Months		Expiration Date: 6/30/2017	

Contract	1. Prepared by: _____ jt	Date: 3/7/17
Routing:	2. Attorney signoff: _____ <i>[Signature]</i>	Date: 3-9-17
	3. AS Finance reviewed: _____ <i>[Signature]</i>	Date: 3/14/17
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____ ✓	Date: 2-13-17
	6. Submitted to Exec.: _____ -	Date: 3-14-17
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____



MEMORANDUM

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt, Director
RE: North Sound Behavioral Health Organization, Substance Abuse Block Grant
DATE: March 9, 2017

Enclosed is an original contract between Whatcom County and North Sound Behavioral Health Organization for your review and signature.

▪ **Background and Purpose**

This ten month contract provides funding to provide opioid outreach services in Whatcom County to individuals who are experiencing opioid dependency and those who use drugs intravenously, in order to facilitate access to medication assisted treatment, substance use disorder assessment, admission into substance use disorder treatment services, and recovery initiation.

▪ **Funding Amount and Source**

This contract is funded with federal Substance Abuse Prevention and Treatment Block Grant and State mental health dollars via the North Sound Behavioral Health Organization in the amount of \$75,000. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Jackie Mitchell at extension 6054 if you have any questions regarding this agreement.

Encl.

WHATCOM COUNTY
CONTRACT NO.
201703009

**NORTH SOUND
BEHAVIORAL HEALTH ORGANIZATION, LLC**

**93.959 COMMUNITY SUBSTANCE ABUSE
BLOCK GRANT (SABG) CONTRACT**

WITH

WHATCOM COUNTY

CONTRACT #NORTH SOUND BHO-WHATCOM COUNTY-SABG-16-17

SEPTEMBER 1, 2016 TO JUNE 30, 2017

NORTH SOUND BHO-WHATCOM COUNTY-SABG-16-17

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Approved by County Authorities Executive Committee 10/12/16, Motion #16-83

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**93.959 COMMUNITY MENTAL HEALTH SERVICES
SABG CONTRACT**

THIS BEHAVIORAL HEALTH SERVICES CONTRACT (the "Contract"), pursuant to RCW Chapter 71.24 and all relevant and associated statutes, as amended, is made and entered into by and between the North Sound Behavioral Health Organization, LLC (North Sound BHO), a governmental limited liability company pursuant to RCW Chapter 70.24, 301 Valley Mall Way, Suite 110, Mount Vernon, WA 98273 and Whatcom County (Contractor), a member County, 509 Girard Street, Bellingham, WA 98227-0935.

I. RECITALS

WHEREAS, Island County, San Juan County, Snohomish County, Skagit County and Whatcom County (the "County Authorities") , as defined by RCW 71.24.025 (10), entered into a Joint County Authority BHO Interlocal Operating Agreement to cooperatively provide a community health program and regional system of care, with the collective goal of consolidating administration, reducing administrative layering and reducing administrative costs, consistent with the State of Washington's legislative policy as set forth in RCW Chapter 71.24 ("Operating Agreement"); and

WHEREAS, North Sound BHO is a governmental limited liability company formed by an operating agreement entered into by the foregoing five (5) County Authorities in response to a request for a detailed plan and to contract with the State of Washington to operate as a regional support network until April 1, 2016 and as a Behavioral Health Organization as of April 1, 2016, as provided for in RCW 71.24.100 and Chapter 25.15.

WHEREAS, the Operating Agreement provides a means for each County Authority to share in the cost of behavioral health services, for payment of services and for the audit of funds, as provided for in RCW 71.24.100 and provides for the joint supervision and operation of services and facilities, as provided for in RCW 71.24.110.

WHEREAS, North Sound BHO anticipates increased need for behavioral health services in the community and recognizes the need for expansion of services and strengthening of cooperation among service providers to meet this challenge; and

WHEREAS, North Sound BHO is engaged in the administration of services described on Exhibit A ("Services");

WHEREAS, Contractor is engaged in the provision of mental health and substance use disorder (SUD) services within Whatcom County ("County"); and

WHEREAS, North Sound BHO desires that Contractor provide, market, distribute and otherwise do all things necessary to deliver Services in the Counties;

1 **WHEREAS**, the parties to this Contract desire to promote the continuity of care for
2 consumers, avoid service disruption, assure the provision of SUD services and strengthen the regional
3 service network; and

4
5 **WHEREAS**, the parties also wish to enter into a Business Associate Agreement (Exhibit H) to
6 ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and
7 Accountability Act of 1996 ("HIPAA Privacy and Security Rules") (45 CFR Parts 160 and 164); now,
8 therefore,

9
10 **THE PARTIES AGREE AS FOLLOWS:**

11
12 **II. CONTRACT**

13
14 This Contract incorporates the Exhibits to the Contract and other documents incorporated by
15 reference.

16
17 The effective date of this Contract is September 1, 2016, through June 30, 2017.

18
19 **A. DEFINITIONS**

20
21 Abuse means provider practices that are inconsistent with sound fiscal, business or medical practices
22 and results in an unnecessary cost to the Medicaid program, or reimbursement for services not
23 medically necessary, or fails to meet professionally recognized standards for health care (Medicaid
24 Managed Care Fraud and Abuse Guidelines).

25
26 Access refers to the initial request for services, initial screening and the related response-time
27 requirements as defined in the Clinical Eligibility and Care Standards section of North Sound BHO
28 contract.

29
30 Action means in the case of a Prepaid Inpatient Health Plan (PIHP) service:

- 31
32 1. Denial or limited authorization of a requested service, including the type or level of service
33 and any service denial based on Access to Care;
34 2. Reduction, suspension, or termination of a previously authorized service;
35 3. Denial in whole, or in part, of payment for a service;
36 4. Failure to provide services in a timely manner, as defined by the state;
37 5. Failure of a Contractor to act within the timeframes provided in section 42 CFR 438.408(b),
38 WAC 388-877A-0420 and 388-877A-0450.

39
40 Administrative Costs means costs for the general operation of the public behavioral health system.
41 These activities cannot be identified with specific direct services or direct services support function as
42 defined in the Budget, Accounting and Reporting System (BARS) supplemental instructions.

43
44 American Society of Addiction Medicine (ASAM)

1 Annual Revenue means all revenue received by the PIHP pursuant to the Contract for July of any year
2 through June of the next year.

3
4 Appeal means a request for review of an action as "action" is defined above.

5
6 Appropriate means the extent a particular procedure, treatment, or service is clearly indicated and
7 not excessive, adequate in quantity and provided in the setting best suited to the needs of the
8 recipient.

9
10 Arbitration means the process by which the parties to a dispute submit their differences to the
11 judgment of an impartial person or group appointed by mutual consent or statutory provision.

12
13 ASAM Criteria means a clinical tool to systemically evaluate the severity and diagnosis of an
14 Individual's need for treatment along six (6) dimensions and then utilize a fixed combination rule to
15 determine which of four (4) levels of care a substance abusing Individual will respond to with the
16 greatest success. ASAM also includes recommended duration of SUD treatment.

17
18 Assessment means diagnostic services provided by a Chemical Dependency Professional (CDP) or CDP
19 trainee under CDP supervision to determine an Individual's involvement with alcohol and other drugs
20 (see WAC 388-877B-0500 for a detailed description of assessment requirements).

21
22 Authorized Representative means an Individual appointed by an Enrollee, or authorized under State
23 or other applicable law, to act on behalf of an Enrollee or other party involved in an Appeal or
24 Grievance. If the Enrollee gives written permission, the Authorized Representative may include a
25 behavioral health practitioner working on behalf of the Individual.

26
27 Behavioral Health Agency (BHA) means an agency licensed by the State of Washington to provide
28 behavioral health and/or SUD treatment and is subcontracted under this contract to provide services.

29
30 Behavioral Health Organization (BHO) means a county authority, group of county authorities or other
31 entity recognized by the Secretary that contracts for behavioral health services and SUD treatment
32 services within a defined Regional Service Area.

33
34 BHO Advisory Board according to RCE 71.24.300 Section (4) means the behavioral health advisory
35 board appointed by each BHO, which reviews and provides comments on plans and policies related to
36 service delivery and outcomes. As per WAC 388-865-0222, the BHO must promote active
37 engagement with persons with behavioral disorders, their families and service providers by soliciting
38 and using input to improve its services and appoints a BHO Advisory Board to fulfill this purpose.

39
40 Capitation Payment means a payment the Department of Social and Health Services (DSHS) makes
41 periodically to a PIHP on behalf of each recipient enrolled under a contract for the provision of
42 medical services under the State Plan. DSHS makes the payment regardless of whether the particular
43 recipient receives the services during the period covered by the payment.

1 Case Management means services provided by a Chemical Dependency Professional (CDP) or
2 Chemical Dependency Professional Trainee (CDPT), or a person under the clinical supervision of a CDP
3 who will assist individuals in gaining access to needed medical, social, education and other services.
4 This covers costs associated with case planning, case consultation and referral services and other
5 support services for the purpose of engaging and retaining individuals in treatment or maintaining
6 individuals in treatment.

7
8 Center for Medicare and Medicaid Services (CMS) the US federal agency which administers Medicare,
9 Medicaid and the Children's Health Insurance Program.

10
11 Chemical Dependency Professional (CDP) means an individual licensed through the Washington State
12 Department of Health (DOH). A CDP is the individual with primary responsibility for implementing an
13 individualized plan for SUD treatment services.

14
15 Chemical Dependency Professional Trainee (CDPT) means, an individual working toward the
16 education and experience requirements for certification as a CDP and who has been credentialed as a
17 CDPT.

18
19 Code of Federal Regulations (CFR) means all references in this Contract to CFR chapters or sections
20 shall include any successor, amended, or replacement regulation. The CFR may be accessed at
21 <https://www.gpo.gov/fdsys/search/submitcitation.action?publication=CFR>.

22
23 Community Mental Health Agency (CMHA) means an agency licensed by the State of Washington to
24 provide behavioral health services and subcontracted to provide behavioral health services covered
25 under this Contract.

26
27 Community Support Services is all community-based, outpatient services. As defined in RCW
28 71.24.025(8) and WAC 388-865 – case management services; 388-865 – residential services; 388-865-
29 0464 – employment services; 388-865 – psychiatric and medical services; 388-865 – In-home services;
30 and 388-865 – Individual or advocate-run services.

31
32 Confidential Information means information exempt from disclosure to the public or other
33 unauthorized persons under RCW Chapter 42.56 or other federal or state laws. Confidential
34 information includes, but is not limited to, personal information.

35
36 Consultation means the clinical review and development of recommendations regarding the job
37 responsibilities, activities, or decisions of clinical staff, contracted employees, volunteers, or students
38 by persons with appropriate knowledge and experience to make recommendations.

39
40 Contract means this document, the General Terms and Conditions and any Special Terms and
41 Conditions, including any Exhibits and other documents attached or incorporated by reference.

42
43 Contractor means an independent Contractor, its employees, agents and Subcontractors.

1 Corrective Action/Compliance Review is when findings from a North Sound BHO/Division of
2 Behavioral Health and Recovery (DBHR) review or other monitoring efforts or audits show apparent
3 violations of this Contract. Contractor shall implement corrective action within specified timeframes
4 determined by North Sound BHO/DBHR or other auditors.

5
6 Corrective Action Plan (CAP) is a written plan specifying what Contractor is required to do to be in
7 compliance. This includes required improvements and a time line for such action(s) to be
8 accomplished.

9
10 Cost Reimbursement means the subcontractor is reimbursed for actual expenses up to the maximum
11 consideration allowed in the contract.

12
13 Crisis may be self-defined or a situation where an individual is acutely behaviorally ill, or experiencing
14 serious disruption in cognitive, volitional, psychosocial and/or neurophysiologic functioning.

15
16 Cultural Competence means a set of congruent behaviors, attitudes and policies that come together
17 in a system or agency and enable that system or agency to work effectively in cross-cultural
18 situations. A culturally competent system of care acknowledges and incorporates at all levels the
19 importance of language and culture, assessment of cross-cultural relations, knowledge and
20 acceptance of dynamics of cultural differences, expansion of cultural knowledge and adaptation of
21 services to meet culturally unique needs.

22
23 Data means information disclosed or exchanged as described by the Contract.

24
25 Date of first contact means the date an Individual contacts an agency by any means (walk-in,
26 telephone call, referral through a physician, counselor or CDP, etc.) to request a service.

27
28 Day for purposes of this Contract means calendar days unless otherwise indicated in the Contract.

29
30 Debarment means an action taken by a federal official to exclude a person or business entity from
31 participating in transactions involving certain federal funds.

32
33 Deliverable means any written information required for submission to North Sound BHO to satisfy the
34 work requirements of this Contract and are due by a particular date or on a regularly occurring
35 schedule.

36
37 Denial means the decision by the PIHP to refuse authorization of covered Medicaid behavioral health
38 services that have been requested by an Enrollee or a provider on behalf of an eligible Medicaid
39 Enrollee. It is also a denial if an intake or assessment is not provided upon request by a Medicaid
40 Enrollee.

41
42 Department of Social and Health Services (DSHS) means the State of Washington and its Secretary,
43 officers, employees and authorized agents.

1 Dependent Child(ren) means in the context of services that fall within the category of Pregnant, Post-
2 Partum and Parenting Women (PPW) Residential Treatment, an Individual age six (6) or younger.

3
4 Employment Services means services or activities provided to assist Individuals in securing
5 employment or acquiring or learning skills that promote opportunities for employment. Component
6 services or activities may include employment screening, assessment, testing, structured job skills
7 and job seeking skills, specialized therapy (occupational, speech, physical), special training and
8 tutoring including literacy training and pre-vocational training, provision of books, supplies and
9 instructional material, counseling, transportation and referral to community resources.

10
11 Enrollee means a Medicaid recipient who is currently enrolled in a PIHP.

12
13 Family means:

- 14
15 1. For adults, those the individual defines as family (i.e., guardians, siblings, caregivers and
16 significant others);
17 2. For children, a child's biological parents, adoptive parents, foster parents, guardian, or legal
18 custodian authorized pursuant to RCW Title 26; a relative with whom a child has been placed
19 by DSHS or Tribe.

20
21 For Profit means a business or institution initiated or operated for the purpose of making a profit.

22
23 Global Appraisal of Individual Needs – Short Screener (GAIN-SS) means a tool used for conducting an
24 integrated comprehensive screening of SUD and behavioral health issues.

25
26 Health and Recovery Services Administration (HRSA) means the DSHS Administration governing public
27 health care, mental health care, SUD services its employees and authorized agents.

28
29 Health Insurance Portability and Accountability Act (HIPAA) of 1996 is codified in 42 USC §1320(d)
30 et.seq. and CFR Parts 160, 162 and 164.

31
32 Housing Services means the services or activities designed to assist individuals or families in locating,
33 obtaining or retaining suitable housing. Component services or activities may include tenant
34 counseling, helping individuals and families to identify and correct substandard housing conditions on
35 behalf of individuals and families who are unable to protect their own interests and assisting
36 individuals and families to understand leases, secure utilities and make moving arrangements.

37
38 Indigent Individuals means those receiving a DSHS income assistance grant (e.g., TANF) or WA Apple
39 Health. They are usually identified by a Medicaid identification card. Food stamp recipients are not
40 considered Indigent Individuals unless they also receive one of the above grant or medical assistance
41 programs.

1 Individual means a person who applies for, is eligible for or receives BHO authorized behavioral
2 health services from an agency licensed by the Department as a BHA. In the case of a minor, the
3 individual's parent or if applicable, the individuals' custodial parent.

4
5 Individual Using Intravenous Drugs (IUID) means an Individual who has used a needle one or more
6 times to illicitly inject drugs.

7
8 Involuntary Treatment includes all services and administrative functions required for the evaluation
9 for involuntary detention or involuntary treatment of individuals in accordance with RCW 71.05,
10 71.24.300 and 71.34.

11
12 Level of Care Guidelines means the criteria the BHO uses in determining the scope, duration and
13 intensity of services to be provided.

14
15 Low-Income Individual means an Individual whose gross household monthly income is at or below
16 220% of the Federal Poverty Guidelines.

17
18 Medicaid Waiver is a waiver granted by the Secretary of DSHS to requirements of 42 USC 1396a for
19 the purpose of permitting the DSHS Mental Health Division to operate a capitated managed care
20 system to provide services to enrolled recipients of the Medicaid program. Under 42 USC 1396n, the
21 Secretary is authorized to grant such waivers to the extent he/she finds proposed improvements or
22 specified practices in the provision of services under Medicaid to be cost-effective, efficient and
23 consistent with objectives of the Medicaid program.

24
25 Medical Necessity or Medically Necessary means a requested service which is reasonably calculated
26 to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient
27 that endanger life, or cause pain or suffering, result in illness or infirmity, threaten to cause or
28 aggravate a handicap, or cause physical deformity or malfunction and there is no other equally
29 effective, more conservative, or substantially less costly course of treatment available or suitable for
30 the person requesting service. "Course of treatment" may include mere observation or, where
31 appropriate no treatment at all.

32
33 Office of Management and Budget (OMB) Circular A-133 means audits of States, Local Governments
34 and Non-Profit Organizations.

35
36 Opiate Substitution Treatment Services (OST) means provision of treatment services and medication
37 management (methadone, etc.) to individuals addicted to opiates.

38
39 Outcome means the results of a service period of treatment. The extents to which services are
40 provided to individuals experiencing emotional and behavioral disorders have a positive or negative
41 effect on their well-being, circumstances and capacity for self-management and recovery.

1 Outreach means a behavioral health service where individuals with mental illness and/or SUD are
2 contacted in their place of residence or in non-traditional settings for the purpose of:

- 3
- 4 1. Improving their behavioral health, health, or social functioning; or
- 5 2. Increasing their utilization of human services and resources.
- 6

7 There are two basic approaches to outreach:

- 8
- 9 1. Mobile (going to an individual/family); and
- 10 2. Peer/Drop-in centers (i.e., shelters, clubhouses, kitchens, clothing banks).
- 11

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

- 13
- 14 1. Locating individuals in need of services;
- 15 2. Engaging individuals into service;
- 16 3. Assessing their needs;
- 17 4. Linking individuals to an appropriate level of support services; and
- 18 5. Providing follow-up services.
- 19

20 Performance-based means the subcontractor is compensated on attainment of specific outcomes.

21

22 Performance Indicator(s) means system level information on the types of service to individuals, the
23 duration and intensity of services, staffing patterns and fiscal viability.

24

25 Personal Information means information identifiable to any person, including, but not limited to,
26 information that relates to a person's name, health, finances, education, business, use or receipt of
27 governmental services or other activities, addresses, telephone numbers, social security numbers,
28 driver license numbers, other identifying numbers and any financial identifiers.

29

30 Pregnant and Postpartum Women and Women with Dependent Children (PPW) means:

- 31
- 32 1. Women who are pregnant;
- 33 2. Women who are postpartum during the first year after pregnancy completion regardless of
34 the outcome of the pregnancy or placement of children;
- 35 3. Women who are parenting children under the age of six (6) including those attempting to gain
36 custody of children supervised by DSHS, Division of Children and Family Services (DCFS).
- 37

38 Prepaid Inpatient Health Plan (PIHP) means an entity that provides or arranges for:

- 39
- 40 1. Behavioral health services to enrollees under contract with the state on the basis of prepaid
41 capitation payments, or other payment arrangements that do not use state plan payment
42 rates;
- 43 2. Provides, arranges for, or otherwise has responsibility for the provision of any inpatient
44 hospital or institutional services for its enrollees; or
- 45 3. Does not have a comprehensive risk contract.

Publish means an officially sanctioned document provided by North Sound BHO/DSHS Internet or Intranet websites for downloading, reading, or printing. Contractor shall be notified in writing or by e-mail when a document meets these criteria.

Recovery means the processes through which people are able to live, work, learn and participate fully in their communities.

Reduction means the decision by a PIHP to decrease a previously authorized covered Medicaid behavioral health service described in the Level of Care Guidelines. The clinical decision by a BHA/CMHA to decrease or change a covered service in an Individualized Service Plan (ISP) is not a reduction.

Request for Service means the point in time when services are sought or applied for through a telephone call, walk-in, or written request for services from an enrollee or the person authorized to consent to treatment for that enrollee. For purposes of this Contract, an early periodic screening, diagnosis and treatment (EPSDT) referral is only a Request for Service when the enrollee or the person authorized to consent to treatment for that enrollee has confirmed they are requesting service.

Reserve Accounts means an allocation of fund balance at the BHO set aside for a specific purpose by the BHO County Authorities Executive Committee or local legislative authority.

1. Operating Reserve – Funds designated from behavioral health revenue sources set aside into an operating reserve account by official action of the BHO's governing body. Operating reserve funds may only be set aside to maintain adequate cash flow for the provision of behavioral health services.
2. Inpatient-Risk Reserve – Funds designated from behavioral health revenue sources to pay for future inpatient hospital claims.

Resilience means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses and to live productive lives.

Revised Code of Washington (RCW) means all references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. The RCW can be accessed at <http://slc.leg.wa.gov>.

Risk means the possibility Contractor may incur a loss because the cost of providing services may exceed the premium payments made by North Sound BHO to Contractor for services covered under this Contract (42 CFR 434.2).

Screening means initial face-to-face or telephone interview to assess immediate behavioral health needs of a client for referral and/or treatment per Health Care Procedural Coding System (HCPCS). Depending upon level of need, a full multi-axial assessment frequently follows screening.

1 Secretary means the individual appointed by the Governor, State of Washington, as the head of
2 DSHS, or his/her designee.

3
4 Serious Emotionally Disturbed (SED) means, according to Federal Register Vol. 58, No. 96, May 20,
5 1993, children from birth up to age 18 who have a diagnosable mental, behavioral, or emotional
6 disorder of sufficient duration to meet diagnostic criteria specified within DSM III-R, and results in
7 functional impairment which substantially interferes with or limits the child's role or functioning in
8 family, school, or community activities.

9
10 Serious Mental Illness (SMI) means, according to Federal Register Vol. 58, No. 96, May 20, 1993,
11 persons age 18 and over who currently, or at any time during the past year, have a diagnosable
12 mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified
13 within DSM III-R, that has resulted in functional impairment which substantially limits one or more
14 major life activities.

15
16 Service Area means the geographic area covered by this Contract for which the PIHP is responsible.

17
18 Subcontract means a separate contract between Contractor and an individual or entity
19 (subcontractor) to perform all or a portion of the duties and obligations Contractor shall perform
20 pursuant to this Contract.

21
22 Subcontractor means an individual or entity performing all or part of the services under this Contract
23 under a separate contract with Contractor or its subcontractors.

24
25 Substance Abuse Block Grant (SABG) means funds granted by the Secretary, through the Center for
26 Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration
27 (SAMHSA), to plan, carry out and evaluate the provisions of the Washington State Block Grant State
28 Plan.

29
30 Substance Use Disorder (SUD) means a problematic pattern of alcohol/drug use leading to clinically
31 significant impairment or distress as categorized in the DSM 5.

32
33 Suspension means the decision by a PIHP or formal designee, to temporarily stop previously
34 authorized Medicaid covered behavioral health services described in their Level of Care Guidelines.
35 The clinical decision of a BHA/CMHA to temporarily stop or change a covered service in the
36 Individualized Resiliency/Recovery Plan (IRP) is not a suspension.

37
38 Termination means the decision by a PIHP or their formal designee, to stop previously authorized
39 covered by Medicaid behavioral health services described in their Level of Care Guidelines. The
40 clinical decision by a BHA/CMHA to stop or change a covered service in the ISP is not a termination.

41
42 Title 42 is the CFR Public Health Service.

43
44 Title XIX is grants with states for Medical Assistance Program.

1 Title XXI is the State Children's Health Insurance Program.

2
3 Waiver means a document by which DSHS/DBHR requests sections of the Social Security ACT (SSA) be
4 waived in order to operate a capitated managed-care system to provide services to enrolled
5 recipients. Section 1915(b) of the Act, authorizes the Secretary to waive the requirements of sections
6 1902 of the Act to the extent he or she finds proposed improvements or specified practices in the
7 provision of services under Medicaid to be cost-effective, efficient and consistent with the objectives
8 of the Medicaid program.

9
10 Washington Administrative Code (WAC) means all references in this Contract to WAC chapters or
11 sections shall include any successor, amended, or replacement regulation. The WAC can be accessed
12 at <http://slc.leg.wa.gov>.

13
14 Withdrawal Management means a set of interventions aimed at managing intoxication and
15 withdrawal.

16
17 Young Adult means a person age 18-20.

18
19 Youth means a person age 13-16.
20

B. PERFORMANCE STANDARDS

In carrying out its responsibilities under this contract, Contractor shall comply with the following performance standards:

- i. Contractor shall ensure Contractor and any applicable subcontractors comply with general limitations on the use of SABG funds.
- ii. If Contractor subcontracts for the provision of services under this contract it shall maintain documentation of its oversight and monitoring of subcontractors who are providing services described in this Contract, including documentation of related outcomes and actual costs and provide such documentation when requested by North Sound BHO.
- iii. Contractor shall incorporate SAMHSA's 10 Fundamental Components of Recovery (Exhibit E) in the daily activities and interactions with individuals seeking help with their recovery.

1. BACKGROUND CHECKS (RCW 43.43.832, WAC 388-877 and 388-877B)

Contractor must ensure a criminal background check is conducted on all staff members; case managers, outreach staff members, etc.; and volunteers who have unsupervised access to children, adolescents, vulnerable adults and persons who have developmental disabilities.

When providing services to Youth, Contractor must ensure requirements of WAC 388-06-0170 are met.

2. FAITH BASED ORGANIZATION (FBO)

Contractor must meet the requirements of 45 CFR Part 54 as follows:

- a. Individuals must be provided with a choice of providers.
- b. The FBO must facilitate a referral to an alternative provider within a reasonable time frame when requested by the Individual.
- c. The FBO must report to the North Sound BHO all referrals made to alternative providers.
- d. The FBO must provide Individuals with a notice of their rights.
- e. The FBO provides recipients with a summary of services that includes any inherently religious activities.

- f. Funds received from the Federal Block Grant must be segregated in a manner consistent with Federal regulations.
- g. No funds may be expended for religious activities such as:
 - i. Worship;
 - ii. Religious instruction;
 - iii. Proselytization.
- h. In delivering services, including outreach activities, SABG funded FBO cannot discriminate against current or prospective program participants based upon:
 - i. Religion;
 - ii. Religious belief;
 - iii. Refusal to hold a religious belief;
 - iv. Refusal to actively participate in a religious practice.

3. SUBSTANCE USE DISORDER (SUD) SERVICE TRANSITION

Contractor shall ensure all individuals in SUD services remain in a course of treatment that began prior to April 1, 2016 for up to 60 days or based on ASAM criteria as follows:

- a. The course of treatment is complete; or
- b. Contractor evaluates the individual and determines services are no longer necessary; or
- c. Contractor determines a different course of treatment is indicated.

4. IDENTICAL TREATMENT

All facilities receiving SABG Funding are required to provide the same services to all Individuals who are financially eligible to receive State or Federal assistance and are in need of services. No distinction must be made between State and Federal funding when providing the following services including, but not limited to:

- a. Women's services;
- b. Individuals using intravenous drugs;
- c. Tuberculosis services;
- d. Childcare services for parenting women;
- e. Interim Services.

1 **C. FINANCIAL TERMS AND CONDITIONS**

2
3 **1. GENERAL FISCAL ASSURANCES**

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

11
12 **2. FINANCIAL ACCOUNTING REQUIREMENTS**

- 13
14 a. Funding that supports this Contract comes from Substance Abuse Prevention and Treatment
15 Block Grant funds, from the federal Department of Health and Human Services
16 (DHHS), CFDA #93.959.
17 b. Contractor shall produce annual audited financial statements and make such reports
18 available to North Sound BHO upon request.
19 c. Contractor is required to limit Administration costs to no more than 15% of the
20 annual revenue supporting the public behavioral health system operated by
21 Contractor. Administration costs shall be measured on a fiscal year basis and based
22 on the information reported in the Revenue and Expenditure reports and reviewed
23 by North Sound BHO.
24

25 **3. RULES COMPLIANCE**

26 Contractor shall:

- 27
28 a. Account for public mental health expenditures under this Contract in accordance
29 with federal circular A-133 and A-87 or other applicable circular and state
30 requirements in accordance with the BARS Manual and BARS Supplemental
31 Instructions;
32 b. Ensure State or Federal funds are not used to replace local funds from any source,
33 which were being used to finance mental health services in the constituent
34 county/counties in the calendar year prior to January 1, 1990. Contractor shall not
35 use State or Federal funds to replace local funds used to administer the Involuntary
36 Treatment Program in the constituent county/counties in the calendar year prior to
37 January 1, 1974.
38 c. Not receive payments from North Sound BHO in advance or anticipation of the
39 delivery of services to be provided pursuant to this Contract;
40 d. Pay Contractor only for authorized services provided in accordance with this
41 Contract. If this Contract is terminated for any reason, North Sound BHO shall pay
42 only for services authorized and provided through the date of termination.

- e. Not bill North Sound BHO for services performed under this contract and North Sound BHO shall not pay Contractor, if Contractor has charged or will charge the State of Washington or any other party under any other contract or contract for the same services.

4. FINANCIAL PROVISIONS – REIMBURSEMENT REQUIREMENTS

The consideration by North Sound BHO to Contractor pursuant to this Contract shall be paid upon receipt of an invoice that meets the requirements of Exhibit A, in accordance with North Sound BHO's standard payment terms. Final billing under this contract must be submitted by July 15, 2017.

5. USES AND USE RESTRICTIONS

The 93.959 SABG for Community Mental Health Services funding may not be used to provide inpatient services; make cash payments to intended recipients of health services, purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility or purchase major medical equipment, to satisfy any requirement for the expenditure of nonfederal funds as a condition for the receipt of Federal funds, or to provide financial assistance to any entity other than a public or nonprofit private entity.

Contractor shall not use SABG Funds for the following:

- a. Services and programs covered under the capitation rate for Medicaid-covered services to Medicaid enrollees;
- b. Inpatient mental health services;
- c. Mental Health Services;
- d. Construction and/or renovation;
- e. Capital assets or the accumulation of operating reserve accounts;
- f. Equipment costs over \$5,000;
- g. Cash payments to Individuals;
- h. State match for other federal funds;
- i. To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility; or purchase major medical equipment;
- j. Satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;
- k. Provide financial assistance to any entity other than a public or nonprofit private entity;
- l. Make payments to intended recipients of health services;
- m. Provide Individuals with hypodermic needles or syringes;
- n. Provide treatment services in penal or correctional institutions of the State.

1 Target Population:
2

3 Contractor must ensure SABG Funds are used only for services to Individuals who are not
4 enrolled in Medicaid or for services not covered by Medicaid, as described below.
5

6

Benefits	Services	Use SABG	Use Medicaid
Individual is <i>not</i> a Medicaid recipient	Any type	Yes	No
Individual <i>is</i> a Medicaid recipient	Allowed under Medicaid	No	Yes
Individual <i>is</i> a Medicaid recipient	Not allowed under Medicaid	Yes	No

17

1 **D. OVERSIGHT, REMEDIES AND TERMINATION**

2
3 **1. OVERSIGHT AUTHORITY**

4 North Sound BHO, DSHS, Office of the State Auditor, DHHS, CMS, the Comptroller General,
5 or any of their duly-authorized representatives (i.e., External Quality Review Organizations
6 [EQRO]), have the authority to conduct announced and unannounced: a) surveys, b)
7 audits, c) reviews of compliance with licensing and certification requirements and
8 compliance with this Contract, d) audits regarding the quality, appropriateness and
9 timeliness of mental health services of Contractor and subcontractors and e) audits and
10 inspections of financial records of Contractor and subcontractors. Contractor shall notify
11 North Sound BHO when an entity other than North Sound BHO performs any audit
12 described above related to any activity contained in this Contract.

13
14 In addition, North Sound BHO will conduct reviews in accordance with its oversight of
15 resource, utilization and quality management, as well as to ensure Contractor has the
16 clinical, administrative and fiscal structures to enable them to perform in accordance with
17 the terms of the contract. Such reviews may include, but are not limited to, encounter
18 data validation, utilization reviews, clinical record reviews and review of administrative
19 structures, fiscal management and contract compliance. Reviews may include desk
20 reviews, requiring Contractor to submit requested information. North Sound BHO will also
21 review any activities delegated under this contract to Contractor.

22
23 Findings, as a result of North Sound BHO conducted reviews, may result in remedial action
24 as outlined below. Federal and State agencies may impose remedial action or financial
25 penalties either directly upon Contractor or through North Sound BHO. Contractor shall
26 comply with the terms of such remedial action and be responsible for the payment of
27 financial penalties.

28
29 **2. REMEDIAL ACTION**

30 North Sound BHO may require Contractor to plan and execute corrective action. CAP
31 developed by Contractor must be submitted for approval to North Sound BHO within 30
32 calendar days of notification. CAP allowed for corrective action depending upon the
33 nature of the situation as determined by North Sound BHO.

34
35 **a. CAP must include:**

- 36
37 i. A brief description of the finding;
38 ii. Specific actions to be taken, a timetable, a description of the monitoring to
39 be performed, the steps taken and responsible individuals that will reflect the
40 resolution of the situation.

41
42 **b. CAP may:**

43
44 Require modification of any policies or procedures by Contractor relating to the
45 fulfillment of its obligations pursuant to this Contract.

- 1 c. CAP are subject to approval by North Sound BHO, which may:
- 2
- 3 i. Accept the plan as submitted;
- 4 ii. Accept the plan with specified modifications;
- 5 iii. Request a modified plan;
- 6 iv. Reject the plan;
- 7
- 8 d. Contractor agrees North Sound BHO may initiate remedial action as outlined in
- 9 subsection below if North Sound BHO determines any of the following situations
- 10 exist:
- 11
- 12 i. A problem exists that negatively impacts enrollees;
- 13 ii. Contractor has failed to perform any of the mental health services required in
- 14 this Contract, including delegated functions, which includes the failure to
- 15 maintain the required capacity as specified by North Sound BHO to ensure
- 16 enrollees receive medically necessary services;
- 17 iii. Contractor has failed to develop, produce and/or deliver to North Sound BHO
- 18 any of the statements, reports, data, data corrections, accountings, claims
- 19 and/or documentation described herein, in compliance with all the provisions
- 20 of this Contract;
- 21 iv. Contractor has failed to perform any administrative function required under
- 22 this Contract, including delegated functions. For the purposes of this section,
- 23 "administrative function" is defined as any obligation other than the actual
- 24 provision of mental health services.
- 25 v. Contractor has failed to implement corrective action required by the state
- 26 and within North Sound BHO prescribed timeframes.
- 27
- 28 e. North Sound BHO may impose any of the following remedial actions in response to
- 29 findings of situations as outlined above.
- 30
- 31 i. Withhold one percent (1%) of the next monthly payment and each monthly
- 32 payment thereafter until the corrective action has achieved resolution. North
- 33 Sound BHO, at its sole discretion, may return a portion or all of any payments
- 34 withheld once satisfactory resolution has been achieved.
- 35 ii. Compound withholdings identified above by an additional one-half of one
- 36 percent (1/2 of 1%) for each successive month during which the remedial
- 37 situation has not been resolved;
- 38 iii. Revoke delegation of any function delegated under this contract;
- 39 iv. Deny any incentive payment to which Contractor might otherwise have been
- 40 entitled under this Contract or any other arrangement by which DBHR
- 41 provides incentives;
- 42 v. Termination for Default, as outlined in this Contract.
- 43

1 **3. PAYMENT WITHHOLD**

2 Up to two percent (2%) of the monthly payment will be withheld upon the request of
3 North Sound BHO's Program Administrator if a required report or deliverable under this
4 contract is due and has not been received by North Sound BHO, including required
5 financial reports and data transmissions.

6
7 Payment will be withheld until the required report or deliverable has been delivered and
8 meets the requirements specified by North Sound BHO.

9
10 **4. INDIVIDUALS SERVICED BY MEDICAID AND OTHER MENTAL HEALTH PROGRAM ARE NOT**
11 **THIRD-PARTY BENEFICIARIES UNDER THIS CONTRACT**

12 Although DSHS and Contractor mutually recognize the services under this Contract may be
13 provided by Contractor to individuals receiving services under the Medicaid program and
14 RCW Chapters 71.05, 71.24 and 71.34, it is not the intention of either DSHS or Contractor
15 that such individuals, or any other persons, occupy the position of intended third-party
16 beneficiaries of the obligations assumed by either party to this Contract.

17
18 **5. ADDITIONAL FINANCIAL PENALTIES – DBHR IMPOSED SANCTIONS**

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

22
23 **6. TERMINATION DUE TO CHANGE IN FUNDING**

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

27
28 **7. TERMINATION FOR CONVENIENCE**

29 Except, as otherwise provided in this Contract, a party may terminate their portion of this
30 Contract upon 30 days written notification by certified mail to the other party. The
31 effective date of termination shall be the thirtieth day after receipt of written notification
32 to the other party or the last day of the calendar month in which the thirtieth day occurs,
33 whichever is later.

34
35 **8. TERMINATION FOR DEFAULT**

36 North Sound BHO's Program Administrator may terminate this Contract for default, in
37 whole or in part, by written notice to Contractor if North Sound BHO or DSHS has a
38 reasonable basis to believe Contractor has or have:

- 39
40 a. Failed to meet or maintain any requirement for contracting with DSHS;
41 b. Failed to perform under any provision of this Contract;
42 c. Violated any law, regulation, rule, or ordinance applicable to the services provided
43 under this Contract;
44 d. Otherwise breached any provision or condition of this Contract.

Before North Sound BHO's Program Administrator may terminate this Contract for default, in whole or in part, North Sound BHO shall provide Contractor with written notice of Contractor's noncompliance with this Contract which notice shall provide Contractor a reasonable time period to correct its/their noncompliance. If Contractor has or has not corrected the noncompliance within the period of time specified in the written notice of noncompliance, North Sound BHO Program Administrator may then terminate this Contract, in whole or in part for default without such written notice and without opportunity for correction if North Sound BHO and/or DSHS has a reasonable basis to believe:

- a. Contractor has violated any law, regulation, rule, or ordinance applicable to services provided under this contract.
- b. Continuance of this Contract with Contractor poses a material risk of injury or harm to any person.

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

- a. Failed to meet or maintain any requirement for contracting with Contractor;
- b. Failed to perform under any provision of this Contract;
- c. Violated any law, regulation, rule, or ordinance applicable to work performed under this Contract;
- d. Otherwise breached any provision or condition of this Contract.

9. TERMINATION PROCEDURE

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

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

- 1 b. Contractor and any applicable subcontractors shall immediately deliver to North
2 Sound BHO's Program Administrator or to his/her successor, all DSHS and North
3 Sound BHO assets (property) in Contractor's and any applicable subcontractor's
4 possession and any property produced under this Contract. Contractor and any
5 applicable subcontractors grants North Sound BHO and DSHS the right to enter upon
6 Contractor's and any applicable subcontractor's premises for the sole purpose of
7 recovering any North Sound BHO or DSHS property Contractor and any applicable
8 subcontractors fails to return within 10 working days of termination of this Contract.
9 Upon failure to return North Sound BHO and/or DSHS property within 10 working
10 days of the termination of this Contract, Contractor and any applicable
11 subcontractors shall be charged with all reasonable costs of recovery, including
12 transportation and attorney's fees. Contractor and any applicable subcontractors
13 shall protect and preserve any property of North Sound BHO and/or DSHS in the
14 possession of Contractor and any applicable subcontractors pending return to North
15 Sound BHO and/or DSHS.
- 16 c. North Sound BHO shall be liable for and shall pay for only those services authorized
17 and provided through the date of termination. North Sound BHO may pay an
18 amount agreed to by the parties for partially completed work and services, if work
19 products are useful to or usable by North Sound BHO. Should either party terminate
20 the contract, Contractor shall be responsible to provide all mental health services
21 through the end of the month for which they will invoice North Sound BHO.
22

1 **E. GENERAL TERMS AND CONDITIONS FOR CONTRACTOR**

2
3 **1. BACKGROUND**

4 North Sound BHO is an entity formed by an inter-local contract between Island, San Juan,
5 Skagit, Snohomish and Whatcom Counties, each county authority recognized by the
6 Secretary. These counties entered into an inter-local contract to allow North Sound BHO
7 to contract with the Secretary pursuant to RCW 71.24.025(13), to operate a single
8 managed system of services for persons with mental illness living in the service area
9 covered by Island, San Juan, Skagit, Snohomish and Whatcom Counties (Service Area).
10 North Sound BHO is party to an interagency contract with the Secretary, pursuant to
11 which North Sound BHO has agreed to provide integrated community support, crisis
12 response and inpatient management services to people needing such services in its
13 Service Area. North Sound BHO, through this Contract, is subcontracting with Contractor
14 for the provision of specific mental health services as required by the contract with the
15 Secretary. Contractor by signing this Contract attests they are willing and able to provide
16 such services in the Service Area.

17
18 **2. MUTUAL COMMITMENTS**

19 The parties to this Contract are mutually committed to the development of an efficient,
20 cost effective, integrated, consumer-driven, age specific recovery and resilience model
21 approach to the delivery of quality community mental health services. To that end, the
22 parties are mutually committed to maximizing the availability of resources to provide
23 needed mental health services in the Service Area, maximizing the portion of those
24 resources used for the provision of direct services and minimizing duplication of effort.

25
26 **3. ASSIGNMENT**

27 Except as otherwise provided within this Contract, this Contract may not be assigned,
28 delegated, or transferred by Contractor without the express written consent of North
29 Sound BHO and any attempt to transfer or assign this Contract without such consent shall
30 be void. The terms "assigned", "delegated", or "transferred" shall include change of
31 business structure to a limited liability company, of any Contractor Member or Affiliate
32 Agency.

33
34 **4. AUTHORITY**

35 Concurrent with the execution of this Contract, Contractor shall furnish North Sound BHO
36 with a copy of the explicit written authorization of their governing bodies to enter into this
37 Contract and accept the financial risk and responsibility to carry out all terms of this
38 Contract including the ability to pay for all expenses incurred during the contract period.
39 Likewise, concurrent with the execution of this Contract, North Sound BHO shall furnish
40 Contractor with a written copy of the motion, resolution, or ordinance passed by North
41 Sound BHO County Authorities Executive Committee authorizing North Sound BHO to
42 execute this Contract.
43

1 **5. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND OPERATIONAL POLICIES**

2 Contractor and their subcontractors shall comply with all applicable federal and state
3 statutes, regulations and operational policies whether or not a specific citation is
4 identified in various sections of this Contract and all amendments thereto that are in
5 effect when the Contract is signed, or come into effect during the term of the Contract,
6 which may include but are not limited to, the following:

- 7
- 8 a. Title XIX and Title XXI of the SSA and Title 42 of the CFR;
 - 9 b. All applicable Office of the Insurance Commissioner (OIC) statutes and regulations;
 - 10 c. All local, State and Federal professional and facility licensing and certification
11 requirements/standards that apply to services performed under the terms of this
12 Contract;
 - 13 d. Comply with the Omnibus Crime Control and Safe Streets Act of 1968; Title VI of the
14 Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the
15 Americans with Disabilities Act of 1990; Title IX of the Education Amendments of
16 1972; The Age Discrimination Act of 1975; and The Department of Justice Non-
17 Discrimination Regulations of 28 CFR Part 42, Subparts C, D, E and G and 28 CFR Parts
18 35 and 39 (see <http://www.ojp.usdoj.gov/about/offices/ocr.htm> for additional
19 information and access to the aforementioned federal laws and regulations);
 - 20 e. Those specified in Title 18 RCW for professional licensing;
 - 21 f. Reporting of abuse as required by RCW 26.44.030;
 - 22 g. Industrial insurance coverage as required by RCW Title 51;
 - 23 h. RCW 38.52, 70.02 and 71.24;
 - 24 i. WAC 388-865, 887, 877A and 877B;
 - 25 j. 42 CFR 438, including 438.58 (conflict of interest) and 438.106 (physician incentive
26 plans);
 - 27 k. 21 CFR Food and Drugs, 42 CFR Subpart A; 45 CFR Public Welfare, Part 96 Subpart 2,
28 CFR Part 200 Subpart F;
 - 29 l. The State Medicaid Manual (SMM), OMB Circulars, the BARS Manual and BARS
30 Supplemental Mental Health Instructions;
 - 31 m. Federal and State non-discrimination laws and regulations;
 - 32 n. HIPAA, 45 CFR parts 160-164;
 - 33 o. DBHR-CIS Data Dictionary and its successors;
 - 34 p. Federal funds must not be used for any lobbying activities.
- 35

36 If Contractor is in violation of a federal law or regulation and Federal Financial
37 Participation is recouped, Contractor shall reimburse the federal amount to North Sound
38 BHO within 20 days of recoupment. Upon notification from DSHS, North Sound BHO shall
39 notify Contractor in writing of changes/modifications in DSHS/DBHR policies and/or
40 contract requirement changes.
41

1 **6. COMPLIANCE WITH North Sound BHO OPERATIONAL POLICIES**

2 Contractor shall comply with all North Sound BHO operational policies that pertain to the
3 delivery of services under this Contract that are in effect when the Contract is signed or
4 come into effect during the term of the Contract.
5

6 Along with all North Sound BHO stakeholders, Contractor will be included in the process
7 for developing relevant operational policies and procedures. North Sound BHO's policies
8 and procedures are posted on North Sound BHO's website. North Sound BHO shall notify
9 Contractor of new and revised policies, if applicable to the services provided under this
10 Contract, through its numbered memoranda. Training will be provided on policies that
11 impact providers.
12

13 North Sound BHO will make best efforts to maintain currency of policies with applicable
14 federal or state law, regulation or policy. In the event of a conflict, federal or state laws,
15 regulations or policies supersede North Sound BHO policies and procedures.
16

17 **7. CONFIDENTIALITY OF CLIENT INFORMATION**

18 The parties shall not use, publish, sell or otherwise disclose any confidential information
19 gained by reason of this Contract for any purpose not directly connected with the
20 performance of the services contemplated there under, except:
21

- 22 a. As provided by law, or
23 b. In the case of Personal Information, as provided by law or with prior written consent
24 of the person or personal representative who is subject of the Personal Information.
25

26 The parties shall protect and maintain all Confidential Information gained by reason of this
27 Contract against unauthorized use, access, disclosure, modification or loss. This duty
28 requires the parties to employ reasonable security measures, which include restricting
29 access to the Confidential Information by:
30

- 31 a. Allowing access only to staff that have an authorized business requirement to view
32 the Confidential Information;
33 b. Physically securing any computers, documents, or other media containing the
34 Confidential Information.
35

36 To the extent allowed by law, at the end of the Contract term, or when no longer needed,
37 the parties shall return Confidential Information or certify in writing the destruction of
38 Confidential Information upon written requests by the other party.
39

40 Paper documents with Confidential Information may be recycled through a contracted
41 firm, provided the contract with the recycler specifies the confidentiality of information
42 will be protected and the information destroyed through the recycling process. Paper
43 documents containing Confidential Information requiring special handling (i.e., protected
44 health information) must be destroyed through shredding, pulping or incineration.

1 The compromise or potential compromise of Confidential Information must be reported to
2 North Sound BHO contact designated on this Contract within 5 business days of discovery
3 for breaches less than 500 persons' protected data and 3 business days of discovery for
4 breaches of over 500 persons' protected data. The parties must also take actions to
5 mitigate the risk of loss and comply with any notification or other requirements imposed
6 by law.

7
8 Contractor shall ensure all staff and subcontractors providing mental health services under
9 this Contract receive annual training on confidentiality policies and procedures. In
10 addition, Contractor shall ensure all staff and subcontractors' providing mental health
11 services under this Contract sign an annual Oath of Confidentiality statement. Signed
12 copies of the Oath of Confidentiality shall be kept in Contractor's personnel files.

13
14 **8. CONTRACT PERFORMANCE/ENFORCEMENT**

15 North Sound BHO shall be vested with the rights of a third party beneficiary, including the
16 "cut through" right to enforce performance should Contractor be unwilling or unable to
17 enforce action on the part of its/their subcontractor(s). In the event Contractor dissolves
18 or otherwise discontinues operations, North Sound BHO may, at its sole option, assume
19 the right to enforce the terms and conditions of this Contract directly with Contractor.
20 Contractor shall include this clause in their contracts with their subcontractors. In the
21 event of the dissolution of Contractor, North Sound BHO's rights in indemnification shall
22 survive.

23
24 **9. COOPERATION**

25 The parties to this Contract shall cooperate in good faith to effectuate the terms and
26 conditions of this Contract.

27
28 **10. DEBARMENT CERTIFICATION**

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

35
36 **11. EXECUTION, AMENDMENT AND WAIVER**

37 This Contract shall be binding on all parties only upon signature by authorized
38 representatives of each party. This Contract, or any provision, may be amended during
39 the contract period, if circumstances warrant, by a written amendment executed by all
40 relevant parties. Only North Sound BHO's Program Administrator or North Sound BHO's
41 Program Administrator's designee has authority to waive any provision of this Contract on
42 behalf of North Sound BHO.
43

1 **12. HEADINGS AND CAPTIONS**

2 The headings and captions used in this Contract are for reference and convenience only
3 and in no way define, limit, or decide the scope or intent of any provisions or sections of
4 this Contract.
5

6 **13. INDEMNIFICATION**

7 Contractor shall be responsible for and shall indemnify and hold North Sound BHO
8 harmless (including all costs and attorney fees) from all claims for personal injury,
9 property damage and/or disclosure of confidential information, including claims against
10 North Sound BHO for the negligent hiring, retention and/or supervision of Contractor
11 and/or from the imposition of governmental fines or penalties resulting from the acts or
12 omissions of Contractor and its subcontractors related to the performance of this
13 contract. North Sound BHO shall be responsible and shall indemnify and hold Contractor
14 harmless (including all costs and attorney fees) from all claims for personal injury,
15 property damage, disclosure of confidential information and from the imposition of
16 governmental fines or penalties resulting from the acts or omissions of North Sound BHO.
17 Except to the extent caused by the gross negligence and/or willful misconduct of North
18 Sound BHO, Contractor, shall indemnify and hold North Sound BHO harmless from any
19 claims made by non-participating BHAs related to the provision of services under this
20 Contract. For the purposes of these indemnifications, the Parties specifically and expressly
21 waive any immunity granted under the Washington Industrial Insurance Act, RCW Title 51.
22 This waiver has been mutually negotiated and agreed to by the Parties. The provision of
23 this section shall survive the expiration or termination of the Contract.
24

25 **14. INDEPENDENT CONTRACTOR FOR NORTH SOUND BHO**

26 The parties intend an independent Contractor relationship be created by this contract.
27 Contractor acknowledges that Contractor is not officers, employees, or agents of North
28 Sound BHO. Contractor shall not hold Contractor or any of Contractor's employees out as,
29 nor claim status as, officers, employees, or agents of North Sound BHO. Contractor shall
30 not claim for Contractor or Contractor's employees any rights, privileges, or benefits,
31 which would accrue to an employee of North Sound BHO. Contractor shall indemnify and
32 hold North Sound BHO harmless from all obligations to pay or withhold Federal or State
33 taxes or contributions on behalf of Contractor or Contractor's employees and
34 subcontractors unless specified in this Contract.
35

36 **15. INSURANCE**

37 North Sound BHO certifies it is a member of Washington Governmental Risk Pool for all
38 exposure to tort liability, general liability, property damage liability and vehicle liability, if
39 applicable, as provided by RCW 43.19.
40

Contractor shall maintain Commercial General Liability Insurance (CGL). If Contractor is not a member of a risk pool, Contractor shall carry CGL to include coverage for bodily injury, property damage and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. Any risk pool shall provide coverage with the same minimum limits. Any policy (non-risk pool and risk pool) shall include liability arising out of premises, operations, independent Contractors, personal injury, advertising injury and liability assumed under an insured contract. Contractor shall provide evidence of such insurance to North Sound BHO within 15 days of execution of this Contract and 15 days post renewal date thereafter. All non-risk pool policies shall name North Sound BHO as a covered entity under said policy(s).

16. INTEGRATION

This Contract, including Exhibits, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

17. MAINTENANCE OF RECORDS

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

- a. Maintain the content of all Medical Records in a manner consistent with utilization control requirements of 42 CFR 456, 434.34 (a), 456.111 and 456.211;
- b. Document performance of all acts required by law, regulation, or this Contract;
- c. Substantiate Contractor statement of their organizations' structures, tax status, capabilities and performance;
- d. Demonstrate accounting procedures, practices and records, which sufficiently and properly document Contractor invoices to North Sound BHO and all expenditures made by Contractor to perform as required by this Contract;
- e. Cooperate in all reviews including, but not limited to, surveys and research conducted by North Sound BHO, DSHS, or other Washington State Departments;
- f. Evaluate by inspection or other means to measure quality, appropriateness and timeliness of services performed under this Contract and to determine whether Contractor and their subcontractors are providing service to individuals in accordance with the requirements set forth in this Contract and applicable state and federal regulations as existing or hereafter amended.

18. NO WAIVER OF RIGHTS

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

1 Waiver of any breach of any provision of this Contract shall not be deemed to be a waiver
2 of any subsequent breach and shall not be construed to be a modification of the terms
3 and conditions of this Contract.
4

5 **19. ONGOING SERVICES**

6 Contractor and their subcontractors shall ensure in the event of labor disputes or job
7 actions, including work slowdowns, so called "sick outs", or other activities within its
8 service network, uninterrupted services shall be available as required by the terms of this
9 Contract.
10

11 **20. ORDER OF PRECEDENCE**

12 In the event of an inconsistency in the terms of this Contract, or any inconsistency
13 between the terms of this Contract and any applicable statute, rule, or contract, unless
14 otherwise provided herein, the conflict shall be resolved by giving precedence in the
15 following order, to:
16

- 17 a. The applicable Medicaid 1915(b) Waiver, Provisions of Title XIX of the SSA and
18 Federal regulations concerning the operations of PIHPs;
- 19 b. State statutes and regulations concerning the operation of the community mental
20 health programs;
- 21 c. Other applicable Federal, State, or local law;
- 22 d. North Sound BHO/DSHS contract, or its successors, that covers the provision of the
23 mental health services covered under this Contract, which shall include any exhibit,
24 document, or material incorporated by reference;
- 25 e. This Contract.
26

27 **21. OVERPAYMENTS**

28 In the event Contractor fails to comply with any of the terms and conditions of this
29 Contract and that failure results in an overpayment, North Sound BHO may recover the
30 amount due DSHS, CMS, or other federal or state agency. In the case of overpayment,
31 Contractor shall cooperate in the recoupment process and return to North Sound BHO the
32 amount due upon demand.
33

34 **22. OWNERSHIP OF MATERIALS**

35 Materials created by Contractor and their subcontractors and paid for by North Sound
36 BHO as a part of this Contract shall be owned by North Sound BHO and shall be, "works for
37 hire" as defined by the U.S. Copyright Act of 1976. This material includes, but is not
38 limited to: books, computer programs, documents, films, pamphlets, reports, sound
39 reproductions, studies, surveys, tapes and/or training materials. Contractor or relevant
40 subcontractors own material which Contractor and their subcontractors use to perform
41 this Contract, but which is not created for or paid for by North Sound BHO; however,
42 North Sound BHO and DSHS shall have a perpetual license to use this material for DSHS
43 internal purposes at no charge to DSHS.
44

1 **23. PERFORMANCE**

2 Contractor shall furnish the necessary personnel, materials and/or mental health services
3 and otherwise do all things for, or incidental to, the performance of the work set forth
4 here and as attached. Unless specifically stated, Contractor is responsible for performing
5 or ensuring all fiscal and program responsibilities required in this contract. No subcontract
6 will terminate the legal responsibility of Contractor to perform the terms of this Contract.
7

8 **24. RESOLUTION OF DISPUTES**

9 The parties wish to provide for prompt, efficient, final and binding resolution of disputes
10 or controversies that may arise under this Contract and therefore establish this dispute
11 resolution procedure. All claims, disputes and other matters in question between the
12 parties arising out of, or relating to, this Contract shall be resolved exclusively by the
13 following dispute resolution procedure unless the parties mutually agree in writing
14 otherwise:
15

- 16 a. The parties shall use their best efforts to resolve issues prior to giving written Notice
17 of Dispute.
18 b. Within 10 working days of receipt of the written Notice of Dispute, the parties (or a
19 designated representative) shall meet, confer and attempt to resolve the claim.
20 c. The terms of the resolution of all claims concluded in meetings shall be memorialized
21 in writing and signed by each party.
22

23 **Arbitration:** If the claim is not resolved within 30 days, the parties shall proceed to
24 arbitration as follows:
25

- 26 a. Demand for arbitration shall be made in writing to the other party. The parties shall
27 select one (1) person as arbitrator.
28 b. If there is a delay of more than 10 days in the naming of any arbitrator, either party
29 can ask the presiding judge of Skagit County to name any remaining arbitrator(s).
30 c. The prevailing party shall be entitled to recover from the other party all costs and
31 expenses, including reasonable attorney fees. The arbitrators shall determine which
32 party, if any, is the prevailing party.
33 d. The parties agree the arbitrators' decision shall be binding, final and appealable to
34 Skagit County Superior Court only as provided in RCW Chapter 7.04A.
35 e. Unless the parties agree in writing otherwise, the unresolved claims in each notice of
36 dispute shall be considered at an arbitration session which shall occur in Skagit
37 County no later than 30 days after the close of the meeting described in paragraph
38 (b) above.
39 f. The Provisions of this section shall, with respect to any controversy or claim, survive
40 the termination or expiration of this Contract.
41 g. Nothing contained in this Contract shall be deemed to give the arbitrator the power
42 to change any of the terms and conditions of this Contract in any way.

- 1 h. The prevailing party in any action to compel arbitration or to enforce an arbitration
2 award shall be awarded its costs, including attorney fees. Venue for any such action
3 is exclusively Skagit County Superior Court.
4 i. This Contract shall be governed by laws of the State of Washington, both as to
5 interpretation and performance.
6

7 **25. SEVERABILITY AND CONFORMITY**

8 The provisions of this Contract are severable. If any provision of this Contract, including
9 any provision of any document incorporated by reference is held invalid by any court, that
10 invalidity shall not affect the other provisions of this Contract and the invalid provision
11 shall be considered modified to conform to existing law.
12

13 **26. SINGLE AUDIT ACT**

14 If Contractor or their subcontractor is a sub-recipient of Federal awards as defined by
15 OMB Circular A-133, Contractor and their subcontractors shall maintain records that
16 identify all Federal funds received and expended. Said funds shall be identified by the
17 appropriate OMB Catalog of Federal Domestic Assistance titles and numbers, the award
18 names and numbers and award years, if awards are for research and development, as well
19 as names of the Federal agencies. Contractor and their subcontractors shall make
20 Contractor and their subcontractors' records available for review or audit by officials of
21 the Federal awarding agency, the General Accounting Office and DSHS. Contractor and
22 their subcontractors shall incorporate OMB Circular A-133 audit requirements into all
23 contracts between Contractor and their subcontractors who are sub-recipients.
24 Contractor and their subcontractors shall comply with any future amendments to OMB
25 Circular A-133 and any successor or replacement Circular or regulation.
26

27 If Contractor and/or their subcontractors are a sub-recipient and expends \$750,000 or
28 more in Federal awards from any and/or all sources in any fiscal year, Contractor and
29 applicable subcontractors shall procure and pay for a single audit for that fiscal year.
30 Upon completion of each audit, Contractor and applicable subcontractors shall submit to
31 North Sound BHO's Program Administrator a copy of their audited financial statements.
32

33 For purposes of "sub-recipient" status under the rules of OMB Circular A-133 205(i)
34 Medicaid payments to a sub-recipient for providing patient care services to Medicaid
35 eligible individuals are not considered Federal awards expended under this part of the rule
36 unless a State requires the fund to be treated as Federal awards expended because
37 reimbursement is on a cost-reimbursement basis.
38

39 **27. SUBRECIPIENTS**

40 General – If Contractor is a sub-recipient of federal awards as defined by OMB Circular A-
41 133 and this Contract, Contractor shall:
42

- a. Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency and name of the pass-through entity;
- b. Maintain internal controls that provide reasonable assurance that Contractor is managing federal awards in compliance with laws, regulations and provisions of contracts or grant contracts that could have a material effect on each of its federal programs;
- c. Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- d. Incorporate OMB Circular A-133 audit requirements into all contracts between Contractor and its Subcontractors who are sub-recipients;
- e. Comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation;
- f. Comply with the applicable requirements of OMB Circular A-87 and any future amendments to OMB Circular A-87 and any successor or replacement Circular or regulation; and
- g. Comply with the Omnibus Crime Control and Safe Streets Act of 1968; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972; The Age Discrimination Act of 1975; and The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42 Subparts C, D, E and G and 28 CFR Part 35 and Part 39 (see <http://ojp.gov/about/ocr/statutes.htm> for additional information and access to the aforementioned Federal laws and regulations).

28. SUBCONTRACTS

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

- a. Contractor shall be responsible for the acts and omissions of any subcontractor.
- b. Contractor must ensure the subcontractor neither employs any person nor contracts with any person or CMHA excluded from participation in federal health care programs under either 42 USC 1320a-7 (§§1128 or 1128A SSA) or debarred or suspended per this Contract's General Terms and Conditions.
- c. Contractor shall require subcontractors to comply with all applicable federal and state laws, regulations and operational policies as specified in this Contract.
- d. Contractor shall require subcontractors to comply with all applicable North Sound BHO operational policies as specified in this Contract, including travel standards and access standards.
- e. Contractor shall oversee, be accountable for and monitor all functions and responsibilities delegated to a subcontractor on an ongoing basis including formal reviews.

- 1 f. Contractor will monitor performance of the subcontractors on an annual basis and
2 notify North Sound BHO of any identified deficiencies or areas for improvement
3 requiring corrective action by Contractor.
4 g. Contractor shall ensure all subcontracts are in writing and specify all duties, reports
5 and responsibilities delegated under this Contract. Those written subcontracts shall:
6
7 i. Require subcontractors to hold all necessary licenses, certifications and/or
8 permits as required by law for the performance of the services to be
9 performed under this Contract;
10 ii. Include clear means to revoke delegation, impose corrective action, or take
11 other remedial actions if the subcontractor fails to comply with the terms of
12 the subcontract;
13 iii. Require the subcontractor correct any areas of deficiencies in the
14 subcontractor's performance identified by Contractor, North Sound BHO
15 and/or DBHR;
16 iv. If a subcontractor is a Faith Based Organization (FBO), the subcontract must:
17
18 a) Use generally accepted auditing and accounting principles to account
19 for SABG funds similar to other nongovernmental organizations;
20 b) Segregate Federal funds from non-Federal funds;
21 c) Subject Federal funds to audits by the government;
22 d) Apply Charitable Choice requirements when other funds are
23 commingled with SABG.
24

25 **29. SURVIVABILITY**

26 The terms and conditions contained in this Contract by their sense and context are
27 intended to survive the expiration of this Contract and shall so survive. Surviving terms
28 include, but are not limited to: Financial Terms and Conditions, Single Audit Act, Order of
29 Precedence, Contract Performance and Enforcement, Confidentiality of Client Information,
30 Resolution of Disputes, Indemnification, Oversight Authority, Maintenance of Records,
31 Ownership of Materials and Contract Administration Warranties and Survivability.
32

33 **30. TREATMENT OF CLIENT PROPERTY**

34 Unless otherwise provided in this Contract, Contractor shall ensure any adult individual
35 receiving services from Contractor under this Contract has unrestricted access to the
36 individual's personal property. Contractor shall not interfere with any adult individual's
37 ownership, possession, or use of the individual's property unless clinically indicated.
38 Contractor shall provide individuals under age 18 with reasonable access to their personal
39 property that is appropriate to the individual's age, development and needs. Upon
40 termination of this Contract, Contractor shall immediately release to the individual and/or
41 the individual's guardian or custodian all of the individual's personal property.
42

1 **31. WARRANTIES**

2 The parties' obligations are warranted and represented by each to be individually binding,
3 for the benefit of the other party. Contractor warrants and represents it is able to
4 perform its obligations set forth in this Contract and such obligations are binding upon
5 Contractor and other subcontractors for the benefit of North Sound BHO.
6

7 **32. CONTRACT ADMINISTRATION**

8 The Program Administrator for each of the parties shall be responsible for and shall be the
9 contact person for all communications and billings regarding the performance of this
10 Contract.
11

12 The Contact for North Sound BHO is:

13
14 Joe Valentine, Executive Director
15 North Sound Behavioral Health Organization, LLC
16 301 Valley Mall Way, Suite 110
17 Mount Vernon, WA 98273-5462
18

19 The Contact for Whatcom County is:

20
21 Anne Deacon, Human Services Manager
22 Whatcom County Health Department
23 509 Girard Street
24 Bellingham, WA 98227-0935
25

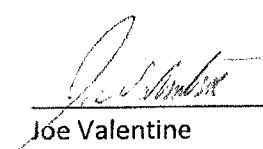
26 Changes shall be provided to the other party in writing within 10 working days.
27

28 This contract will go into effect and shall be fully enforceable when signed by authorized
29 representatives of all parties involved. This contract is subject to ratification after it
30 becomes effective. This contract will be submitted for ratification at the next scheduled
31 meeting of the North Sound BHO County Authorities Executive Committee ("the
32 Committee"). If not ratified by the Committee, North Sound BHO will terminate the
33 contract either immediately or within a reasonable amount of time at North Sound BHO's
34 discretion.
35

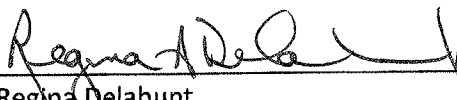
1 **THIS CONTRACT**, consisting of 38 Pages, plus Exhibits is executed by the persons signing below who
2 warrant that they have the authority to execute this Contract.

3
4 **FOR NORTH SOUND BEHAVIORAL**
5 **HEALTH ORGANIZATION, LLC**

FOR WHATCOM COUNTY

6
7
8 
9 Joe Valentine
10 Executive Director

3/13/17
Date


Regina Delahunt
Director

3/8/17
Date

DEPARTMENT APPROVAL



Anne Deacon, Human Services Division Manager

3/7/17
Date

WHATCOM COUNTY

JACK LOUWS
County Executive

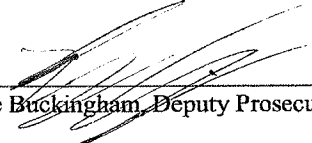
STATE OF WASHINGTON)
)
COUNTY OF WHATCOM)

On this _____ day of _____, 2017, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

My Commission expires: _____

APPROVED AS TO FORM



Royce Buckingham, Deputy Prosecuting Attorney

3-9-17
Date

**EXHIBIT A
SCOPE OF WORK
OPIOID OUTREACH SERVICES
Whatcom County**

PURPOSE

To provide opioid outreach services in Whatcom County to individuals who are experiencing opioid dependency, and those who use drugs intravenously, in order to facilitate access to medication assisted treatment, substance use disorder assessment, admission into substance use disorder treatment services, and recovery initiation.

TARGET POPULATION

Individuals who are homeless and are identified by paramedics
Individuals who are homeless and are identified by the City of Bellingham Police
Individuals who are identified by jail behavioral health staff
Individuals who are homeless and living outdoors in encampments, parks and downtown areas
Individuals who are living in emergency shelters

SERVICES

Employ one Full Time Equivalency (FTE) Opiate Outreach Worker who will:

- provide outreach, coordination and liaison services to individuals who are experiencing opioid dependency and those who use drugs intravenously;
- screen and determine the individual's needs;
- assist with access to services to meet individual needs as identified such as housing, medical, food, mental health care, and clothing;
- assist in access to or coordination of buprenorphine and other medication assisted treatment as indicated;
- coordinate with the jail behavioral health staff for re-entry of those with opioid use disorder who are incarcerated and homeless by providing housing screening; and,
- facilitate access to and coordinate substance use disorder assessment and treatment services.

The outreach services will:

- Increase individual engagement in SUD treatment services; and
- Lower the barrier to accessing medication assisted treatment and SUD treatment services

Number of outreach hours provided annually: 1,560

Number of individuals outreached to annually: 200

Of those, the number who are pregnant: 10

MONTHLY REPORTING

Complete the Opiate Outreach Report and submit with each monthly invoice.

AWARD

Substance Abuse Block Grant funds

\$75,000

No funding in this budget may be used for SUD treatment services.

NORTH SOUND BHO-WHATCOM COUNTY-SABG-16-17

SABG Funding Restrictions. SABG Funds cannot be used for the following:

- Services and programs that are covered under the capitation rate for Medicaid-covered services to Medicaid enrollees.
- Inpatient mental health services.
- Mental health services.
- Construction and/or renovation.
- Capital assets or the accumulation of operating reserve accounts.
- Equipment costs over \$5,000.
- Cash payments to individuals.
- Purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or other facility; or purchase major medical equipment.
- Satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.
- Provide financial assistance to any entity other than a public or nonprofit private entity.
- Make payments to intended recipients of health services.
- Provide individuals with hypodermic needles or syringes.
- Provide treatment services in penal or correctional institutions of the State.

Row #	Revenues from Third Party	Acct. Code	Revenue	Line Item	Grand Total
1	Revenues Federal Sources:	XXXXXXXXXX			
2	Direct Mental Health Federal Grants		\$	-	
o January	Other		\$	-	
o July - D	Revenues from Insurance:	XXXXXXXXXX			
	Medicare		\$	-	
7	Insurance Companies		\$	-	
8			\$	-	
9	Other Payments (Detail in notes)		\$	-	
10			\$	-	
11	Revenues from Clients:	XXXXXXXXXX			
12	Client Payments		\$	-	
13	Other Client Payments		\$	-	
14			\$	-	
15	Revenues from Other (detail in notes):	XXXXXXXXXX			
16			\$	-	
17			\$	-	
18			\$	-	
19			\$	-	
20	Total		\$		\$

THIRD PARTY CERTIFICATION

I, _____, certify that during the time period of _____ (Time Frame)
(Print Name)

the _____ s sub contractors pursued all third party revenue prior to utilization of Medicaid funding.
(Name of Provider)

Contractor further certifies that expenditures related to the reported third party revenue are not included in the Medicaid or Non-Medicaid report.

Signature

REVENUE & EXPENDITURE REPORT

Reporting Agency: _____

☐ January – June 20____

☐ July – December 20____

I have reviewed this report and certify that to the best of my knowledge it is both complete and accurate.

Signed by: _____

Date: _____

By signing this form you assure that no payments were made directly or indirectly to physicians or other persons as inducements to limit services to recipients.

By signing this form you assure that the attached reports are your best estimate due to county or provider books not being officially closed.

If your Agency was audited during this report period, please attach a copy of your corrective action plan(s).

The 10 Fundamental Components of Recovery

Self-Direction: Consumers lead, control, exercise choice over, and determine their own path of recovery by optimizing autonomy, independence, and control of resources to achieve a self-determined life. By definition, the recovery process must be self-directed by the individual, who defines his or her own life goals and designs a unique path towards those goals.

Individualized and Person-Centered: There are multiple pathways to recovery based on an individual's unique strengths and resiliencies as well as his or her needs, preferences, experiences (including past trauma), and cultural background in all of its diverse representations. Individuals also identify recovery as being an ongoing journey and an end result as well as an overall paradigm for achieving wellness and optimal mental health.

Empowerment: Consumers have the authority to choose from a range of options and to participate in all decisions—including the allocation of resources—that will affect their lives, and are educated and supported in so doing. They have the ability to join with other consumers to collectively and effectively speak for themselves about their needs, wants, desires, and aspirations. Through empowerment, an individual gains control of his or her own destiny and influences the organizational and societal structures in his or her life.

Holistic: Recovery encompasses an individual's whole life, including mind, body, spirit, and community. Recovery embraces all aspects of life, including housing, employment, education, mental health and healthcare treatment and services, complementary and naturalistic services, addictions treatment, spirituality, creativity, social networks, community participation, and family supports as determined by the person. Families, providers, organizations, systems, communities, and society play crucial roles in creating and maintaining meaningful opportunities for consumer access to these supports.

Non-Linear: Recovery is not a step-by-step process but one based on continual growth, occasional setbacks, and learning from experience. Recovery begins with an initial stage of awareness in which a person recognizes that positive change is possible. This awareness enables the consumer to move on to fully engage in the work of recovery.

Strengths-Based: Recovery focuses on valuing and building on the multiple capacities, resiliencies, talents, coping abilities, and inherent worth of individuals. By building on these strengths, consumers leave stymied life roles behind and engage in new life roles (e.g., partner, caregiver, friend, student and employee). The process of recovery moves forward through interaction with others in supportive, trust-based relationships.

Peer Support: Mutual support—including the sharing of experiential knowledge and skills and social learning—plays an invaluable role in recovery. Consumers encourage and engage other consumers in recovery and provide each other with a sense of belonging, supportive relationships, valued roles, and community.

Respect: Community, systems, and societal acceptance and appreciation of consumers—including protecting their rights and eliminating discrimination and stigma—are crucial in achieving recovery. Self-acceptance and regaining belief in one's self are particularly vital. Respect ensures the inclusion and full participation of consumers in all aspects of their lives.

Responsibility: Consumers have a personal responsibility for their own self-care and journeys of recovery. Taking steps towards their goals may require great courage. Consumers must strive to understand and give meaning to their experiences and identify coping strategies and healing processes to promote their own wellness.

Hope: Recovery provides the essential and motivating message of a better future—that people can and do overcome the barriers and obstacles that confront them. Hope is internalized; but can be fostered by peers, families, friends, providers, and others. Hope is the catalyst of the recovery process. Mental health recovery not only benefits individuals with mental health disabilities by focusing on their abilities to live, work, learn, and fully participate in our society, but also enriches the texture of American community life. America reaps the benefits of the contributions individuals with mental disabilities can make, ultimately becoming a stronger and healthier Nation.

CONTRACT #NORTH SOUND BHO-WHATCOM COUNTY-SABG-16-17
September 1, 2016 – June 30, 2017

CONTRACT DELIVERABLES

DESCRIPTION	DUE DATES	Contract Reference
1. Concurrent with the execution of this Contract, Contractor shall furnish North Sound BHO with a copy of the explicit written authorization of their governing bodies to enter into this Contract and accept the financial risk and responsibility to carry out all terms of this Contract including the ability to pay for all expenses incurred during the contract period.	10/3/16	E.4
2. Contractor shall maintain Commercial General Liability Insurance (CGL). If the Contractor is not a member of a risk pool, the Contractor shall carry CGL to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. All non-risk pool policies shall name North Sound BHO as a covered entity under said policy(s).	10/3/16	E.15
3. Report Contractor and subcontractor revenue and expenditure information to North Sound BHO on a biannual basis. Reports must comply with the provisions in the BARS Supplemental Instructions for Mental Health Services promulgated by the Washington State Auditor's Office. Reports are due within 30 days of the quarter end (quarters ending in December and June of each year).	15 days post quarter end	C.2
4. Contractor shall report monthly on Opioid Outreach Services. The template for reporting is located on the North Sound BHO website: http://northsoundbho.org/contracts/#Deliverables	Monthly-15 days post month end	n/a

EXHIBIT G		NORTH SOUND BHO-WHAYCOM COUNTY-SABG-16-17		Page 1 of 1	
FORM A19 - 1A	STATE OF WASHINGTON INVOICE VOUCHER	VENDOR OR CLAIMANT (Warrant payable to)		Contract #	
AGENCY NAME Department of Social and Health Services Division of Behavioral Health and Recovery P.O. Box 45525 Olympia, Washington 98504				Agency No.	3000
		VENDOR NUMBER:		SUPPLEMENTAL #	
		MONTH and YEAR OF SERVICE:			
Vendor's Certificate I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination.					
		(signature)			
		(title)		(telephone number)	(date)
Type of Service Provided		SABG		TOTAL	
		Treatment	Cost Sharing Assistance		
Prevention & Wellness					
37	Community Outreach				
	1. IUID				
	2. PPW				
39	Brief Intervention				
77	Drug Screening Tests/Urinalysis				
Engagement Services					
71	Assessment				
	1. Adult				
	2. Youth				
	3. PPW				
31	Engagement & Referral				
36	Interim Services				
	1. IUID				
	2. PPW				
31	Educational Programs				
33	Opiate Dependency Outreach				
Outpatient Services					
51	Outpatient Treatment				
	1. Adult				
	2. Youth				
	3. PPW				
51	Brief Outpatient Treatment				
	1. Adult				
	2. Youth				
	3. PPW				
59	Opiate Substitution Treatment				
	1. PPW				
	2. Non-PPW				
Community/Other/Intensive Support					
64	Case Management				
	1. PPW				
	2. Non-PPW				
69	PPW Housing Support Services				
61	Therapeutic Intervention Services for Children				
43	Sobering Services				
41	Crisis Stabilization				
Out-of-Home Residential Services					
45	Sub-acute Withdrawal Management				
81	Intensive Inpatient Residential				
	1. Adult				
	2. Youth				
	3. PPW				
82	Long-Term Care Residential				
	1. Adult				
	2. Youth				
	3. PPW				
83	Recovery House Residential				
	1. Adult				
	2. Youth				
	3. PPW				
44	Involuntary Commitment Services				
42	Acute Withdrawal Management				
91	Family Hardship				
93	Room and Board				
Recovery Supports					
62	Transportation				
	1. PPW				
	2. Non-PPW				
67	Childcare Services				
92	Recovery Support Services (RSS)				
Other SABG Activities					
12	Continuing Education/Training				
32	Alcohol/Drug Information School				
96	Naloxone				
TOTAL					

THIS AREA BELOW FOR DBHR USE ONLY:			
DBHR Program Manager Name and Telephone		DBHR Program Mgr Approval For Payment	
		See Attached EMAIL	
Document #	VCT	Fiscal Approval	Date

A19 Effective April 1, 2016 through June 30, 2017

Instructions for Preparing the BHO Invoice (A19) Substance Abuse Block Grant (SABG)

The purpose of this document is to define the expenditure elements specific to the Behavioral Health Organizations integrated contract and Federal Block Grant expenditures. Each of the following elements corresponds to the elements listed on the invoice (A19) provided by the Division of Behavior Health and Recovery (DBHR). Costs reported on each invoice are for a single month of service. Before an invoice can be processed by DBHR, we require a signed and dated pdf invoice (A19), as well as a completed Excel invoice (A19), which should be submitted by email to your DBHR program manager named on your contract.

SABG “Treatment” Column: Monthly reimbursable costs associated with each element are to be entered in the “Treatment” column.

SABG “Cost Sharing Assistance” Column: This term generally includes costs for behavioral health insurance deductibles, co-insurance, and co-payments, or similar charges; it doesn’t include premiums, balance billing amounts for non-network providers, or the cost of non-covered services. These funds are to assist eligible clients in meeting their cost-sharing responsibilities, which should be entered against the appropriate service in the “Cost Sharing Assistance” column.

Also, under no circumstances may SABG funds be used to pay these costs for a client’s failure to enroll in minimum essential coverage, and payment for these services cannot be made to either the client or insurance entity.

PREVENTION & WELLNESS

37 Community Outreach

Outreach is an activity of providing critical information and referral regarding behavioral health services to people who might not otherwise have access to that information. This may include assisting individuals to navigate through different systems including health care enrollment, scheduling appointments for a substance use disorder assessment and ongoing treatment, or providing transportation to appointments. Outreach tasks may include educating communities, family members, significant others, or partners about services and to support access to services where care coordination may be necessary. Costs to be covered may also include responding to requests for information to be presented both in and out of the treatment facility by individuals, the general public and community organizations.

IUID: Individual Using Intravenous Drugs (IUID) means an individual who has used a needle one or more times to illicitly inject drugs.

PPW: Pregnant and postpartum women and women with dependent children.

“Dependent Children” means an individual age seventeen (17) or younger.

39 Brief Intervention

A time limited, structured behavioral intervention using substance use disorder brief intervention techniques, such as evidence-based motivational interviewing techniques, and referral to treatment services when indicated. Services may be provided at, but not limited to, sites exterior to treatment facilities such as hospitals, medical clinics, schools or other non-traditional settings.

77 Drug Screening Tests/Urinalysis

Costs incurred to provide screening tests, such as urinalysis or breathalyzers, to identify a patient's use of drugs or alcohol. There is a maximum limit of eight tests per month for any individual.

ENGAGEMENT SERVICES

71 Assessment

Costs incurred in diagnosis, placement in accordance with the American Society of Addiction Medicine (ASAM) patient placement criteria.

Adult: All individuals who are not considered Youth or PPW.

Youth: An individual from age ten (10) through age seventeen (17).

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

31 Engagement & Referral

Engagement and referral services are used to identify hard-to-reach individuals with possible substance use disorder and to engage these individuals in an assessment and ongoing treatment services as deemed necessary. Costs can be reimbursed for activities associated with providing information on substance use disorders, the impact of substance use disorders on families, treatment of substance use disorders, and treatment resources that may be available as well as re-engaging individuals in the treatment process. This does not include ongoing therapeutic or rehabilitative services.

36 Interim Services

Services to individuals who have been denied admissions to a treatment program on the basis of the lack of the capacity to reduce the adverse health effects of substance use disorder, promote the health of the individual, and reduce the risk of transmission of disease. Such services are provided until the individual is admitted to a treatment program. Services include referral for prenatal care for a pregnant patient, brief screening activities, the development of a service plan, individual or group contacts to assist the person either directly or by way of referral in meeting his/her basic needs, updates to advise him/her of treatment availability, and information to prepare him/her for treatment, counseling, education, and referral regarding HIV and tuberculosis (TB) education, if necessary referral to treatment for HIV and TB.

IUID: Individual Using Intravenous Drugs (IUID) means an individual who has used a needle one or more times to illicitly inject drugs.

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

31 Educational Programs

Educational programs can include parent training, impact of alcohol and drug problems, anxiety symptoms and management, and stress management and reduction. Education services may be made available to individuals, groups, organizations, and the community in general. This is different than staff training. Treatment services must meet the criteria as set forth in WAC 388-877B

33 Opiate Dependency Outreach

Costs incurred with outreach and referral services to special populations such as opiate dependent or injecting drug users (IDU) individuals. Opiate Dependency Outreach is specifically designed to encourage injecting drug users (IDUs) and other high-risk groups such as opiate dependent individuals to undergo treatment.. Costs include providing information and skills training to non-injecting, drug using sex partners of IDUs and other high-risk groups such as street youths. Programs may employ street outreach activities, as well as more formal education and risk-reduction counseling. Referral services include referral to assessment, treatment, interim services, and other appropriate support services. Costs do not include ongoing therapeutic or rehabilitative services.

OUTPATIENT SERVICES

51 Outpatient Treatment

Services provided in a non-residential substance use disorder treatment facility. Outpatient treatment services must meet the criteria in the specific modality provisions set forth in WAC 388-877B. Services are specific to client populations and broken out between group and individual therapy. The service satisfies the level of intensity in ASAM Level 1.

Adult: All individuals who are not considered Youth or PPW.

Youth: An individual from age ten (10) through age seventeen (17).

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

51 Brief Outpatient Treatment

A program of care and treatment that provides a systemic, focused process that relies on assessment, client engagement, and rapid implementation of change strategies. The service as described satisfies the level of intensity in ASAM Level 1.

Adult: All individuals who are not considered Youth or PPW.

Youth: An individual from age ten (10) through age seventeen (17).

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

59 Opiate Substitution Treatment

Costs incurred to provide assessment and treatment services to opiate dependent patients. Services include prescribing and dispensing of an approved medication, as specified in 212 CFR Part 291, for opiate substitution services in accordance with WAC 388-877B. Both detoxification and maintenance are included, as well as physical exams, clinical evaluations, individual or group therapy for the primary patient and their family or significant others. Additional services include guidance counseling, family planning and educational and vocational information. (The service as described satisfies the level of intensity in ASAM Level 1.)

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

Non-PPW: All individuals who are not considered PPW.

COMMUNITY / OTHER / INTENSIVE SUPPORT

64 Case Management

Case management services are services provided by a Chemical Dependency Professional (CDP), CDP Trainee, or person under the clinical supervision of a CDP who will assist clients in gaining access to needed medical, social, education, and other services. Does not include direct treatment services in this sub element. This covers costs associated with case planning, case consultation and referral services, and other support services for the purpose of engaging and retaining clients in treatment or maintaining clients in treatment. This does not include treatment planning activities required in WAC 388-887B.

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

Non-PPW: All individuals who are not considered PPW.

69 Pregnant, Post-Partum, Or Parenting (PPW) Women's Housing Support Services

Costs incurred for support services to PPW in a transitional residential housing program designed exclusively for such clients. Costs include facilitating contacts and appointments for community resources for medical care, financial assistance, social services, vocational, childcare needs, outpatient treatment services, and permanent housing services. This includes services to family or significant others of a person currently in transitional housing.

61 Therapeutic Intervention Services for Children

Cost incurred to provide services promoting the health and welfare of children accompanying parents who participate in the residential substance abuse program. Services include: developmental assessment using recognized, standardized instruments; play therapy; behavioral modification; individual counseling; self-esteem building; and family intervention to modify parenting behavior and/or the child's environment to eliminate/prevent the child's dysfunctional behavior.

43 Sobering Services

Costs incurred to provide shelter services for short-term (12 hours or less) emergency shelter, screening, and referral services to persons who need to recover from the effects of alcohol. Services include medical screening, observation and referral to continued treatment and other services as appropriate.

41 Crisis Stabilization

Services provided on a very short term basis to intoxicated or incapacitated individuals on the streets or in other public places and may include general assessment of the patient's condition, an interview for diagnostic or therapeutic purposes, and transportation home or to an approved treatment facility. Services may be provided by telephone or in person, in a facility or in the field, and may or may not lead to ongoing treatment. This does not include the costs of ongoing therapeutic services.

OUT-OF-HOME RESIDENTIAL SERVICES

45 Sub-Acute Withdrawal Management

Costs incurred for withdrawal management services provided to an individual to assist in the process of withdrawal from psychoactive substance (includes alcohol) in a safe and effective manner. Sub-Acute is nonmedical withdrawal management or patient self-administration of withdrawal medications ordered by a physician, provided in a home-like environment. (Limited to 3-5 days for Medicaid State Plan Services)

81 Intensive Inpatient Residential Treatment Services

Costs incurred for a concentrated program of substance use disorder treatment, individual and group counseling, education, and related activities for alcoholics and addicts excluding room and board in a twenty-four-hour-a-day supervised facility in accordance with WAC 388-887B. (The service as described satisfies the level of intensity in ASAM Level 3.5)

Adult: All individuals who are not considered Youth or PPW.

Youth: An individual from age ten (10) through age seventeen (17).

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

82 Long-Term Care Residential Treatment Services

Costs incurred for the care and treatment of individuals with substance use disorder with impaired self-maintenance capabilities including personal care services and a concentrated program of substance use disorder treatment, individual and group counseling, education, vocational guidance counseling and related activities for alcoholics and addicts excluding room and board in a twenty-four-hour-a-day supervised facility in accordance with WAC 388-877B. (The service as described satisfies the level of intensity in ASAM Level 3.3)

Adult: All individuals who are not considered Youth or PPW.

Youth: An individual from age ten (10) through age seventeen (17).

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

83 Recovery House Residential Treatment Services

Costs incurred for a program of care and treatment with social, vocational, and recreational activities designed to aid individuals with substance use disorder in the adjustment to abstinence and to aid in job training, reentry to employment, or other types of community activities, excluding room and board in a twenty-four-hour-a-day supervised facility accordance with WAC 388-877B. (The service as described satisfies the level of intensity in ASAM Level 3.1)

Adult: All individuals who are not considered Youth or PPW.

Youth: An individual from age ten (10) through age seventeen (17).

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

44 Involuntary Commitment Services

Costs incurred for services employed to identify and evaluate individuals with substance use disorder requiring protective custody, detention, or involuntary commitment services in accordance with RCW 70.96A.120-140. Costs include case finding, investigation activities, assessment activities, and legal proceedings associated with these cases.

42 Acute Withdrawal Management

Withdrawal Management services provided to an individual to assist in the process of withdrawal from psychoactive substance in a safe and effective manner. Acute withdrawal management provides medical care and physician supervision for withdrawal from alcohol or other drugs. (Limited to 3-5 days for Medicaid State Plan Services)

91 Family Hardship

The provision of transportation and lodging for family members traveling from their home to the treatment facility for distances over 50 miles within Washington State in support of Medicaid funded youth who are receiving services in a Residential facility in order to allow them to participate in treatment with the youth.

93 Room and Board

The provision of accessible, clean and well-maintained sleeping quarters with sufficient space, light and comfortable furnishings for sleeping and personal activities along with nutritionally adequate meals provided three times a day at regular intervals in a 24-hour-a-day setting. Medicaid and Non-Medicaid patients should be recorded. Room and Board must be provided consistent with the requirements for Residential Treatment Facility Licensing through the Department of Health WAC 246-337.

RECOVERY SUPPORTS

62 Transportation

Costs incurred to transport patients to and from substance use disorder treatment programs.

PPW: Pregnant and postpartum women and women with dependent children.

"Dependent Children" means an individual age seventeen (17) or younger.

Non-PPW: All individuals who are not considered PPW.

67 Child Care Services

Costs incurred to provide child care services, when needed, to children of parents in treatment in order to complete the parent's plan for substance use disorder treatment services. Childcare services must be provided by licensed childcare providers or by providers operating in accordance with the provisions set forth in WAC's published by the Department of Health and Department of Early Learning for the provision of child care services.

92 Recovery Support Services

A broad range of nonclinical services that are designed to assist individuals and their families to become stable and maintain long term recovery from substance use disorder, delivered through a variety of community and faith-based groups, treatment providers, schools, and other specialized services. Services can be provided by a single entity or a consortium of health and human service providers.

OTHER SABG ACTIVITIES

12 Continuing Education/Training

Costs incurred to support educational programs, training projects, and/or other professional development programs directed toward: 1) improving the professional and clinical expertise of prevention and treatment facility staff, 2) the knowledge base of county employees who oversee the program agreement; and 3) to meet minimum standards and contract requirements. Costs could include trainers, transportation, per diem expenses, and tuition.

32 Alcohol/Drug Information School

Costs incurred for Alcohol/Drug Information schools to provide information regarding the use and abuse of alcohol/drugs in a structured educational setting. Alcohol/Drug Information Schools must meet the certification standards in WAC 388-877B. (The service as described satisfies the level of intensity in ASAM Level 0.5)

96 Naloxone

Purchase of: sodium chloride for reconstitution, syringes and needles for administration of Naloxone, Narcan Nasal Spray, education materials for administration of Naloxone, and Naloxone education classes for medical professionals. Also, costs incurred for Naloxone hydrochloride injections,

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "**Agreement**") is made effective the 1st day of September, 2016 ("**Effective Date**") by and between North Sound Behavioral Health Organization ("**North Sound BHO**") and Whatcom County ("**Contractor**") (individually, a "**Party**" and, collectively, the "**Parties**").

- A. WHEREAS, the Parties wish to enter into this Agreement to comply with the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended (collectively, "**HIPAA**").
- B. WHEREAS, the Parties have entered into one or more written or verbal arrangements (collectively, the "**Service Contract**") under which Contractor will provide certain services to North Sound BHO that may involve Contractor creating, receiving, maintaining, or transmitting Protected Health Information (PHI), as defined below, and Contractor may be considered a "Business Associate" of North Sound BHO under HIPAA and a "**Qualified Service Organization**" under the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR Part 2 ("**Part 2**").

NOW, THEREFORE, in consideration of the Parties' continuing obligations under the Service Contract, their compliance with HIPAA and Part 2, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

- I. **DEFINITIONS.** Except as otherwise defined in this Agreement, capitalized terms in this Agreement shall have the definitions set forth in HIPAA. "**Individual**" shall have the same meaning as the term "Individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g). "**Part 2 Information**" means alcohol abuse, drug abuse, or Substance Use Disorder information covered by Part 2. "**PHI**" shall have the same meaning as the term "Protected Health Information" that is created, received, maintained, or transmitted by Contractor from or on behalf of North Sound BHO. PHI includes, without limitation, Electronic PHI and Part 2 Information. "**PII**" means personally identifiable information as defined under Washington law.

II. **PERMITTED USES AND DISCLOSURES BY CONTRACTOR.**

- 2.1 **Performance of Service Contract.** Contractor may use and disclose PHI and PII to perform functions, activities, or services for, or on behalf of, North Sound BHO as specified in the Service Contract as long as the use or disclosure would not violate HIPAA, Part 2 and state and federal laws (collectively, "**Law**"), if done by North Sound BHO.
- 2.2 **Management; Administration; Legal Responsibilities.** Contractor may use PHI and PII for its proper management and administration and to fulfill its legal responsibilities, as long as the uses are permitted under Law for both North Sound BHO and Contractor.
- 2.3 **Required by Law.** Except as otherwise limited in this Agreement, Contractor may disclose PHI and PII as required by Law. Contractor shall: (i) to the extent permitted by Law, immediately notify North Sound BHO prior to the disclosure; (ii) cooperate with North Sound BHO in making any disclosures required by Law, including efforts to challenge or limit the disclosure; and (iii) provide a copy of all information disclosed relating to this Agreement or the Service Contract.
- 2.4 **De-identified Information.** Contractor may not use or disclose PHI or PII to create de-identified information or Limited Data Sets or to otherwise anonymize or aggregate PHI or PII for its own use or disclosure, without prior, express, written approval from North Sound BHO.
- 2.5 **Minimum Necessary.** Contractor shall make all reasonable efforts to access, use, disclose, or request only the minimum necessary amount of PHI or PII to accomplish the intended, permitted purpose of the access, use, disclosure, or request. Contractor shall comply with North Sound BHO's policies and procedures concerning minimum necessary requirements.

The Parties shall collaborate in determining what quantum of information constitutes the "minimum necessary" amount for Contractor to accomplish its intended purposes.

III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.

3.1 **Compliance with this Agreement.** Notwithstanding anything to the contrary, Contractor agrees to not use or further disclose PHI or PII other than as permitted or required by this Agreement or as required by Law.

3.2 **Safeguards.** Contractor agrees to: (i) use appropriate safeguards to prevent use or disclosure of PHI and PII other than as provided for by this Agreement; (ii) implement the administrative, physical and technical safeguards of the Security Standards for the Protection of Electronic PHI (the "**Security Rule**") that reasonably and appropriately protect the confidentiality, integrity and availability of any PHI; and (iii) comply with those requirements under the Security Rule that apply to Business Associates.

3.3 **Notification.**

3.3.1 **Impermissible Use or Disclosure.** Contractor shall report to North Sound BHO any use or disclosure of PHI or PII not permitted under this Agreement, regardless of whether the use or disclosure raises to the level of a Breach.

3.3.2 **Security Incident.** Contractor shall report to North Sound BHO any Security Incident of which Contractor becomes aware, regardless of whether the Security Incident rises to the level of a Breach. This Agreement constitutes notification of "unsuccessful" Security Incidents that do not present a risk to PHI such as: (i) "pings" on an information system firewall; (ii) port scans; and (iii) attempts to log on to an information system or enter a database with an invalid password or user name.

3.3.3 **Breach Notification.** Contractor shall report any Breach of Unsecured PHI, as required by the Notification of a Breach of Unsecured PHI Standards.

3.3.4 **Reporting Requirements.** Contractor shall make the report as soon as practical and in any event within five (5) business days of Contractor's discovery of one of the above described events (an "**Event**"). Contractor shall supplement the information provided in the report as it becomes available. An Event shall be treated as discovered by Contractor as of the first day on which the Event is known to Contractor or, through the exercise of reasonable diligence, would have been known to Contractor.

3.3.5 **Content of Notification.** Contractor shall provide information to fully inform North Sound BHO of each Event and any additional information requested by North Sound BHO. At a minimum, the report of an Event shall include, to the extent possible:

- (i) The identification of each individual whose PHI or PII has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Event;
- (ii) A brief description of what happened, including the date of the Event and the date of discovery of the Event;
- (iii) A description of the types of PHI or PII involved in the Event (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- (iv) Any steps individuals should take to protect themselves from potential harm resulting from the Event;
- (v) A brief description of what Contractor is doing to investigate the Event, to mitigate harm to individuals and to protect against any further Events; and

- (vi) Contact procedures for North Sound BHO or individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 3.4 **Subcontractors.** Contractor shall ensure that any subcontractor whom Contractor permits to create, receive, maintain, or transmit PHI or PII on behalf of North Sound BHO, agrees in writing: (i) to the same restrictions and conditions that apply through this Agreement to Contractor; and (ii) to comply with the requirements of the Security Rule that apply to Business Associates.
- 3.5 **Restrictions.** Contractor agrees to comply with any requests for restrictions on certain uses and disclosures of PHI or PII of which North Sound BHO informs Contractor.
- 3.6 **Access.** At the request of North Sound BHO, within ten (10) business days, unless a shorter time period is requested, in the manner, form and format requested by North Sound BHO, Contractor shall make available PHI and PII so that North Sound BHO may respond to an individual's request for access to PHI and PII in accordance with the Standards for Privacy of individually identifiable Health Information (the "**Privacy Rule**") and other Law. In the event that an individual requests from Contractor access to PHI or PII, Contractor, to the extent permitted by Law, shall forward the request to North Sound BHO within two (2) business days.
- 3.7 **Amendment.** At the request of North Sound BHO, in a reasonable time and manner and in the form and format requested by North Sound BHO, Contractor shall make amendments to PHI and PII so that North Sound BHO may respond to an individual's request for an amendment by North Sound BHO in accordance with the Privacy Rule and other Law. In the event that an individual requests from Contractor any amendments, Contractor shall forward the request to North Sound BHO within two (2) business days.
- 3.8 **Accounting of Disclosures.** Contractor shall document any disclosures that are required to be in an accounting of disclosures under the Privacy Rule and, upon request, shall provide information required to be included in an accounting of disclosures to North Sound BHO to permit North Sound BHO to comply with the Privacy Rule and other Law. In the event that an individual requests from Contractor, an accounting of disclosures, to the extent permitted by law, Contractor shall forward the request to North Sound BHO within two (2) business days.
- 3.9 **Disclosures to the Secretary.** Contractor agrees that it will make its internal practices, books and records available to the Secretary of the United States Department of Health and Human Services (the "**Secretary**"), for the purpose of determining North Sound BHO's and Contractor's compliance with HIPAA and to North Sound BHO for the purpose of determining Contractor's compliance with this Agreement and HIPAA, in a time and manner designated by the Secretary or North Sound BHO. Contractor: (i) immediately shall notify North Sound BHO of any requests from the Secretary pertaining to an investigation of Contractor's or North Sound BHO's compliance with HIPAA; (ii) cooperate with North Sound BHO in responding to the Secretary's request; and (iii) provide to North Sound BHO a copy of all documents provided to the Secretary.
- 3.10 **Part 2 Information.** To the extent that, in performing services for or on behalf of North Sound BHO under the Service Contract, Contractor uses, discloses, maintains, or transmits Part 2 Information, Contractor acknowledges and agrees that: (a) in creating, receiving, maintaining, transmitting, using, or disclosing Part 2 information, it is fully bound by Part 2; and (b) if necessary, it will resist in judicial proceedings any efforts to obtain access to Part 2 Information except as permitted by Part 2. Contractor acknowledges that any unauthorized disclosure of Part 2 Information may be a federal criminal offense.

- 3.11 **Covered Entity Obligations.** To the extent that Contractor is to carry out one or more of North Sound BHO obligations under the Privacy Rule, Contractor shall comply with the requirements of the Privacy Rule that apply to North Sound BHO in the performance of the obligations.
- 3.12 **On-Site Services.** Contractor agrees that, while present at any North Sound BHO facility and/or when accessing North Sound BHO's computer network(s), it and all of its Workforce, agents and subcontractors at all times will comply with any network access and other security practices, policies and procedures established by North Sound BHO including, without limitation, those established pursuant to HIPAA.
- 3.13 **No Sale of PHI.** Contractor agrees that it will not directly or indirectly receive remuneration in exchange for any PHI or PII without the written authorization of each applicable individual, except when expressly permitted by the Privacy Rule.
- 3.14 **No Impermissible Marketing or Fundraising Communication.** Contractor agrees that it will not engage in Marketing or fundraising communications that would not be permitted by North Sound BHO under HIPAA.
- 3.15 **Mitigation.** Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or PII by Contractor in breach of this Agreement, failure to comply with applicable Law and any Event, as defined in Section 3.3.
- 3.16 **Compliance with Applicable Law.** Contractor shall comply with applicable Law. Contractor shall not act or fail to act in a manner that causes North Sound BHO to not be in compliance with applicable Law.

IV. **OBLIGATIONS OF NORTH SOUND BHO.** North Sound BHO shall not request Contractor to act in a manner that is not permissible under HIPAA.

V. **TERM AND TERMINATION.**

- 5.1 **Term.** The term of this Agreement shall be effective as of the Effective Date and shall terminate upon the expiration or termination of the Service Contract.
- 5.2 **Termination.** Upon North Sound BHO's knowledge of a material breach by Contractor of its obligations under this Agreement, North Sound BHO may notify Contractor and Contractor shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. Notwithstanding anything to the contrary in the Service Contract, if Contractor fails to cure the breach or end the violation within the designated time period, then North Sound BHO immediately may terminate the Service Contract upon notice.
- 5.3 **Effect of Termination.**
- 5.3.1 **Return or Destruction.** Except as provided in 5.3.1, upon termination of this Agreement, Contractor, within ten (10) days, shall return or destroy all PHI and PII. Any destruction shall be in a manner consistent with HIPAA and related guidance. This provision also shall apply to PHI and PII that is in the possession of subcontractors or agents of Contractor. Neither Contractor nor its subcontractors or agents shall retain copies of the PHI. Upon request, Contractor shall provide a certificate of appropriate destruction of the PHI and PII.
- 5.3.2 **Continued Protections.** In the event that Contractor determines that returning or destroying the PHI and PII is infeasible, Contractor shall provide within ten (10) days to North Sound BHO notification of the conditions that make return or destruction infeasible of PHI and PII. Upon mutual agreement of the Parties that return or

destruction of PHI is infeasible and to the extent Contractor retains knowledge of the PHI and PII, Contractor shall extend the protections of this Agreement to the PHI and PII and limit further uses and disclosures of the PHI and PII to those purposes that make the return or destruction infeasible, for as long as Contractor maintains, or retains knowledge of, the PHI or PII.

VI. MISCELLANEOUS.

- 6.1 **Indemnification Obligation.** Notwithstanding anything to the contrary in the Service Contract, Contractor will indemnify, defend at North Sound BHO's request and hold harmless North Sound BHO, its Workforce, County Authorities Executive Committee, Advisory Board, partners, agents and subcontractors, (collectively "**North Sound BHO Indemnified Parties**") from and against any and all claims, actions, investigations, proceedings, losses, liability, damages, costs and expenses (including attorneys' fees, costs of defense and costs of investigation, mitigation, remediation and notification) incurred or suffered by an North Sound BHO Indemnified Party (collectively, "**Damages**") that arise out of, result from, allege, or relate to any of the following: (i) Contractor's breach of this Agreement, including any breach of any representation or warranty; (ii) any Event reported by Contractor under this Agreement; (iii) any violation of Law by or caused by Contractor or its Workforce, agents, or subcontractors; or (iv) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its workforce, agents, or subcontractors.
- 6.2 **No Limitations on Liability.** Notwithstanding any other provision of this Agreement or the Service Contract, in no event will any exclusions, disclaimers, waivers, or limitations of any nature whatsoever apply to any damages, liability, rights, or remedies arising from or in connection with: (i) Contractor's indemnification and defense obligations under this Agreement; (ii) Contractor's breach of this Agreement, including any breach of any representation or warranty; (iii) any Event reported by Contractor; (iv) any violation of Law by or caused by Contractor or its workforce, agents, or subcontractors; or (v) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its workforce, agents, or subcontractors.
- 6.3 **Ownership of Information.** The Parties agree that Contractor shall not have an ownership interest in PHI or PII or any derivations of the PHI or PII.
- 6.4 **Third Party Beneficiaries.** Notwithstanding anything to the contrary in the Service Contract or this Agreement, individuals who are service recipients of North Sound BHO shall be third party beneficiaries to this Agreement. Subject to the foregoing, nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 6.5 **Interpretation.** This Agreement shall be interpreted in a manner consistent with the Parties' intent to comply with HIPAA, Part 2 and other Law. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA, Part 2 and other Law. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of HIPAA, HIPAA shall control. In the event of any inconsistency between this Agreement and the Service Contract or any other agreement between the Parties, the terms of this Agreement shall control. Nothing in this Agreement shall be construed as a waiver of any legal privilege or protection, including for trade secrets or confidential commercial information.

- 6.6 **Survival.** The obligations of Contractor under Sections 3.3, 3.6, 3.8, 3.10, 3.13, 3.15, 5.3, 6.1, 6.2, 6.3 and 6.4 of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Service Contract and/or the business relationship of the Parties and shall continue to bind Contractor, its workforce, agents, employees, subcontractors, successors and assigns as set forth in this Agreement.
- 6.7 **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in HIPAA and Part 2.
- 6.8 **Assignment.** Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- 6.9 **Independent Contractor.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. No agency relationship is deemed created by this Agreement.
- 6.10 **Governing Law.** To the extent this Agreement is not governed exclusively by HIPAA, Part 2, or other Law, it will be governed by and construed in accordance with the laws of the State of Washington.
- 6.11 **No Waiver.** No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 6.12 **Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- 6.13 **Notice.** Any notification required in this Agreement shall be made in writing to the representative of the Party who signed this Agreement or the person currently serving in that representative's position with the other Party.
- 6.14 **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties with respect to its subject matter and supersedes all prior agreements, oral or written.

IN WITNESS WHEREOF, the Parties have executed, through representatives with the authority to bind each Party, this Agreement effective as of the Effective Date day and year written above.

NORTH SOUND BHO:

By: 

Title: Executive Director

Date: 3/6/17

CONTRACTOR:

By: _____

Title: County Executive

Date: _____

North Sound Behavioral Health Organization
Budget for Substance Abuse Block Grant Opiate
Outreach Services Whatcom County

9 Month Budget

Revenue

SABG Funding 90%	\$	67,500
State Funding 10%	\$	7,500
Total	\$	75,000

Expenses

Salaries & Wages	\$	53,325
Personnel Benefits		5,925
Office & Operating Supplies		500
Small Tool & Minor Equipment		480
Professional Services -		
Communications		720
Travel		1,500
Operating Rentals		500
Insurance		800
Utilities		
Repair & Maintenance		
Machinery & Equipment		
Miscellaneous Expense		
Direct Cost Allocations		
Indirect Cost Allocations		11,250
Other		
Total	\$	75,000

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	JL	03/02/17	<div style="text-align: center;"> RECEIVED MAR 14 2017 WHATCOM COUNTY COUNCIL </div>	03/21/17	COTW
Division Head:					
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive: <i>TKH</i>	<i>[Signature]</i>	<i>3/13/17</i>			
TITLE OF DOCUMENT County Executive will provide an update to Council on new jail planning					
ATTACHMENTS: 					
SEPA review required? () Yes (<input checked="" type="checkbox"/>) NO SEPA review completed? () Yes (<input checked="" type="checkbox"/>) NO			Should Clerk schedule a hearing? () Yes (<input checked="" type="checkbox"/>) 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.) Discussion with County Executive on new jail planning and status of process					
COMMITTEE ACTION: 			COUNCIL ACTION: 		
Related County Contract #:		Related File Numbers: AB2015-047		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

NO. 2017-083

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Matt W. Aamot	M.A.	2/6/2017	<div>RECEIVED</div> <div>FEB 14 2017</div> <div>WHATCOM COUNTY COUNCIL</div>	3/7/17	Planning & Development Comm.
Division Head: Mark Personius	WMP	2.6.17		3/7/17	Council
Dept. Head: Sam Ryan	SR	2-9-17		3/21/2017	COTW / Council
Prosecutor: Royce Buckingham	<i>[Signature]</i>	2-9-17			
Purchasing/Budget:					
Executive: Jack Louws	TLS	2/13/17			

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:

- Cover letter
- Draft Resolution Initiating Comprehensive Plan and Zoning Amendments
- Correspondence relating to de-docketing two previously initiated applications

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

Should Clerk schedule a hearing? () Yes (☒) NO
Requested Date

¹ SEPA will be completed on those amendments initiated by the Council prior to final Council action.

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:

3/7/2017: Held in Committee

COUNCIL ACTION:

3/7/2017: Held in Committee

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

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

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



J.E. "Sam" Ryan
Director

RECEIVED

FEB 9 - 2017

**JACK LOUWS
COUNTY EXECUTIVE**

Memorandum

TO: The Honorable Jack Louws, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner *MA*

THROUGH: Mark Personius, Assistant Director *MP*

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.

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.

Sponsored by: _____
Proposed by: Planning
Introduction date: _____

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

EXHIBIT A

File #	File Name	Applicant	Description	Location	Fee Waiver Requested?
<u>PLN2017-00001</u>	<u>Urban Fringe Subarea Plan Update</u>	<u>Whatcom County</u>	<u>Review and update the Urban Fringe Subarea Plan and related provisions of the Whatcom County Comprehensive Plan.</u>	<u>Bellingham Urban Fringe</u>	<u>N/A</u>
<u>PLN2017-00002</u>	<u>Marijuana Production Facility - Buffer Waivers</u>	<u>Seth Stromme of Agape Research</u>	<u>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.</u>	<u>Agriculture Zoning District</u>	<u>Yes (suggested amendment)</u>
<u>PLN2017-00003</u>	<u>Marijuana Production Facility - Buffer Reduction</u>	<u>Seth Stromme of Agape Research</u>	<u>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'.</u>	<u>Agriculture Zoning District</u>	<u>Yes (suggested amendment)</u>
<u>PLN2017-00004</u>	<u>MRL County-wide Designation Process</u>	<u>Whatcom County</u>	<u>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.</u>	<u>County-wide</u>	<u>N/A</u>
<u>PLN2017-00005</u>	<u>New Marine Resource Lands Section</u>	<u>Whatcom County</u>	<u>Create a new Marine Resource Lands section in the Comprehensive Plan (Chapter 8) pursuant to Comprehensive Plan Policy 8T-1.</u>	<u>Marine Areas</u>	<u>N/A</u>
<u>PLN2017-00006</u>	<u>Water Resources - GMA Compliance</u>	<u>Whatcom County</u>	<u>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 <i>Hirst v. Whatcom County</i> (Oct. 2016).</u>	<u>County-wide</u>	<u>N/A</u>
<u>PLN2017-00007</u>	<u>WCC/Title 20 Amendments</u>	<u>Whatcom County</u>	<u>Review and, if needed, revise the Whatcom County Zoning Code and other sections of the Whatcom County Code to implement Comprehensive Plan</u>	<u>N/A</u>	<u>N/A</u>

File #	File Name	Applicant	Description	Location	Fee Waiver Requested?
			<u>policies and/or address issues identified in the administration of the codes. Additionally, any revisions needed to achieve consistency with the Growth Management Act may also be considered.</u>		
PLN2016-00002	Kennels in the Ag Zone	Ken and Charmae Scheffer	<u>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.</u>	N/A	The applicant paid the fees.
PLN2016-00003	Capital Facility Planning	Whatcom County	<u>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.</u>	County-wide	N/A
PLN2016-00004	CAO Update	Whatcom County	<u>Update the Critical Areas Ordinance, in accordance with the Growth Management Act.</u>	N/A	N/A
PLN2016-00005	Low Impact Development Code Revision	Whatcom County	<u>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.</u>	N/A	N/A

File #	File Name	Applicant	Description	Location	Fee Waiver Requested?
PLN2016-00006	Wireless Communication Facilities	Whatcom County	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.	N/A	N/A
PLN2016-00007	WCC/Title 20 Amendments	Whatcom County	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.	N/A	N/A
PLN2016-00008	Permit Review Procedures	Whatcom County	Review and revise Whatcom County Code 2.33 (Permit Review Procedures), including updating the code for consistency with state law.	N/A	N/A
PLN2016-00009	Sign Regulations Update	Whatcom County	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 <i>Reed v. Town of Gilbert</i> (2015).	N/A	N/A
PLN2016-00010	2016 Comp Plan Update	Whatcom County	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	County-wide, including UGAs	N/A

File #	File Name	Applicant	Description	Location	Fee Waiver Requested?
			accommodate population and employment growth projected for the 20-year planning period. Whatcom County is required to complete its review and update of the comprehensive plan and urban growth areas by June 30, 2016.		
PLN2016-00012	Cherry Point Amendments Comprehensive Plan	Whatcom County	Review proposed amendments to the Cherry Point section of Chapter Two – Land Use of the Comprehensive Plan.	This amendment relates to the Cherry Point UGA	N/A
PLN2015-00002	Broadcast Tower Height Limits Point Roberts	John Lesow and Armene Belless	Amend the Whatcom County Zoning Ordinance to prohibit broadcast towers greater than 25' in height in the Point Roberts Special District. The amendment would also insert a definition of "Broadcast Tower" into the Zoning Ordinance.	The amendment relates to Point Roberts	N/A Suggested Amendment
PLN2015-00003	Code Enforcement Amendments	Whatcom County	Create a new Whatcom County Code (WCC) Title 19, called "Code Enforcement," to establish an efficient system to address enforcement of building, critical areas and zoning codes. The proposal would consolidate the existing code enforcement provisions from WCC 15, 16.16, and 20 into a new WCC Title 19. The proposed amendments include provisions that would allow the County to record a document at the Whatcom Auditor's office indicating that there is a code violation on a property.	N/A	N/A
PLN2015-00004	Point Roberts Character Plan Amendments	Whatcom County / Arthur Reber	Amend the Point Roberts Subarea Plan including the "Point Roberts Character Plan" to ensure consistency between Character Plan development regulations and administrative procedures, the Official Whatcom	The amendment relates to Point Roberts	N/A Yes

File #	File Name	Applicant	Description	Location	Fee Waiver Requested?
			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 & other uses, signs rules, and Character Plan Advisory Committee timelines for responding to alleged code violations.		
PLN2014-00001	Boundary Line Adjustments	Jay Irwin	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.	N/A	N/A
PLN2014-00016	Weddings and Special Events	Whatcom County	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.	N/A	N/A
PLN2013-00003	Bellingham Development Standards	Whatcom County	Review and potentially revise the Whatcom County Code to adopt City of Bellingham Development Standards for the Bellingham Urban Growth Area (UGA).	These amendments relate to the Bellingham UGA	N/A

File #	File Name	Applicant	Description	Location	Fee Waiver Requested?
PLN2012-000006	Specified Fittings (R5A to R1M)	Gregory & Kathleen Gundel and Ken Mann	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	Parcel # 390225 459079. Within the SE 1/4 of section 25, T39N, R2E, W.M.	N/A
PLN2012-000007	Agricultural Strategic Plan Implementation	Whatcom County	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.	Proposal relates to Agricultural and Rural lands	N/A
PLN2012-000009	MRL Expansion – North Star Rd.	Ferndale Ready Mix & Gravel	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).	Parcel # 390110 212100; Within the SW 1/4 of section 10, T39N, R1E, W.M.	N/A

File #	File Name	Applicant	Description	Location	Fee Waiver Requested?
PLN2012-00012	Rural Element Update	Whatcom County	Amend the Rural element of the Whatcom County Comprehensive Plan, including provisions relating 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.	Rural Areas	N/A
PLN2011-00009	MRL Expansion - Lummi Island	Lummi Rock, LLC	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.	Parcel # 370124 191084; Within the SW 1/4 of section 24, T37N, R1E, W.M.	N/A
ZON2008-00001	Offsite Wetland Mitigation/ Habitat Restoration	KG, LLC	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.	N/A	N/A

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



J.E. "Sam" Ryan

Director

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

Matt Aamot

From: Rebecca Rettmer <becca@liht.org>
Sent: Friday, December 16, 2016 3:53 PM
To: Joshua Fleischmann
Cc: mvaughn@aggwest.com; Mark Personius
Subject: Re: PLN2011-00009 - Lummi Island MRL Comp Plan Amendment

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"



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

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive,
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

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,

A handwritten signature in blue ink, reading "Cliff Strong", is written over a horizontal line. The signature is stylized with a large, looping "S" at the end.

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

Matt Aamot

From: Cliff Strong
Sent: Thursday, February 02, 2017 8:29 AM
To: Matt Aamot
Subject: RE: Off-site wetland mitigation, notice of dedocketing (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

From: Matt Aamot
Sent: Thursday, February 02, 2017 8:17 AM
To: Cliff Strong
Subject: Off-site wetland mitigation, notice of dedocketing (ZON2008-00001)

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

From: Cliff Strong
Sent: Monday, January 30, 2017 4:26 PM
To: Matt Aamot
Subject: Off-site wetland mitigation, notice of dedocketing

Thanks,

Cliff Strong
Senior Planner

Whatcom County Planning & Development Services

cstrong@co.whatcom.wa.us

360.778.5942

www.co.whatcom.wa.us/pds

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-063

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Matt W. Aamot	M.A.	1/24/2017	<div>RECEIVED</div> <div>JAN 31 2017</div> <div>WHATCOM COUNTY COUNCIL</div>	2/7/2017	Planning & Development Committee
Division Head: Mark Personius	MP	1-24-17		3/7/2017	COTW / Introduction
Dept. Head: Sam Ryan	SR	1-24-17		3/14/2017	SCOTW
Prosecutor: Royce Buckingham	R/B	1-26-17			
Purchasing/Budget:					
Executive: Jack Louws	JL	1/30/17			

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

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

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

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

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

COMMITTEE ACTION:

2/7/2017: Discussed
3/7/2017: Discussed, amended, and held in Committee

COUNCIL ACTION:

3/7/2017: Held in Committee

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

Related File Numbers:
County Planning File #
PLN2016-00012

Ordinance or Resolution Number:

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



RECEIVED

JAN 26 2017

Memorandum

JACK LOUWS
COUNTY EXECUTIVE

TO: The Honorable Jack Louws, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner *MA*

THROUGH: Mark Personius, Assistant Director *MP*

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

¹ Jaffe, D., Strode, S., *Sources, Fate and Transport of Atmospheric Mercury from Asia*, Environmental Chemistry Vol. 5(2): 121-126 (doi:10.1071/EN08010) (April 17, 2008); Boehm, A., et al., *West Coast Ocean Acidification and Hypoxia Science Panel: Major Findings, Recommendations and Findings* (April 2016) at Appendix A.

1 ~~may have contributed to the crash of the Cherry Point Herring stock.~~²~~Because of the~~
2 ~~large acreage demands of the types of industries likely to locate there, the~~
3 ~~remaining undeveloped acreage at Cherry Point will likely be absorbed during the~~
4 ~~20-year planning period.~~

5
6 The Cherry Point shoreline ~~also~~ has great importance to the fisheries and ecology of
7 Northern Puget Sound because it provides essential spawning habitat for what once
8 was the largest herring stock in Washington State. This herring stock has supported
9 important commercial fisheries in the past and provides forage for salmonids and
10 other important marine species. In August 2000 and again in November 2010, the
11 State Lands Commissioner ordered the Cherry Point tidelands and bedlands
12 withdrawn from the state's general leasing program, except for existing leases, and
13 designated them as the "Cherry Point Aquatic Reserve." In December 2010, the
14 DNR recognized the need to "protect the significant environmental resource of
15 aquatic lands at Cherry Point" (CPAR Management Plan p. 1), and completed the
16 Cherry Point Environmental Aquatic Reserve Management Plan and designated the
17 Cherry Point Aquatic Reserve to ensure long-term environmental protection of the
18 areaAquatic Reserve. The ~~r~~Reserve extends from the southern boundary of Birch
19 Bay State Park to the northern border of the Lummi Indian Nation Reservation. The
20 site ~~excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping~~
21 ~~piers) and one proposed aquatic land lease.~~

22
23 The overall purpose of the Cherry Point Aquatic Reserve (AR) is to ensure long-term
24 environmental protection for local habitats and species (CPAR MP p. 1). Specific
25 goals include protection and recovery (as applicable) of Cherry Point herring,
26 Nooksack Chinook salmon, ground fish, marine mammals, seabird/duck and
27 shorebird communities, Dungeness crab, and submerged native aquatic vegetation
28 (CPAR MP p. 2). Another goal is to cooperate with other stakeholders "to minimize
29 and reduce identified impacts of human activities on the species and habitats within
30 the Reserve" (CPAR MP p. 2).

31
32 The Aquatic Reserve Management Plan acknowledges that so long as the existing
33 industries, complying with all federal, state and local laws and regulations, they
34 may~~do~~ not conflict with the Aquatic Reserve although their activities may pose risks
35 for the recovery of species and other goals of the Aquatic Reserve. Indeed, the
36 industries' need for buffer space and their compliance with shoreline management
37 requirements means that m~~Much of the Aquatic Reserve shoreline is in substantially~~
38 natural riparian vegetation and bluff processes proceed without interference.
39 Existing shoreline and upland stream and wetland functions and values are of
40 continuing importance to the recovery and protection of species identified in the
41 Aquatic Reserve Management Plan. The area includes one of the last undeveloped
42 intertidal wetlands of any size in Northern Puget Sound, with importance to juvenile
43 salmon and other species. Existing industries may continue to~~can~~ serve the Aquatic

² Incardona, J. P. et al., Very low embryonic crude oil exposures cause lasting cardiac defects in salmon and herring, Sci. Rep. 5, 13499; doi: 10.1038/srep13499 (2015).

1 Reserve's objectives so long as they are managed according to the Plan and so long
2 as the lessees comply with applicable legal requirements and actively work to
3 further the goals of the Reserve (CPAR MP p. 2).
4

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

21 ~~_especially where deep water access for shipping is a critical locational factor.~~
22 ~~These characteristics were articulated in the Overall Economic Development Plan~~
23 ~~(OEDP) for Whatcom County adopted by the Whatcom County Council of~~
24 ~~Governments in May, 1993, in the 1997 Property Counselors Report on supply and~~
25 ~~demand for industrial land in Whatcom County and at Cherry Point, the 2002~~
26 ~~Greater Whatcom Comprehensive Economic Development Strategy, the 2003~~
27 ~~Whatcom County Industrial Land Study, and the 2015 Whatcom County~~
28 ~~Comprehensive Economic Development Strategy.~~
29

30 The characteristics that ~~make~~ made Cherry Point unique as a site for the existing
31 major industrial developments include the following:
32

33 Port Access – The marine waters off Cherry Point provide deep water access for
34 shipping. Deep water access for shipping was a major siting consideration for the
35 three major industries currently located at Cherry Point ~~and for the~~
36 ~~industrial/shipping facilities currently being proposed.~~
37

38 Rail Access – Cherry Point is served by a branch line of the Burlington Northern
39 mainline serving western Washington from Blaine to Portland. Rail service is
40 considered to be vital to statewide as well as local interests for the competitive
41 movement of freight. Rail service is particularly important in relation to water borne
42 commerce of the existing users. The Cherry Point area has the rail access to
43 support marine terminals and industrial users in the area. The BP refinery at Cherry
44 Point uses the railroad to ship calcined coke to U.S. markets and to other port
45 facilities for transshipment to foreign markets. Both the BP and Phillips 66 refineries
46 receive crude oil shipments by rail.
47

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.

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

4
5 The Bonneville Power Administration supplies power directly to the Alcoa Intalco
6 Works aluminum production facility.

7
8 Water: Whatcom County Public Utility District #1 currently provides industrial
9 process water to all major industrial facilities at Cherry Point and has additional
10 water available contracts in place to provide process water to properties that are
11 currently undeveloped. PUD # 1 also operates a small system to provide potable
12 water to one industry (Praxair). Birch Bay Water and Sewer District provides
13 potable water to the BP Cherry Point Refinery. The other industries operate their
14 own water treatment facilities to provide potable water for their facilities. Existing
15 industries consume large quantities of water, in many cases drawn from the
16 Nooksack River. It is the County's policy to support renewed efforts to reduce both
17 water consumption levels and the quantity of discharges, in favor of recycled water
18 use.

19
20 Sewer: Sewer service is not typically required for large industrial developments.
21 Most of the existing industrial users provide their own on-site sewage treatment
22 and waste water treatment. Sewer service for domestic wastewater is provided to
23 the BP Refinery by the Birch Bay Water and Sewer District. If and when sewer
24 service should become necessary for other industries, service could be provided on
25 a contractual basis with the Birch Bay Water and Sewer District, which borders the
26 Cherry Point industrial area on the north.

27
28 Natural Gas: Natural gas is currently available at Cherry Point.

29
30 All-weather Roads: Grandview and Slater roads, the major east-west connectors
31 between Cherry Point and Interstate-5, provide all-weather road access to Cherry
32 Point.

33
34 The industries currently located at Cherry Point are a substantial part of the
35 economic base of Whatcom County and the region and the economic welfare of the
36 county is strongly tied to the health of these industries and their ability to flourish
37 and expand appropriately as opportunities present themselves. While these
38 existing industries need to be protected from the inappropriate encroachment of
39 incompatible uses; particularly residential uses that could affect their ability to
40 expand, at the same time, the expansion of these industries needs to be done in
41 ways that do not significantly impact the ecology of the Salish Sea or encourage
42 expanded export of unrefined fossil fuels. The best means for protecting these
43 industries from incompatible adjoining residential uses and to assure their
44 continued regulatory conformity is to maintain the industrial land use designation of
45 these lands and adjoining properties currently designated for industrial
46 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 thatto accomplish the goals of the Aquatic Reserve Management Plan. Ensure that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean-energy and low-carbon emitting industries are favored;
- Strict avoidance of estuaries and near-shore wetlands, as they play not only an important role in protecting habitat, but also serve as flood storage areas in the absorption of future sea level rise;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

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

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

Policy: 2CC-5: Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or

- 1 supporting uses to assure that accessory or supporting uses are
 2 compatible with and will not interfere with the major industrial
 3 user.
 4
- 5 Policy: 2CC-6: Specify 160 acres as a minimum area for planning, prior to the
 6 commitment of a parcel for a major user (40 acres or more,
 7 singularly or as a cluster or group).
 8
- 9 Policy: 2CC-7: Permit support activities, warehousing, rail shipments ~~shipping~~,
 10 machine repair and service, educational services, food service
 11 and conveniences, to locate on a parcel only after the
 12 completion of a master plan, and the identification and site plan
 13 approval for the major user.
 14
- 15 Policy 2CC-8: Exclude Cherry Point as part of any future incorporation of Birch
 16 Bay.
 17
 - to protect interests of the property owner in terms of
 - 18 taxation and urban regulations;
 - 19 • to preclude urbanism near "smokestack" industries;
 - 20 • to preserve county government tax base.
 21
- 22 Policy 2CC-9: Continue to work with service providers that serve Cherry Point
 23 to ensure the delivery of services and to allow it to develop to
 24 its fullest potential, consistent with other County policies
 25 mandating and supporting energy and water conservation.
 26
- 27 Policy 2CC-10: It is the policy of Whatcom County to limit the number of
 28 industrial piers at Cherry Point to the existing three approved
 29 leases identified in the Lands Commissioner's Order No. 201037
 30 designating the Cherry Point Aquatic Reserve (BP, Intalco, and
 31 Phillips 66) to:
 32
 - Support and remain consistent with the state Department of
 - 33 Natural Resources' withdrawal of Cherry Point tidelands and
 - 34 bedlands from the general leasing program and species
 - 35 recovery goals of the Cherry Point Aquatic Reserve
 - 36 designation and CPAR MP;
 - 37 • Further public health and safety;
 - 38 • Recognize federal actions upholding treaty rights;
 - 39 • Protect traditional commercial and tribal fishing;
 - 40 • Prevent conflicts with vessel shipment operations of existing
 - 41 refineries that could lead to catastrophic oil or fuel spills; and
 - 42 • Adhere to best available science documenting species decline
 - 43 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,

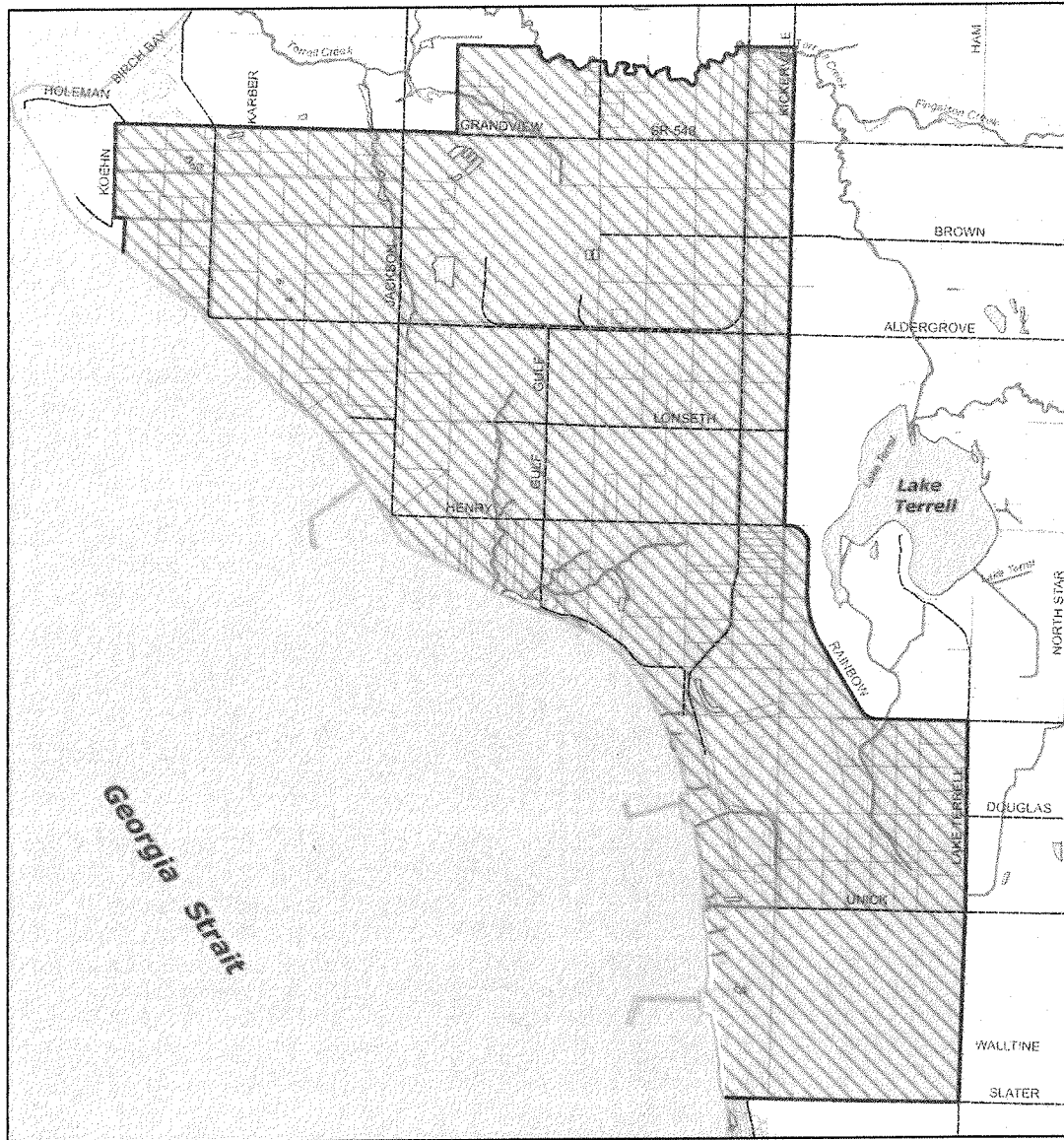
1 zoning, permitting, electrical, nuisance, and fire codes, and
2 develop recommendations for legal ways the County can work to
3 limit unrefined fossil fuel exports from the Cherry Point UGA
4 above levels in existence as of July 5, 2016. The study shall
5 review and analyze any legal advice freely submitted to the
6 County by legal experts on behalf of a variety of stakeholder
7 interests, and make that advice public as part of the study
8 report.

9
10 • Based on the above study, develop proposed Comprehensive
11 Plan amendments and associated code and rule amendments
12 for Council consideration as soon as possible.


13
14 • Until the above mentioned amendments are implemented,
15 the Prosecuting Attorney and/or the County Administration
16 shall as soon as is practicable, and before any permissions
17 are granted by the County, provide the County Council
18 written notice of all known pre-application correspondence or
19 permit application submittals and notices, federal, state, or
20 local, that involve activity with the potential to expand the
21 export of fossil fuels from Cherry Point.

Whatcom County | Comprehensive Plan

Map UGA-10



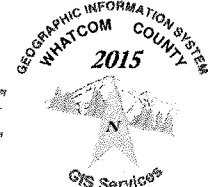
- Cherry Point Urban Growth Area

 Major Port/Industrial UGA

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Alternative # 1

(Council Member Alternative)

Major Industrial Urban Growth Area / Port Industrial

Cherry Point

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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. 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.

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

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

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

31
32 The characteristics that make Cherry Point unique as a site major industrial
33 development include the following:

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35 Port Access – The marine waters off Cherry Point provide deep water access for
36 shipping. Deep water access for shipping was a major siting consideration for the
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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.

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

4
5 The Bonneville Power Administration supplies power directly to the Alcoa Intalco
6 Works aluminum production facility.

7
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9 process water to all major industrial facilities at Cherry Point and has additional
10 water available contracts in place to provide process water to properties that are
11 currently undeveloped. PUD # 1 also operates a small system to provide potable
12 water to one industry (Praxair). Birch Bay Water and Sewer District provides
13 potable water to the BP Cherry Point Refinery. The other industries operate their
14 own water treatment facilities to provide potable water for their facilities. It is the
15 County's policy to work cooperatively with all businesses to support all efforts to
16 reduce water consumption and quantity of discharges.

17
18 Sewer: Sewer service is not typically required for large industrial developments.
19 Most of the existing industrial users provide their own on-site sewage treatment
20 and waste water treatment. Sewer service for domestic wastewater is provided to
21 the BP Refinery by the Birch Bay Water and Sewer District. If and when sewer
22 service should become necessary for other industries, service could be provided on
23 a contractual basis with the Birch Bay Water and Sewer District, which borders the
24 Cherry Point industrial area on the north.

25
26 Natural Gas: Natural gas is currently available at Cherry Point.

27
28 All-weather Roads: Grandview and Slater roads, the major east-west connectors
29 between Cherry Point and Interstate-5, provide all-weather road access to Cherry
30 Point.

31
32 The industries currently located at Cherry Point are a substantial part of the
33 economic base of Whatcom County and the region and the economic welfare of the
34 county is strongly tied to the health of these industries and their ability to flourish
35 and expand appropriately as opportunities present themselves. These existing
36 industries need to be protected from the inappropriate encroachment of
37 incompatible uses; particularly residential uses that could affect their ability to
38 expand, at the same time, the expansion of these industries needs to be done in
39 ways that do not significantly impact the ecology of the Salish Sea or encourage
40 expanded export of unrefined fossil fuels. The best means for protecting these
41 industries from incompatible adjoining residential uses and to assure their
42 continued regulatory conformity is to maintain the industrial land use designation of
43 these lands and adjoining properties currently designated for industrial
44 development. The Cherry Point industrial lands have been designated for industrial
45 development, and as a direct result of the industrial designation, incompatible and
46 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 shipmentsshipping, 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.

1
2 Policy 2CC-9: Continue to work with service providers that serve Cherry Point
3 to ensure the delivery of services and to allow it to develop to
4 its fullest potential, consistent with County policies supporting
5 energy and water conservation.

6
7 Policy 2CC-10: It is the policy of Whatcom County to limit the number of piers
8 at Cherry Point. Any moratorium shall not affect, nor otherwise
9 apply to, any proposed pier that Whatcom County approved
10 under its Shoreline Management Program prior to adoption of
11 the moratorium. It is also the policy of Whatcom County to:

- 12
- 13 • Further public health and safety;
- 14 • Recognize federal actions upholding treaty rights;
- 15 • Protect traditional commercial and tribal fishing;
- 16 • Prevent conflicts with vessel shipment operations of existing
- 17 refineries that could lead to catastrophic oil or fuel spills;
- 18 • Adhere to best available science documenting species decline
- 19 in the Salish Sea and at Cherry Point and enhance the
- 20 likelihood of reaching the recovery goals of the CPAR and the
- 21 Puget Sound Partnership's recovery goals for Year 2035; and
- 22 • Support environmental upgrades when expanding refining
- 23 operations.

24
25
26 ~~by establishing a development moratorium. Notwithstanding the~~
27 ~~above, this moratorium shall not affect, nor otherwise apply to,~~
28 ~~any proposed pier that Whatcom County approved under its~~
29 ~~Shoreline Management Program prior to adoption of the~~
30 ~~moratorium.~~

31
32 Policy 2CC-11: RCW 36.70A.365 requires the implementation of Traffic Demand
33 Management (TDM) programs for the designating of a Major
34 Industrial Urban Growth Area. Any employer in the Cherry Point
35 Urban Growth Area that employs one hundred or more full-time
36 employees at a single worksite, who begin their regular work
37 day between 6:00 am and 9:00 am on weekdays for at least
38 twelve continuous months during the year, are required to meet
39 the TDM requirements of WCC 16.24.

40
41 Policy 2CC-12: Work with the Cherry Point industries to maximize public access
42 to the Cherry Point beaches without compromising industrial
43 security.

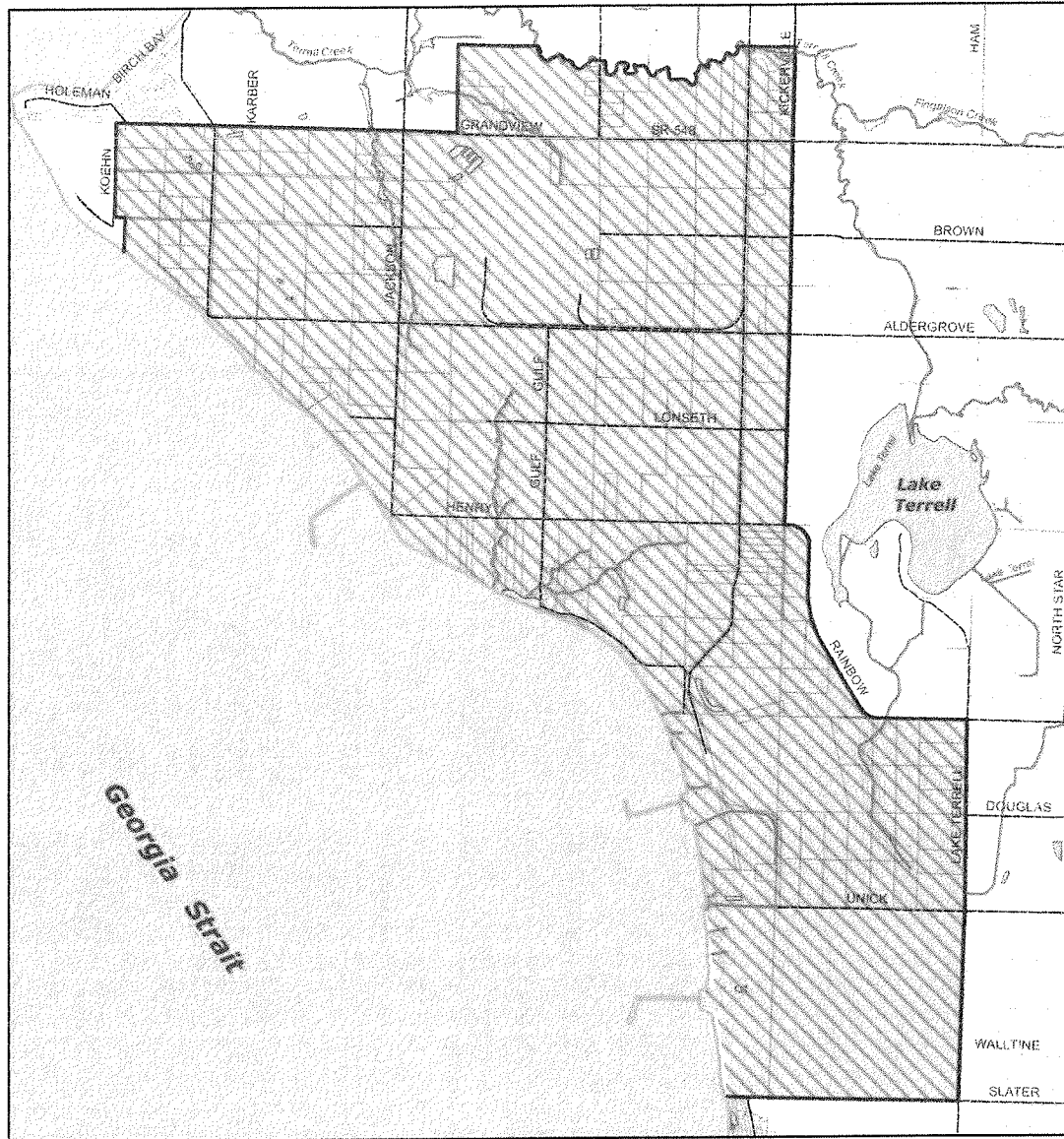
1
2 Policy 2CC-13: Cooperate with the DNR and existing industries to monitor the
3 effects of industrial activities on water quality and habitat
4 functions in and adjacent to the Cherry Point Aquatic Reserve.
5

6 Policy 2CC-14: The County shall undertake a study to be completed by
7 December of 2017 to examine existing County laws, including
8 those related to public health, safety, development, building,
9 zoning, permitting, electrical, nuisance, and fire codes, and
10 develop recommendations for legal ways the County can work to
11 limit unrefined fossil fuel exports from the Cherry Point UGA
12 above levels in existence as of July 5, 2016. The study shall
13 review and analyze any legal advice freely submitted to the
14 County by legal experts on behalf of a variety of stakeholder
15 interests, and make that advice public as part of the study
16 report.
17


- 18 • Based on the above study, develop proposed Comprehensive
19 Plan amendments and associated code and rule amendments
20 for Council consideration as soon as possible.
21
22

Whatcom County | Comprehensive Plan

Map UGA-10



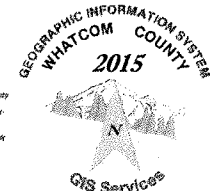
- Cherry Point Urban Growth Area

 Major Port/Industrial UGA

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0 0.25 0.5 1 Miles



Alternative # 2

(No Action Alternative)

1 Major Industrial Urban Growth Area / Port Industrial

2 Cherry Point

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

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

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

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

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

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

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

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

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

27 Proximity to Canada, Alaska and Foreign Ports - Cherry Point occupies a unique
28 location for the siting of industry because of its close proximity to Canada and
29 because of its shorter travel distance than other regional port facilities for shipping
30 to Alaska and to other Pacific Rim locations. The Cherry Point industrial area
31 benefits from proximity to Canada, as trade between the U.S. and Canada grows in
32 response to the lifting of trade barriers under the Free Trade Agreement. Canadian
33 exports to the U.S. are expected to increase and Canadian firms exporting to the
34 U.S. are expected to seek locations in the U.S. as a way of improving access to U.S.
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36 lack of extensive upland areas to support major industrial development, Canadian
37 port facilities are likewise constrained. There are limited expansion sites available at
38 Roberts Banks and in the Vancouver Harbor, and development sites further up the
39 Fraser River are constrained by limitations on vessel draft. Marine terminals at
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41 cargo.

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3 Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in
4 1966, and the BP Cherry Point Refinery in 1971. The infrastructure to support these
5 industries and future industrial users at Cherry Point is in place and includes the
6 following:

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33 provide potable water for their facilities.

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36 and waste water treatment. Sewer service for domestic wastewater is provided to
37 the BP Refinery by the Birch Bay Water and Sewer District. If and when sewer
38 service should become necessary for other industries, service could be provided on
39 a contractual basis with the Birch Bay Water and Sewer District, which borders the
40 Cherry Point industrial area on the north.

41

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

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6 economic base of Whatcom County and the region and the economic welfare of the
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8 and expand as opportunities present themselves. These industries need to be
9 protected from the inappropriate encroachment of incompatible uses; particularly
10 residential uses that could affect their ability to expand. The best means for
11 protecting these industries from incompatible adjoining uses and to assure their
12 continued regulatory conformity is to maintain the industrial land use designation of
13 these lands and adjoining properties currently designated for industrial
14 development. The Cherry Point industrial lands have been designated for industrial
15 development and as a direct result of the industrial designation, incompatible and
16 inappropriate residential development has been curtailed.

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

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22 to accommodate major users that need to be located away from
23 concentrated urban residential areas and that can manage their
24 activities in such a way that they do not conflict with the goals
25 of the Aquatic Reserve Management Plan.

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28 Reserve Management Plan.

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31 protected from incompatible development.

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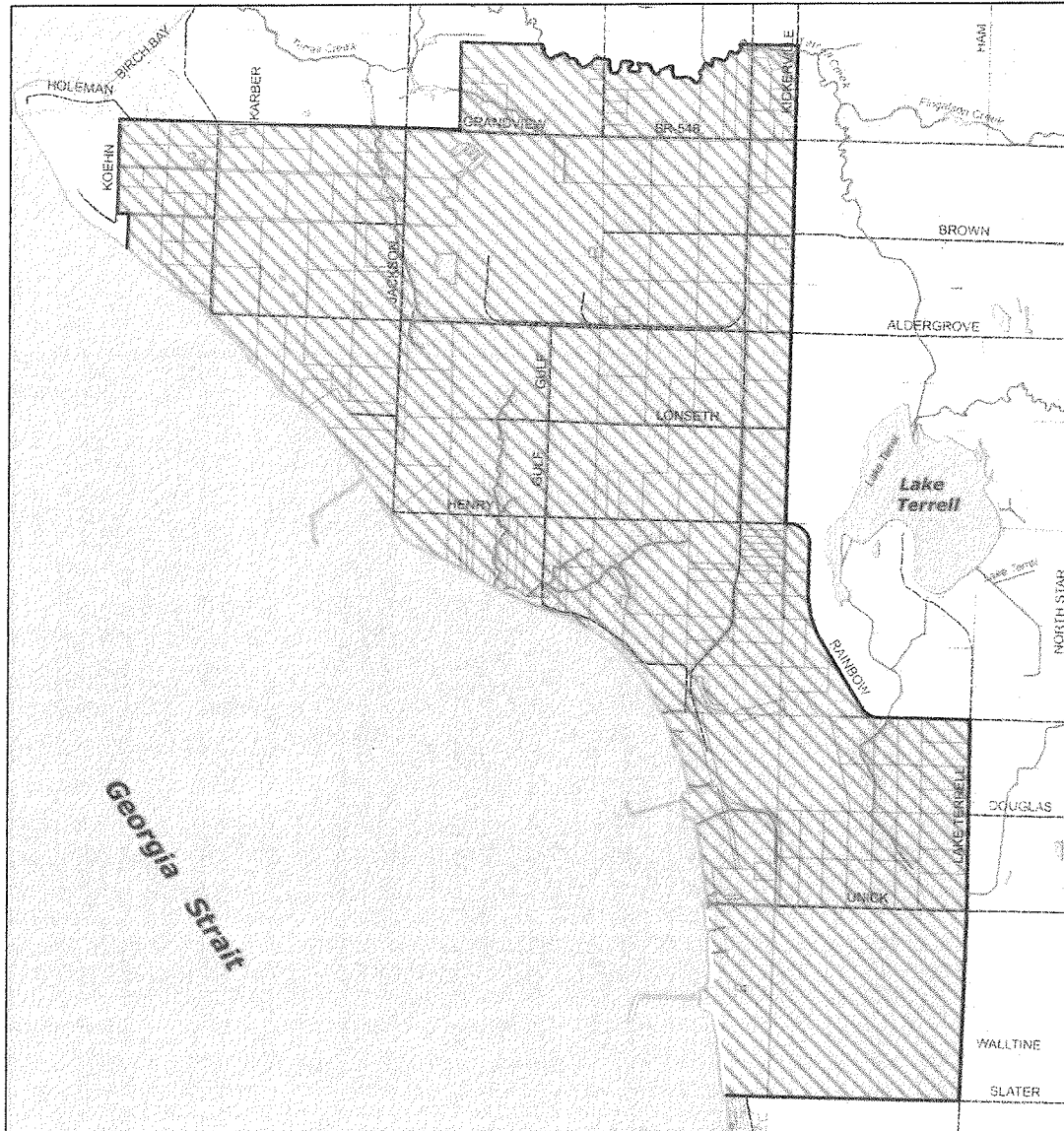
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3 the major user.
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5 Bay.
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7 taxation and urban regulations;
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15 Notwithstanding the above, this moratorium shall not affect, nor
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18 adoption of the moratorium.
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22 Urban Growth Area that employs one hundred or more full-time
23 employees at a single worksite who begin their regular work day
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25 continuous months during the year are required to meet the
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32 functions in and adjacent to the Cherry Point Aquatic
33 Reserve.

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Map UGA-10



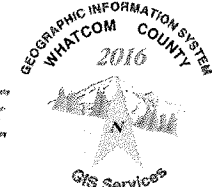
- Cherry Point Urban Growth Area

 Major Port/Industrial UGA

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0 0.25 0.5 1 Mile



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.
13. Notices of the public hearings were published in the Bellingham Herald on September 23, 2016 and November 25, 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

78. The Washington State DNR originally issued the *Cherry Point Environmental Aquatic Reserve Management Plan* in November 2010, and amended the Plan in January 2017.

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.

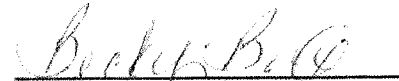
RECOMMENDATION

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

1/19/17
Date

1/19/17
Date

Commissioners present at the January 12, 2017 meeting when the vote was taken:
Atul Deshmane, Gary Honcoop, David Hunter, Natalie McClendon, Andy Rowison,
and Gerald Vekved.

**Vote: Ayes: 5, Nays: 1, Abstain: 0, Absent: 3. Motion carried to adopt the
above amendments.**

EXHIBIT A

Planning Commission Recommended Cherry Point Amendments

January 12, 2017

Major Industrial Urban Growth Area / Port Industrial

Cherry Point

The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of industrial land. The land has long been planned and designated by Whatcom County for industrial development and is currently the site of three major industrial facilities including two oil refineries and an aluminum smelter. Together, these three existing industries own about 4,400 acres of the total Cherry Point industrial lands. A fourth large tract of undeveloped land constituting approximately 1,500 acres is designated for industrial development.

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has regional significance for the siting of large industrial or related facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point Refinery in 1971.

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

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

Since adoption of earlier versions of this Comprehensive Plan, governments have increased their recognition of the observed and projected effects that fossil fuel extraction, transportation and use have on human health and the environment. The Cherry Point UGA contains the second-largest emitter of carbon pollutants (primarily CO₂, which was ruled air pollution by the US Supreme Court in 2007) in Washington State (Ecology, June 2016). Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20-year planning period.

Environmental

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington State. This herring stock has supported important commercial fisheries in the past and provides forage for salmonids and other important marine species. In 2000, 2010, and 2017 the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state's general leasing program and designated them as the "Cherry Point Aquatic Reserve." The following DNR Use Authorizations are exempted from withdrawal: Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66), 20-A08488 (Intalco Aluminum Corporation), and 20-010521 (Birch Bay Water and Sewer District). In December 2010, the DNR recognized the need to "protect the significant environmental resource of aquatic lands at Cherry Point" (CPAR Management Plan p. 1), and completed the Cherry Point Environmental Aquatic Reserve Management Plan and ~~designated the Cherry Point Aquatic Reserve to ensure long-term environmental protection of the area~~Aquatic Reserve. The ~~Reserve~~ extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. ~~The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.~~

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

~~The Management Plan acknowledges that the existing industries, complying with laws and regulations, do not conflict with the Aquatic Reserve although their activities may pose risks for the Aquatic Reserve. Indeed, the industries' need for buffer space and their compliance with shoreline management requirements means that m~~Much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing shoreline and upland stream and wetland functions and values are of continuing importance to the recovery and protection of species identified in the Aquatic Reserve Management Plan. The area includes undeveloped intertidal wetlands with importance to juvenile salmon and other species. Existing industries can serve the Aquatic Reserve's objectives so long as they are managed according to the Plan and so long as the lessees actively work to further goals for the Reserve (CPAR MP p. 2).

1 The County and industrial users have long recognized that the Cherry Point area
2 exhibits a unique set of characteristics that makes land there not only locally but
3 regionally important for the siting of major industrial developments. Based on the
4 public record developed during this plan review and best available science in the
5 record, the County supports a limit on the construction of additional export docks or
6 piers at Cherry Point due to environmental and treaty right concerns related to: (a)
7 physical interference with shoreline functions and values; (b) physical interference
8 with traditional, historic and commercial fishing and shellfish harvesting at the
9 Cherry Point shoreline; and (c) the increased risk of catastrophic and cumulative
10 small oil and fuel spills from increased large vessel traffic, potential collisions with
11 tankers and other vessels serving the existing three piers at Cherry Point, and
12 related barge traffic and support vessels (see Policy 2CC-11).

13 ~~_especially where deep water access for shipping is a critical locational factor.~~
14 ~~These characteristics were articulated in the Overall Economic Development Plan~~
15 ~~(OEDP) for Whatcom County adopted by the Whatcom County Council of~~
16 ~~Governments in May, 1993, in the 1997 Property Counselors Report on supply and~~
17 ~~demand for industrial land in Whatcom County and at Cherry Point, the 2002~~
18 ~~Greater Whatcom Comprehensive Economic Development Strategy, the 2003~~
19 ~~Whatcom County Industrial Land Study, and the 2015 Whatcom County~~
20 ~~Comprehensive Economic Development Strategy.~~

21
22 The United States Congress approved the "Magnuson Amendment" in 1977 in order
23 to restrict tankers carrying crude oil in the Puget Sound area. Congress found that
24 Puget Sound and the adjacent shorelines were threatened by the increased
25 possibility of vessel collisions and oil spills. Therefore, Congress restricted federal
26 agencies from issuing federal permits as follows:

27
28 . . . no officer, employee, or other official of the Federal Government shall, or
29 shall have authority to, issue, renew, grant, or otherwise approve any
30 permit, license, or other authority for constructing, renovating, modifying, or
31 otherwise altering a terminal, dock, or other facility in, on, or immediately
32 adjacent to, or affecting the navigable waters of Puget Sound, or any other
33 navigable waters in the State of Washington east of Port Angeles, which will
34 or may result in any increase in the volume of crude oil capable of being
35 handled at any such facility (measured as of October 18, 1977), other than
36 oil to be refined for consumption in the State of Washington.

37
38 Whatcom County does not enforce the Magnuson Amendment through the local
39 permitting process. However, the County can encourage federal agencies to
40 enforce the Magnuson Amendment and may, if necessary, seek to enforce the
41 Magnuson Amendment through the court system (see Policy 2CC-15).

42 **Cherry Point UGA Features**

43
44
45 The characteristics that make Cherry Point unique as a site for major industrial
46 developments include the following:
47

1 Port Access—
2

3 The marine waters off Cherry Point provide deep water access for shipping. Deep
4 water access for shipping was a major siting consideration for the three major
5 industries currently located at Cherry Point and for the industrial/shipping facilities
6 currently being proposed.
7

8 Rail Access –
9

10 Cherry Point is served by a branch line of the ~~BNSF Railway~~ Burlington Northern
11 mainline serving western Washington from Blaine to Portland. Rail service is
12 considered to be vital to statewide as well as local interests for the competitive
13 movement of freight. Rail service is particularly important in relation to water borne
14 commerce. The Cherry Point area has the rail access to support marine terminals
15 and industrial users in the area. Cherry Point industries use rail to ship and receive
16 multiple feedstocks and products. The BP refinery at Cherry Point uses the railroad
17 to ship calcined coke to U.S. markets and to other port facilities for transshipment
18 to foreign markets. Both the Cherry Point Refinery and the Ferndale Refinery ~~BP and~~
19 ~~Phillips 66 refineries~~ receive crude oil shipments by rail.
20

21 Proximity to Canada, Alaska and Foreign Ports—
22

23 Cherry Point occupies a unique location for the siting of industry because of its close
24 proximity to Canada and because of its shorter travel distance than other regional
25 port facilities for shipping to and from Alaska and to other Pacific Rim locations. The
26 large acreage, good rail access and proximity to Washington State and Canadian
27 ports makes the remaining upland area at Cherry Point suitable for commercial or
28 industrial production with emphasis on major sustainable clean energy
29 manufacturing or production (see Policy 2CC-3). The Cherry Point industrial area
30 benefits from proximity to Canada, as trade between the U.S. and Canada grows in
31 response to the lifting of trade barriers under the Free Trade Agreement. Canadian
32 exports to the U.S. are expected to increase and Canadian firms exporting to the
33 U.S. are expected to seek locations in the U.S. as a way of improving access to U.S.
34 markets. Compared to other port facilities in Washington and Canada, Cherry Point
35 is not constrained by extensive upland development or vessel draft limitations.
36 Additionally, just as other port facilities in Washington are constrained by lack of
37 extensive upland areas to support major industrial development, Canadian port
38 facilities are likewise constrained. There are limited expansion sites available at
39 Roberts Banks and in the Vancouver Harbor, and development sites further up the
40 Fraser River are constrained by limitations on vessel draft. Marine terminals at
41 Cherry Point could serve a portion of the potential growth in Canadian marine
42 cargo.
43

44 **Presence of Necessary Utilities and Infrastructure**
45

46 Cherry Point is a major industrial area in Whatcom County. The ~~Phillips 66-Ferndale~~
47 ~~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).

1 Sewer:

2
3 Sewer service is not typically required for large industrial developments. Most of the
4 existing industrial users provide their own on-site sewage treatment and waste
5 water treatment. Sewer service for domestic wastewater is provided to the BP
6 Cherry Point Refinery by the Birch Bay Water and Sewer District. If and when sewer
7 service should become necessary for other industries, service could be provided on
8 a contractual basis with the Birch Bay Water and Sewer District, which borders the
9 Cherry Point industrial area on the north.

10
11 Natural Gas:

12
13 Natural gas is currently available at Cherry Point.

14
15 All-weather Roads:

16
17 Grandview and Slater roads, the major east-west connectors between Cherry Point
18 and Interstate-5, provide all-weather road access to Cherry Point.

19
20 Use Compatibility and Land Use Designation

21
22 The industries currently located at Cherry Point are a substantial part of the
23 economic base of Whatcom County and the region and the economic welfare of the
24 county is strongly tied to the health of these industries and their ability to flourish
25 and expand as opportunities present themselves. These industries need to be
26 protected from the inappropriate encroachment of incompatible uses; particularly
27 residential uses that could affect their ability to expand. at the same time, the
28 expansion of these industries needs to be done in ways that do not significantly
29 impact the ecology of the Salish Sea. The best means for protecting these
30 industries from incompatible adjoining uses and to assure their continued
31 regulatory conformity is to maintain the industrial land use designation of these
32 lands and adjoining properties currently designated for industrial development. The
33 Cherry Point industrial lands have been designated for industrial development and
34 as a direct result of the industrial designation, incompatible and inappropriate
35 residential development has been curtailed.

36
37 **Goal 2CC: Maintain Cherry Point as an unincorporated urban growth**
38 **area based on its unique location, and characteristics and**
39 **its significant contribution to the overall industrial land**
40 **supply and Whatcom County's tax base.**

41
42 **Policy 2CC-1:** Designate Cherry Point as a major industrial Urban Growth Area
43 to accommodate major users that need to be located away from
44 concentrated urban residential areas and that can manage their
45 activities in such a way that they do not conflict with the goals
46 of the Aquatic Reserve Management Plan.
47

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

4
5 Policy 2CC-3: Encourage that future developments or expansions within the
6 Cherry Point UGA are consistent with the following:

- 7 • Clean and low carbon emitting technology;
- 8 • Avoidance of estuaries and near shore wetlands;
- 9 • Archeological review; and
- 10 • Water recycling technology to minimize water use.

11
12 Policy 2CC-43: Assure that Cherry Point's unique features of large parcelization,
13 port access, and pipeline, vehicular and rail transportation
14 availability are maintained and protected from incompatible
15 development.

16
17 Policy: 2CC-54: Require the master planning of each large parcel in advance of
18 any development or subdivision at Cherry Point.

19
20 Policy: 2CC-65: Require the designation and site plan for a major user (generally
21 40 acres or more) before the development of accessory or
22 supporting uses to assure that accessory or supporting uses are
23 compatible with and will not interfere with the major industrial
24 user.

25
26 Policy: 2CC-76: Specify 160 acres as a minimum area for planning, prior to the
27 commitment of a parcel for a major user (40 acres or more,
28 singularly or as a cluster or group).

29
30 Policy: 2CC-87: Permit support activities, warehousing, shipping, machine repair
31 and service, educational services, food service and
32 conveniences, to locate on a parcel only after the completion of
33 a master plan, and the identification and site plan approval for
34 the major user.

35
36 Policy 2CC-98: Exclude Cherry Point as part of any future incorporation of Birch
37 Bay.

- 38 • to protect interests of the property owner in terms of
- 39 taxation and urban regulations;
- 40 • to preclude urbanism near "smokestack" industries;
- 41 • to preserve county government tax base.
- 42

1 Policy 2CC-~~109~~: Continue to work with service providers that serve Cherry Point
2 to ensure the delivery of services and to allow it to develop to
3 its fullest potential, consistent with other County policies
4 supporting energy and water conservation.

5
6 Policy 2CC-~~1110~~: It is the continuing policy of Whatcom County to support a limit
7 on the number of industrial piers at Cherry Point, consistent
8 with:

9
10 • existing vested rights, approvals or agreements granted
11 under Whatcom County's Shoreline Master Program;

12 • continued agency use of best available science;

13 • Whatcom County's application of the Shoreline
14 Management Act, the Whatcom County Shoreline Master
15 Program, Whatcom County Comprehensive Plan,
16 Whatcom County Critical Areas Ordinance and other
17 applicable local plans, laws and regulations including,
18 without limit, the fire, mechanical and electrical codes
19 adopted by Whatcom County;

20 • state agencies' application of state laws and regulations
21 including without limit the State Environmental Policy Act,
22 Washington Indian Graves and Records Act, the
23 Washington Archaeological Sites and Resources Act, the
24 state Energy Facility Site Location Act, limitations
25 imposed by the Cherry Point Aquatic Reserve
26 Management Plan; and the federal Clean Water Act as
27 delegated to the State of Washington; and

28 • federal agencies' application of federal laws, regulations,
29 and treaties including without limit the National Historic
30 Preservation Act, Clean Water Act, Clean Air Act,
31 Endangered Species Act, U.S. Coast Guard regulations
32 regarding vessel operations, and the Magnuson
33 Amendment to the Marine Mammal Protection Act.

34
35 ~~by establishing a development moratorium. Notwithstanding the~~
36 ~~above, this moratorium shall not affect, nor otherwise apply to,~~
37 ~~any proposed pier that Whatcom County approved under its~~
38 ~~Shoreline Management Program prior to adoption of the~~
39 ~~moratorium.~~

40
41 Policy 2CC-~~1211~~: RCW 36.70A.365 requires the implementation of Traffic Demand
42 Management (TDM) programs for the designating of a Major

1 Industrial Urban Growth Area. Any employer in the Cherry Point
2 Urban Growth Area that employs one hundred or more full-time
3 employees at a single worksite who begin their regular work day
4 between 6:00 am and 9:00 am on weekdays for at least twelve
5 continuous months during the year are required to meet the
6 TDM requirements of WCC 16.24.

7
8 Policy 2CC-~~13~~12: Work with the Cherry Point industries to maximize public access
9 to the Cherry Point beaches without compromising industrial
10 security.

11
12 Policy 2CC-~~14~~13: Cooperate with the DNR and existing industries to monitor the
13 effects of industrial activities on water quality and habitat
14 functions in and adjacent to the Cherry Point Aquatic Reserve.

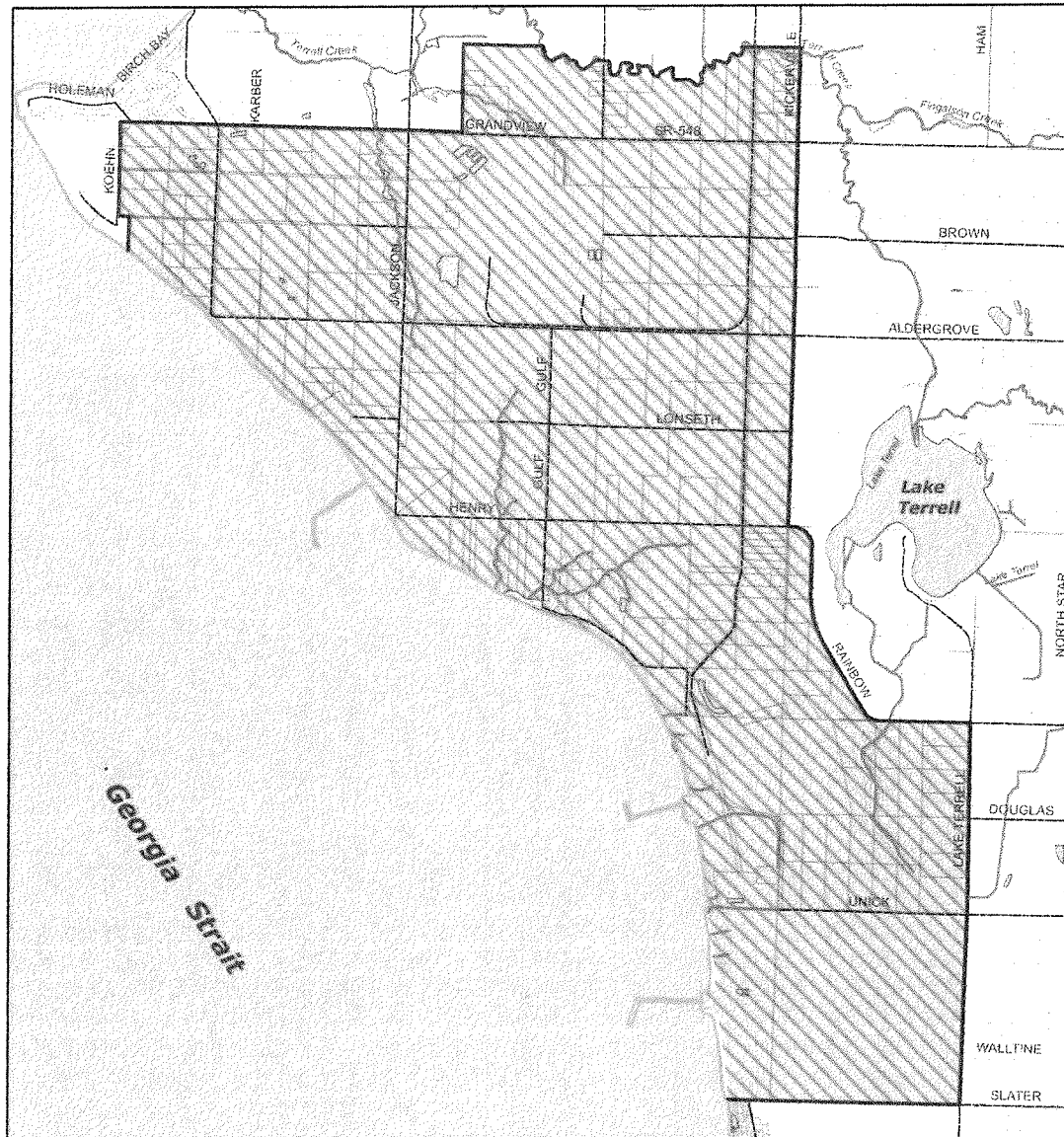
15
16 Policy 2CC-15: Whatcom County will encourage federal agencies, including the
17 U.S. Army Corps of Engineers, to enforce the provisions of the
18 Magnuson Amendment (33 USC Sec. 476). If necessary,
19 Whatcom County may initiate legal action to enforce the
20 provisions of the Magnuson Amendment.

21
22 Policy 2CC-16: The County shall undertake a study to be completed by
23 December of 2018 to examine existing County laws, including
24 those related to public health, safety, development, building,
25 zoning, permitting, electrical, nuisance, and fire codes, and
26 develop recommendations for legal ways the County can work to
27 limit crude oil, coal, and natural gas exports from the Cherry
28 Point UGA above levels in existence as of July 5, 2016, and
29 attract and support clean and low carbon industry. The study
30 shall review and analyze any legal advice freely submitted to the
31 County by legal experts on behalf of a variety of stakeholder
32 interests, and make that advice public as part of the study
33 report.

- 34
35 • Based on the above study, develop proposed Comprehensive
36 Plan amendments and associated code and rule amendments
37 for Council consideration as soon as possible.
38
39 • Until the above mentioned amendments are implemented,
40 the Prosecuting Attorney and/or the County Administration
41 should provide the County Council written notice of all known
42 pre-application correspondence or permit application
43 submittals and notices, federal, state, or local, that involve
44 activity with the potential to expand the export of fossil fuels
45 from Cherry Point.

Whatcom County | Comprehensive Plan

Map UGA-10



- Cherry Point Urban Growth Area

 Major Port/Industrial UGA

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0 0.25 0.5 1 Miles



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
October 13, 2016**

Regular Meeting

1

1 **Call To Order:** The meeting was called to order, by Whatcom County Planning
2 Commission Chair, Nicole Oliver, in the Whatcom County Council Chambers at 6:30
3 p.m.
4

5 **Roll Call**

6 Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael
7 Knapp, David Hunter, Kelvin Barton, Andy Rowison, Atul Deshmane
8

9 **Staff Present:** Mark Personius, Matt Aamot, Jessie Roberts
10

11 **Department Update**

12
13 Mark Personius updated the commission on the following:
14

15 The Supreme Court decision regarding water.
16

17 **Open Session for Public Comment**
18

19 Carole Perry, Whatcom County: Stated that on most occasions the Planning
20 Commission has very few people attending. She was pleased to see the large crowd. At
21 a previous meeting one of the commissioners said that the Pledge of Allegiance should
22 not be said at the meetings. She felt that was wrong.
23

24 Chet Dow, Whatcom County: Addressed a letter he had sent to the Planning
25 Commission regarding the changes to the Council districts and how it affects the
26 members of the Planning Commission. The letter originated from the non-profit group
27 Common Threads. The legitimacy of the commission's deliberations was called into
28 question.
29

30 Royce Buckingham-Whatcom County Prosecuting Attorney's Office addressed Mr.
31 Dow's concerns. He stated the county will not be removing all of the current members
32 and replacing them. The transition is complicated and is being worked through.
33

34 **Commissioner Comments**
35

36 Commissioner McClendon asked the members of the public that have comments be
37 very specific what their concerns are.
38

39 Commissioner Hunter addressed his previous comments regarding the Pledge of
40 Allegiance. He asked the commission to think about what it means to be an American
41 and what it means to be patriotic. There are lots of different ways to demonstrate
42 patriotism. Saying the Pledge of Allegiance is a very easy way to appear to be
43 patriotic. There are hard day to day jobs which embody patriotism.
44

45 Commissioner Rowison asked that boarding of horses be added to the list of pending
46 business items. The commission agreed.
47

**RECORD OF PROCEEDINGS OF THE
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October 13, 2016**

Regular Meeting

2

Approval of Minutes

September 8, 2016: Commissioner Rowson amended page 7, line 1 to add:
Commissioner Rowson 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.

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Regular Meeting

3

1
2 On September 13, 2016 the Council approved the Public Participation Plan for the
3 Comprehensive Plan amendments. These Cherry Point amendments were classified as
4 Level 3, which means that we are to consider and develop alternatives. Alternative 1
5 was proposed by an individual Council member. It includes: Encouraging
6 environmental protection, no additional piers, except one already permitted in the
7 1990's, and study legal ways to limit unrefined fossil fuel exports. Alternative 2 is the
8 no action alternative and would retain the exiting Comprehensive Plan language with
9 no changes.

10
11 The purpose of the meeting was to have the town hall meeting, as required by the
12 Public Participation Plan and to seek public input on the proposal and alternatives.
13 Another purpose of the meeting was to seek public comments under the State
14 Environmental Policy Act (SEPA) requirement. It requires the county to make a
15 threshold determination on the proposed amendments. This could be a determination
16 of non-significance; a mitigated determination of non-significance or a determination of
17 significance, which would require an Environmental Impact Statement (EIS). The
18 county is seeking information from the public, agencies and tribes prior to making the
19 threshold determination.

20
21 The Commission will hold meetings October 27, November 10, December 8 and
22 January 2017 (if needed). The Council will review the Planning Commission proposal in
23 2017.

24
25 The hearing was opened to the public.

26
27 Sandy Lawrance, Whatcom County: Spoke in favor of the proposal by Council. Several
28 weeks ago, at another public meeting, he heard someone comment that the planet has
29 been changing for millions of years, which he agrees with. The implication of that sort
30 of statement is that it is hyper-variable, it is chaotic, and is totally unpredictable. That
31 is far from the truth. There is lots that is known about climate science. There are two
32 basic pitfalls regarding Earth's climate. One is greenhouse gases and the other is
33 variations in the planet's orbit. Fossil fuels use have led to an increase in carbon
34 dioxide, methane and nitrous oxide. We have known about the effect of greenhouse
35 gases since the 1800's. If we were not changing the Earth's atmosphere what would be
36 going on right now is a very gradual cooling. Instead we are going in the opposite
37 direction at a rapid pace. We now have the highest surface temperatures in over
38 100,000 years. If we stop burning fossil fuels now we would still get to the highest
39 temperature in over two million years. Anything that will hinder the continued use of
40 fossil fuels is something that should be supported.

41
42 Dena Jensen, Whatcom County: This meeting is being held on land that was the
43 traditional territory of the Lummi and Nooksack peoples. They nurture a relationship
44 with the Coast Salish neighbors. She supported the Council resolution. She asked the
45 commission to consult with the Lummi Nation in a comprehensive and meaningful way
46 to understand and support the protections that they are seeking regarding their
47 historic, cultural and spiritual resources at Cherry Point. The Lummi Nation was not

**RECORD OF PROCEEDINGS OF THE
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October 13, 2016**

Regular Meeting

4

1 consulted when the proposal before you was originally drafted even though the
2 proposal seeks to take into consideration requests the Lummi Indian Business Council
3 made in letters to Whatcom County during the Comprehensive Plan process. At this
4 time we are fortunate to have some new studies done in areas close to ours that have
5 come forward. She asked the commission to review these studies in order to gain more
6 insights into ways to protect the valuable resources at Cherry Point. Take action to
7 offer the strongest investment possible for the wellbeing of our land, air, water and
8 landforms for these things keep our human community alive on Earth. It takes a great
9 deal of effort to do this. The necessary effort to enhance and protect the resources
10 creates jobs and will enhance and strengthen our existing lands. These are the types of
11 jobs that will truly support us as a strong and vibrant community.

12
13 Warren Sheay, Whatcom County: Supported the Council proposal. One reason to do
14 this is for homeland security. By preventing crude oil from being shipped overseas
15 from Cherry Point we will protect our land and our citizens from oil train derailments
16 and explosions which have occurred all over the country and which have resulted in
17 death and destruction of property and significant damage to the environment. Think
18 about denying this proposal. By allowing more train traffic how would you feel if we
19 suffered a deadly crude oil train accident, an accident that you could have helped
20 prevent. He would not want that on his conscious. Another very important reason to
21 pass the Council proposal is that by preventing crude oil from going to overseas
22 refineries it actually protects the existing refinery jobs at Cherry Point. There has been
23 a lot of hysteria and misinformation about this. He was suspicions that much of it
24 comes from the oil company management that is misleading workers into believing
25 their job security is being threatened. In fact, thanks to the Council proposal, it is
26 being protected. Many are on the side of the refinery workers.

27
28 Matt Krough, Whatcom County: Supported the Council proposal. Regarding Policy 2CC-
29 2 the statement: *Clean energy and low carbon emitting industries are favored*; there
30 should be a definition of what *favored* means. The final bullet refers to water. We have
31 heard about the lawsuit against the county regarding water. Any water restrictions or
32 any issues having to do with water should address that. He does support the language
33 in Alternative 1 regarding existing development which states: *Work cooperatively with*
34 *all businesses to increase environmental protection*. He does not agree with the
35 expansion but does agree making improvements to refineries to make them safer for
36 workers and the environment. Being allowed to export crude overseas could be the
37 route to outsourcing jobs. He supports the proposed Council language in 2CC-10.
38 Policy 2CC-14 is a statement of federal law. It is not taking federal authority from the
39 county. It simply states county regulations should be consistent with federal law.
40 Regarding Policy 2CC-15, in Alternative 1 the final bullet point is removed. It should
41 remain in the Council proposal.

42
43 Eddy Ury, Whatcom County: Representing Resources for Sustainable Communities. In
44 looking at these policies let's stay with the details. What are the issues and goals? Is
45 there anything in them where we don't achieve the goals in the best way that we can?
46 Write development regulations that are consistent with the County's due authority
47 consistent with overriding state and federal law. That's what these policies are about.

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Regular Meeting

5

1 The people that are here need to take a hard look at what is in the policies. He would
2 like to hear from the representatives from the industries, if they are going to speak
3 against them, what specifically is wrong. What in these policies is a threat to anything
4 they are planning to do? You think these policies are a big threat and somehow this is
5 going to threaten the jobs at Cherry Point. We know these industries are a huge part
6 of our economy and are really in no danger of going away anytime soon as long as we
7 continue to use fossil fuels. There is no way that the county could preemptively shut
8 down refineries. Nothing the county can do will regulate out industries at Cherry Point.
9 These policies bring the county into compliance with what the state and feds have
10 already decided in regards to respecting the Lummi Nation's treaty rights. It has been
11 determined that there will not be a fourth pier at Cherry Point. That would have to be
12 overturned in a federal court of appeals. There are people who do want to overturn
13 that decision. The fact that they want to change the law is not an argument for the
14 county. They do not have that authority so should the Comprehensive Plan be
15 inconsistent with the law? When we talk about jobs being threatened what actually is
16 being threatened. BP is saying we are threatening to shut down the refineries and send
17 off-shore jobs overseas by exporting crude oil, skipping the refining process and doing
18 it somewhere that is cheaper.

19
20 Ron Colson, Whatcom County: Speaking on behalf of the Sierra Club. The Sierra Club
21 fully endorses the inclusion of all aspects of the Weimer amendments. They issued this
22 endorsement for two reasons. First, the Sierra Club is dedicated to protecting our
23 environment and second, they want to protect the existing jobs at Cherry Point. You
24 will hear comments from hardworking citizens who have been told that their jobs are
25 threatened by these amendments. However, the exact opposite is true. Fossil fuel
26 companies are claiming that if they are not allowed to export crude oil they will no
27 longer be profitable and will be forced to close the refineries. If they are so
28 unprofitable, without exporting unrefined fossil fuels, how are they able to afford to
29 make such large philanthropic contributions to so many local non-profits? If crude oil
30 exports are allowed it will be the fossil fuel companies themselves that will close the
31 refineries and lay off most workers because it is cheaper to refine crude oil overseas
32 and reimport the refined products back here. Remember that the primary obligation of
33 all corporations is to increase shareholder value. In this case this would be best
34 accomplished by laying off highly paid Whatcom County workers and shipping jobs to
35 low paid foreign workers where environmental restrictions are virtually nonexistent.
36 From an environmental perspective the Sierra Club recognizes that environmental
37 damage would be inevitable if we allow the export of unrefined fossil fuels from Cherry
38 Point. The damage will include the inability of emergency vehicles to cross railroad
39 tracks due to the huge increase in oil train traffic through the county. There is the
40 noise and air pollution caused by diesel locomotives. The constant danger of train
41 derailment and damaging spills. The cumulative damage from unavoidable small spills
42 and the risk of immediate damage due to large spills while moving unrefined fossil
43 fuels from train cars into the transfer facilities. There is huge risk to the
44 environmentally sensitive Cherry Point Aquatic Reserve. It is not a question of if it will
45 happen, but when. The Sierra Club recognizes the hard working refinery workers by
46 stating they are on their side. Don't believe the wealthy and powerful fossil fuel

**RECORD OF PROCEEDINGS OF THE
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October 13, 2016**

Regular Meeting

6

1 companies that want to fool you into believing that this is a choice between well paying
2 jobs or a clean environment. We can have both.

3
4 Dirk Vermeren, Whatcom County: Supported the Weimer proposal. He recently retired
5 from the oil drilling industry. Upon retiring he chose to live in Bellingham for the
6 quality of life and what it has to offer. His professional background includes 35 years of
7 industry experience in refinery operations, environmental safety, marketing, sales, and
8 business development. He empathized with the refinery workers. He had been
9 impacted with downsizing and has been involved in downsizing studies. From his
10 experience marketing helps drive decisions in global industries. The regional market is
11 study and strong and oil will continue to be in demand. Do we want to build an export
12 refinery? Is that what we want in Whatcom County? What is the overall risk and the
13 cost benefit? Increasing exports does not require more man power. Increasing the risk
14 on land by rail and water is a major issue. He urged the Comprehensive Plan to take
15 into account holistic long term goals of life in the county and consider the impacts on
16 all stakeholders. There should be consideration of the integration with the Washington
17 State Shoreline Management Act of 1971 which states: Shoreline use for all,
18 environmental protection-increased risk from shipping and rail along the shore, and
19 public access. How will increased rail traffic impact the economic viability of the Port of
20 Bellingham development? People will not be able to access the facilities along the rail
21 corridor.

22
23 Tony Larson, Whatcom County: President of the Whatcom Business Alliance. They have
24 a Cherry Point coalition which is made up of industry workers, land owners, contractors
25 and their employees, non-profits, school districts, fire districts, etc. Recently Carl
26 Weimer invited the Cherry Point stakeholders to attend a meeting in order to better
27 look at the issues. This was encouraging. They asked the commission to establish a
28 period in which the public may submit alternative proposals for 2016 Comprehensive
29 Plan amendments. They would like to work collaboratively to create a compromise.
30 They asked that a SEPA threshold of significance be issued. There needs to be a
31 supplemental EIS.

32
33 Michael Wolf, Senior Vice President of Asia Energy Services: They provide turnaround
34 services to the oil and gas industries. They employ more than 2,000 workers on the
35 west coast, many of which are Whatcom County residents. Oil is a commodity that
36 many hate. He realized there have been incidents that have caused concern. The oil
37 industry is highly regulated. There are many agencies and authorities overseeing the
38 safe and reliable use of it. Given the strong economic benefits and responsible use of
39 oil he supports the industry and encouraged the commission to do the same. We
40 should focus our attention on safe, reliable and responsible use of oil that has proven
41 to enhance the quality of life. We should not support unreasonable destruction of the
42 industry.

43
44 Jessica Spiegel, Representing the Western States Petroleum Association: They are a
45 paid group comprised of 25 companies that explore development transport of
46 petroleum in five states. She addressed Councilmember Weimer's proposal. Page 2,
47 line 34 states: *The Cherry Point UGA contains the second largest emitter of carbon air*

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1 *pollution in Washington State.* This section has a lot of environmental references that
2 require more study before being put in the Comprehensive Plan. The Cherry Point area
3 is unique in that it supports industry. Export of crude retains jobs...(inaudible).
4

5 Pete Romero, Whatcom County: His company employees 80 to 100 people at Cherry
6 Point and over 500 during turnarounds. A lot of people here rely on the industrial work
7 at Cherry Point. To say that the jobs will still be there if this proposal happens is a
8 farce. There is no way to maintain these quality jobs if you limit production and export.
9

10 Jill Macyntire-Witt, Whatcom County: Representing 7 billion people, the animals and
11 plants. She was happy to see the BP workers present so they could hear the
12 messages. It is true their jobs are threatened by climate changes. Worldwide
13 renewable energy has employed over eight million people.
14

15 Jeff TenPas, BAI Environmental Services: He encouraged the commission to continue
16 to promote the original language submitted earlier this year and remove all language
17 proposed by the council in recent months that negatively impacts the economic vitality
18 of the Cherry Point region. When the businesses of Cherry Point are affected the rest
19 of the local and regional economy are impacted. These businesses help provide the
20 quality of life we enjoy in Whatcom County and ultimately here in the United States.
21 They support the transportation network linking family and friends. They provide heat
22 for homes in Custer or on Alabama Hill and electricity to keep St. Joe's operating
23 rooms lit. They continue to provide a stable source of energy for the West Coast
24 limiting the need for imports from other unstable global regions. The recent proposed
25 ban will devastate local jobs and the economy. Employees of the businesses located on
26 Cherry Point as well as contract companies like ours will be impacted. Cherry Point
27 refineries are the catalyst to this community's economy. Let me remind you of the
28 jobs multiplier computed by the study done by staff from Western Washington
29 University and the University of Washington, published in October of 2014, that shows
30 that for one job in the Cherry Point area 3-5 others are supported. The study also
31 showed that the wages paid in the Cherry Point area supports directly or indirectly
32 15% of the wages paid in Whatcom County. The economic decision to limit or restrict
33 future expansion could be devastating to the local economy and the region. A few
34 examples of the "ripple effect" when contemplating restricting or prohibiting activities
35 on Cherry Point - the industrial base at Cherry Point contributes to increased
36 occupancy rates at the numerous Bellingham hotels, it brings diners to the local
37 restaurants and establishments, the businesses buy millions of dollars' worth of goods
38 made or sold by local manufacturers and distributors. They seek loans from local
39 banks, the employees purchase and build new homes to keep the real estate sector
40 vibrant, and they buy food from local farm stands and grocery stores. I have
41 personally worked inside all the industrial sites at Cherry Point over the years. I have
42 also run, biked, hiked, mowed, planted and fished in this area for the past two
43 decades. These businesses are good neighbors to have in Whatcom County. They
44 operate world-class operations and continue to abide by high environmental standards.
45 I ask that you flat out reject this extreme proposal of the fuel export ban and eliminate
46 all negative language in the comprehensive plan.
47

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1 Mike Levine, Whatcom County: Works for AirGas. There are a lot of people on both
2 sides of the issue but remember those stuck in the middle. There are thousands of
3 people who work at businesses that support the refineries. These people help build our
4 community. Everyone in the room has benefited from these industries. This issue is not
5 about right or wrong or all or nothing. This issue is about the importance of working
6 together as a community to find an agreeable stance that allows people to maintain
7 their employment which is vital to our economy and community. Our children hope to
8 remain in this community and earn a family wage with good benefits. By keeping these
9 industries here the county will have the tax resources necessary to support so much of
10 what they do.

11
12 Pete Sim, Whatcom County: Employee of BP. Supports Alternative 2. The Weimer
13 proposal does not analyze, under the current EIS that was done for the Comprehensive
14 Plan, accordingly. The county should issue a determination of significance and should
15 prepare a supplemental EIS. There is a good relationship between BP and Whatcom
16 County and was built as a result of transparent cooperation. BP works very hard to
17 maintain trust with county staff and the community. BP is looking forward to working
18 in cooperation with the Planning Commission to develop Chapter 2 language that
19 addresses their concerns and limits adverse impacts on their ability to do business in
20 Whatcom County today and in the future.

21
22 Pat Simons, Whatcom County: Employee of BP. He was not in favor of the Weimer
23 proposal. He could be in favor of a mutually agreed upon collaboration that has yet to
24 be printed. Collaboration is essential. Industry has a lot to offer and should be a full
25 part of the collaboration. Is the County Council interested in collaboration? He hoped
26 so. Do not discourage local investment. The refinery has spent over 750 million dollars
27 over the past decade to modernize the refinery.

28
29 Todd Taylor, Whatcom County: Speaking on behalf of the NW Building and
30 Constructions Trades Council. They are the workers that do not work full time for the
31 refinery. They are the ones that perform routine maintenance, etc. These jobs pay
32 good wages and are essential to the members being able to provide for their families
33 and help support the community. If the commission were not to adopt the
34 Comprehensive Plan updates as originally written it would harm future opportunity and
35 prosperity in Whatcom County and interfere with the legal property rights of Cherry
36 Point land owners. Please support Alternative 2.

37
38 Kent Murray, Whatcom County: Since 1998 he has worked at four refineries and
39 different engineering firms. Georgia Pacific has been closed, Intalco has been reduced
40 and CH2M-Hill has closed their doors. A lot of this is due to regulations, crude prices,
41 etc. Most of the work he has done has been projects to reduce emissions and OSHA
42 issues. The 1,000 living-wage jobs from Georgia Pacific have not been replaced. The
43 proposed language that intends to stop all export of unrefined crude products is very
44 confusing. The list contains butanes, propane and other refined products. This
45 language needs to be cleaned up. The Council has said they can replace the refinery
46 jobs with high-tech clean industry jobs. Put your money where your mouth is. Show
47 that those jobs have been invited to site here.

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1
2 Ann Serwold, Whatcom County: Executive Director of the Ferndale Chamber of
3 Commerce. Their organization's mission is to encourage and support economic
4 development in their community by supporting their businesses and creating a means
5 to help them grow. She spoke in support of these businesses. Take into consideration
6 allowing the input from the land owners at Cherry Point. Without their input and the
7 chance to come to an agreement that works for everyone it forces these companies to
8 conduct business in a way that inhibits their ability to grow and prosper. One of the
9 council members had stated they had no idea if this moratorium was legal. That is a
10 problem. We need to bring all investors to the table in making a decision of this
11 magnitude. If we don't what are we saying to all businesses who may want to come
12 here in the future?

13
14 Alyssa Willis, Whatcom County: If this proposal goes through it will not allow for
15 growth. She has an issue with what is listed as unrefined fuels. Refined fuels are listed
16 which they should not be. This does not allow export of refined fuels which is a
17 problem. If these businesses can't export their product then they won't stay here. If
18 the businesses aren't here the people who are employed there will also leave. She
19 supports Alternative 2.

20
21 Tom Robins, King County: His company works at the refineries. The refineries trust his
22 judgment in regards to environmental issues. The proposal affects what he does. It will
23 make it difficult for him to get permits to do the work that needs done. This will kill
24 these businesses.

25
26 Tyson Green, Whatcom County: Representing Williams and Northwest Pipelines.
27 Williams Pipeline has been part of the community for over 60 years. They transport
28 natural gas. Encouraged the commission to work with the land owners at Cherry Point
29 to develop a plan that will support future opportunities and prosperity for the county.
30 All of their pipelines meet or exceed safety requirements. They operate in a way that
31 makes their company an asset to the community. They try to do this in a way that will
32 not affect the environment. A healthy environment and healthy economy are not
33 mutually exclusive. Economic ability and prosperity are the best tool in the community
34 to ensure a healthy environment. When county government and businesses have a
35 good relationship we can achieve wonderful things for the county.

36
37 Rick Stumph, Whatcom County: Works for JH Kelly, a contractor for the refineries. The
38 businesses at Cherry Point are critical to the economic health of our community. They
39 make numerous charitable donations to the county. Work should be done to come up
40 with language that would allow them to stay competitive in a highly competitive global
41 market. Asked the commission to not adopt any changes to the Comprehensive Plan
42 until an EIS is done. Broad changes should not be made, but rather look at each
43 proposal on a case by case basis. Asked the commission to look into the true impact of
44 oil trains. A lot of those trains are coming here to refine product.

45
46 Max Perry, Whatcom County: Worked at Intalco. He spoke against the Weimer
47 amendment. This issue came about because the Executive would not sign the

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1 ordinance relating to the Comprehensive Plan if the Weimer proposal was part of it. So
2 they waited until the Executive was on vacation. They then passed the emergency
3 ordinance. There is no emergency. The proposal prevents propane and butane from
4 being exported. The Council needs to talk with the people that work out there to work
5 out a good plan.

6
7 Nathaniel Maddux, Whatcom County: Representing the local chapter of the
8 International Association of Machinists. They have over 600 employees in Whatcom
9 County. Whatcom County is the land of No. We are sending messages to businesses
10 both here and those potentially coming here that they can't do what they want here.
11 We need to let them know that they can do what they are wanting to do here. By
12 doing this we end up eating the costs of the environmental impacts because we will be
13 paying for them one way or another.

14
15 Daryl Graves, Whatcom County: By limiting the number of train cars that can go
16 through the county the railroads will just make the cars bigger. Look at the
17 terminology.

18
19 Lee Newgent, Executive Director of Washington Building and Construction Trades. Has
20 seen a lot of business leave. Other communities have taken industry for granted,
21 especially paper mills. The regulations make businesses go elsewhere. We need to
22 support the 200 million dollars in tax revenue here. Bellingham has long been known
23 as an industrial town and maritime port. We need to get back to that idea and have
24 local people working in their community. There has been comments that the
25 environment and businesses at Cherry Point can't work together. They have worked
26 together for 60 years. The businesses are the first responders on any incident. They
27 take safety seriously. They have the highest environmental standards in the U.S. None
28 of the employers have a problem with any EIS. They know they can mitigate anything
29 that may come up.

30
31 Brad Owen, Whatcom County: President of the Northwest Jobs Alliance. They promote
32 the growth of family wage jobs in the context of sound environmental practice. Cherry
33 Point industries have been good neighbors. They have provided thousands of family
34 wage jobs with health care and pensions. They contribute more than a million dollars
35 annually to local charitable organizations. Whatcom County Council's proposed changes
36 to the Comprehensive Plan significantly threaten these socio-economic benefits that
37 are so critical to the welfare of Whatcom County. The adverse impacts on jobs,
38 housing, land use, economy, etc. must be studied. They ask that the county prepare a
39 supplemental EIS that addresses these matters. The subject of a fourth industrial pier
40 is not a dead issue. Until the property owners appeal rights have been exhausted there
41 is still a possibility that a fourth pier may be constructed. The property rights of Cherry
42 Point land owners must be respected. The Council resolution would de-value property
43 values by millions of dollars in the Cherry Point UGA. Like it or not fossil fuels provide
44 the only path to reduce emissions and a cleaner environment. The whole world relies
45 on fossil fuels for energy. Adding unnecessary regulations to the fossil fuel industry
46 only impedes the process to a cleaner environment and adds unnecessary costs to the
47 cost of living to those that can least afford it. The industries, for many years, have

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1 been constantly working to improve our environment. They continually improve the
2 facilities to reduce emissions, they have been involved in restoring over 200 acres of
3 wetlands at Cherry Point, along with many other accomplishments. At this point the
4 Cherry Point landowners are working on alternatives to the options on the table and
5 they must be heard. They support Alternative 2. If, however, additional alternatives are
6 submitted as part of a mission statement they reserve the right to move their support
7 in that direction. The commission should only consider updates to the Comprehensive
8 Plan that balance environmental concerns with economic opportunity.

9
10 Dustin Hoffman, Whatcom County: Family wage jobs for unskilled workers are very
11 scarce. He had to work elsewhere to make enough money to afford to buy a home. In
12 order to get a job locally he had to go to school. He got a degree in process technology
13 from Bellingham Technical College in order to get a job at one of the industries at
14 Cherry Point. He supports keeping the processing of hydrocarbons at the local
15 refineries but the new proposal covers more than this and all growth at Cherry Point
16 will be stifled. This is jobs people have been trained for. Those jobs will be affected by
17 the proposal. The oil industry is a very competitive market and if companies can't
18 expand to meet that demand and build newer, safer and environmentally friendly
19 structures the refining of fossil fuels will have to go elsewhere. There was once a paper
20 processing plant in Bellingham that was a main source of local heavy manufacturing
21 jobs that paid good wages. This company closed its doors in 2001. It appears as
22 though it was becoming the policy not to invest in additional resources. He hopes this
23 scenario isn't being played out again in Cherry Point by politically ambitious individuals
24 on the County Council who disregard people and families. The businesses at Cherry
25 Point are not some nameless companies. They are made up of people who take pride
26 in what they do and are good stewards to the communities and environment.

27
28 Karen Shorten, Whatcom County: She encouraged the commission to listen to the
29 residents of Whatcom County and recognize who their decisions will impact most. She
30 is the manager of Phillips 66 Refinery in Ferndale. She is proud to be providing energy
31 and improving lives for all of their customers. She urged the commission to support
32 the current and future viability of Cherry Point industries, protect the ability of the
33 existing businesses to remain flexible and to adopt their operations to future market
34 conditions. They recognize that the market is slowly changing and in order to remain
35 competitive in the global market all businesses, not just refineries, need the freedom
36 to respond to those changing market conditions, consumer demands as well as
37 environmental regulations and continual improvement opportunities. Their Ferndale
38 refinery has a strong history of safe, reliable and environmentally responsible
39 operations. They have reduced their energy usage by 10 percent over a 10 year
40 period. They have reduced their greenhouse gas emissions by 24 percent between
41 2011 and 2015. They are recognized by the U.S. EPA as an Energy Star refinery in
42 three of the last four years. Their clean fuels projects will continue to yield benefits to
43 air quality. Phillips 66 has a substantial positive impact on Whatcom County and
44 northwest Washington. They are a proud corporate citizen. They provide jobs for over
45 400 employees and contractors. These jobs average over \$100,000 per year.
46 According to a 2014 study done by the Whatcom Business Alliance and United Way 24
47 percent of households are below the federal poverty level and struggle to find and

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1 afford basic housing, food costs, etc. They ask that individual projects be evaluated
2 based on the merit of the specific proposals. Avoid blanket prohibitions that place
3 unnecessary restrictions on the refineries and limit their future flexibility. Exclude the
4 Weimer proposal from the Comprehensive Plan.

5
6 Gerry Arney, Whatcom County: Has worked at the Cherry Point refinery for almost 30
7 years. Businesses that are not allowed to expand and grow wither away and go away.
8 Once they go away they don't come back and aren't replaced by something else. He is
9 in favor of Alternative 2. If you restrict the refineries from expanding the county will
10 lose major industry. If you lose these industries you won't have much left.

11
12 Todd Mitchell, Whatcom County: We now have middle class jobs in Whatcom County
13 because of the refineries. A new pier would allow for many of his coworkers to continue
14 to earn a middle class wage in a county that doesn't have many other options. Many
15 workers who work in the construction of ship building, maintenance of ships, pilots,
16 seafarers, etc. are also middle class residents of Whatcom County that have
17 chosen to live here and have come here since the refineries have been built. They
18 continue to come here because of the great things this county produces. Without the
19 tax base here we would not have the building they are in and the other amenities that
20 make it a great county. We have to continue to ensure that we are able to responsibly
21 steward our county.

22
23 Joe Wilson, Vice President of Pederson Brothers: They do heavy industrial steel
24 fabrication. They do a lot of work at the refineries. They support Alternative 2 mainly
25 because of the jobs issue. He stated he wanted to address how poorly written the
26 resolution is. There are unrefined by-products that are in the refining process. His
27 understanding of the proposal is that they could not get a permit to build a project
28 related to safety if it had anything to do with the unrefined by-products. His company
29 also builds equipment for air pollution control and water pollution control but they
30 could not get a permit for that as stated in the proposal. This resolution needs to be
31 thrown out.

32
33 Mike Culley, Representing Carpenters Local 70 and the workforce at Cherry Point: He
34 works in the scaffolding industry which is a support industry for the refineries. To have
35 good family wage jobs in the county is a blessing. A lot of places don't have that
36 privilege. When certain industries go away they don't come back. The contractors and
37 refineries have a strong bond. They have a safe business and if safety wasn't involved
38 they would not be in business. Safety is always a priority. His company has affected
39 schools, charities, other businesses, etc. How do you calculate the thousands of other
40 people that have worked there and how they have affected the county? The refineries
41 give back millions in the form of charities. This has continued only because Cherry
42 Point has successfully grown safely and efficiently through the decades. Whatcom
43 County is an environmentally friendly and safe area. They find it egregious that their
44 local government seems to be putting limits on their livelihood.

45
46 Brian Ferguson, Whatcom County: Is in favor of Alternative 2. Is also in favor of
47 another pier. We need to grow the economy, not restrict it. He compared Cherry Point

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1 and the refineries to the Boeing plant in Everett. They continue to grow even though
2 there is a risk of a plane crashing. Our refineries are some of the cleanest and safest.
3 If we try to push these industries away it will happen.

4
5 Matthew Hepner, Executive Director of Certified Electrical Workers of Washington
6 State. Proposals like this drive away economic investment. Investments like this here
7 can lead real solutions in climate change. The definition of unrefined fossil fuels needs
8 to be thrown out. There is a concept called *Just Transition*. It revolves around getting
9 away from fossil fuels and ensuring that workers keep their jobs. He supports
10 Alternative 2.

11
12 Jerry James, Whatcom County: Supported the no action alternative. Asked the
13 commission to not forget about the wages the refinery workers are making.

14
15 Joe Murphy, Whatcom County: Works at Phillips 66. Supports Alternative 2 because
16 there is not a problem that needs to be solved. If the Council proposal is to go through
17 there needs to be a determination of significance and an EIS done. Someone had
18 stated these industries and jobs are not going away. That is naive. 20 years ago there
19 was a lot of fear mongering in the timber industries and a lot of jobs were lost as the
20 sawmills disappeared. The refineries compete for corporate support in order to keep
21 running. This support helps modernize the plants, make it safer, cleaner and more
22 efficient. They don't do projects that make these things go backwards. There are over
23 two billion people in the world that do not have access to electricity. We can't get rid of
24 fossil fuels because if we do that number will go up. Those people burn wood and
25 charcoal for their energy. What we should be talking about is how do we more
26 responsibly use the fossil fuels that are have. The refineries at Cherry Point are some
27 of the safest in the world. If we restrain those businesses they will end up leaving.

28
29 Pam Brady, Whatcom County: Works at BP. Asked the commission to clarify the
30 process by which they will be accepting public input. It is an unusual process to have a
31 town hall meeting to review SEPA. It is unclear what the county's process will be in the
32 future. The county should accept Alternative 2 which has already received a full public
33 process. Absent that the commission should postpone the Cherry Point UGA
34 amendments until 2017 to be in alignment with the GMA requirement that counties
35 update comprehensive plans once a year. Or they could take action to establish a
36 period within this process where the public may submit its own alternatives and
37 proposals. The county should issue a SEPA threshold determination of significance and
38 prepare a supplemental EIS. It is clear the Council did not contemplate the proposal.
39 She stated concern that the process is moving too quickly and the pace will prevent
40 the county from getting meaningful input from effected citizens and the companies and
41 may expose the county to challenges regarding non-compliance of public notice and
42 comment requirements. There is no need to amend the Comprehensive Plan on an
43 emergency basis. She recommended the Planning Commission appoint a technical
44 work group regarding this issue that includes all stakeholders. The proposed language
45 does not reflect the technical aspects of the energy business, its infrastructure or its
46 statutory authorities of the existing regulatory bodies. The jobs supported by these

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1 industries are vitally important to Whatcom County. It is false to say the restricting
2 exports and expansion of these industries protects jobs.

3
4 Bob Allendorfer, Whatcom County: Stated Alternative 2 is superior to Alternative 1.
5 There is the opportunity to create a better alternative by collaborating with a cross
6 section of the county. Establish an advisory board to ensure that any potential changes
7 are inclusive of the diversity and the hopes, concerns and aspirations of all our
8 citizens. Make a full and transparent cost benefit analysis before any decisions are
9 made. Make it clear what tradeoffs are being considered. Economic and social justice
10 go hand in hand. We can't put extraordinary burdens on the businesses at Cherry
11 Point. The rules of supply and demand won't allow it. Our neighbors to the north and
12 south will gladly fill any void created here. If these businesses disappear who will make
13 up the lost wages and charitable contributions? 22 percent of our population is earning
14 less than the basic cost of living. These businesses contribute to charities for those in
15 need.

16
17 June Coover, King County: An environmental engineer who has been working at
18 Cherry Point for over 25 years. She supports Alternative 2. We need to support the
19 industries here and let them grow.

20
21 Chris Colon, Whatcom County: Employee of BP. The no action alternative is a little
22 disingenuous because there has been a lot of work done on this issue in the past. The
23 original language presented includes all of the environmental concerns and regulations.
24 There is no reason for the Weimer proposal to be adopted. When we start to look at
25 sustainability it is disingenuous to say that the proposal includes sustainability. A 2012
26 report regarding the timber industry on the Olympic Peninsula shows good economic
27 recovery but it is non-sustainable. He stated his concern for that here. People are here
28 to support their livelihood and freedoms which are being threatened by the Weimer
29 proposal. Even those not in favor of the industries at Cherry Point have to look at the
30 way the Council is saying they know best how to run these industries. That could
31 happen to anyone in the room.

32
33 Richard Tewes, Whatcom County: The businesses at Cherry Point make many
34 charitable contributions to the county. They help a lot of people. A lot of people in this
35 room use the fuels we make.

36
37 Chris McGary, Whatcom County: He works for one of the contractors at the refineries.
38 The Cherry Point refineries are in the business of refining oil, not shipping it elsewhere
39 to be refined. If you do not allow businesses to move products, materials and
40 resources, as needed, you create potentially unsafe and harmful situations. If Cherry
41 Point industries wish to pursue building export facilities that should be dealt with at
42 that time through permitting and environmental review. To put a broad ban on refined
43 fossil fuel exports is impracticable and irresponsible. This ban is not about the
44 environment, the economy or jobs. This ban is about deindustrializing Cherry Point one
45 little piece at a time making it harder for current and future industries to operate
46 there. The future is about green clean energy but we can't shut our current industries
47 as they currently fuel the items we use.

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1
2 Tim Fitz, Jr., Skagit County: Supports Alternative 2.

3
4 John Kaller, Whatcom County: Works at Phillips 66. This is not just about the economy
5 and jobs. It is hypocritical for the county to put restraints on the local industry,
6 whereupon your competitors, such as the Asian market, don't have these restrictions.
7 They don't care about the economy or environment, they are built to produce jobs.
8 These other markets want us to have additional restrictions and costs they don't have.
9 What is being proposed is bad business and you are just pushing the problem
10 elsewhere. The refineries overseas are terrible. The refineries here are world class, first
11 rate facilities.

12
13 Lindsay Cerise, Whatcom County: Employee at BP. 24 percent of the citizens in
14 Whatcom County have no safety net, no backup income. 18 percent of our community
15 is making less than the federal poverty limit. This is why a strong economy is so
16 important. The industries at Cherry Point are part of that.

17
18 Linda Murphy, Whatcom County: They live near the refinery which they chose to do
19 because they wanted a clean environment for their family. They purposely did not look
20 for a house near the berry fields, which get sprayed. She does not have to worry about
21 that near the refineries. She has confidence in that. They are very safe.

22
23 Carole Perry, Whatcom County: She has often said that if the people in the county
24 knew what was really going on they would be here and they are finally here. These
25 proposed amendments came in through the back door to the commission. They were
26 brought in the wrong way. This may be our Brexit. There are so many regulations the
27 lawyers can't even figure them out.

28
29 Maureen Cleveland, Whatcom County: She was in support of Carl Weimer's
30 amendments. She does believe BP has high standards but she was concerned about an
31 increase in coal train or oil train traffic which is a risk. Whatcom County does not have
32 the ability to handle oil train accidents.

33
34 Ms. Lewis: Supports Alternative 2.

35
36 The meeting was closed to the public.

37
38 Commissioner Honcoop asked the managers from the two refineries if they currently
39 export unrefined products, as listed, from Whatcom County to other refineries.

40
41 Karen Shorten, Phillips 66: Stated there are circumstances where they need to import
42 or export certain materials. This proposal would restrict what they could do in order to
43 maintain their ongoing operations. They do not bring crude through the refinery for the
44 purposes of export. There are materials, under the proposal, that they do export. The
45 future of the industry may involve importing or exporting different materials. Each
46 individual project needs to be based on its merits.

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1 Bob Allendorfer, BP: Stated they are governed by federal law. Butane and propane are
2 not unrefined products. Products travel across the globe, as needed. They bring in
3 crude but they do not export it.

4
5 Commissioner Deshmane asked what they are currently allowed to do in regards to
6 bringing in raw material and exporting.

7
8 Ms. Shorten stated she could not say what they are able to legally export because that
9 is not their primary business.

10
11 Commissioner Hunter asked for clarification regarding unrefined products. He asked if
12 that were a concern.

13
14 Mr. Allendorfer stated it is a concern.

15
16 Commissioner Hunter asked if we were to have a definition, of unrefined fossil fuels,
17 that works if that would take care of the issue.

18
19 Ms. Shorten stated that she was not in a position to negotiate that. What is in the
20 proposal is very unclear and absolutely can't stay as it is. Even if that issue is clarified
21 it still does not resolve her issue which is the long term viability of the facility. That
22 means not encumbering them with restrictions that might impact their future
23 opportunities to utilize the assets they have.

24
25 Mr. Allendorfer stated all three proposals have the language *allow Cherry Point*
26 *industries flourish and expand*. But do they really have the option to do this? If the
27 county puts in any language that adds additional restrictions, beyond the local, state
28 and federal restrictions you are only hurting Whatcom County. It will only remove
29 investment from this county and put it somewhere else. Who is going to make up that
30 shortfall? 42 percent of the population already can't afford to live here.

31
32 Commissioner Honcoop asked for clarification regard the SEPA process.

33
34 Mr. Personius stated the threshold determination will probably be made in November.
35 PDS needs to look at the alternatives more closely along with any other alternatives
36 presented. Anyone can submit an alternative proposal.

37
38 Commissioner Knapp stated nothing has been mentioned regarding alternative energy
39 sources. He would like the refineries to take on the challenge of finding alternative
40 energy sources. This would bring more family wage jobs to the county.

41
42 Commissioner McClendon urged those with alternatives to get them in before the next
43 commission meeting so they can be discussed. The commission agreed.

44
45 Commissioner Honcoop stated the time frame given by the County Council may not be
46 realistic. This is a major issue that may take a while to look at.

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17

1 Commissioner Vekved stated he had no background or knew what the options were
2 regarding a fourth pier at Cherry Point. He would like information on that. He would
3 also like more information on the Magnuson Amendment.

4
5 Commissioner Rowlson wanted direction from the county legal staff if these restrictions
6 are even legal.

7
8 Mr. Aamot stated there will be a memo regarding these issues for their next meeting.

9
10 The meeting was adjourned at 10:30 p.m.

11 Minutes prepared by Becky Boxx.

12
13
14 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

15
16
17
18
19 _____
Nicole Oliver, Chair

Becky Boxx, Secretary

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1

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Council Chambers at 6:30 p.m.

Roll Call

Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowison, Atul Deshmane
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

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1 Commission Oliver reminded the commissioners to speak up so the audio recording
2 can be easily heard.

3
4 **Work Session**

5
6 File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two –
7 Land Use including provisions relating to environmental protection, water usage, fossil
8 fuel exports, and the number of piers allowed in the Cherry Point area. The proposed
9 amendments and alternatives are also being reviewed under the State Environmental
10 Policy Act or SEPA.

11
12 The commission took comments from the public.

13
14 Brad Owens, President of the Northwest Jobs Alliance: They are going on record as
15 being in full support of the subject matter contained in the letter from Pacific
16 International Terminals, dated October 26, 2016. In so much as Native American
17 treaty rights must be honored, so must the 1999 settlement agreement, section 4
18 regarding the Whatcom County Plan amendments relating to a fourth pier at Cherry
19 Point. As we have previously stated the property rights of Cherry Point land owners, as
20 well as all land owners in Whatcom County, must be respected and honored. The
21 Cherry Point proposed amendments would devalue property values by millions of
22 dollars in the Cherry Point Urban Growth Area. How does this respect Cherry Point land
23 owners? In regards to the letter from Royce Buckingham, dated October 14, 2016,
24 nearly all of the comments pertaining to the Cherry Point proposed amendments
25 indicate an improper attempt to insert regulation into a policy document, that being
26 the Comprehensive Plan. They understand Cherry Point land owners are working on
27 alternatives. Absent additional alternative options at this time they could only support
28 Alternative 2. If however, additional alternative are submitted that support their
29 Mission Statement they reserve the right to move their support in that direction.

30
31 Sandy Robson, Whatcom County: Addressed the issue of collaborating with industry. It
32 is upsetting that she hasn't heard anything about collaborating with the tribes. She felt
33 they were being ignored by the county government. If they will be reaching out to the
34 industries this also needs to be applied to the tribes. On January 26, 2016, at the
35 County Council meeting, Councilman Barry Buchanan addressed the audience saying
36 that upon the advice of the county's legal counsel the county would defer any type of
37 action on the proposed Cherry Point amendments. She found that to be egregious
38 because there was some proposed language from the Lummi Nation. This appears
39 unfair. Their suggestions have been ignored.

40
41 Tony Larsen, President of the Whatcom Business Alliance: They represent a number of
42 Cherry Point stakeholders. They would like to open up communication to make sure
43 they know they have the Alliance as a resource for information. They will be submitting
44 an alternative for consideration. They are suggesting a collaborative approach that
45 balances economic development and environmental protection. Their approach will also
46 acknowledge existing local, state and federal procedures, processes and jurisdictions.
47 They would like guidance from the commission on communication with the County

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1 Council. The Council has reached out to their coalition for enhanced communication
2 with Cherry Point industries. They want to engage but want to make sure they respect
3 the Planning Commission's authority and the Comprehensive Plan process.

4
5 Wendy Harris, Whatcom County: Stated her concerns regarding how this matter was
6 handled procedurally. It was done in a way that was agenda driven and inappropriate.
7 What people need to understand is what we are talking about now is isn't the
8 Comprehensive Plan. That is done. What we are talking about is an amendment to the
9 existing plan. That is a whole different process. There are certain procedures that need
10 to be followed when making amendments to the Comprehensive Plan. There are legal
11 standards that need to be met. You have to show there has been a change in facts and
12 circumstances that justify the change to the Comprehensive Plan. She did not see any
13 change that would justify this. The way the County Council went into executive session
14 and deemed that the Weimer amendments were being severed from the
15 Comprehensive Plan update was not appropriate. When she questioned staff about it
16 she was told that there was no application or fees needed. She was also told the
17 Council was not subject to legal standards. She had a problem with that. One of the
18 big goals of the GMA is to ensure public input. Keeping the public out of this is wrong.
19 Consider the fact that there is an important marine reserve there. She was not worried
20 about the voices of industry and those seeking a profit. The voices that aren't going to
21 be heard are those of the fish, wildlife and marine ecosystem. That is why we have to
22 objectively keep that in the forefront of everything we do.

23
24 Erin Haverson, Speaking on behalf of the Whatcom Business Alliance and the Coalition
25 of Industrial Members: She is one of their attorney's. There are an incredible host of
26 local, state and federal laws and regulations that already regulate the Cherry Point
27 industries. It is important for the commission to understand the types of laws that
28 apply there and the ones that they are being asked to act on. There is the Clean Air
29 Act which has been in effect for over 40 years. There is an abundance of federal and
30 state agencies which oversee this act. Congress retains the right to decide what kinds
31 of products can be exported among states and our relations with foreign countries.
32 Trying to restrict trade among states and foreign countries is a violation of the U.S.
33 Constitution. Also, there are a host of state acts, such as the Shoreline Management
34 Act, the GMA, etc. Consult with the county's legal staff regarding these proposals.

35
36 Eddy Ury, Whatcom County: From Resources for Sustainable Communities. There are
37 already a lot of existing state and federal laws addressing this issue. He was happy to
38 hear that new language and alternatives are being asked for. If this is not done
39 correctly the issue will go to court and cost everyone a lot of time and money. This
40 time would be better spent working on something more proactive. Let's not bog down
41 the county with permits that are going to be embattled for years.

42
43 The public comment was closed.

44
45 Mr. Buckingham addressed his memo to the commission and staff dated October 14,
46 2016. When he looked at the council proposal he noticed there were policies being put
47 in the text section. His recommendation for that was to cite the actually policies or not

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1 put them in the text section. It gets confusing when you bury policies somewhere else.
2 The next issue he noticed was that there were a number of things that were
3 regulations masquerading as policies. Policies should be a general guideline not what
4 the rule is. He pointed out those items in his memo. Some are debatable so he stated
5 he would leave it up to staff and the commission to figure them out. Regarding Policy
6 2CC-10 relating to limiting the number of piers; he was concerned about the fact that
7 there is a vested application and settlement agreement for a fourth pier. It would be
8 awkward to have a policy that states we can't have those when there is one pending.
9 Regarding the Magnuson Amendment, his concern was that the language in the
10 proposal is not policy, but regulations. That is inappropriate to put in the
11 Comprehensive Plan. Also the proposal is to adopt a local regulation in parallel with a
12 federal regulation. The federal regulation is a regulation of import/export, not only
13 inter-state but internationally. This raises a red flag for the Commerce Clause. The
14 county and the state don't have the power to regulate commerce between states or
15 internationally. There are a number of complicated tests for whether you are doing
16 that. It is pretty clear that if you limit the amount of a commodity that can move
17 through your county that you are interfering with commerce. If you adopt a federal law
18 and try to enforce it locally you are going to run into a lawsuit. We would face a lawsuit
19 based on the fact that we would adopt a regulation that made our Planning
20 Department interpret the Magnuson Act locally and try to enforce it. If we try to
21 enforce something in parallel with the federal government and we have a different
22 view of it we are then in the awkward position of enforcing the same law a different
23 way. We can already enforce the Magnuson Act, as a federal law, without subjecting
24 the county to lawsuits. He asked anyone who may have a different opinion on the
25 subject to let him know in order to gain more information on the issue.

26
27 Commissioner Knapp addressed Policy 2CC-2 in regards to clean energy. There will be
28 a need for clean energy in the future. Alternative 1 does no address that issue.

29
30 Commissioner McClendon stated her opinion was that Councilmember Weimer wrote
31 the proposal with the intention to make the federal law obvious. She asked Mr.
32 Buckingham how they should make it obvious in an appropriate way.

33
34 Mr. Buckingham stated it was his thought that what the council wanted is that if we
35 have something happening at a local level we want to notice it and make sure it
36 complies with the Magnuson Act. If it doesn't the county could take some action.
37 Implementing a local regulation to examine every project would be one way to do that.
38 We could put in a policy that says we are obligated to follow it and file lawsuits if we
39 see a violation. If something comes through that meets that criteria we would notify
40 federal agencies and consider a lawsuit. I like that approach because it puts us in the
41 driver's seat.

42
43 Commissioner Oliver asked for clarification. The county would not deny a permit on the
44 basis that it violated the Magnuson Act, it would not be able to under this proposal. It
45 would not be requiring that it obey the Act for a huge permit, but it would have to and
46 then sue?
47

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1 Mr. Buckingham agreed and stated the county would have to notify the federal
2 agencies as well. Under his analysis you would not have the right to deny it even if you
3 had your own regulations that said you could. The local regulations would not be any
4 good. For example, if we find a Magnuson Act violation and we have to approve a
5 permit, because we can't deny it, and we tell federal agencies, environmental
6 concerns, etc. it is very likely we don't have to sue because then the lawsuit happens
7 without us being involved. We are only involved in so far as we approved the permit.

8
9 Commissioner Rowson stated the environmental proposal has a study in it. What is
10 the value of putting it into the Comprehensive Plan?

11
12 Mr. Buckingham stated he did not study the value of it he only stated it was okay to
13 put in if they want. It's just policy, not regulation.

14
15 Commissioner Rowson stated it is a good way to get studies into the Comprehensive
16 Plan that the County Council needs to address.

17
18 Commissioner Rowson asked for Mr. Buckingham's opinion on the legal aspects of the
19 Planning Commission reviewing this issue.

20
21 Mr. Buckingham stated he was not prepared to answer that and suggested Karen
22 Frakes, the County Council's attorney, answer that. Mr. Buckingham will follow up on
23 the issue and report back.

24
25 Commissioner Deshmane stated guidance regarding the Magnuson Act somewhat
26 overlaps with the guidance relating to the Commerce Clause. He wanted clarification of
27 what the implications of the Magnuson Act are apart from the implications of the
28 Commerce Clause.

29
30 Mr. Buckingham stated the Magnuson Amendment is a federal law that restricts certain
31 imports and exports. Can the county restrict state and international trade? His
32 interpretation of the Commerce Clause is that no we can't.

33
34 Commissioner Deshmane noted there are examples of local governments not honoring
35 federal or state laws. People have challenged regulations based on the Commerce
36 Clause.

37
38 Mr. Buckingham agreed. His job is to keep the county from risk so he recommends not
39 violating the laws in order to keep the county out of lawsuits. There is a way to enforce
40 this without putting our heads on the chopping block.

41
42 Mr. Aamot stated there are four main policy issues which staff needs direction on.

43
44 Council's proposed language in Policy 2CC-2. This refers to favoring clean energy, strict
45 avoidance of wetlands, avoiding and prohibiting bulkheads or shoreline armoring,
46 requiring an archeological study, and requiring water recycling.

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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

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1 **Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971.**
2 **The wording should be changed to identify the original constructor and to**
3 **somehow note that for the rest of the document they will be identified in the**
4 **general terms as stated above along with the smelter.**

5
6 **Commissioner Deshmane seconded.**

7
8 Commissioner Hunter asked why the name of who constructed it was needed.

9
10 Commissioner Vekved stated they are in close enough proximity that they may be
11 confused. If there is a baseline name from when they were constructed it will delete
12 that confusion.

13
14 Commissioner Rowson asked if it was even necessary to identify them at all. We could
15 just say two refineries and one smelter.

16
17 No vote was taken on this motion. Staff will draft language to present at the next
18 meeting.

19
20 Commissioner Vekved addressed page 2, lines 18-20 which states: Cherry Point is also
21 important historically and culturally to the Coast Salish people, and part of the usual
22 and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point
23 Elliot of 1855. Is Cherry Point more significant Coast Salish people than Pt. Roberts,
24 Birch Bay, Drayton Harbor, etc.?

25
26 Commissioner Honcoop stated the context of this is Cherry Point is the major industrial
27 growth area whereas the other areas aren't.

28
29 **Commissioner Rowson moved to delete the language on page 2, lines 21-22**
30 **which reads: The Lummi Nation and Western Washington University have**
31 **identified an ancestral village dating back over 3,000 years ago in this area.**

32
33 **Commissioner Honcoop seconded.**

34
35 Commissioner Rowson stated the reason being it is just an interesting factoid.

36
37 Commissioner Honcoop stated this is what he had been talking about earlier. These
38 types of statements don't need to be in the Comprehensive Plan.

39
40 Commissioner Hunter stated there are lots of factoids which are history and should be
41 in the plan. Nothing is gained by deleting the language.

42
43 Commissioner Rowson stated nothing is gained by adding it.

44
45 Commissioner Knapp stated he would not support the motion.

46
47 Commissioner McClendon stated she would not support the motion.

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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 Rowison seconded.

Commissioner Honcoop stated the reason was this was again editorializing and scientific statements don't belong here.

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1 Commissioner Vekved spoke in favor of the motion.

2
3 Commissioner Rowilson stated the language doesn't make sense with the intent of the
4 policies that come later. The language is making it very clear that we are not shipping
5 fossil fuels overseas to be refined because apparently they do it poorly. We are also
6 limiting the expansion of the facilities here where he would rather have the refining
7 done.

8
9 **Commissioner Oliver made an amendment to retain the language which**
10 **reads: Since adoption of earlier versions of this Comprehensive Plan there has**
11 **been an increasing recognition of the impacts that fossil fuel use and**
12 **transportation has on human health, and both the local and global**
13 **environment. The Cherry Point UGA contains the second-largest emitter of**
14 **carbon air pollution in Washington State (Ecology, June 2016).**

15
16 **Commissioner Deshmane seconded.**

17
18 Commissioner Oliver stated this language is facts that should be retained.

19
20 **The vote on the amendment carried (ayes-5, nays-4).**

21
22 **The vote on the main motion, as amended carried (ayes-8, abstain 1).**

23
24 Commissioner Honcoop addressed the language on page 3, lines 1-4 which reads:
25 Because of the large acreage demands of the types of industries likely to locate there,
26 the remaining undeveloped acreage at Cherry Point will likely be absorbed during the
27 20 year planning period. This question is related to designation of UGAs. For the
28 Growth Management Hearings Board you had to have some justification for size of the
29 UGAs. By removing the language (as proposed by Council) does that potentially put
30 the county in jeopardy because we are not showing the need for that size UGA?

31
32 Mr. Aamot stated he did not believe so because there were employment and
33 population projections done along with a land capacity analysis for all the UGAs. This
34 statement has been in the plan since 1997. We are showing that demand matches the
35 supply for the next 20 years. The language says this is what we anticipate, based on
36 the studies, but we really don't know what will happen. His opinion was it is fine to
37 take it out.

38
39 Commissioner Vekved addressed page 3, lines 10-13 which states: In August 2000 and
40 again in November 2010, the State Lands Commissioner ordered the Cherry Point
41 tidelands and bedlands withdrawn from the state's general leasing program, except for
42 existing leases, and designated them as the "Cherry Point Aquatic Reserve." As it's
43 written it is not clear that the statement, except for existing leases, includes not only
44 the leases for the existing piers but for the GPT pier.

45
46 **Commissioner Vekved moved to change the language to read: In August 2000**
47 **and again in November 2010, the State Lands Commissioner ordered the**

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1 **Cherry Point tidelands and bedlands withdrawn from the state's general**
2 **leasing program, ~~except for existing leases~~, and designated them as the**
3 **"Cherry Point Aquatic Reserve." The following DNR Use Authorizations were**
4 **exempted from withdrawal: Lease application numbers 20-A09122 (British**
5 **Petroleum), 20-A11714 (Phillips 66), 20-A08488 (Intalco Aluminum**
6 **Corporation), 20-013265 (Gateway Pacific Terminals), and 20-010521 (Birch**
7 **Bay Water and Sewer District).**
8

9 **Commissioner Knapp seconded.**

10
11 Commissioner Honcoop asked if they were going beyond policy to regulatory by being
12 that specific.

13
14 Mr. Buckingham stated that it is only stating what the situation is, it is not declaring
15 policy.

16
17 Commissioner McClendon asked Commissioner Vekved why he felt it was necessary to
18 call out each individual lease.

19
20 Commissioner Vekved stated as it is written right now it is not clear if existing leases
21 are an application or lease.

22
23 Commissioner Deshmane asked if the leases are reassignable.

24
25 Mr. Aamot stated it was his belief that when Intalco sold their pier it included the lease
26 too.

27
28 Commissioner Hunter felt the language was excessive and unnecessary.

29
30 Commissioner McClendon stated she understood Commissioner Hunter's point but it is
31 important considering the high interest in what happens at Cherry Point. By naming
32 the leases it makes it very clear to the reader that those are the leases being
33 discussed.

34
35 Commissioner Rowson agreed with the statements made by Commissioner Hunter.
36 The language does not add significant value.

37
38 **The vote on the motion carried (ayes-7, nays-2).**

39
40 Commissioner Vekved addressed page 3, lines 32-35 which reads: The Aquatic
41 Reserve Management Plan acknowledges that so long as the existing industries,
42 comply with all federal, state and local laws and regulations, they may not conflict with
43 the Aquatic Reserve although their activities may pose risks for the recovery of species
44 and other goals of the Aquatic Reserve. The language seems to be a little patronizing
45 and conditional. It was fine as is.
46

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1 Commissioner Honcoop agreed. There are plenty of laws in regards to this so the
2 language isn't needed.

3
4 **Commissioner Vekved moved to change the wording to read: The Aquatic**
5 **Reserve Management Plan acknowledges that ~~so long as~~ the existing**
6 **industries, complying with all federal, state and local laws and regulations,**
7 **they may not conflict with the Aquatic Reserve although their activities may**
8 **do pose risks for the recovery of species and other goals of the Aquatic**
9 **Reserve.**

10
11 **Commissioner Honcoop seconded.**

12
13 **Commissioner Hunter made a friendly amendment to delete the language: The**
14 **Aquatic Reserve Management Plan acknowledges that so long as the existing**
15 **industries, comply with all federal, state and local laws and regulations, they**
16 **may not conflict with the Aquatic Reserve although their activities may pose**
17 **risks for the recovery of species and other goals of the Aquatic Reserve.**

18
19 **Commissioner Oliver seconded.**

20
21 **The vote on the amendment carried (ayes-6, nays-1, abstain-2).**

22
23 Commissioner Vekved addressed page 3, lines 41-43 which reads: The area includes
24 one of the last undeveloped intertidal wetlands of any size in Northern Puget Sound,
25 with importance to juvenile salmon and other species. This is more statistics without
26 baselines or comparison. If we are going to keep the language we need to add some
27 sort of baseline or number to compare against. Otherwise delete it.

28
29 **Commissioner Vekved moved to delete the language. Commissioner Barton**
30 **seconded.**

31
32 Commissioner Hunter stated he does not see the need for that. The sentence is self-
33 explanatory. It doesn't compare with anything it's just a piece of information that is
34 useful to have. He won't support the motion.

35
36 Commissioner Knapp agreed with Commissioner Hunter's statements.

37
38 Commissioner Barton stated he would rather see a comparison added rather than
39 deleted.

40
41 **Commissioner Barton withdrew his second.**

42
43 **Commissioner Vekved moved to add some sort of baseline. Commissioner**
44 **Barton seconded.**

45
46 Commissioner Rowson stated he is not sure it's important to compare it to something
47 else. We could have language that simply says: the area includes an undeveloped

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1 intertidal wetland of importance to juvenile salmon and other species. He didn't think it
2 was important to note it was one of the last.

3
4 Commissioner Hunter stated it is important to note that it is one of the last. It is calling
5 into question whether the Council has accurately reflected what has been said here. Is
6 it a fact that it is one of the last? Does staff or Council know if it is accurate?

7
8 Mr. Aamot stated he has not investigated the statement.

9
10 Commissioner Deshmane noted that the entire sentence was messy and suggested it
11 be rewritten.

12
13 Mr. Aamot suggested staff reword the section and bring it back at the next meeting for
14 review. The commission agreed.

15
16 **Commissioner Vekved moved to change page 3, line 43 through page 4, line 3**
17 **back to the original text to read: Existing industries ~~may continue to~~ can**
18 **serve the Aquatic Reserve's objectives so long as they are managed according**
19 **to the Plan and so long as the lessees ~~comply with applicable legal~~**
20 **~~requirements and actively work to further the goals of~~ for the Reserve (CPAR**
21 **MP p. 2).**

22
23 **Commissioner Honcoop seconded.**

24
25 **The vote on the motion carried (ayes-9, nays-0).**

26
27 **Commissioner Vekved moved to delete the wording on page 4, lines 8-11**
28 **which reads: While deep water access made future shipping facilities**
29 **desirable in the past, recent actions by federal and state regulators denying a**
30 **proposed fourth pier at Cherry Point have underscored the fact that any**
31 **future industrial development will undergo scrutiny for compliance with**
32 **federal and state laws, including treaty rights.**

33
34 **Commissioner Deshmane seconded.**

35
36 Commissioner Honcoop agreed with the motion. Anyone should have the right to apply
37 for a permit even if it is challenging. He also stated that the fourth pier has not been
38 denied so that language should be stricken.

39
40 **The vote on the motion carried (ayes-5, nays-0, abstain-4).**

41
42 **Commissioner Honcoop moved to delete the remainder of the paragraph.**
43 **Commissioner Vekved seconded.**

44
45 Commissioner Honcoop stated the reason being it's editorializing.

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13

1 Commissioner Oliver stated it was her understanding of the language that the Army
2 Corps of Engineers and the Department of Natural Resources have now said no to the
3 additional pier and are proposing to get rid of the cutout for that pier. What the county
4 is trying to do is lay the groundwork so that we don't have to evaluate these at the
5 level we have been if we know that they probably won't be allowed anymore.

6
7 Commissioner Honcoop stated the permit for the pier still exists.

8
9 Commissioner McClendon stated she did not know enough about the issue to vote on
10 it. This section was mentioned by Mr. Buckingham in that it should be moved to the
11 policies or referenced to a policy.

12
13 Commissioner Hunter stated this is a policy that states the county no longer supports
14 construction. Either way you vote it is editorializing.

15
16 Commissioner Rowson addressed the first sentence which reads: The County and
17 industrial users have long recognized that the Cherry Point area exhibits a unique set
18 of characteristics that makes land there not only locally but regionally important for
19 the existing industrial developments. The reality is there are only going to be three or
20 four piers, not five. He suggested staff rewrite this section to indicate that the county
21 does not support more piers.

22
23 Commissioner Vekved stated that various shoreline functions and values can possibly
24 be mitigated or engineered around so those need to be evaluated on a case by case
25 basis. Regarding fishing access, that will also be addressed on a case by case basis.
26 The percent of loss, related to shellfishing, etc. is not compelling in spite of some and
27 the opinion is ripe for appeal based on the fact we are dealing with a very small
28 footprint related to a very large area of water. The area is very heavily utilized for crab
29 fishing.

30
31 **The vote on the motion failed (ayes-4, nays-5).**

32
33 **Commissioner Hunter moved to reference the language in Policy 2CC-10.**
34 **Commissioner Knapp seconded.**

35
36 Commissioner Rowson did not like the idea of referencing policies. He would rather
37 have a phrase which leads to the policy.

38
39 **Commissioner Deshmane made a friendly amendment to read: the county is**
40 **evolving its position on construction of additional export docks and piers.**
41 **Commissioner Knapp seconded.**

42
43 **The commission agreed the motion to amend had no relation to the original**
44 **motion. Commissioner Deshmane withdrew the motion.**

45
46 **The vote on the main motion carried (ayes-6, nays-1, abstain-2).**
47

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14

1 **Commissioner Honcoop moved to change page 4, line 7 back to the original**
2 **language to read: The County and industrial users have long recognized that**
3 **the Cherry Point area exhibits a unique set of characteristics that makes land**
4 **there not only locally but regionally important for the siting of major existing**
5 **industrial developments.**

6
7 **Commissioner Knapp seconded.**

8
9 Commissioner Honcoop stated it is important as a site to remain an area for major
10 industrial industry. That doesn't mean it has to be refineries. It could be wind towers,
11 etc.

12
13 **The vote on the motion carried (ayes-9, nays-0).**

14
15 **Commissioner Hunter moved to change page 4, lines 30-31 back to the**
16 **original language to read: The characteristics that ~~made~~ make Cherry Point**
17 **unique as a site for ~~the existing~~ major industrial developments includes the**
18 **following.**

19
20 **Commissioner Vekved seconded.**

21
22 **The vote on the motion carried (ayes-9, nays-0).**

23
24 **Commissioner Vekved moved to change page 4, line 42 to read: Rail service is**
25 **particularly important in relation to water borne commerce ~~of the existing~~**
26 **users.**

27
28 **Commissioner Honcoop seconded.**

29
30 **The vote on the motion carried (ayes-9, nays-0).**

31
32 Commissioner Barton asked staff to correct page 4, line 38 to read: Rail Access –
33 Cherry Point is served by a branch line of the Burlington Northern/Santa Fe. The
34 commission agreed.

35
36 Commissioner Honcoop addressed page 5, lines 4-7 which reads: The large acreage,
37 good rail access and proximity to Washington State and Canadian ports makes the
38 remaining upland area at Cherry Point suitable for major sustainable, clean-energy
39 manufacturing or production of other commercial or industrial products. His concern
40 was that it seems that one of the tests for siting industry there would be that it has to
41 be sustainable and clean energy.

42
43 Mr. Aamot stated it is only text and not a policy. It doesn't say they have to be one of
44 those.

45
46 **Commissioner Deshmane moved to change page 5, lines 1-18 back to the**
47 **original language to read: Proximity to Canada, Alaska and Foreign Ports -**

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15

1 **Cherry Point occupies a unique location for the siting of industry because of**
2 **its close proximity to Canada and because of its shorter travel distance than**
3 **other regional port facilities for shipping to and from Alaska and to other**
4 **Pacific Rim locations. ~~The large acreage, good rail access and proximity to~~**
5 **~~Washington State and Canadian ports makes the remaining upland area at~~**
6 **~~Cherry Point suitable for major sustainable, clean energy manufacturing or~~**
7 **~~production of other commercial or industrial products.~~ The Cherry Point**
8 **industrial area benefits from proximity to Canada, as trade between the U.S.**
9 **and Canada grows in response to the lifting of trade barriers under the Free**
10 **Trade Agreement. Canadian exports to the U.S. are expected to increase and**
11 **Canadian firms exporting to the U.S. are expected to seek locations in the U.S.**
12 **as a way of improving access to U.S. markets. Additionally, just as other port**
13 **facilities in Washington are constrained by lack of extensive upland areas to**
14 **support major industrial development, Canadian port facilities are likewise**
15 **constrained. There are limited expansion sites available at Roberts Banks and**
16 **in the Vancouver Harbor, and development sites further up the Fraser River**
17 **are constrained by limitations on vessel draft. Marine terminals at Cherry**
18 **Point could serve a portion of the potential growth in Canadian marine cargo.**

19
20 **Commissioner Vekved seconded.**

21
22 Commissioner Oliver was not in favor of the change because the intention of the
23 council language was to be a little more protective of what we want to happen at
24 Cherry Point.

25
26 Commissioner Deshmane stated there is a lot in this preamble discussing concerns and
27 constraints. It is fine, regardless of what the policies say. There are a lot of important
28 issues on the table.

29
30 Commissioner Vekved stated the block of text is not needed as proposed. He would
31 support restoring the original language.

32
33 Commissioner Rowson suggested language be added referencing a policy. He also
34 suggested language that reads: The large acreage, good rail access and proximity to
35 Washington State and Canadian ports makes the remaining upland area at Cherry
36 Point suitable for major commercial or industrial production with sustainable industries
37 preferred. There are two ways to encourage industry. One, is to make it harder on
38 other industries and two, is to make it easier on the preferred industry.

39
40 Commissioner Knapp was not in favor of removing the language regarding clean
41 energy.

42
43 Commissioner Hunter stated he would not support the motion because he wants the
44 proposed text left in. He was okay with the proposed deleted language being
45 reinstated.

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16

1 **Commissioner Vekved made a friendly amendment to read: Compared to**
2 **other port facilities in Washington and Canada, Cherry Point is not**
3 **constrained by extensive upland development or vessel draft limitations. This**
4 **would replace the delete text which was moved to be restored.**

5
6 **Commissioner Knapp seconded.**

7
8 Commissioner McClendon addressed comments made by Commissioner Rowilson. She
9 was not in favor of making any of the language policy.

10
11 **The vote on the amendment carried (ayes-6, nays-2, abstain-1).**

12
13 **The vote on the main motion, as amended, carried (ayes-5, nays-4).**

14
15 **Commissioner Rowilson made a motion to page 5, lines 4-7 to read: The large**
16 **acreage, good rail access and proximity to Washington State and Canadian**
17 **ports makes the remaining upland area at Cherry Point suitable for major**
18 **commercial or industrial production with an emphasis on clean energy.**

19
20 **Commissioner Hunter seconded.**

21
22 Commissioner McClendon stated she was not in favor of putting in some language that
23 is actual policy. The old language was not policy but the new language is.

24
25 **Commissioner Vekved made a friendly amendment to read: The large acreage,**
26 **good rail access and proximity to Washington State and Canadian ports**
27 **makes the remaining upland area at Cherry Point suitable for commercial or**
28 **industrial production, with emphasis on major sustainable clean energy**
29 **manufacturing or production.**

30
31 **Commissioner Knapp seconded.**

32
33 Commissioner Honcoop stated he would not support the amendment. It is picking
34 winners and losers and picking businesses by emphasizing a type.

35
36 Commissioner Hunter stated he favored giving advantages to sustainable energy
37 because that's what we are concerned about if we go forward with this. We aren't
38 trying to prevent something from happening only try to create preferences.

39
40 **The vote on the amendment carried (ayes-6, nays-3).**

41
42 The commission discussed whether or not this was a policy.

43
44 **Commissioner McClendon moved to add reference to Policy 2CC-2.**

45 **Commissioner Deshmane seconded. The motion carried (ayes-7, nays-1,**
46 **abstain-1).**

47 The meeting was adjourned at 10:00 p.m.

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17

1
2 Minutes prepared by Becky Boxx.
3

4
5 WHATCOM COUNTY PLANNING COMMISSION ATTEST:
6
7
8
9

10 _____
Nicole Oliver, Chair

Becky Boxx, Secretary

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1

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Council Chambers at 6:30 p.m.

Roll Call

Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowson, Atul Deshmane

Staff Present: Mark Personius, Matt Aamot, Royce Buckingham-Prosecutor's Office, Becky Boxx

Department Update

Mark Personius updated the commission on the following:

- County Council schedule
- Planning Commission schedule

Commissioner Rowson reminded Mr. Personius of the pending business items on the agenda.

Mr. Personius thanked Commissioner Rowson for the reminder and stated staff has been putting together the work program for next two years. These can be added to it.

Open Session for Public Comment

Carole Perry, Whatcom County: When this process first started she had asked the commission to be sure it was the way it should be. She asked that some of the meetings not be held in the Council chambers. Many people are intimidated to speak in the chambers because they are large and too formal. The Commission works better at the Annex. Make sure the process really reflects the people they represent. We will have a Brexit in this county because the people don't feel that they are being represented.

Sandy Robson, Whatcom County: She appreciates that the meetings are held at the Council chambers because of the large crowds that sometimes attend.

Brooks Anderson, Whatcom County: Stated Bellingham is part of the county too. She was offended by the idea that people are feeling they are not represented because you are not holding your meetings out at another part of the county. This is part of the county. It is not the space that intimidates her. The intimidation is to do with the guys that show up in their suits representing a particular aspect of Cherry Point. The Commission needs to pay attention to the whole county, not just the rural part. She can't picture a Brexit in Whatcom County.

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2

1 John Strong, Whatcom County: Asked the Commission how many members they had.
2 Asked if any of them had ever worked at Resources. Where do they receive their legal
3 advice?

4
5 **Commissioner Comments**

6 Commissioner Deshmane asked the other commissioners to give a quick description of
7 their associations with the industries at Cherry Point. He wanted a full disclosure from
8 each commissioner.

9
10 Commissioner Rowlson stated he was not comfortable with the request. It makes him
11 want to indicate that he has no dealings with them or he will be shamed if he doesn't
12 The Commission deals with the entire county on all of their regulations so why is this
13 one different?

14
15 Commissioner Deshmane stated it would be beneficial because if there are specific
16 business interests associated with the industries at Cherry Point it could affect the
17 perspective of the Commission members.

18
19 Commissioner Oliver stated it should be an individual decision as to whether or not the
20 commissioners want to answer that question. She did not have any dealings at Cherry
21 Point.

22
23 Commissioner Honcoop stated the Business Rules require them to disclose to the
24 Commission any conflict and recuse themselves if necessary. The majority of people
25 there have some association with Cherry Point whether they know it or not. To what
26 degree do they have that requirement to disclose something?

27
28 Commissioner McClendon stated she was bothered by the discussion because it
29 becomes some type of shadow over them that they are somehow not wanting to tell
30 people something that doesn't exist.

31
32 **Approval of Minutes**

33
34 October 13, 2016: Commissioner Knapp moved to approve as written. Commissioner
35 Rowlson seconded. The motion carried.

36
37 **Work Session**

38
39 File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two –
40 Land Use including provisions relating to environmental protection, water usage, fossil
41 fuel exports, and the number of piers allowed in the Cherry Point area. The proposed
42 amendments and alternatives are also being reviewed under the State Environmental
43 Policy Act or SEPA.

44
45 The Commission took comments from the public.
46

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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.

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.

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

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4

1 after the GPT permit was denied by the Army Corps because it was found that
2 construction of the facility would violate Lummi Nation's treaty fishing rights. In June
3 2016 County Council members presented their amendments to the Cherry Point
4 section of chapter 2. That was five months ago that everyone was made aware of the
5 proposal. In July Council members voted 6-1 to send the proposal to the Planning
6 Commission for further review and public input. That was four months ago. She favors
7 public input and participation in order to accomplish the goal of providing additional
8 time for public input on the proposal that the Council endorsed. The commission should
9 be evaluating that proposal only and should be considering all the input they are
10 getting in relation to that proposal. That way there will have been a good additional six
11 months' worth of input after the many months of input that went into forming it. This
12 will help inform and evaluate those aspects of that proposal before it is sent back to
13 the Council to review and vote on. To her knowledge there is nothing that actually
14 requires the review of alternatives in a process of making a threshold determination on
15 a proposal undergoing SEPA review. She believed that alternative proposals, after the
16 Council submitted their proposal, are the ones that should be held for the 2017 review.

17
18 Brad Owens, representing Northwest Jobs Alliance: Spoke in regards to the November
19 8, 2016 letter from the Whatcom Business Alliance which included the Alternative 3
20 collaborative draft. The Northwest Jobs Alliance is a local, non-partisan organization
21 whose growing membership includes business, civic and labor leaders, as well as
22 elected officials. Collectively they represent thousands of likeminded individuals all of
23 whom rally around their mission to promote the growth of family wage jobs in the
24 context of sound environmental practice. The Northwest Jobs Alliance is in full support
25 of the positions stated in the November 8, 2016 letter and proposed alternative. The
26 proposed Alternative 3 collaborative alternative draft is a well written, responsible and
27 positive document. It honors various stakeholder interests in the Cherry Point UGA and
28 port industrial area of Whatcom County as a whole.

29
30 Eddie Ury, representing Resources for Sustainable Communities: Regarding the
31 proposed Alternative 3, they were happy to see the Commission was considering the
32 input of the stakeholder industries at Cherry Point. He was puzzled as to why it was
33 being considered an alternative. If the Commission is going to reopen the process, and
34 deviate from what they were originally asked to do, then other stakeholders should
35 also be invited to submit alternatives. The original proposal was just as much a
36 surprise to them as it was to everyone else when it was released. However, they do
37 support the original proposal and asked the Commission to do the same. In regards to
38 the changes made at the Commission's last work session, they do not have any
39 substantive problems with them. He did take issue with some of the changes that were
40 proposed and voted down by a 5-4 margin. They do need to address the suggestion to
41 strike two lines from the preamble of the document which stated "Cherry Point is also
42 important historically and culturally to the Coast Salish people, and part of the usual
43 and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point
44 Elliot of 1855." The language does not have any effect on policy, however, it is deeply
45 offensive that they would think it was important to strike that language. It seeks to a
46 mindset that is in problematic.

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1 Bert Kotres, Whatcom County: Addressed the issue of commissioners recusing
2 themselves if they had any conflict of interest regarding the proceedings. He stated he
3 noted no one said they had a conflict. He believed the Weimer proposal was written by
4 Resources. He lives 3 ½ miles from Cherry Point so he sees what it going on out there.
5 All the statements that this issue is killing their fishing industry isn't true because they
6 don't fish out there. They are fishing out in the Gulf Islands. People are talking about
7 the coal industry. What was proposed at Cherry Point was a dry bulk shipping facility.
8 The first one who stepped up and wanted to ship out of that place was Peabody Coal
9 but that doesn't preclude others from shipping there. Everyone is ignoring that
10 because of the word coal. He had a real problem with that. Everyone needs to step
11 back and look at what the facility could actually do for Whatcom County. The three
12 industries at Cherry Point have been good corporate neighbors. They have done a lot
13 for the county.

14
15 Mike Sennett, Whatcom County: Corrected the statements of the previous speaker by
16 stating that according to GPT's own documents the only thing that would be shipped
17 for the first 20 years would be coal. His concern with the proceedings is there seems to
18 be a false impression of litigation at both the County Council and Planning Commission
19 meetings. At the previous meeting Mr. Buckingham was asked if there was pending
20 litigation regarding the Cherry Point fourth pier. He replied in the affirmative.
21 According to both the Army Corps of Engineers and the Washington State Department
22 of Natural Resources there is no litigation. Any future reference by the county's
23 attorneys that there is currently litigation regarding the GPT terminal should be
24 ignored and corrected.

25
26 Sandy Robson, Whatcom County: At the October 27, 2016 Planning Commission
27 meeting one of the Commissioners asked Mr. Buckingham if there is currently a pier
28 that is in litigation. Mr. Buckingham replied yes to that and he referenced the GPT
29 permit application litigation. She was able to get clarification on that issue. She
30 contacted Executive Louws seeking clarification. She asked him is PIT's 2011-2012
31 shoreline substantial development permit application and/or its major development
32 permit application, for the GPT project, currently under litigation with Whatcom
33 County? Executive Louws response was "Not to my or Deputy Executive Schroeder's
34 knowledge." She also informed the Commission that on November 1, 2016 she
35 checked with the Army Corps of Engineers asking if PIT/SSA Marine had filed an
36 appeal. According to the email she received from them no appeal has been filed. She
37 also checked with the Washington State Department of Natural Resources asking if
38 there was or is a potential for appeal by PIT. The response was "The decision by DNR
39 to deny the lease application for the GPT proposal is final and no longer subject to
40 appeal. The application has been canceled." As such there does not appear to be any
41 current litigation so Mr. Buckingham's statements regarding it should be cleared up
42 because his remarks could potentially influence the Commission. She stated she
43 continues to support all of the important protections contained in the proposed Cherry
44 Point amendments of Councilmember Weimer and urged the Commission to
45 recommend approval.

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1 John Strong, Whatcom County: He had attended a County Council meeting and
2 listened to Councilmember Mann share his dream of a world where any fossil fuel
3 would not be allowed to leave the ground ever. Many of the other councilmembers
4 shared his dream. He was sure they already have a plan to replace gasoline, jet fuel,
5 butane, heating oil, etc. and all the other nasty fuels we use. He wondered about the
6 thousands of byproducts made from petroleum. There are over 6,000 common ones.
7 Plastic is one of the items. What will we do without that? There are also organic
8 pharmaceuticals, lubricants, etc. He was baffled why there is discussion of coal
9 terminals. The discussion should be about industries and family wage jobs. If some
10 people kill fossil fuels, as they would like, it would solve our housing problems because
11 we would be living in caves. The discussions are sort sighted and comical.

12
13 Amy Glasser, Whatcom County: We need to look at what the planet is going through
14 and if we continue to burn and produce fuels we are warming up the planet and we are
15 going to have floods that take care of Birch Bay and Cherry Point and they won't be
16 around anymore. The point is that land is not ours. It is Lummi Nation territory. If we
17 respect the treaty we won't be doing anything there. It is all very simple. This
18 nonsense of fighting about it needs to end.

19
20 Mr. Buckingham spoke in regards to comments about litigation. He asked the
21 Commission if they were under the impression the county was involved in a lawsuit.

22
23 The Commission responded they were not under that impression. He had not meant to
24 give that impression.

25
26 Commissioner Rowlson asked for clarification regarding a fourth pier. Is it appealable
27 or is it a dead issue?

28
29 Mr. Buckingham stated the appeal period is for six years so it can be appealed for a
30 long time. This is a problem because we don't want permits sitting around for years
31 and years. The county has sent out letters regarding the wait for the appeal period to
32 end. The decision about the fishing grounds is appealable.

33
34 Brooks Anderson, Whatcom County: The testimony being given that evening was not
35 staying on point. It's about the charge they were given which was to look at the
36 Weimer proposal as well as the alternatives. It is not about what is going to happen
37 when we do or don't get rid of fossil fuels. She asked the Commission to limit their
38 attention to what they have been asked to do.

39
40 Lynn Murphey, representing Puget Sound Energy: They have two electric generating
41 facilities at Cherry Point. They burn natural gas to create electricity. They are only on
42 demand generation for electricity. They also have wind, solar and hydro power
43 facilities. She invited the Commission to tour their facility.

44
45 Commissioner Deshmane asked Ms. Murphey about policy concerns as stated in the
46 comment letter she submitted.

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7

1 Ms. Murphey stated there are no direct impacts to their facilities but they want to
2 continue to monitor the process to ensure there are no unintended consequences from
3 the amendments. They want to protect their use of natural gas that comes in to their
4 facilities. They did have concerns about the repeated language referring to excessive
5 water usage. They would like clarification and quantification of what that means. They
6 do use a large amount of water that does go through a recycling process. The water
7 goes back up into the atmosphere. It is a very efficient process.

8
9 The public comment period was closed.

10
11 Mr. Aamot gave a summary of the memo submitted to the Commission.

12
13 Policy 2CC-2 has five bullet points. Three of the bullets relate to the protection of
14 wetlands, bulkheads and water recycling. Mr. Buckingham's memo indicated that these
15 are more of a regulatory nature and they should be more policy oriented or have
16 regulations that implement the policies. Staff also put in the memo some of the
17 existing regulations. The Shoreline Management Program (SMP) addresses wetlands
18 and bulkheads. The Critical Areas Ordinance also addresses wetlands. There are no
19 county regulations, that staff could find, relating to water recycling. They also asked
20 the DOE and they were not aware of any such regulations or requirements at the state
21 level.

22
23 There is also a bullet point on clean energy. Low carbon emitting industries are
24 favored. From a legal perspective, Mr. Buckingham said that would be an appropriate
25 policy direction. It would need to be implemented with regulations. The Heavy Impact
26 Industrial regulations do not have much regarding the issue. It does have a regulation
27 on thermal power plants up to a certain kilowatt limit. There is no such limit on solar,
28 wind and other types of renewable resources.

29
30 There is a bullet referring to archeological study. In the SMP there are some good rules
31 on that already, however, they only apply within 200 feet of the shoreline. Outside of
32 the shoreline jurisdiction two things come into play. One is if a person is filling or
33 grading then the building code requires the applicant be notified they are near an
34 archeological site and that federal and state rules may apply. Also, if a project requires
35 a SEPA review a SEPA notice is sent to the Tribes and the State Department of
36 Archaeology and Historic Preservation. Typically, if the tribes or state wants an
37 archeological study that would be a condition on the mitigated determination of non-
38 significance. The vast majority of the time that recommendation is followed.

39
40 Policy 2CC-10 as stated in the existing policy, says there is a moratorium and there will
41 be no more piers, except the one that was approved in the 1990's. The Council
42 proposal will change that to say no more piers. Mr. Buckingham has stated that would
43 be subject to the existing permit and also the settlement agreement. The settlement
44 agreement states the Whatcom County administration agrees to actively support an
45 amendment to the Whatcom County Comprehensive Plan which would prevent further
46 piers, with the exception of the PIT project and existing piers. There is also language

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1 which was adopted into the Whatcom County Shoreline Program in 1999. There is also
2 language that states the parties agree that to carry out the agreement they are
3 operating in a relationship of trust and confidence and, except as provided herein,
4 have neither done, nor will do, any acts that will diminish the value of this settlement
5 agreement, etc. PDS feels that they would support the existing policy.
6

7 Policy 2CC-14 relates to the Magnuson Amendment. There are two issues relating to
8 this. One is risk of violating the Commerce Clause. The other is that if we have a local
9 regulation that was parallel to the federal regulation and the county came to a different
10 interpretation of the federal regulations it could open the county up to a lawsuit. Staff
11 has proposed some alternative language. Basically the policy would say Whatcom
12 County would encourage federal agencies to enforce the Magnuson Amendment and if
13 necessary Whatcom County could initiate legal action to enforce the Magnuson
14 Amendment. This would not create a new county law, but it would recognize there was
15 an existing federal law and the county, or any other party, could seek to enforce that
16 through the court system.
17

18 Policy 2CC-15 would require the county to do a study to look for legal ways to limit
19 unrefined fossil fuel exports by December 2017. Staff does not have any objections to
20 that. They noted that the study was not funded at this time. The commission may also
21 want to consider if the December 2017 date is appropriate or not. Mr. Buckingham
22 noted in his memo that there is some language that is more regulatory than policy.
23 Commissioner Rowson asked if the study would be done by staff or a consultant.
24

25 Mr. Personius stated it would have to be funded and the county would hire a
26 consultant.
27

28 Regarding a definition for Unrefined Fossil Fuel staff had asked the refineries for some
29 assistance. Staff received some information from BP which included a definition from
30 the EPA. It indicates that propane and butane are refined products, so they should not
31 be in the definition. There is also a comment that natural gas may not be a refined
32 product. Instead of a definition there could be language referring to crude oil, coal,
33 natural gas, etc.
34

35 Commissioner Deshmane suggested staff use the definitions from the American
36 Society of Testing and Measurement and the American Petroleum Institute.
37

38 Commissioner McClendon asked if there is ever an instance when something can be
39 enforceable through the Comprehensive Plan.
40

41 Mr. Aamot stated there is language that is more regulatory than policy so staff has
42 tried to identify those and propose alternatives. The Comprehensive Plan has to be
43 internally consistent with the Shoreline Program.
44

45 Commissioner Deshmane stated he is frustrated that Washington State is the least
46 clean energy friendly state on the west coast. Whatcom County is one of the least

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1 friendly clean energy counties in the state. There is a moratorium on wind energy that
2 was passed by the County Council. The words he sees about clean energy don't mean
3 anything. This county has a long way to go in order to do anything significant.

4
5 The commission continued their review of the Council proposal (as modified by the
6 Planning Commission on October 27, 2016).

7
8 Commissioner Vekved addressed page 5, lines 45-27 and page 6, lines 1-2 which
9 reads: Existing industries consume large quantities of water, in many cases drawn
10 from the Nooksack River. It is the County's policy to support renewed efforts to
11 reduce both water consumption levels and the quantity of discharges, in favor of
12 recycled water use. He stated there is no attempt made at quantification. He suspected
13 that was deliberate. It could be made very general but was not done.

14
15 **Commissioner Vekved moved to strike the text. Commission Honcoop**
16 **seconded.**

17
18 Commissioner McClendon stated her concern was more with the text that states: it is
19 the County's policy... There should not be policy language in the narrative.

20
21 Commissioner Rowson stated it should be stated as a policy for the county not just
22 this small area of the county. If it is something that the county wants to pursue it
23 seems like it should be on the work plan to address for a much larger area.

24
25 Commissioner Honcoop agreed with Commissioner McClendon that he doesn't like the
26 policy language. If it is the county's policy where is it? Don't just make a broad
27 statement. As far as water, there is a Coordinated Water System Plan the county just
28 passed.

29
30 Commissioner Vekved stated he was not trying to make the water issue go away. He
31 was trying to put it in the appropriate place.

32
33 Commissioner Barton stated the paragraph does not flow very well with the proposed
34 language.

35
36 Commissioner Deshmane stated he was frustrated with the language in the
37 Comprehensive Plan. There is a lot of language regarding environmental objectives but
38 there is no tool to accomplish them.

39
40 Commissioner Hunter stated it is easy to take language and tear it apart. This
41 language is not confusing. The intent is very clear and does not create any problems.

42
43 **The vote on motion failed (ayes-2, nays-7).**
44

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1 **Commissioner McClendon moved to amend Policy 2CC-2, bullet 5 to read:**
2 **Encourage Any New water-intensive development ~~shall~~ to utilize state-of-**
3 **the-art water recycling manufacturing technology to minimize water use.**

4
5 **Commissioner Vekved seconded.**

6
7 **The motion carried (ayes-7, nays-1, abstain-1).**

8
9 **Commissioner Vekved moved to change page 6, lines 21-22 to read: ...and**
10 **expand ~~appropriately~~ as opportunities present themselves. ~~While these~~**
11 **~~existing~~ industries need to be protected from the inappropriate encroachment**
12 **of...**

13
14 **Commissioner Knapp seconded.**

15
16 **The motion carried (ayes-9, nays-0).**

17
18 **Commissioner Vekved moved to change page 6, line 25 to read: ... ways that**
19 **do not significantly impact the ecology of the ~~Salish Sea~~ Georgia Strait or**
20 **encourage...**

21
22 **Commissioner Deshmane seconded.**

23
24 Commissioner Hunter stated there is a context for using Salish Sea rather the Strait of
25 Georgia, which has to do with our larger community. Salish Sea is a term that has
26 gained some credibility.

27
28 **The motion failed (ayes-4, nays-5).**

29
30 **Commissioner Vekved moved to change page 6, line 26 to read: ... expanded**
31 **export of ~~unrefined fossil fuels~~ crude oil, coal and natural gas.**

32
33 **Commissioner McClendon seconded.**

34
35 Commissioner Hunter stated he was not sure it was only those three items that should
36 be listed. The definition of unrefined fossil fuels has not been clarified.

37
38 **The motion carried (ayes-7, nays-1, abstain-1).**

39
40 Commissioner Vekved addressed page 6, lines 26-27 which reads: The best means for
41 protecting these industries from incompatible adjoining residential uses and to assure
42 their... He stated there is no need to add the word residential because there are other
43 adjoining uses which may be incompatible.

44
45 **Commissioner Vekved moved to strike the word residential. Commissioner**
46 **Deshmane seconded.**

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11

The motion carried (ayes-9, nays-0).

Commissioner Vekved addressed Policy 2CC-2 which states: Ensure that existing developments in the Cherry Point UGA maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan.

Commissioner Oliver felt it was very important to leave the word in because the policy is differentiating between existing and any new industry.

Commissioner Vekved asked what is preventing management plans being created for the new ones.

Commissioner Oliver stated new development would be held to higher standards.

Commissioner Honcoop stated the existing industries are working quickly to meet current regulations. They have to in order to remain competitive.

Commissioner Vekved moved to change the language to read: Ensure that existing developments in the Cherry Point UGA maintain and operate under management plans that to accomplish the goals of the Aquatic Reserve Management Plan.

Commissioner Honcoop seconded.

Commissioner Vekved stated that inadvertently this has been made less prescriptive. It makes no sense to state on existing development conforms to the regulations. Throughout the document there has been an attempt to draw some dateline of existing and new. It makes no sense in this case.

Commissioner McClendon stated all the industries are grandfathered in and no one is going to have to go back and change things.

Commissioner Hunter asked staff, if this language, regarding development, was found in regulations as well, are they satisfied that it would include any new effort to get a permit of any kind.

Mr. Aamot stated that development is broadly defined in the zoning code so it would be a fair assumption.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Oliver stated she liked the Whatcom Business Alliance proposal to separate this section from the Aquatic Reserve Management Plan.

Commissioner Oliver moved to remove the following, from Policy 2CC-2 and make it a new policy:

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1 **Ensure that future developments or expansions within the Cherry Point UGA**
2 **are consistent with the following:**

- 3 • **Clean-energy and low-carbon emitting industries are favored;**
- 4 • **Strict avoidance of estuaries and near-shore wetlands, as they play not**
5 **only an important role in protecting habitat, but also serve as flood storage**
6 **areas in the absorption of future sea level rise;**
- 7 • **Additional hardening of the shoreline through bulkheads or other**
8 **methods at Cherry Point is prohibited;**
- 9 • **Any proposed new development is consistent with an archeological study**
10 **designed in cooperation with the Lummi Nation and reviewed by the Lummi**
11 **Nation as part of the record for any permitting review;**
- 12 • **Any new water-intensive development shall utilize state-of-the-art water**
13 **recycling manufacturing technology to minimize water use.**

14
15 **Commissioner Vekved seconded**

16
17 **The motion carried (ayes-9, nays-0).**

18
19 Commissioner Honcoop stated he had trouble with this policy because it is picking
20 winners and losers. That is not what government should be doing. He also did not like
21 bullet point three regarding hardening of the shorelines. It does not take into
22 consideration repairs, protections, etc. With this policy are we restricting reasonable
23 fixes?

24
25 Commissioner Deshmane stated he did not see it as picking winners or losers because
26 the language is general enough. His main concern was how is PDS going to respond
27 according to the type of qualitative factors in the Comprehensive Plan?

28
29 **Commissioner McClendon moved to reword the new policy to read:**

30
31 **~~Ensure Enact programs that future for~~ developments or expansions within the**
32 **~~Cherry Point UGA are consistent with the following that :~~**

- 33 • **Encourage ~~C~~lean-energy and low-carbon emitting industries are**
34 **~~favored;~~**
- 35 • **Strict avoidance of estuaries and near-shore wetlands, as they play not**
36 **only an important role in protecting habitat, but also serve as flood storage**
37 **areas in the absorption of future sea level rise;**
- 38 • **Additional hardening of the shoreline through bulkheads or other**
39 **methods at Cherry Point is prohibited;**
- 40 • **Any proposed new development is consistent with an archeological study**
41 **designed in cooperation with the Lummi Nation and reviewed by the Lummi**
42 **Nation as part of the record for any permitting review;**
- 43 • **Any new water-intensive development shall utilize state-of-the-art water**
44 **recycling manufacturing technology to minimize water use.**

45
46 **The motion failed for lack of a second.**

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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 a~~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 a~~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.

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Commissioner Rowilson seconded.

Commissioner Knapp stated all of this is very confusing. Staff should have rewritten this in a policy context rather than trying to do this here.

Mr. Aamot stated staff will make the changes and bring it back to the next meeting so the commission can review them.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change 2CC-3 to read: Assure that Cherry Point's unique features of large parcelization, existing port access, and rail transportation availability are maintained and protected from incompatible development.

Commissioner Honcoop seconded.

The motion carried (ayes-9, nays-0).

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

Commissioner Knapp seconded.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change 2CC-10 to read:

It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three approved leases identified in the Lands Commissioner's Order No. 201037 designating the Cherry Point Aquatic Reserve (BP, Intalco, and Phillips 66) to:

- ◆ Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and species recovery goals of the Cherry Point Aquatic Reserve designation and CPAR MP;**
- ◆ Further public health and safety;**
- ◆ Recognize federal actions upholding treaty rights;**
- ◆ Protect traditional commercial and tribal fishing;**
- ◆ Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills; and**
- ◆ Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the likelihood of reaching the recovery**

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1 ~~goals of the CPAR and the Puget Sound Partnership's recovery goals for Year~~
2 ~~2035, by establishing a development moratorium. Notwithstanding the above,~~
3 ~~this moratorium shall not affect, nor otherwise apply to, any proposed pier~~
4 ~~that Whatcom County approved under its Shoreline Management Program~~
5 ~~prior to adoption of the moratorium.~~

6
7 **Commissioner Honcoop seconded.**

8
9 Commissioner Oliver stated she opposed the motion because it is an important part of
10 the proposal. The collaborative alternative Policy 2CC-10 reiterates the existing
11 regulations that are consistent with what staff has also articulated, including best
12 available science and the Magnuson Act. The one thing that is missing is the
13 recognition of treaty rights.

14
15 Commissioner Vekved stated that regarding the federal actions and treaty rights, they
16 are what they are and they are part of whatever county approval process that might
17 be in place anyway. Regarding the Magnuson Act, are we at risk of putting ourselves,
18 with the language as it is, in some sort of legal quandary?

19
20 Commissioner Oliver stated she did not think so. There are regulations that exist right
21 now and they were able to apply them to be consistent with the regulations, without
22 imposing the authority to regulate on a federal level, on the county regulations.

23
24 Commissioner McClendon stated she would support the motion. The concern about
25 treaty rights can be addressed elsewhere.

26
27 **Commissioner Oliver made a friendly amendment to read as presented in the**
28 **proposal from the Whatcom Business Alliance:**

29
30 **It is the continuing policy of Whatcom County to support a limit on the**
31 **number of industrial piers at Cherry Point, consistent with:**

- 32
33 • **existing vested rights, approvals or agreements granted under Whatcom**
34 **County's Shoreline Master Program;**
35 • **continued agency use of best available science;**
36 • **Whatcom County's application of the Shoreline Management Act, the**
37 **Whatcom County Shoreline Master Program, Whatcom County**
38 **Comprehensive Plan, Whatcom County Critical Areas Ordinance and other**
39 **applicable local plans, laws and regulations including, without limit, the**
40 **fire, mechanical and electrical codes adopted by Whatcom County;**
41 • **state agencies' application of state laws and regulations including**
42 **without limit the State Environmental Policy Act, Washington Indian**
43 **Graves and Records Act, the Washington Archaeological Sites and**
44 **Resources Act, the state Energy Facility Site Location Act, limitations**
45 **imposed by the Cherry Point Aquatic Reserve Management Plan; and the**
46 **federal Clean Water Act as delegated to the State of Washington; and**

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1 • federal agencies' application of federal laws, regulations, and treaties
2 including without limit the National Historic Preservation Act, Clean Water
3 Act, Clean Air Act, Endangered Species Act, U.S. Coast Guard regulations
4 regarding vessel operations, and the Magnuson Amendment to the Marine
5 Mammal Protection Act.

6
7 Commissioner Barton seconded.

8
9 The motion carried (ayes-9, nays-0).

10
11 Commissioner Honcoop moved to change Policy 2CC-9 to read: Continue to
12 work with service providers that serve Cherry Point to ensure the delivery of
13 services and to allow it to develop to its fullest potential, consistent with
14 other County policies ~~mandating and supporting~~ energy and water
15 conservation.

16
17 Commissioner Vekved seconded.

18
19 Commissioner Hunter stated it is not mandating anything. It is just saying it is
20 consistent with other policies that mandate and support these things.

21
22 The motion carried (ayes-7, nays-2).

23
24 Commissioner McClendon moved to change Policy 2CC-14 and add the
25 preamble to read as presented in the proposal from the PDS staff:

26
27 The United States Congress approved the "Magnuson Amendment" in 1977 in
28 order to restrict tankers carrying crude oil in the Puget Sound area. Congress
29 found that Puget Sound and the adjacent shorelines were threatened by the
30 increased possibility of vessel collisions and oil spills. Therefore, Congress
31 restricted federal agencies from issuing federal permits as follows:

32
33 . . . no officer, employee, or other official of the Federal Government shall, or
34 shall have authority to, issue, renew, grant, or otherwise approve any permit,
35 license, or other authority for constructing, renovating, modifying, or
36 otherwise altering a terminal, dock, or other facility in, on, or immediately
37 adjacent to, or affecting the navigable waters of Puget Sound, or any other
38 navigable waters in the State of Washington east of Port Angeles, which will
39 or may result in any increase in the volume of crude oil capable of being
40 handled at any such facility (measured as of October 18, 1977), other than oil
41 to be refined for consumption in the State of Washington.

42
43 Whatcom County does not enforce the Magnuson Amendment through the
44 local permitting process. However, the County can encourage federal
45 agencies to enforce the Magnuson Amendment and may, if necessary, seek to
46 enforce the Magnuson Amendment through the court system.

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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 Rowison 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 Rowison 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

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1 **correspondence or permit application submittals and notices, federal, state,**
2 **or local, that involve activity with the potential to expand the export of fossil**
3 **fuels from Cherry Point.**

4
5 **Commissioner Knapp seconded.**

6
7 Mr. Personius suggest the Commission remove the date of December 2017 because of
8 the limitation it puts on getting the work done.

9
10 Commissioner Hunter stated he saw no reason to change the date. If Council wants to
11 change it later they can.

12
13 **Commissioner Honcoop made a friendly amendment to read: The County shall**
14 **undertake a study to be completed by December of 2017 to examine existing**
15 **County laws, including those related to public health...**

16
17 **Commissioner Barton seconded.**

18
19 **The motion carried (ayes-6, nays-3).**

20
21 **Commissioner Hunter made a friendly amendment to read: The County shall**
22 **undertake a study to be completed by December of 20178 to examine existing**
23 **County laws, including those related to public health...**

24
25 **Commissioner Oliver seconded.**

26
27 **The motion carried (ayes-6, nays-3).**

28
29 **The vote on the original motion, as amended, carried (ayes-7, nays-1,**
30 **abstain-1)**

31
32 Commissioner Honcoop stated that the staff memo states that the second bullet is
33 clearly not policy and may not be enforceable thorough the Comprehensive Plan.
34 Regulations would need to be added to implement this language.

35
36 **Commissioner Honcoop moved to strike the second bullet.**

37
38 **Commissioner Vekved seconded.**

39 Commissioner McClendon asked staff what the impact of the language is.

40
41 Mr. Aamot stated it would be an additional workload for staff. Staff has no issues with
42 it.

43
44 Commissioner Oliver stated it is unusual for staff direction to be put in the
45 Comprehensive Plan. Can't they just direct staff to do it without if being in the plan?

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1 Mr. Aamot stated they are the Executive Branch so Council could request that, but
2 staff takes direction for the Executive.

3
4 Mr. Buckingham stated it would not be enforceable through the Comprehensive Plan. It
5 is awkward to have here. If *shall* was replaced with *should* it would be okay.

6
7 **Commissioner Deshmane made a friendly amendment to read: Until the above**
8 **mentioned amendments are implemented, the Prosecuting Attorney and/or**
9 **the County Administration ~~shall~~ should provide the County Council written**
10 **notice of all known pre-application correspondence or permit application**
11 **submittals and notices, federal, state, or local, that involve activity with the**
12 **potential to expand the export of fossil fuels from Cherry Point.**

13
14 **Commissioner Oliver seconded.**

15
16 **The motion carried (ayes-8, nays-1).**

17
18 The meeting was adjourned at 9:45 p.m.

19
20 Minutes prepared by Becky Boxx.

21
22
23
24 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

25
26
27
28
29 _____
Nicole Oliver, Chair

Becky Boxx, Secretary

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December 8, 2016**

Regular Meeting

1

1 **Call To Order:** The meeting was called to order, by Whatcom County Planning
2 Commission Vice-Chair, Kelvin Barton, in the Whatcom County Council Chambers at
3 6:30 p.m.

4
5 **Roll Call**

6 Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Michael Knapp, David
7 Hunter, Kelvin Barton, Andy Rowson, Atul Deshmane

8 Absent: Nicole Oliver
9

10 **Staff Present:** Mark Personius, Matt Aamot, Royce Buckingham-Prosecutor's Office,
11 Becky Boxx
12

13 **Department Update**

14
15 Mark Personius updated the commission on water issues.
16

17 **Open Session for Public Comment**

18
19 Max Perry, Whatcom County: Cautioned the commissioners to keep an open mind. The
20 moratorium on the wells is really impacting people. At the County Council meeting the
21 entire room was filled with people this has impacted. He noted the Planning
22 Commission meeting was full of people that will be impacted by the Cherry Point
23 decisions.
24

25 **Commissioner Comments**

26
27 Commissioner Barton stated that earlier this year the commission had added small lots
28 to the Birch Bay UGA through the Comprehensive Plan update.
29

30 Commissioner Barton moved to add development of regulations for small lots in Birch
31 Bay to the Pending Business Items.
32

33 Commissioner Vekved seconded.
34

35 The motion carried.
36

37 **Approval of Minutes**

38
39 October 27, 2016: Commissioner McClendon moved to approve as written.
40 Commissioner Honcoop seconded. The motion carried.
41

42 November 10, 2016: Commissioner Rowson moved to approve as written.
43 Commissioner Vekved seconded. The motion carried.
44

45 **Public Hearing**
46

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December 8, 2016**

Regular Meeting

2

1 File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two –
2 Land Use including provisions relating to environmental protection, water usage, fossil
3 fuel exports, and the number of piers allowed in the Cherry Point area. The proposed
4 amendments and alternatives are also being reviewed under the State Environmental
5 Policy Act or SEPA.

6
7 Matt Aamot gave an overview of the proposal.

8
9 In 1997 Whatcom County designated Cherry Point as an Urban Growth Area (UGA)
10 under the Growth Management Act (GMA). The Cherry Point boundaries did not change
11 in the 2009 or 2016 UGA reviews. The Cherry Point UGA is approximately 7,035 acres.
12 There are about 6,565 acres of Heavy Impact Industrial (HII) and approximately 470
13 acres of Light Impact Industrial (LII). On August 9, 2016 the County Council approved
14 an ordinance updating the Comprehensive Plan as required by the GMA. The Cherry
15 Point section had some policy changes, including changes relating to the Department
16 of Natural Resources (DNR) Cherry Point Aquatic Reserve Management Plan, public
17 access and monitoring water quality and habitat. On July 26, 2016 the County Council
18 passed a resolution requesting the Planning Commission review additional proposed
19 policies for the Cherry Point UGA. These policies included provisions relating to
20 environmental protection, prohibiting additional piers, prohibiting county permits that
21 would allow increased crude oil export by ship and studying legal ways to limit
22 unrefined fossil fuel exports in the future. Council requested Planning Commission
23 recommendations by January 2017. On September 13, 2016 the County Council
24 approved the Public Participation Plan. The Cherry Point amendments are classified as
25 Level 3 which means alternatives are to be considered. Alternative 1 utilizes
26 amendments that were put forward by an individual County Council member. This
27 alternative encourages environmental protection; does not allow additional piers,
28 except one that was already permitted in the 1990's; and provides for studying legal
29 ways to limit unrefined fossil fuel exports in the future. Alternative 2 was the no action
30 alternative which retains the existing Comprehensive Plan language. Prior to this
31 meeting the Planning Commission held three meetings on this issue. These meetings
32 included a combined town hall meeting and SEPA public hearing and two work
33 sessions. After listening to public testimony the Planning Commission has formulated
34 preliminary draft changes. The commission's draft policies encourage environmental
35 protection, support a limit on the number of proposed industrial piers (the Shoreline
36 Management Plan currently allows only one additional pier), encourage federal
37 agencies to enforce the Magnuson Amendment and state that the county may, if
38 necessary, initiate legal action to enforce the Magnuson Amendment. The Magnuson
39 Amendment is a federal law that does not allow federal permits for handling more
40 crude oil except if refined for use in Washington State. The Planning Commission draft
41 also includes studying legal ways to limit crude oil, coal and natural gas exports in the
42 future. After approval of a proposal by the Planning Commission County Council review
43 would commence in the first quarter of 2017.

44
45 Staff had some suggested amendments.

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1 Modify the text on p. 3 as follows:

2 Existing shoreline and upland stream and wetland functions and values are of
3 continuing importance to the recovery and protection of species identified in the
4 Aquatic Reserve Management Plan. The area includes ~~one of the last~~ undeveloped
5 intertidal wetlands ~~of any size in Northern Puget Sound~~, with importance to juvenile
6 salmon and other species.

7
8 Staff contacted the Department of Ecology (DOE) who stated that this proposed
9 deletion better reflects reality as there are other important intertidal wetlands.

10
11 Modify the text on pp. 3-4, for consistency with Policy 2CC-11, as follows:

12 Based on the public record developed during this plan review and best available
13 science in the record, the County ~~no longer~~ supports a limit on the construction of
14 additional export docks or piers at Cherry Point due to environmental and treaty right
15 concerns related to: (a) physical interference with shoreline functions and values; (b)
16 physical interference with traditional, historic and commercial fishing and shellfish
17 harvesting at the Cherry Point shoreline; and (c) the increased risk of catastrophic and
18 cumulative small oil and fuel spills from increased large vessel traffic, potential
19 collisions with tankers and other vessels serving the existing three piers at Cherry
20 Point, and related barge traffic and support vessels (see Policy 2CC-~~11~~10).

21
22 This language was discussed at two different meetings which resulted in conflicting
23 text and policies. This proposed language corrects this.

24
25 Modify the text on p. 4 as follows:

26 Whatcom County does not enforce the Magnuson Amendment through the local
27 permitting process. However, the County can encourage federal agencies to enforce
28 the Magnuson Amendment and may, if necessary, seek to enforce the Magnuson
29 Amendment through the court system (see Policy 2CC-15).

30
31 Modify the text on p. 5 as follows:

32 The large acreage, good rail access and proximity to Washington State and Canadian
33 ports makes the remaining upland area at Cherry Point suitable for commercial or
34 industrial production with emphasis on major sustainable clean energy manufacturing
35 or production (see Policy 2CC-~~32~~).

36
37 Modify the text on p. 6 as follows:

38 Existing industries consume large quantities of water, in many cases drawn from the
39 Nooksack River. It is the County's policy to support renewed efforts to reduce both
40 water consumption levels and the quantity of discharges, in favor of recycled water use
41 (see Policy 2CC-3 and Policy 2CC-10).

42
43 These last three relate to citing policies that support the text.

44
45 The hearing was opened to the public.

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1 Warren Sheay, Whatcom County: Stated he wants all of the children in Whatcom
2 County to grow up in a clean and safe environment. The time has come. We can no
3 longer sweep genuine environmental threats under the rug by pretending they don't
4 exist or by simply deferring action to future generations. Our planet is dying. Now,
5 more than ever, it is up to local governments to lead the battle against climate change.
6 We need to prevent Cherry Point from becoming an international export highway for
7 unrefined fossil fuels. It bears repeating that by preventing crude oil from being
8 exported we are protecting existing refinery jobs and ensuring that the refining process
9 meets high environmental standards. Most of the people he talks to, in the
10 environmental community, want to protect existing refinery jobs. Do not be fooled by
11 claims to the contrary. To keep Cherry Point clean, safe, healthy and economically
12 viable he requested the following improvements to the draft recommendations: Policy
13 2CC-2: Please consult with the Lummi Nation, especially for review of archeologically
14 significant sites at Cherry Point. Please respect the 1855 treaty. Policy 2CC-11: Please
15 indicate that we want no new piers in the aquatic reserve. Policy 2CC-15: This needs
16 to be strengthened so there is no piecemealing of expansions for crude export. Please
17 keep the original 2017 completion date for the study to discourage more unrefined
18 fossil fuel exports. He supported the Weimer amendments.

19
20 Jean Carmean, Whatcom County: Representing the Bellingham/Whatcom County
21 League of Women Voters. They support the Weimer amendment. The League of
22 Women Voters has long been involved in advocating for the protection of the ecology
23 in Cherry Point. They joined in a successful lawsuit by the DOE, Washington State
24 Department of Fish and Wildlife and several environmental groups, in 1997, to gain
25 federal protection for the area. Their position on deep water ports is that Cherry Point's
26 ecosystem should not be altered or destroyed, that numbers of vessels plying the
27 Salish Sea should be limited and that cargo with high risk to harm the environment or
28 health should not be allowed. Several arguments against the Weimer amendments
29 focus on jobs. Certainly the League is supportive of family wage jobs. In point of fact,
30 however, these amendments do not affect current Cherry Point industries shipping
31 finished products. They may even protect jobs, since there is precedent for the
32 elimination or reduction of refinery jobs in other locations after they have established
33 bulk shipping ports. Some claim that the amendments are anti-industry, but it should
34 be noted that the amendments actually commit to the development of Cherry Point via
35 clean industries which use state of the art water recycling manufacturing technology to
36 minimize water use. They assume that these would provide long term family wage jobs
37 as opposed to the short term jobs that would be created during the construction phase
38 of any fossil fuel project. Since they would minimize the number of additional fossil fuel
39 tankers and barges navigating the narrow passages and sharp turns in the Salish Sea
40 the risk of destroying an ecosystem is reduced. The more vessels, the more likely it is
41 that a large spill or even several small ones, could destroy our four billion dollar native
42 and other commercial fishing and shellfish industries and our two billion dollar tourist
43 industry which depends on activities like fishing, orca watching and beach combing.
44 The amendments also recognize the treaty rights of Native Americans to protect their
45 sacred sites and fishing rights. It has been argued by some that wording to urge
46 enforcements of the Magnuson Amendment by federal agencies would have the same
47 effect as these amendments. The law against the export of fossil fuels, which Senator

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1 Magnuson championed to protect the jobs of American refinery workers, was recently
2 repealed after intense lobbying by big oil. The chances of the Magnuson Amendment
3 surviving in the current climate are nil. Finally, since fossil fuel resources are finite we
4 need to think about preserving them for future generations to manufacture clothing,
5 hospital plastics and other necessary products rather than extract them for short term
6 profits for export to Asia. Fossil fuel burning in Asia comes back to us as air pollution
7 and ocean acidification and pushes us toward the tipping point on climate change.
8 Fossil fuel burning is a serious threat to all of us.

9
10 Virginia Malmquist, Whatcom County: One thing constantly going on is this concept of
11 a problem between jobs versus the environment. She suggested we protect our local
12 jobs by not allowing the export of fossil fuels in their raw form. It provides no
13 guarantee that we will have a safe environment or the current jobs will stay here. She
14 recently spent time with a young girl who felt her future had no hope. Part of the
15 reason she thought that was because our world is dying. We have an obligation to our
16 youth, to our Earth, our life forms and ourselves to do everything in our power to keep
17 this world safe. We have not been doing that which needs to be turned around. We
18 need to honor the Lummi Tribe and their treaty. We need to enforce the Magnuson
19 Amendment. We need to prevent Cherry Point from becoming just an opportunity to
20 dump raw fossil fuels into Puget Sound. Please help keep our community and world
21 safe.

22
23 Elizabeth Hines, Whatcom County: This is not an us and them situation. This is an all
24 of us situation. Everybody wants a win and can win. The first thing we have to do is
25 protect our environment. She supports the Lummi People and their sacred site. She
26 supports their ancestral burial grounds. They were here long before the rest of us. She
27 wants her grandchildren to have a beautiful world. She doesn't want to see their world
28 destroyed by greed and lust for oil, coal and foolish decisions. She would like to see oil
29 jobs replaced by clean energy jobs. Water catchment is done in many parts of the
30 world. We have lots of water here so let's do this.

31
32 Seth Owens, Whatcom County: He worked in the oil fields for many years, the solar
33 energy field and now the commercial fishing industry. He supports the Weimer
34 amendment. The fishing industry is huge to Whatcom County. When a treaty is made
35 with the Lummi People it should be honored.

36
37 Dena Jensen, Whatcom County: Stated this meeting was being held on land that is the
38 traditional territory of the Lummi and Nooksack People. May we nurture our
39 relationship with our Coast Salish neighbors. She supports the Weimer proposal
40 because it offers the strongest language for our county taking responsibility to protect
41 our land, waters and lifeforms. It indicates that we will adopt protective regulations
42 and enforce them. If we want air to breathe, water to drink and land to exist on we
43 have to start taking responsibility and not leave it to corporations and business
44 advocates that put money first. Workers try hard to protect us and themselves, but
45 accidents happen. She was disappointed to hear members of the County Council try to
46 shake off some forms of responsibility for the compromised flow of water in our rivers
47 resulting in what ultimately amounts to the theft of water from our wildlife, senior

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1 water rights holders and our community has a whole. The county is responsible, as is
2 she. We need to be role models for each other. We all have to work with coming up
3 with solutions and stop relying or insisting on or passively waiting for other entities to
4 fix things for us. If we all work together we will have truly reliable prosperity for future
5 generations.

6
7 Sandy Robson, Whatcom County: Supports the Weimer proposal. Regarding the
8 Planning Commission draft, page 3: In 2000 and again in 2010, the State Lands
9 Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the
10 state's general leasing program and designated them as the Cherry Point Aquatic
11 Reserve. The following DNR Use Authorizations were exempted from withdrawal:
12 Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66),
13 20-A08488 (Intalco Aluminum Corporation), 20-013265 (Gateway Pacific Terminals),
14 and 20-010521 (Birch Bay Water and Sewer District). She urged the commission to
15 make an edit, actually more of a correction, in the excerpt just cited. Lines eight and
16 nine of the draft specifically reference lease application 20-013265(Gateway Pacific
17 Terminals). There is no reason to make that reference unless it is acknowledged by the
18 fact that the lease application, which once had been exempted from withdrawal, is no
19 longer a viable or active lease application with DNR. According the DNR Commissioner
20 Peter Goldmark's July 11, 2016 letter sent to Skip Sahlin, of Pacific International
21 Holdings, and her email communications with DNR the language stated in the Planning
22 Commissioner draft does not accurately reflect the current status of lease application
23 20-013265 (Gateway Pacific Terminals) with DNR. Commissioner Goldmarks' letter
24 states the DNR has denied the lease application for the Gateway Terminal Project.
25 Pacific International Holding or its affiliated entities no longer have an application with
26 DNR and there will be no further consideration of the past application. So, due to the
27 fact that DNR has officially stated that the lease application for the Gateway Pacific
28 Terminal project has been denied and that there will be no further consideration of the
29 past lease application, coupled with the fact that DNR's lease denial cannot be
30 appealed by applicant PIH/PIT, the language inserted by you commissioners in your
31 11/10/2016 Draft document on lines # 8 and # 9, specifically referencing lease
32 application number "20-013265 (Gateway Pacific Terminals)," then does not appear to
33 be completely accurate or adequate. She asked the language to be removed from the
34 draft.

35
36 Paula Rotondi, Whatcom County: Like everyone there she depends on the fuel that the
37 people at the refineries make. Refinery jobs are good jobs, but they are dangerous and
38 they are done to take care of families which is everyone's first obligation. Whatever
39 else you give your family doesn't matter if they can't drink the water or the air isn't
40 safe to breath. It is an obligation to provide our families with clean water and air. The
41 first obligation of corporations is not providing jobs it is maximizing profits.
42 Corporations can and will increase profits, when they have the opportunity, by sending
43 crude oil and refining jobs overseas. If we allow new pipelines, trains and ships to
44 export unrefined fuels to Asia we increase the risk to our families health and safety
45 and to our air and water. Pipelines are going to keep rupturing, trains are going to
46 keep derailing and ships are going to keep capsizing. We accept these risks for the fuel
47 we need here ourselves. It is unacceptable to risk our health, safety, air and water to

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1 export unrefined fuel to foreign nations. She supports the Weimer proposal. It best
2 protects Cherry Points and its good jobs.
3

4 Mike Sennett, Whatcom County: Stated the Division Manager of the Aquatic Resources
5 has written the decision by DNR to deny the lease application for the GPT proposal is
6 final and no longer subject to appeal. The application has been canceled. As such,
7 there should be no mention of GPT in the Comprehensive Plan. In connection to this
8 request he asked the commission to state that the county opposes any additional piers
9 at Cherry Point in Policy 2CC-11. This brings the Comprehensive Plan into line with the
10 DNR's closing of the fourth pier cut-out and to protect the Aquatic Reserve from any
11 future shoreline disruption. As we all know Pacific International Terminal committed
12 illegal destruction and desecration at Cherry Point. To prevent any such outrage again
13 he asked the commission to strengthen Policy 2CC-3 by adding language supporting
14 collaboration with the Lummi Nation in any future development at Cherry Point.
15

16 David Kershner, Whatcom County: Used to work as a commercial fisherman near
17 Cherry Point alongside members of the Lummi Nation. He values salmon as a
18 significant contributor to our economy and the way of life of his Lummi neighbors. The
19 Lummi People are the original stewards of the land we call Cherry Point. He urged the
20 commission to recommend specific language in the Comprehensive Plan that
21 recognizes the Lummi Nation's rights as expressed in the Treaty of 1855. He also
22 urged them to recommend collaboration with the Lummi Nation in reviewing
23 archeological sites at Cherry Point. He urged them to state in the revised
24 Comprehensive Plan that an additional pier is inconsistent with honoring the Lummi
25 Nation's treaty fishing rights. It is critical that the county make sure that new
26 developments at Cherry Point are reviewed in the context of the Marine Mammal
27 Protection Act and the Magnuson Amendment. The county can't afford to have these
28 projects avoid thorough review because they are represented as serious but minor
29 projects. He supports the county studying its legal powers with respect to the
30 restrictions on fossil fuel exports. He urged them to recommend that the study be
31 completed before the end of 2017.
32

33 Charles Bailey, Whatcom County: He is opposed to the county becoming an open
34 highway for the shipment of unrefined fossil fuels. The risk of spillage, even in small
35 amounts, add up to a devastating impact on our environment, our destination for
36 tourism, our fishing industry and the general wellbeing of people here. He
37 recommended a strong planning policy that includes no piecemealing; a number of
38 small developments that have a cumulative effect; no new piers; collaboration with the
39 Lummi Nation-recognizing their treaty rights as well as their participation in the
40 archeological reviews and the legal study should be completed by December 2017.
41

42 Dirk Vermeeren, Whatcom County: He is a retired refinery industry executive. His wife
43 and he have been Whatcom County residents since 2014. He supports the Weimer
44 proposal. Recognize the Lummi Nation and consult with the aquatic reserve group.
45 Approve Policy 2CC-11 and restrict the current number of piers to three. Approve
46 Policy 2CC-15 and strengthen the language to ensure the county does not allow
47 developments to violate the Marine Mammal Protection Act and Magnuson

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1 Amendment. Retain the study completion date of 2017. The main issue we need to
2 address is what do we want to be in 10 years? Do we want to become like Texas, who
3 is heavily dependent on the petrochemical industry or do we want to start diversifying
4 our economic base? How well prepared are the Cherry Point industries for an
5 earthquake? Does the permit process require a plan for mitigating this catastrophe?
6 Whatcom County natural resources are finite. Our land, rivers and coastal waters
7 sustain numerous industries, including commercial and sport salmon fisheries and
8 related businesses. Our quality of life has become a key attractor and driver for
9 growth. Unfortunately some people are using scare tactics to achieve their agendas.
10 Our goal is to balance growth for clean energies. Please prepare a plan that will
11 represent all Whatcom County stakeholders.

12
13 Ron Colson, Whatcom County: He asked the commission to adopt the Weimer
14 proposal. If we allow crude oil to be exported from Cherry Point our Whatcom County
15 refinery jobs will end. U.S. labor costs are among the highest in the world. That is why
16 we have watched so many well-paying U.S. jobs outsourced overseas. It costs over 25
17 dollars to refine one barrel of crude oil at U.S. refineries. It costs about one half that to
18 refine the same amount in India. Exporting American crude oil does not help the U.S.
19 achieve energy independence. The most recent data shows that the U.S. is importing
20 foreign oil at the rate of about 242 million barrels of oil per month. Meanwhile, we are
21 exporting American oil at the rate of about 158,000 barrels per month. As long as we
22 are still importing so much foreign crude oil there is absolutely no reason to export
23 American crude oil, or is there? The average U.S. refiners acquisition costs, for
24 domestic crude, recently rose 36 cents to \$44.54 per barrel. Meanwhile, the average
25 cost of imported crude declined 39 cents to \$40.82 per barrel. Therefore, it is \$3.72
26 less, per barrel, for U.S. refineries to purchase foreign oil than to purchase domestic
27 oil. Excerpts from a recent Bloomberg report state: The recent solar power generation
28 will increasingly dominate. It is a technology, not a fuel. As such, the efficiency
29 increases and prices fall as time goes on. What's more, the price of batteries, to store
30 solar power when the sun isn't shining, is falling in a similarly stunning arc. U.S. oil
31 and gas groups are falling into the insolvency zone. Oil and gas woes are driven less
32 by competition from renewables than by a mismatch of too much supply and too little
33 demand. With renewable energy expanding at record rates and more efficient cars,
34 including all electric vehicles that are syphoning off oil profits, the insolvency zone of
35 fossil fuel companies is only going to get more crowded. Natural gas will still be needed
36 for when the sun isn't shining and the wind isn't blowing. Whatcom County must not
37 allow the dying fossil fuel industry to place a long term strangle hold on our economy
38 for the short term profits of a few wealthy corporations. Allowing crude oil exports at
39 Cherry Point would only hasten the loss of refinery jobs and we will be saddled with
40 filthy rusting infrastructure that will have to be cleaned up with our tax dollars. Do not
41 allow that to happen. Adopt the Weimer proposal then let's begin the important job of
42 enticing new clean industries to build their businesses at Cherry Point.

43
44 Steve Garey, Skagit County: A recently retired refinery worker. He is a the Executive
45 Board Member of the Washington State Blue Green Alliance which is a national
46 organization that seeks to build understanding, common cause and shared goals
47 between labor and environmental organizations. He encouraged the commission to

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1 support Comprehensive Plan language that will effectively prohibit the export of crude
2 oil or other feed stocks that are necessary to produce transportation fuels or any other
3 finished products that can be produced in the refineries with the Cherry Point industrial
4 area. Prohibiting crude oil export supports refinery workers as well as the economy of
5 Whatcom County. We know this because we have seen oil companies, in other times
6 and places, react to regulations, market restraints or other concerns, by shutting
7 refinery process units down in order to turn the facility into an export terminal. They
8 do this by laying off the great majority of production and maintenance workers while
9 continuing to run just the tank farm, shipping pumps and the wharf with a much
10 smaller work force. This places most workers in local unemployment lines and tends to
11 increase the volumes of crude and other feed stocks that pass through the community
12 and the facility without processing. It also tends to increase the price of crude oil,
13 effecting the viability of local refiners and increases the likelihood that finished fossil
14 fuel products are imported into our communities from off shore producers that often
15 recognize no protections for workers or the environment. It is important to note that a
16 local ban on crude export would be consistent with a federal ban that was in place for
17 decades until it was overturned just recently. The federal ban, for many years, was
18 seen as supportive of both our country's national security as well as manufacturing
19 industries and the nation's economy. The federal ban was supported for good reason
20 by both labor organizations, environmental groups and many others. You have an
21 opportunity now in considering Comprehensive Plan language to support local workers,
22 our local economy, as well as our environment for the same reasons that supported
23 the federal ban for so long. He also pointed out an important flaw in the current
24 moratorium language that is not supportive of our best interests. The current
25 moratorium language defines unrefined fossil fuels by listing several forms of crude oil
26 and other raw materials, but also lists inaccurately several finished products. Propane,
27 butane and natural gas are finished products. Without going too deeply into organic
28 chemistry you should know that those products do not come out of the ground all by
29 themselves. Those products should not be listed. Those molecules must be processed
30 in order to isolate them from each other and all the other hydro carbons, as well as
31 many impurities, in order to be suitable for markets. While he is a person who has
32 supported working people in some form for most all of his life he knows, the
33 international union knows, as the Washington State Labor Council knows, that global
34 warming and the consequences that result must be stopped. We know that in order to
35 do that we must reduce demand for fossil fuels. We also know, however, and many of
36 our friends in the environmental community know as well, that while the transition is
37 underway it is our responsibility to insure that it is a fair, just and equitable transition.
38 To be just it must, in addition to many other things, recognize and protect as much as
39 possible those workers and communities that are most exposed to disproportional
40 costs.

41
42 Eddy Ury, Whatcom County: Everyone in the room should find some satisfaction with
43 the draft in that it balances so many stakeholder concerns in both the economic and
44 industrial issues at Cherry Point as are the various laws and policies that need to be
45 outlined in our planning document. We need these in order to be fair to business so
46 they know what to expect during the permitting process. There are some proposals
47 forthcoming that are not consistent with state law, federal law or county policies and

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1 yet seem to be moving forward anyway. There is a Canadian gas pipeline that is
2 proposed to route through rural Whatcom County farmland, through the Cherry Point
3 Aquatic Reserve and on to Vancouver Island. This does nothing for the U.S. economy
4 but does pose some risks. It also violates state law in terms of the Aquatic
5 Management Plan. This shows disregard for the policies in place. At some point the
6 county could be sued merely for enforcing the law. That is all the more reason why we
7 need this legal study so the county can be best prepared for these types of things. He
8 would like to see the deadline for the study be changed back to December 2017. He
9 would like to see Policy 2CC-11 be consistent with other parts of the chapter to state
10 we don't encourage new piers. He submitted a petition with signatures of those who
11 support a ban on unrefined fossil fuel exports.

12
13 Tate Garret, Whatcom County: He has friends and family who have been supported by
14 the jobs and businesses at Cherry Point. He has seen how the opportunity to hold a
15 family wage job so close to home provided not only a stable income but a larger
16 amount of time to spend together with family. About a year ago, as he was starting his
17 sophomore year in high school, he started considering what these jobs could have to
18 offer and ended up deciding to take classes at Bellingham technical College through
19 Running Start. After earning an Associate's Degree in 2018 he hopes to get a job at
20 Cherry Point so he can stay local with family and friends while earning a good living.
21 You may already know that the jobs at Cherry Point provide a large chunk of the
22 county's income, both directly through the employees that work there and indirectly by
23 bringing in contractors and paying for utilities. What you might not know however, is
24 that the industries at Cherry Point are constantly searching for ways to increase their
25 efficiency and decrease their environmental footprint. They are also actively developing
26 green energy solutions and more sophisticated methods to detect and contain any
27 leaks or emissions in the atmosphere and ground. Because of this the environmental
28 impact of the Cherry Point businesses has been reduced to an almost imperceptible
29 level and will remain in retreat with the continued vigilance and innovation of the
30 industries and public. The current plan for the Cherry Point Industrial Zone is often
31 ambiguous and vague, sometimes to the point that it can be easily and perhaps
32 unintentionally used to inhibit and restrict the industries it's designed to help. It also
33 makes it nearly impossible for the industries located there to upgrade their facilities
34 and equipment to more efficient and environmentally friendly modern designs. These
35 difficulties, along with the moratorium currently in effect, are part of why he believes
36 the current plan for the Cherry Point Urban Growth Area should be amended in favor of
37 the Whatcom Business Alliance's Alternative 3, or canceled as Alternative 2 suggests.
38 Diminishing the number of family wage jobs will drive people to seek employment
39 elsewhere and will cause Whatcom County's average income, which is currently 25%
40 below the state average, to decrease even more. He hopes that he and hundreds of
41 other students, along with thousands of current employees and their families will be
42 able to continue counting on Cherry Point to provide this county with a reliable and
43 sustainable source of jobs that will benefit both its people and environment.

44
45 Ricky Goss, Whatcom County: He is currently working on obtaining his Associates
46 Science Degree from Bellingham Technical College. He currently works for Bellingham
47 Technical College as a math, chemistry and process technology program tutor. He is

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1 also Vice President for two Students for Local Industry clubs at the college. He lives in
2 Snohomish County but hopes to soon become a contributing member of this
3 community. He is enrolled in the Process Tech program to achieve a goal. That goal is
4 to have the opportunity to work for and retire from one of these great industries. He
5 has concerns about the Weimer proposal. These proposals will not only affect the
6 companies that do business in the Cherry Point area but it will reach out and touch
7 employees, contractors, sub-contractors, schools and businesses. This decision affects
8 families. Because of the families that this decision affects the two choices he can
9 support are Alternative 2 and Alternative 3. We need to keep these companies in
10 Whatcom County and help them grow so they can continue to support our friends and
11 families that live here.

12
13 James Hendrix, Skagit County: A student at Bellingham Technical College in the
14 Process Technology Program. He had previously made a living doing turn arounds and
15 shut downs for refineries across the U.S. but this has always been home. The
16 regulations being considered are already enforced by different agencies. It seems like
17 an overreach to consider enforcing them again. If you overregulate an industry it will
18 die. We can't afford to lose the industries that are here. With the average income in
19 Whatcom County already 25% below the state average we can't afford to let these
20 jobs go. We can't regulate them to death by putting on regulations that are already in
21 place. There are several major cities in the country that have lost their industries.
22 Detroit has a 39% poverty rate. Chicago has a 1.3 million people living in poverty and
23 is one of the most dangerous places to live. This can be directly attributed to a loss of
24 their industries. If you have no hope and no future you act out in desperation and
25 dangerous environments happen. Living in poverty is not something we should accept.
26 We have industries we need to support and help grow.

27
28 Joe Wilson, Whatcom County: Vice President of Pederson Brothers who are a heavy
29 industrial steel fabricating company. They work at the refineries as well as other
30 industrial facilities. They are a small business. They have a lot of sub-contractors who
31 work for them. The refineries are very good neighbors in this community. They
32 contribute a lot to the tax base. They provide very many family wage jobs. They also
33 spend millions of dollars on air and water pollution control and safety for their
34 employees. He was against the Weimer proposal because it is so poorly written. Right
35 now there is a moratorium on permits. These permits may be needed for air and water
36 pollution control. If the Weimer proposal is instituted the county will be spending a lot
37 of tax dollars in a legal battle because it will be found unconstitutional. We all know
38 that. This county can't decide for the U.S. what is in our constitution.

39
40 Eileen McCracken, Whatcom County: She is employed as an engineer at Phillips 66.
41 The collaborative proposal from the Cherry Point industries provides a lot of helpful
42 guidance to the community in planning for the future of Cherry Point. Please reconsider
43 proposed Policy 2CC-3, specifically requiring water recycling technology to reduce
44 water use. Consideration should be given first to reducing overall water use. Jumping
45 right to recycling may or may not have the same impact. Remove Policy 2CC-15. The
46 refineries are committed in their operations here. They show it every day in the high

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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.

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1 Jessica Spiegel, Thurston County: Representing the Washington State Petroleum
2 Association. They are a non-profit trade group that is comprised of 25 companies that
3 explore, develop, transport, refine and market petroleum products in five states. She
4 felt the process was rushed and not following the GMA. It requires a public process.
5 Alternative #3 should be included as an alternative and recommended as the proposal
6 to the council.

7
8 Erin Anderson, Whatcom County: Legal counsel for the Whatcom Business Alliance.
9 There is no statutory mandate that the commission rush their decisions. She urged the
10 commission to take up the offer from the WBA for a public open and transparent
11 training session regarding the entire framework of regulations of all of the businesses
12 at Cherry Point. Address the constitutionality of any county trying to ban the export of
13 commercial products. Commerce has this jurisdiction. In regards to meeting the haste
14 of the January deadline she had an email from staff dated November 8, 2016. The
15 email states the WBA could submit an alternative if they did so by November 10, 2016.
16 The Planning Commission will consider WBA's proposed language. This is not being
17 done at this meeting. It would be the appropriate that to do to slow down and respect
18 what staff said to a significant stakeholder. This process won't even come to the
19 council until the entire docketing process is completed. That package of docketing
20 items then come to the commission, SEPA gets done and only then does this issue get
21 delivered to the County Council for action. That is law. There is no rush. Undertake the
22 training session they have been invited to. She concurs with the County Prosecutor's
23 analysis that it is Commerce's role to decide who gets to export and receive products.

24
25 Dustin Hoffman, Whatcom County: He is a student at Bellingham Technical College and
26 President of Students for Local Industry. He recently attended one of the commission's
27 work sessions and some members openly admitted to not knowing who the Planning
28 Commission serves. Mr. Deshmane even asked if it was Carl Weimer himself who the
29 commission answers to. Nicole Oliver stated she had no knowledge of how these
30 industries operate. He witnessed the commission's legal representation, Royce
31 Buckingham, explain how there are already many existing regulations and agencies
32 that take care of these matters, such as the Interstate Commerce Commission, the
33 EPA and the Magnuson Act and to implement the Alternative 1 policies would open
34 Whatcom County up to expensive litigation and lawsuits which we the people would be
35 forced to pay. After observing this he realized that not only does this seem confusing
36 to him but also to many on the commission. Is this how we want to conduct business
37 here in Whatcom County? As Planning Commissioners and public servants do you feel
38 it is necessary to drive a wedge between your fellow neighbors, the industries that
39 provide so much support for our community and the environment? Is it necessary or
40 even good policy to ignore your own legal advice at the public's expense? For him the
41 answer is no, we shouldn't. We don't have to continue to polarize our communities
42 with divisive issues. We can choose to be better than that and proactively seek
43 comprehensive policy changes that brings harmony to the environment, local industry
44 and our community that we can all agree on. Our local industries are our friends,
45 neighbors and families. They are not out to cause us harm, they just want to be able
46 to operate safely, efficiently and in peace. A few example of how just one company,
47 BP, has helped our local environment and economy are: BP purchased and donated

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1 180 acres of land to the Whatcom Land Trust to maintain the third largest blue heron
2 colony in the region and has actively worked to restore salmon habitat in Terrell Creek.
3 It is the largest contributor to the United Way of Whatcom County and has also
4 donated \$250,000 to help rebuild the Boys and Girls Club in Ferndale after in burned
5 down in 2007. BP contributes more than \$47 million dollars to our state and local taxes
6 each year. These examples are not the actions of industry that needs to be over-
7 regulated because of political over reach. They deserve our attention and appreciation,
8 for those industries are made up of the men and women of our community. For the
9 good of Whatcom County and its citizens please stop taking an adversarial role
10 between you and Cherry Point industries. Please look past the loud voices of Carl
11 Weimer and David Hunter. We are not their loyal subjects and neither are you. Find
12 your own individual voices and with research and due diligence each one of you will
13 find that Alternative #3 will enable our community, environment and this industry to
14 coexist for many more years to come.

15
16 Cary Clemenson, Whatcom County: In 1991 he went to work at Cherry Point. At the
17 refinery where he works it was pay day. There are 297 employees. The payroll amount
18 was \$440,484. This is what really matters. He was opposed to the Weimer proposal. It
19 will kill jobs and economic growth at Cherry Point. If industry can't adapt to the
20 changing market conditions they will cease to exist. The Weimer proposal will
21 absolutely place the Cherry Point industries at a disadvantage to their competitors.
22 There are 2,100 full time jobs at Cherry Point with an average annual income of
23 \$144,000 per year. How will those jobs be replaced? Cherry Point companies pay over
24 \$200 million in tax base in the State of Washington per year. Calculate for yourselves
25 how many retail cannabis businesses is it going to take to replace that. How do you
26 plan to pay teachers, police officers, firefighters, etc. without these industries? He
27 supported Alternative #3. This approach balances economic growth with environmental
28 stewardship.

29
30 Tyler Ryan, Whatcom County: Board member of the Western States Petroleum
31 Association and employee of a financial management firm. The Weimer proposal is
32 entirely politically motivated. The commission should take into account what the true
33 intentions of the proposal are. Is the goal of the Planning Commission to help plan for
34 responsible growth in our community or is it just to shut things down? The Weimer
35 proposal is designed to shut things down. The WBA proposal, which was done with
36 care and intent to do what is best for Whatcom County, is something the commission
37 should consider. We hear people talk about the refinery jobs and the services that are
38 provided but the commission also needs to realize that his company's source of income
39 relies on the employees that work at the refineries. There are lots of other businesses
40 that rely on the employees of the Cherry Point industries. The demand for fossil fuels is
41 a constant. What we do here has no bearing on that. If we don't do it here it will go
42 somewhere else. The demand isn't going to disappear. The refineries take great care of
43 the environment.

44
45 Tom Robins, Whatcom County: He is a project manager at BP. He was opposed to the
46 Weimer proposal. Many people would look at him as a dupe of the oil companies or an
47 evil polluter. That is a cute debate trick. It will always bring into question the

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1 opponents motives. There are many families that work and make their living at Cherry
2 Point. They talk a lot about supporting people and they don't want to chase jobs out of
3 the areas, but the net effect of what they are doing is going to put those businesses
4 out of business. They also say they care about the workers and they have some special
5 insight as to the working of the industries that enables them to see how this works.
6 They miss the point that this is a very complex industry and they don't understand
7 anything regarding what they are talking about. What he finds difficult to put up with
8 in the proposed language is the talk about clean industries. What are clean industries?
9 He is an engineer and knows that activities by humans have impacts on the
10 environment and the systems. How are these clean industries going to get through the
11 process these people are putting in place for them to be successful here? Will they
12 even want to come here? It is more of a cartoon than reality.

13
14 Spencer Palmer, Whatcom County: In support of Alternative #3 from WBA. A lot of
15 people are talking about the strong backbone that the industries at Cherry Point
16 provide for this community. The Cherry Point Reachout Community, comprised of
17 employees, contractors and retirees from Cherry Point, is working very hard to provide
18 Christmas for 225 families in the county. The Christmas they will provide is not only
19 presents but also includes food. The employees at the Cherry Point industries give a lot
20 of money to United Way, the new soccer field, etc. The point is the community needs
21 people like these and people like these need jobs like these.

22
23 Eric Emsky, Whatcom County: He believes in ethical and sustainable business for the
24 future. A large overseas tanker uses 1,688,000 pounds of fuel to ship product
25 overseas. This equates to 17,000,000 pounds of CO2 released by one tanker ship. The
26 fuel used by these ships has a lot higher sulfur content which results in a lot higher
27 sulfur dioxide emissions. On the economic side a dollar is not dollar. We must look at
28 our resource usage for the future. He would like to see his children and grandchildren
29 have a safe and healthy place to live. He is supportive of business and our economy.
30 The refineries can create cleaner alternatives. Do not allow crude oil exports. Keep our
31 limited resources here in North America. Employees of the refineries should urge their
32 employers to develop and institute renewable energy sources that will provide jobs for
33 the future. There will not always be oil in the ground to use.

34
35 Hamilton Dutcher, Whatcom County: Was worried about terminology. Trains used to
36 come through the county and we had to wait for them at the crossings. We said we
37 were going to limit the size of the train. The limit was 100 cars. The corporations
38 immediately doubled the size of the cars. Now we are looking at another pier at Cherry
39 Point. How big is it going to be? He is scared of the size of the boats coming in and
40 where they are coming from. What are they going to bring with them? Corporations
41 are after profits. They want to increase them. Trains coming here from other areas had
42 been leaking all the way for three years and the companies did not have to clean it up.
43 This leaking oil is going into the ground and water. We don't want this.

44
45 Bill Chambers, Whatcom County: A licensed professional engineer. Was attracted here
46 by the natural beauty balanced by the opportunity to work for and earn a living wage.
47 The forward thinking people who offered the original Shoreline Management Plan in

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1 1976 recognized that balance by preserving a small area around Cherry Point for
2 heavy industrial development. They realized the value of that unique physical feature
3 of having developable uplands in close proximity to water deep enough to
4 accommodate ocean going ships. The idea was that the industries that built there
5 would be the engine that would drive efficient economic development within the
6 county. That is exactly what has happened. The last significant amendment, to the
7 original document, was adopted in 1987 after 18 months of study and public input. It
8 resulted in the Cherry Point Management Unit. The language supported the existing
9 facilities and encouraged new development. The proposed amendments neither
10 support existing facilities or encourage new development. Instead they seek to limit
11 the existing industries ability to adapt to the changing dynamics of a complex global
12 industry. He asked that the Weimer language be rejected.

13
14 Brad Owens, Whatcom County: Representing the Northwest Jobs Alliance (NWJA). The
15 NWJA is a local, non-artisan organization whose growing membership includes
16 business, civic and labor leaders as well as elected officials. Collectively they represent
17 thousands of likeminded individuals all of whom rally around our mission to promote
18 the growth of family wage jobs in the context of sound environmental practice. The
19 NWJA is in full support of the legal opinions and comments contained with the
20 December 7, 2016 letter from the WBA. Additionally, the NWJA is in full support of and
21 recommends collaborative Alternate #3 for adoption. In the instance that the Planning
22 Commission does not adopt Alternative #3 and for reasons set forth in the referenced
23 document we reiterate the WBA recommendation to urge the commission to suspend
24 the current breakneck schedule for consideration of amendments to the Cherry Point
25 UGA section of the county Comprehensive Plan; Docket the three alternatives noticed
26 for hearing on December 8, 2016 for consideration in January, together with
27 Alternative #3 submitted by the WBA and any additional proposals received from
28 interested citizens; Take advantage of the process required by Chapter 2.160 of the
29 county code to learn more about the marine terminals operating in the Cherry Point
30 UGA and the regulatory programs that new or modified terminal projects would need
31 to satisfy. Focus on whether the amendments are necessary, whether they would have
32 unintended consequence and whether they would undermine a pillar of the county's
33 economy.

34
35 Cliff Freeman, Whatcom County: He opposes the Weimer proposal. Its intent is to
36 specifically restrict the existing fossil fuel industry and limit future industrial
37 development at Cherry Point. He opposed most of the language changes the
38 commission made. He appreciated the language in Policy 2CC-11, bullet one which
39 recognizes the fourth dock granted under the current Shoreline Master Plan. Thank you
40 for recognizing the importance of a fourth dock. It is absolutely critical to the future of
41 this industrial zone. Regarding Policy 2CC-16, he opposed the use of his tax dollars for
42 the study. Death by 1,000 cuts was a comment made by Commissioner Honcoop. He
43 couldn't agree more. Enough with more layers of policy leading to additional
44 regulation. The last 40 years has seen no new industry at Cherry Point, just expansion
45 of existing operations. It is not without lack of trying. In 1976 a company started a
46 project on about 300 acres on Gulf Road. They soon realized that they did not have
47 deep enough pockets to run the permit gauntlet. In 1977 Chicago Bridge and Iron

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1 spent several million dollars, produced a draft EIS and then walked away. In 1983
2 another company entered the picture and spent several millions and walked away. In
3 1992 the Cherry Point Industrial Park was proposed with a multi-use dock. After
4 several years and several millions spent no permit was issued.

5
6 Barbara Lewis, Whatcom County: A Lummi Tribal member. This area has such a high
7 literacy rate and has so many natural resources that it makes us rich. What would
8 happen if the economy collapsed and we are left to fend for ourselves? Is oil going to
9 be the first thing we are going to grab? No, we are going rely on our natural resources
10 and we are one of the few places in the country and world that is left where we can
11 still live off of the land. That is changing both here and nationally. She grew up living
12 off of the land, gathering plants and medicines. She felt for the people at the meeting
13 who wanted to protect their families and wanting to protect what they hold dear to
14 them. The Comprehensive Plan is going to live on longer than four years. She wants to
15 see us doing the best we can for the environment that we are going to be relying on
16 forever. We need to stop relying on oil and rely on healthy alternatives. Our economic
17 future relies on having more green jobs. Respect the Lummi Treaty.

18
19 Chuck LaTavec, Whatcom County: Works at Cherry Point. The Cherry Point refinery is
20 the largest and newest refinery in the Pacific Northwest. Without the refineries at
21 Cherry Point we would be relying on older refineries, in Skagit County, to import their
22 products to the Pacific Northwest. This is not efficient. Today the energy industry is
23 moving much faster than ever before. Cherry Point was built to run Alaskan crude.
24 Today it sources crude from all over the world. Where is our crude source going to
25 come from in the future? It is a very challenging problem to try and figure out. This
26 issue is the same for the components they use. Their products have much different
27 components from what they used to have. This continues to evolve and change. The
28 energy industry is no different from any other industry. All industries today are
29 moving, changing and rapidly adapting to what is going to be in front of them in the
30 future. Revisit collaborative Alternative #3. Slow down and work with all stakeholders
31 to find a balanced position.

32
33 Bob McCarthy, Whatcom: Director of Safety and Risk at the Cherry Point refinery. The
34 emphasis of his job is to identify risk. The common source of risk in his and any other
35 business is moving too fast. This issue is happening too fast. People don't really
36 understand all of the details and the unintended consequences are not being fully
37 seen. He encouraged members of the commission to visit the industries at Cherry
38 Point. In order to operate safely and provide living wage jobs requires the flexibility to
39 respond to changing conditions in a changing world. Many may not fully understand
40 what the impacts of the proposals are. There does not need to be a tradeoff between
41 economic development and a healthy environment. The Cherry Point businesses
42 support the collaborative draft because it provides the right balance of economic
43 opportunity and environmental stewardship. The Cherry Point workers will provide food
44 for over 225 families. The magnitude of this effort is immense. It is the economic
45 power of these industries that make this possible. The wages of the employees are
46 shared with the community.

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1 Lucas Burdick, Whatcom County: Existing laws are important for any government. The
2 Magnuson Amendment was created in the 1970s and has been a safeguard for the
3 state. It is not a new detriment to the industry. Making sure that law is not
4 undermined by piecemeal progress would be keeping with federal law and the law of
5 the constitution. The Lummi Treaty is also law. There are a lot of ways for counties to
6 regulate industry that is within constitutional boundaries. Commissions throughout the
7 country make regulations regarding trucking, rail, etc. in the name in tourism, zoning,
8 etc. and including climate change and energy policy. The idea that it would be
9 unconstitutional to regulate industry because it affects imports is a generalization of
10 U.S. law.

11
12 June Coover, Whatcom County: Supported Alternative #3 and the comments made by
13 WBA.

14
15 Pete Romero, Whatcom County: A contractor who works at the refineries. He opposed
16 the Weimer proposal. If the industries at Cherry Point can't make decisions to adapt to
17 the changing market conditions they will eventually cease to exist. The Weimer
18 proposal may not even be legal. To spend taxpayer's money to get legal counsel seems
19 ridiculous. Supported Alternative #3. A lot of clean fuel projects have been built at the
20 facilities. All of this federally mandated. These refineries are super clean. He has
21 worked at other refineries, in other states, that aren't as clean.

22
23 Alyssa Willis, Whatcom County: Secretary for the Students for Local Industry club at
24 Bellingham Technical College. It is not known what will happen with passing of the
25 proposed Weimer amendments but significant evidence has already been presented
26 which suggests it will not positively impact Whatcom County. This proposal is
27 redundant. There has been some confusion regarding the Magnuson Amendments. The
28 Amendment states "no officer, employee, or other official of the Federal Government
29 shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit,
30 license, or other authority for constructing, renovating, modifying, or otherwise
31 altering a terminal, dock, or other facility in, on, or immediately adjacent to, or
32 affecting the navigable waters of Puget Sound, or any other navigable waters in the
33 State of Washington east of Port Angeles, which will or may result in any increase in
34 the volume of crude oil capable of being handled at any such facility (measured as of
35 October 18, 1977), other than oil to be refined for consumption in the State of
36 Washington." This bill has already been enacted. She does not want to see the
37 industries at Cherry Point be subject to excessive red tape and ambiguous language.
38 Supported Alternative #3 or #2 and urged the commission to work with the WBA
39 because they are more impartial.

40
41 Randy Ambuehl, Whatcom County: Supported Alternative #3. The industrial base at
42 Cherry Point provides a disappearing commodity in this country, which is jobs with
43 family wages and disposable income which supports the local economy. Undermining
44 the ability to maintain businesses that can provide these kinds of jobs will undermine
45 the ability to have a good quality of life for Whatcom County citizens. Supported
46 having a fourth dock. It is important to preserve the industrial base there.

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1 Robert Larson, Whatcom County: Supported Alternative #2 or #3 by the WBA. Asked
2 the commission to take the time to make resolutions that will benefit the county as a
3 whole, not only special interest groups or political agendas. Do not make regulations
4 that are beyond the federal regulations already in place. They would handicap the
5 industries from being able to improve their facilities and remain competitive. They
6 need to be viable and safe in their operations. They are environmental stewards. They
7 take the local communities needs seriously, make charitable donations and pay
8 hundreds of thousands of taxes and payrolls.

9
10 Erica Charbonneau, Whatcom County: Works for a non-profit agency in the county.
11 Asked the commission to consider the impacts of the proposals to the non-profit
12 agencies in the county. The businesses and employees at Cherry Point donate over one
13 million dollars to the community every year. That does not take into consideration all
14 of the volunteer hours of the employees and their families.

15
16 Christopher Grannis, Whatcom County: Supported the Weimer proposal. It would not
17 have a negative impact on the jobs that are here now. It may help to preserve them. If
18 you can export crude you can the export jobs that refine the crude. There is a
19 disconnect between people that believe that preventing crude export is going to hurt
20 the jobs that we have here and the very likely reality that the opposite would happen.
21 Recognize the Lummi Nation and their treaty rights. Protect Whatcom County's aquatic
22 ecology by preventing any additional piers at Cherry Point. When the first refinery was
23 being built the herring fisheries were thriving. The three piers that went in coincided
24 with the demise of the herring fisheries. Another pier would very likely wipe it out. In
25 the Salish Sea there is the risk of oil spills. Just one spill would do tremendous
26 damage. He supported the study with a completion date of 2017. Do not allow
27 anything that would violate the Magnuson Amendment.

28
29 Pam Brady, Whatcom County: Works at BP. She supported the amendments from
30 WBA. There needs to be land use policies that support a robust industrial sector in the
31 county. These policies should support investment by existing and future companies so
32 that these companies may grow, expand and flex to meet future business needs. If
33 Cherry Point companies, or other businesses, are restricted so they do not have the
34 flexibility to adapt to changing market conditions they will not remain competitive and
35 eventually cease to exist. The loss of Cherry Point businesses is not confined to the oil
36 industry. The economic loss would be felt throughout the community and the county
37 will suffer severe setbacks in its job growth and tax revenue. The companies at Cherry
38 Point have offered to meet and educate the commission. Anyone is welcome to tour
39 the refinery to learn more. It is important to understand the complex industry as
40 policies are contemplated. Reconsider Policy 2CC-16 requiring a study of the legal
41 ways the county can work to limit fossil fuels. This reference has no place in a land use
42 planning document. The county can ask for a study any time they want. Encouraged
43 adoption of Alternative #3. It recognizes a middle of the road approach.

44
45 Amy Glasser, Whatcom County: Supported the Weimer proposal. Allowing any
46 shipment of unrefined fuels overseas will no doubt result in corporations moving
47 refinery jobs overseas where labor is cheaper and environmental safeguards are not in

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1 place. The jobs here are less stable if unrefined fossil fuels are shipped overseas. The
2 land we are talking about is Lummi Nation Treaty land and they have made it very
3 clear they will not support any projects that will result in increased risk in
4 environmental accidents. Treaty rights need to be respected. Our planet is warming
5 faster than we actually imagined and the increased fossil fuel projects ignore the facts
6 that we must move away from fossil fuels, not increase them. Jobs in the industry will
7 remain but they won't last forever. She felt the people in the asbestos manufacturing
8 industry were anxious about losing their jobs also. However, they moved on and got
9 new jobs. They realized the future should be safer. We don't need to be dealing with
10 dangerous materials in order to be a successful economy. Humans are imperfect and
11 accidents happen. The environment is never the same after they do. Corporations fight
12 cleanup, we know that. They always have and always will. They don't want to pay for
13 it. They are not invested in anything that is going to cost them more money. They are
14 invested in making profit. We can't afford to pay for the spills, lose our tourists and the
15 reason why many of us came to live in this area.

16
17 Darrell Johnson, Whatcom County: Years ago he had taken a tour of a chemical plant.
18 When they put new lines in they did not remove the old ones because they did not
19 have the money, resources or motivation to do so. The chemical plant could get away
20 with that because there was only a little something still in the ground. In the refineries
21 you find very few abandoned lines because they realize that putting something new in,
22 without taking out the old, leads to confusion, dangerous situations and other
23 unintended consequences. The same thing happens with laws. If a law is already in
24 place and another law comes along and tries to enforce a law that is already not being
25 enforced people start getting confused. What happens is you are always wrong and
26 you are never wrong because of the conflicting laws. The Weimer proposal was put
27 together quickly as are the new proposals. Step back and take time to look at these.
28 What is driving the new proposals? There are already a lot of laws already in place that
29 are not being enforced.

30
31 Chris McGary, Whatcom County: Contractor at the refineries. Those supporting the
32 Weimer amendment are either those nearing retirement or young people with no
33 children. These people have no young families they are supporting. Bellingham is an
34 industrial town with lots of good paying jobs to go around. He is not a fan of having a
35 true export facility but the current industries need to be allowed to adjust to the
36 changing demands. He is tired of needless regulations chipping away at the future
37 possibilities for jobs at Cherry Point especially when it is more economically viable, via
38 the Magnuson Amendment, to build an export facility outside of Puget Sound where
39 supertankers are allowed should anyone choose to build one there. We still import
40 crude for domestic use. He refuses to stand idly by and let Weimer destroy the
41 possibility for future industrial jobs at Cherry Point. Each individual issue should be
42 looked at and given proper environmental review and permitting process. A broad ban
43 is inappropriate and irresponsible.

44
45 Andrew Eckels, Whatcom County: Part of the reason there are good paying jobs in the
46 oil industry is because the oil industries are organized, have unions and they force the
47 oil companies to give them wages and benefits that they deserve. If the oil companies

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1 had the opportunity to pay less they would shift refining somewhere else, out of the
2 U.S. if they were able to export to unrefined oil. While we need an economy that
3 supports people. Oil is not the only industry here that provides good paying jobs. The
4 fishing industry, tourist industry, etc. are massive parts of our economy. Fishing is the
5 livelihood and cultural way of life for the Lummi and Nooksack Nations. Their entire
6 way of life could be destroyed with a single oil spill from any of these new projects.
7 How many people are really looking at the analysis of climate change? The federal
8 government will not do anything in line with what climate scientists say. They say we
9 need to dramatically cut emissions or we will experience runaway warming. Climate
10 change is happening much faster than anyone thought it would. There will be dramatic
11 changes in his lifetime. If we are really serious about our future we have to look at
12 things honestly and move away from dependence on fossil fuels.

13
14 Ann Douglas, Whatcom County: Supports the Weimer proposal. Overregulation does
15 cause problems, especially when there are conflicting laws. BP was not clean until
16 there were lawsuits that forced them to be clean. They are clean because they are
17 highly regulated. She has leukemia which is associated with high levels of benzene in
18 the water. She lived in an area in California where she was probably exposed to the
19 benzene. There needs to be intelligent regulation on industry. Although BP is a
20 relatively recently built refinery, if they are allowed to export oil you will find their next
21 newest refinery in a foreign land. The jobs will leave here. This country isn't just about
22 money but also about taking care of human beings. We need to look at regulations
23 that will help jobs stay here and keep the country clean.

24
25 Rich Stump, Whatcom County: Refinery worker. Supports the WBA proposal or the
26 option to do nothing. He did not see what the problem was with the original language
27 in the Comprehensive Plan. The refineries are not currently exporting oil and he does
28 not see that happening. If they have to do that in order to keep their doors open that
29 should be allowed to happen. If these businesses go away they will never come back.
30 The more regulations we add will make things harder. Think carefully about what they
31 do and what regulations we add to these businesses. Someday there will be another
32 source of cheap heat and they won't have their jobs.

33
34 Bob Burr, Whatcom County: He has heard about preserving jobs for his grandkids but
35 he is concerned about preserving life for his grandkids. Planning is about the future.
36 You have to read the future in order to make decisions. His reading of the future, along
37 with many scientists, is mass extinction. In considering the future you have to consider
38 that we now have a new administration for this country that is going to put in charge
39 of the EPA a person who does not believe in climate change. It is very possible that the
40 regulations that exist now are going to be taken away. The effort to preserve our
41 planet now has to shift to the local level since we will not have support at the federal
42 level. Therefore, the Weimer proposal is very important.

43
44 Carole Perry, Whatcom County: All politics are local. She and her husband were in
45 attendance when Councilmember Weimer proposed his amendments. When he
46 proposed them there were no other public around. The entire Comprehensive Plan had
47 been gone through and then he did this at the very end. Even other members of the

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22

1 council said it was not proper procedure. Days later PDS put out a statement asking for
2 input. The process is not going right. Did the commission notice at the meeting who
3 the first 10 people were that testified? There was some manipulation there too. This
4 was brought in through the back door at the last minute. The commission had already
5 done their work.

6
7 Jeff Hallender, Whatcom County: Encouraged the commission to do more research.
8 Tour the refineries to get more information. He commented about testimony he heard
9 regarding cleanup of spills. He stated that the industry has made tremendous strides in
10 terms of reliability and safety. They have extensive drills to try and be prepared to
11 respond to accidents. There is a state law that taxes the refineries and takes that
12 money to put in a fund that the state can then use to help pay for spills.

13
14 Chris Johnson, Whatcom County: Representing the NW Washington Central Labor
15 Council. They oppose the Weimer proposal. They could support Alternative #1 if
16 language was changed to simply refer to export of unrefined crude oil. He personally
17 supported the WBA proposal. He supported his family on wages he earned at the
18 refinery. With this hurried process to push this through it feels like the people that
19 make their living at the Cherry Point refineries are getting the bum's rush. They
20 deserve a fair and open hearing and the ability to have back and forth with their
21 government.

22
23 Natalie Chavez, Whatcom County: Encouraged the commission to watch
24 documentaries. *March Point* is a documentary that investigates the impact of the two
25 oil refineries. The two refineries were built in the late 1950's on land that was once
26 part of the Swinomish Tribal lands. *Wasted Waters* is a far reaching investigation into
27 the U.S. great water ways. There is a portion that explains how the water pollution has
28 affected our orcas as well. Dead zones are a local problem. Every 10 years the dead
29 zones double in size and number around the world. In the Gulf of Mexico there is a
30 dead zone that is as large as the state of Massachusetts. Some of our worst pollution is
31 invisible. The water may look okay but science tells us that it's not. There are over 100
32 chemicals on scientists watch lists. Many of these chemicals include "endocrine
33 disrupters". These kill fish, cause mutations, threaten human health, raise the risk of
34 breast cancer, lower sperm count, etc. Approving a Comprehensive Plan with the
35 Weimer amendments does not put people at risk in the county. This is not about
36 shutting down anyone. This is not about people losing their local jobs, volunteers not
37 being involved anymore or donations not being donated. This about using common
38 sense, integrity, creating space to reach our highest potential, protecting our health,
39 our children's health and the health of our environment. This needs to be about
40 balance and having a harmonious transition into healthier industries and a healthier
41 way of life. Many people may not be aware that ?? swimming pools have been in
42 regular use for over 50 years in European countries. People there would not even
43 conceive of swimming in toxic chlorinated swimming pools. It is time for us to evolve.

44
45 Rick Poitress, Whatcom County: Lives on Point Whitehorn about three miles from
46 Cherry Point. The Weimer amendment was not well thought out. He supports the
47 proposal from the WBA or Alternative #2. There has been a lot of comments about the

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1 refineries leaving. There is nothing to stop BP from going other places. They are an
2 international company. They can go where they want. He addressed the fourth pier.
3 This is the last deep water port on the west coast where there is an opportunity to
4 make that an economic driver in Whatcom County.

5
6 Max Perry, Whatcom County: Encouraged the Cherry Point workers to keep paying
7 attention. Go to the County Council meetings. That is where the Weimer amendment
8 came up out of the blue. They bring these types of things up when no one is there. The
9 process at the commission meeting was manipulated. The signup sheets were
10 manipulated. The first 10 to 15 speakers were the environmentalists. He has seen that
11 happen at the County Council meetings. Be aware of these people doing this.

12
13 Mike Kimmick, Whatcom County: Takes exception to the statements of the previous
14 speaker regarding the manipulation of the signup sheets. For the business association
15 to say they have a collaborative proposal is not true. It was a special interest business
16 group that put it together. He supports the Weimer amendment because the export of
17 crude oil is wrong. It will also export jobs and resources.

18
19 Anastacia Lancombe, Whatcom County: In support of the Weimer amendments.
20 Planners need to do the planning that is consistent with the best interest in the county.
21 Not just for the next 5, 10 or 20 years but also for the next 50 to 75 years. She
22 supported the Weimer amendments because right now there is a balance of industry,
23 agriculture, fishing and tourism. If we build a fourth pier we might approach a tipping
24 point in the bay where we eradicate the herring. If we eradicate the herring we will kill
25 the salmon and then the orcas. The refineries are a very clean, but that is not usually
26 where the really big problems are. It is getting the oil and the crude to and from the
27 refineries. Look to the future to figure out what will be the best balance for the county.
28 Limiting the fourth pier would force them to become agile by moving into the next
29 century and cultivating wind farms, solar farms, etc. which is going to be more needed
30 as time goes by. Expanding the uses at Cherry Point would diversify the economic base
31 in the county.

32
33 Terry Montonye, Whatcom County: All indications show that the herring depletion is
34 not due to the piers but to herring seining in the early 1980's which was authorized by
35 the state. The key issue the commission needs to find is someone who has intimate
36 knowledge of what has happened to the herring over the last 30 years. It is a mistake
37 to presume that a fourth pier will have any impact on the herring.

38
39 Tyler Headman, Whatcom County: Works at the refinery. The refineries have been
40 very mischaracterized. They have proven themselves to be good neighbors. They take
41 care of their spills. Accidents do happen, but they are taken care of. This is no more
42 than a property rights issue. The companies have legally purchased the land and
43 legally permitted everything they have done. They have the right to do what they can
44 with their business. It is not the right of the county to stop that while the other
45 agencies, that actually regulate, do not stop it. They are great neighbors and great
46 employers. This does not need to be made an issue.

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1 Lindsay McDonald, Whatcom County: Stated that as she spoke the artic was melting,
2 which is changing the global atmospheric patterns and global ocean patterns. The
3 ocean is becoming acidified because of carbon dioxide emissions which is affecting our
4 ability to raise oysters in our region. Coastal cities are in risk of swamping. We have to
5 see the big picture. We are on the front lines of a huge bubble. The old companies
6 have assets in the ground which need to be removed. The forests of the west are
7 burning, Pacific islands are becoming inundated and the country is in a huge drought.
8 She would like to see who can connect the dots, including the workers at Cherry Point
9 who need to face the fact that the oil industry has to leave their product in the ground
10 for us to stay under two degrees. We need to go through a transition that addresses
11 the needs of everyone, including the workers at Cherry Point. We are on the front lines
12 of the planet's struggle. Isn't BP the one that had the Deepwater Horizon issue? How
13 did they fix it? With a bunch of dispersements that caused more problems. Is that what
14 they will do here if one of their tankers collides?

15
16 Alex Bergsma, Whatcom County: Is a refinery worker. Through his work he has
17 learned how to do a lot of unsafe things. He does not feel unsafe in his work at the
18 refinery. There is no lack of safety. He urged the commission to visit the refineries.
19 They do the best they can with the environment.

20
21 Jeff Hedricks, Whatcom County: Everyone agrees this is a beautiful place and no one
22 wants to make it go away. The businesses at Cherry Point have been very responsible.
23 There are federal mandates and regulations that they often go above and beyond
24 because that is good business. If they export things that cause damage it will cost
25 them money which is not good business. If these amendments are allowed who is
26 going to be next? These businesses are a great asset to the community. How are we
27 repaying them by changing the rules? That is not fair or good business practices.
28 Supported Alternative #2 or to communicate with the businesses to find a good
29 solution.

30
31 The hearing was closed to the public.

32
33 Commissioner McClendon asked Mr. Buckingham if the county has a legal right to ban
34 exports.

35
36 Mr. Buckingham stated no.

37
38 Commissioner McClendon stated there seems to be some confusion that is what the
39 county is trying to do, which is incorrect. She then asked Mr. Buckingham if there are
40 instances, in what they have recommended, which ignored his legal advice.

41
42 Mr. Buckingham stated yes. The commission continues to put policy in the text, which
43 is bad form but does not cause any problems.

44
45 Commissioner McClendon asked staff if there is anything in the proposal that restricts
46 upgrades to existing industrial facilities.

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1 Mr. Aamot stated that Policy 2CC-3 relates to future development or expansions. Policy
2 2CC-11 supports a limit on the number of industrial piers. 2CC-15 encourages
3 enforcement of the Magnuson Amendment, which is already federal law. 2CC-16 would
4 study legal ways to limit exports. In summary the existing proposal does not have
5 anything that would restrict upgrades. He stated he did not know where the study may
6 lead.

7
8 Commissioner McClendon asked if any of the language makes the regulations stronger
9 than the federal language.

10
11 Mr. Aamot stated they are only policies, not regulations. The study may lead to
12 potential regulations.

13
14 Commissioner McClendon stated a number of people commented on the moratorium,
15 which is temporary. When does that go away?

16
17 Mr. Aamot stated he did not know what the council will do but the moratorium will
18 expire about April 2017.

19
20 Commissioner Deshmane asked what would happen if the council passes what the
21 Planning Commission has currently drafted and then the Magnuson Amendment was
22 repealed.

23
24 Mr. Aamot stated that in 2015 congress lifted the general ban on crude oil exports but
25 that did not change the Magnuson Amendment so the Puget Sound has different rules.
26 If congress repealed the Magnuson Amendment there would not be any prohibitions on
27 export of crude oil exports.

28
29 Commissioner Honcoop asked for clarification on expansion. Right now they can't apply
30 because of the moratorium. Does the proposal allow for future expansion or just
31 maintenance?

32
33 Mr. Aamot stated after the moratorium expires, if a refinery wants to expand it is
34 encouraged in Policy 2CC-3 consistent with the 4 point in the policy but that is not
35 regulatory.

36
37 Commissioner Honcoop stated that is true but regulations could be developed based on
38 policies.

39
40 Commission Knapp asked why the proposal from the WBA, stated as Alternative #3,
41 wasn't part of the other alternatives presented and considered.

42
43 Mr. Aamot stated the process is that proposals get docketed early in the year. There is
44 a Public Participation Plan that classifies projects at different levels. Level 3 has the
45 greatest amount of review which this proposal is. Level 3 states the county is to come
46 up with alternatives that are reviewed. The WBA was invited to submit a proposal
47 which Mr. Personius said would be reviewed like any other comment received from the

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1 public. The commission decided to incorporate some of that language which they can
2 do along with comments from others.

3
4 Commissioner Knapp addressed the suggested conspiracy regarding the way people
5 signed up to speak. He stated he did not think it was really a conspiracy.

6
7 Mr. Aamot stated the signup sheet to speak was put in the back of the room and
8 people sign up when they come in. He was not aware of any issues with it.

9
10 Commissioner Vekved stated it would be useful to get some understanding of how
11 many barrels of oil are shipped and if they are stuck at a certain amount.

12
13 Commissioner McClendon asked where in the policy does it matter if we know whether
14 they can export or import more crude.

15
16 Commissioner Vekved stated he is concerned because it has been stated by the public
17 that there is a great deal of concern regarding the notion of exporting in general so it
18 would be useful to know.

19
20 Commissioner Honcoop addressed the proposal by the WBA. He took issue with the
21 staff's statement that it was just another public comment. The Planning Commission
22 requested alternatives which they would then consider. Their alternative should have a
23 fair hearing which is no different than any of the other alternatives. If it needs to be
24 docketed it should be. They had not really had any time to review it.

25
26 **Commission Honcoop moved to give the WBA proposal, Alternative #3, fair**
27 **presentation by staff to the commission and that it be given fair consideration**
28 **as the other alternatives were.**

29
30 **Commissioner Knapp seconded.**

31
32 Commissioner McClendon agreed with staff that it should be considered as public
33 comment. To hold a public hearing on this one alternative does not make sense. The
34 commission agreed from the beginning of the process to work from the Weimer
35 proposal which could have items pulled into it.

36
37 Commissioner Hunter stated the commission did not request it. The commission simply
38 said that any public comment was welcome until November 10th. It is only public
39 comment, it is not special. Public comment from some people is not entitled to special
40 attention. It clearly got attention since the commission adopted some of it.

41
42 Commissioner Rowson agreed that the WBA proposal is only public comment like all of
43 the rest they have received. It is worthy of thorough review.

44
45 **The vote on the motion failed (ayes-4, nays-4).**
46

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1 Commissioner Deshmane referred to a previous comment regarding data collection. He
2 stressed that it be done in a way that holds the presenter of the data accountable. It
3 should be done in a forum that is very transparent because data can be skewed and
4 controlled in a certain way.

5
6 Commissioner Hunter stated he was opposed to collecting that type of data. It does
7 not contribute anything.

8
9 Commissioner Rowson would like staff to restructure the commission proposal to
10 reflect the structure of the WBA proposal because he likes that structure better. There
11 would not be any word changes, structure only.

12
13 Commissioner Hunter was not in favor of that. If the commission is not happy with the
14 organization that needs to be addressed at the next meeting.

15
16 The meeting was adjourned at 10:15 p.m.

17
18 Minutes prepared by Becky Boxx.

19
20
21 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

22
23
24
25
26 _____
Kelvin Barton, Vice-Chair

Becky Boxx, Secretary

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1

1 **Call To Order:** The meeting was called to order, by Natalie McClendon-acting
2 Chairperson, in the Whatcom County Council Chambers at 6:30 p.m.

3
4 **Roll Call**

5 Present: Natalie McClendon, Jerry Vekved (by phone), Gary Honcoop, David Hunter,
6 Andy Rowson, Atul Deshmane

7 Absent: Nicole Oliver, Kelvin Barton, Michael Knapp

8
9 **Staff Present:** Mark Personius, Matt Aamot, Becky Boxx

10
11 Due to the absence of both the Chair and Vice-Chair Commissioner Rowson nominated
12 Commissioner McClendon as acting Chair. Commissioner Honcoop seconded. The
13 motion carried.

14
15 **Department Update**

16
17 Mark updated the commission on:

- 18 • The Planning Commission schedule
- 19 • Reappointment to the Commission of Andy Rowson and Atul Deshmane. There
- 20 is still one vacancy which can be filled from either district 1 or 4.
- 21 • There was an appeal of the Cherry Point SEPA determination which will be heard
- 22 by the Hearing Examiner.

23
24 **Open Session for Public Comment**

25
26 Carole Perry, Whatcom County: She attended a County Council meeting the previous
27 Tuesday. In one of the committee meetings they were discussing fire flow. Because
28 two of the council members had been affected by fire flow they were very concerned.
29 Because they were not sure of all of the regulations one of them made a motion to
30 take the issue back to the commission in order for them to gather more information.
31 She had never seen that happen before. The motion failed because some of the council
32 members didn't want it going back to the commission. The council does know that the
33 commission does have some experience to forward to the council.

34
35 **Commissioner Comments**

36
37 There were no commissioner comments.

38
39 **Approval of Minutes**

40
41 December 8, 2016: Commissioner Deshmane addressed page 13, line 28. A member
42 of the public made a comment regarding something Commissioner Deshmane had said in
43 the past. Commissioner Deshmane stated he did not believe he had made that
44 comment.

45
46 Commissioner Rowson moved to approve the minutes as written. Commissioner
47 Deshmane seconded. The motion carried.

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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 policies 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.

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1 Sandy Robson, Whatcom County: The lease application for a fourth pier is definitely no
2 longer in existence. That language regarding the pier should be removed from the
3 draft. She did not think that the comment from the Whatcom Business Alliance (WBA),
4 described by the organization as a collaborative alternative, should be given any higher
5 level of consideration than any other submitted comments. The fact that the WBA met
6 with the Planning Department staff is inappropriate. She hoped that the commission
7 did not try to place the WBA suggestions at any higher level. There should not have
8 been any alternatives at all generated by PDS before any SEPA checklist was made. It
9 confused things for the public. The council directed one proposal only for review by the
10 commission. The other alternatives were pushed by the county administration. She
11 contacted the DOE who replied stating that the county has a fair amount of flexibility
12 when conducting SEPA review on their Comprehensive Plan updates. They also said
13 that usually the analysis of alternatives is better suited for an EIS rather than a SEPA
14 checklist. She asked that the commission only look at the council proposal and treat
15 the other alternatives as comments.

16
17 Tony Larson, Whatcom County: President of the Whatcom Business Alliance. There was
18 a lot of effort put into their recommendation and it was done in good faith. The intent
19 of the preamble, in the policy sections, was to create language that is factually
20 accurate and created a balance between the environment, the quality of life and
21 business. These are things we all share and are important to everyone. They share the
22 goal to improve the quality of life for everyone in the county as do the industries at
23 Cherry Point. The industries do this through their environmental stewardship and
24 economic opportunities that are extraordinary in the county. There was a study done
25 by the University of Washington and Western Washington University that shows that if
26 the industries at Cherry Point sneeze the Whatcom County economy will catch a cold.
27 The final product recommended to the council should recognize the Cherry Point
28 industries as a good community partner, which is what they are. It should allow them
29 to thrive and adapt to the changing marketplace. That is what is fair and what any
30 business requires. It should require environmental stewardship and community review.
31 Alternative 3 does exactly that. Alternative 3 was written as a compromise. This was
32 done at the request of the commission.

33
34 Ron Coleson, Whatcom County: Representing the Mt. Baker Group of the Sierra Club.
35 The club appreciates all of the revisions made and feel that the final additions to 2CC
36 should be further scrutinized. 2CC-3, as maintained in draft, it is important to
37 acknowledge the history of Cherry Point and the Treaty of 1855. This policy should
38 support collaboration with the Lummi Tribe, specifically for archeological review of sites
39 at Cherry Point. This is respectful to the Lummi Nation and is absolutely necessary.
40 2CC-11, states, existing vested rights, approvals or agreements, is meant to exempt
41 Gateway Pacific Terminal (GPT) and must be removed. All proposals on the site must
42 be held to the same standard for approval and GPT should not be given any leverage
43 over other companies. This policy could also be improved by indicating that since the
44 marine preserve is now closed to any new piers the county no long supports additional
45 piers. In policy 2CC-15 the staff recommendation does not protect against
46 piecemealing of expansions that would not require public permits. The original
47 proposal's intent is to ensure that the county does not allow minor developments that

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1 violate the Marine Mammal Protection Act and Magnuson Amendment. The study on
2 fossil fuel export should not take two years. The information can be readily available
3 and a deadline in 2017 is ample time.

4
5 Alex Ramel, Whatcom County: Representative for STAND. Urged the commission to
6 pass the draft. Policy 2CC-3 ideally would include reference to making bulkheads the
7 last alternative. It should include reference of consultation with the Lummi Nation as
8 part of the archeological review. Encouraged the commission to update the narrative in
9 Policy 2CC-11 to reflect the fact that both the Army Corps of Engineers and
10 Washington State Department of Natural Resources have effectively precluded the
11 possibility of a fourth pier being constructed at Cherry Point. Encouraged them to
12 change the conclusion date of the study to December 2017. Encouraged them to
13 change back the two references to coal, oil and natural gas back to the original
14 unrefined fossil fuels.

15
16 Eddy Ury, Whatcom County: Representing ReSources. There are different legal
17 opinions regarding the Magnuson Amendment. He stated they were happy to see
18 language in the draft that asks agencies to enforce the Magnuson Amendment but
19 would like it to go a little further. There are cases where certain projects may not be
20 automatically triggering Magnuson review or there might be change in uses. Whatcom
21 County may receive minor permit applications for piecemeal upgrades that will
22 facilitate increased outbound shipping of bitumen and crude oil through existing piers
23 arriving by existing pipelines. There may not be any significant federal review of these
24 applications. Regarding the rewritten chapter by the WBA it is nice to see their
25 attempts at compromise. They did agree with them on some language, specifically
26 Policy 2CC-2 which states: Ensure that developments at Cherry Point UGS maintain
27 and operate under management plans that accomplish the goals of the Aquatic
28 Reserve Management Plan.

29
30 Wendy Harris, Whatcom County: Supported the comments made by Sandy Robson and
31 STAND. She expressed her distaste for the fact that this process is even taking place.
32 It is inappropriate. She was not criticizing the Planning Commission. This issue should
33 never have come to them. The County Council issued a resolution with one person
34 against. That one person argued extensively for their position which was rejected. The
35 council knew what they wanted and were told by legal counsel that it had to come
36 back to the commission. Once it came to the commission it turned into a three ring
37 circus because the Planning staff decided that they were going to set this up as some
38 sort of EIS type review with alternatives. She has never seen a resolution treated in
39 this manner. The council knows what they want. They discussed it extensively. They
40 weren't asking for anyone's input because they had already received it. A lot of time
41 has been wasted. This has been nothing more than an opportunity for the
42 administration to allow businesses at Cherry Point to come in and get some extra
43 words in and try to get the community riled up. It is completely political and
44 inappropriate. What would be appropriate would be for the commission to make
45 changes that have to do with circumstances that have changed since this first came to
46 them for review. There is no need for any major changes. There was no change in

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1 facts or circumstances here, it was just manipulation. More and more that has come to
2 define what is happening in county politics. Someone needs to say it's wrong.

3
4 Erin Anderson, Whatcom County: Speaking on behalf of the WBA. The comprehensive
5 plan process is driven by the people. It is a bottoms up process that requires counties
6 to adopt a public participation process. It is not a process to be conducted outside of
7 the public. Regarding changing circumstances, changes to the comprehensive plan or
8 zoning can be docketed for amendment every year whether there is a change in
9 circumstances or not. It is not a change in circumstances test. Regarding Policy 2CC-3,
10 you have been encouraged to enunciate a preference for the Lummi Nation, however,
11 she did not think it was a wise move to identify one tribe and not others because they
12 all have different rights and they are recognized as separate governments. There is a
13 process for them to establish their rights. It is a worrisome path to call out one for
14 rights and not others. As for consultation, consultation with tribes is a federal a
15 process. Washington State does not have a similar process. The Washington State
16 Historical Preservation Office does consult with the tribes and jurisdictions as needed.
17 As far as bulkheads and hardening, that is already taken care in the Whatcom County
18 Shoreline Master Program. She encouraged the county to spend taxpayer's money
19 wisely, including money spent on the study. To take taxpayer's money to fund a study
20 that prevents the county from growing their businesses and adapting to the future
21 seems unreasonable.

22
23 Alyssa Willis, Whatcom County: Secretary for the Students for Local Industry Club at
24 the Bellingham Technical College. It is really important to have a forum for the public
25 to interact and get involved in politics, etc. As a person who studies process
26 technology, there is a difference between crude oil and refined oils. Don't change the
27 language. She supports the WBA alternative.

28
29 Carole Perry, Whatcom County: Explained why this issue came to the commission.
30 During a work session the council slipped in these amendments. There was no one left
31 at the meeting. Gradually people heard about what was happening and began to pay
32 attention and attend meetings. There were a lot of business people at one of the
33 meetings and Councilmember Weimer told them the council wanted their input. At the
34 meeting in December there was no mention of any other alternatives.

35
36 Dena Jensen, Whatcom County: As far as the acknowledgement of the Lummi Tribe,
37 she did not feel this gave them any super rights. The Cherry Point area is an area that
38 is sacred territory to them which we need to acknowledge. Native American nations
39 historically have not been properly consulted. Their traditional territories have been
40 taken from them and abused. It would be proper to stand up against that. If we need
41 to mention other tribes we should certainly do that. It is in no way harmful to
42 recognize the importance and significance that Cherry Point has to the Lummi Nation.

43
44 The public comment period was closed.
45

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1 **Commissioner Honcoop moved to adopt the staff proposed changes, as**
2 **outlined in the memo dated January 3, 2017. Commissioner Rowilson**
3 **seconded. The motion carried (ayes-6, nays-0).**
4

5 Commissioner Honcoop asked where things are in regards to the proposed study. Has
6 it been funded?
7

8 Mr. Personius stated the council adopted a budget of \$150,000 for the study which will
9 be done by the council office.
10

11 Commissioner Honcoop stated the language is not policy so what is the need to have it
12 in the Comprehensive Plan. The council is moving ahead with the study regardless.
13 Don't they have the ability at any time to request a study?
14

15 Mr. Personius stated they do have that jurisdiction.
16

17 **Commissioner Honcoop moved to delete Policy 2CC-16. Commissioner Vekved**
18 **seconded.**
19

20 Commissioner Deshmane asked staff if the council has indicated a timeline for the
21 study.
22

23 Mr. Personius stated he did not believe the budget adoption established a timeline.
24

25 Commissioner Deshmane asked if any parameters have been established.
26

27 Mr. Personius stated he was not aware of any.
28

29 Commissioner Rowilson asked if the study has started yet.
30

31 Mr. Personius stated it has not started yet.
32

33 Commissioner Honcoop spoke to his motion. The language does not fit in the
34 Comprehensive Plan. This policy will still be in the plan after the study is done which it
35 shouldn't be.
36

37 Commissioner Deshmane spoke in opposition to the motion. He stated this is the
38 opportunity to prioritize the study. The purpose of the study should be discovery and
39 understanding rather than specifying an outcome. In the current language there is
40 somewhat of an implied outcome. They know what the objectives of the council are.
41 Some of the questions that would be great to have answered in the study would be:
42 Has export happened in our region? Has this been a concern? What is the real cause of
43 the herring decline? What type of industrial activities harm habitat in general? What
44 would be the impact of a Magnuson Amendment repeal? How do treaty rights impact
45 commercial development in general? What kind of heavy industry will be welcomed at
46 Cherry Point?
47

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1 Commissioner Hunter stated he felt there was confusion about the real purpose of
2 Policy 2CC-16. Now, more than ever, those places in our nation that have a genuine
3 interest in environment concerns and the health and welfare of the American people
4 are wanting to be sending out messages that they intend to remain, in spite of
5 whatever has happened in the country, attentive to and concerned about the ways in
6 which we are, as a people, degrading our environment, particularly through carbon
7 burning. The policy is simply a statement that he is happy to have in a place where it
8 is apparently getting a good deal of attention. We need to create a living environment
9 which is open for employment that is healthy and closed to processes which are
10 unhealthy. This is a good focus. It may not fit the general rule as to what goes into the
11 Comprehensive Plan but it does not make it unreadable, inoperable or hard to
12 understand.

13
14 Commissioner Rowlson asked staff if the language adds value. Is there legal recourse
15 to point to it? Does it help the county in some way regarding the process?

16
17 Mr. Personius stated yes, because it clearly shows intent, whether you disagree with
18 that intent or not. It also shows the rationale for the other amendments to the chapter.

19
20 Commissioner Rowlson stated that the study is going to happen and having it in the
21 chapter is not super relevant, but leaving it in would leave them the option to do
22 another study to counterbalance it. Since the commission can recommend studies he
23 would like to see a study done which looks at ways the county can support economic
24 development in the Cherry Point UGA.

25
26 Commissioner Deshmane asked why have two different studies. The commission can
27 add language to the current recommended study.

28
29 Commissioner Rowlson stated he was open to that idea. He proposed adding a second
30 study.

31
32 Commissioner Honcoop stated the first study is definitely designed to find legal ways
33 the county can work to limit crude oil, etc. It has already been predetermined what the
34 result will be. We know what the council's goal is. He did not see putting two studies
35 together working.

36
37 Commissioner Vekved stated this is a case of where the cart is before the horse. One
38 would expect to read the results of this study, in the preamble text, as justification for
39 policy. The policy might be what is currently in the preamble text. He was opposed to
40 the premise of the study because it is kind of a witch hunt. However, the council is
41 going to do what they want to do. He wants to have the study reflect the language in
42 the preamble text and policies as a result of the study. He supported the motion.

43
44 Commissioner Hunter stated he remains amazed that we imagine that the
45 degradations that are being put upon our planet by far too heavy use of fossil fuels is
46 still a witch hunt. We don't have to guess about this any longer. We don't have time to
47 ponder whether it is true or not. We know it's true. We seem shocked to be asked to

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1 do something about it. This is only a note to us that we need to take a step back. He
2 didn't know if there were any foregone conclusions about what the study will bring. He
3 was not optimistic that they would find legal ways of avoiding the Commerce Clause,
4 although he would like to believe they could. He did not think there was anyone in
5 Whatcom County that imagines they can just tear down the industries at Cherry Point
6 to the extent that they are no longer able to produce. This is a call they need to pay
7 attention to. It should not be so difficult. Businesses do not need our help. They are in
8 the business of making profits. If they can't do it they will stop doing it. He was not
9 interested in developing an economic plan. Cherry Point does not need them for that.
10 When they figure out it is going to profit them more by moving abroad than it does to
11 stay they will do that and drop every single employee they have to do it. That is all
12 they care about. It is time to stop pretending.

13
14 Commissioner Deshmane stated he did not like the way Policy 2CC-16 currently read.
15 Regarding a second study it is currently not funded. If we recommend a second study
16 maybe that will force the council to fund it.

17
18 Commissioner McClendon stated she would vote against the motion. Whether the
19 commission adopts it or not this is what was adopted by the council and they will
20 proceed with a study. We don't need to spend time on the issue. She agreed with
21 Commissioner Hunter regarding anyone finding legal ways to get around the
22 Commerce Clause but we have to go through the process to make it clear to everyone,
23 on both sides of the issue, what the federal laws are that have to be dealt with.

24
25 Commissioner Honcoop stated a study is not a good way to spend taxpayer money. We
26 will also be spending taxpayer money to defend it which will be a long expensive
27 process.

28
29 **The vote on the motion failed (ayes-3, nays-3).**

30
31 **Commissioner Rowlson moved to add a new Policy, 2CC-17, to read: While**
32 **conducting a study as outlined in Policy 2CC-16 to limit some exports from**
33 **the Cherry Point UGA the county shall also undertake a study, to be completed**
34 **by December 2018, to examine ways the county can work to support**
35 **economic development of the Cherry Point UGA and other industrial areas**
36 **throughout the county. Based on the study develop or update economic**
37 **development strategies, programs and initiatives.**

38
39 **Commissioner Deshmane seconded.**

40
41 Commissioner Rowlson stated during the Great Recession nothing happened regarding
42 economic development. This is the opportunity to make something happen.

43
44 **Commissioner Deshmane proposed an amendment to the motion. Assess, in**
45 **the Cherry Point UGA, the impacts of industrial activity and what can be done**
46 **to support clean, low carbon development.**

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1 Commissioner Rowlson stated he was not in favor of the amendment. It should be
2 treated as two different issues.

3
4 **Commissioner Deshmane withdrew the motion.**

5
6 Commissioner McClendon asked staff if the motion duplicated what is already
7 happening with economic development and low carbon development.

8
9 Mr. Aamot stated the county just updated the Comprehensive Economic Development
10 Strategy in 2015. The Port of Bellingham is one of the agencies responsible for
11 promoting development in the county. There are a number of initiatives in process.

12
13 Commissioner Deshmane asked if the proposed language should be limited to just the
14 Cherry Point area, not all industrial areas in the county.

15
16 Commissioner Rowlson stated he would like it to apply to all industrial areas.

17
18 Mr. Aamot stated the meeting was advertised for the Cherry Point area, which is
19 something to keep in mind.

20
21 Commissioner Hunter asked what the purpose of the motion was. Was Commissioner
22 Rowlson interested in promoting clean economic development?

23
24 Commissioner Rowlson stated he had a preference for clean economic development.

25
26 Commissioner Hunter stated that the proposed language is just a repeat of what is
27 already in the Comprehensive Plan.

28
29 Commissioner Rowlson stated the language in Policy 2CC-16 addresses exploring
30 things such as Comprehensive Plan amendments, etc. for the council to consider in
31 order to eliminate the export of fossil fuels from Cherry Point. The economic
32 development study may help them study ways they can propose changing rules to help
33 with economic development. He stated he did not want to go as far as proposing
34 certain codes, etc. He wanted to leave the study more open.

35
36 Commissioner Honcoop stated he would support the motion because it provides a
37 better balance to 2CC-16 which is on a direct path for the purpose of restricting
38 activity at Cherry Point. If we are going to restrict activity there and we still have it
39 designated as a heavy industrial UGA we should provide some answers as to what
40 Whatcom County will accept. There have been multiple industries that have tried to
41 come here and every one of them has not been allowed.

42
43 Commissioner McClendon stated she opposed the motion because the entire section
44 being considered does not need balanced. Everything about the section states what the
45 parameters are.

46
47 **The vote on the motion failed (ayes-3, nays-3).**

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1
2 **Commissioner Honcoop moved to change 2CC-13 to read: Work with the**
3 **Cherry Point industries industrial land owners to maximize public access to**
4 **the Cherry Point beaches without compromising industrial security.**
5

6 **The motion failed for lack of a second.**
7

8 **Commissioner Deshmane moved to change Policy 2CC-16 to read: The County**
9 **shall undertake a study to be completed by December of 2018 to examine**
10 **existing County laws, including those related to public health, safety,**
11 **development, building, zoning, permitting, electrical, nuisance, and fire codes,**
12 **and develop recommendations for legal ways the County can work to limit**
13 **~~crude oil, coal, and natural gas exports from the Cherry Point UGA above~~**
14 **~~levels in existence as of July 5, 2016~~ enhance clean and low carbon industry.**
15 **The study shall review and analyze any legal advice freely submitted to the**
16 **County by legal experts on behalf of a variety of stakeholder interests, and**
17 **make that advice public as part of the study report.**
18

19 **Commissioner Honcoop seconded.**
20

21 Commissioner Deshmane stated the refineries do not need Whatcom County's help
22 with planning. This proposal would actually help create a template for other businesses
23 to come here. Instead of saying what they can and can't do this would encourage them
24 to come here and create change.
25

26 Commissioner Hunter stated he had nothing against adding the language, however he
27 did not want to get rid of the other language. Why get rid of what is the heart of the
28 policy?
29

30 **Commissioner Hunter made an amendment to read: The County shall**
31 **undertake a study to be completed by December of 2018 to examine existing**
32 **County laws, including those related to public health, safety, development,**
33 **building, zoning, permitting, electrical, nuisance, and fire codes, and develop**
34 **recommendations for legal ways the County can work to limit crude oil, coal,**
35 **and natural gas exports from the Cherry Point UGA above levels in existence**
36 **as of July 5, 2016, and enhance clean and low carbon industry. The study**
37 **shall review and analyze any legal advice freely submitted to the County by**
38 **legal experts on behalf of a variety of stakeholder interests, and make that**
39 **advice public as part of the study report.**
40

41 **Commissioner Vekved seconded.**
42

43 Commissioner McClendon stated similar language is already in Policy 2CC-3. Do we
44 need to duplicate it in the study?
45

46 Commissioner Vekved stated the study will reveal more than what is stated in Policy
47 2CC-3.

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1
2 **The vote on the amendment carried (ayes-5, nays-1).**

3
4 **Commissioner Rowilson moved to change Policy 2CC-16 to read: The County**
5 **shall undertake a study to be completed by December of 2018 to examine**
6 **existing County laws, including those related to public health, safety,**
7 **development, building, zoning, permitting, electrical, nuisance, and fire codes,**
8 **and develop recommendations for legal ways the County can work to limit**
9 **crude oil, coal, and natural gas exports from the Cherry Point UGA above**
10 **levels in existence as of July 5, 2016, and enhance attract and support clean**
11 **and low carbon industry. The study shall review and analyze any legal advice**
12 **freely submitted to the County by legal experts on behalf of a variety of**
13 **stakeholder interests, and make that advice public as part of the study report.**

14
15 **Commissioner Honcoop seconded.**

16
17 **The motion carried (ayes-4, nays-2).**

18
19 **Commissioner Vekved moved to change page 2 (of the Planning Commission**
20 **draft), line 26-35 to read: Since adoption of earlier versions of this**
21 **Comprehensive Plan governments have increased their recognition of the**
22 **observed and projected effects ~~there has been an increasing recognition of~~**
23 **~~the impacts~~ that fossil fuel extraction ~~use and transportation and use has~~**
24 **have on human health, and both the local and global environment. The Cherry**
25 **Point UGA contains the second-largest emitter of carbon air pollution in**
26 **Washington State (Ecology, June 2016).**

27
28 **Commissioner Hunter seconded.**

29
30 **The motion carried (ayes-6, nays-0).**

31
32 **Commissioner Vekved moved to change page 2, line 35-37 to read: The Cherry**
33 **Point UGA contains the second-largest emitter of carbon air ~~pollution~~**
34 **pollutants (primarily CO₂, which was ruled air pollution by the US Supreme**
35 **Court in 2007) in Washington State (Ecology, June 2016).**

36
37 **Commissioner Rowilson seconded.**

38
39 **The motion carried (ayes-5, nays-1).**

40
41 **Commissioner Honcoop moved to change page 2, lines 5-10 to read: The**
42 **Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of**
43 **industrial land. The land has long been planned and designated by Whatcom**
44 **County for industrial development and is currently the site of three major**
45 **industrial facilities including two oil refineries and an aluminum smelter.**
46 **Together, these three existing industries own about ~~4,400~~ 4,650 acres of the**
47 **total Cherry Point industrial lands. A fourth large tract of undeveloped land**

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1 **constituting approximately 1,500 acres is designated for industrial**
2 **development.**

3
4 **Commissioner Rowlson seconded.**

5
6 Commissioner McClendon asked staff if they knew what the correct acreage was.

7
8 Mr. Aamot stated they would have to check on it through the GIS staff.

9
10 **Commissioner Honcoop amended his motion to read: The Cherry Point Urban**
11 **Growth Area (UGA) contains approximately 7,000 acres of industrial land. The**
12 **land has long been planned and designated by Whatcom County for industrial**
13 **development and is currently the site of three major industrial facilities**
14 **including two oil refineries and an aluminum smelter. Together, these three**
15 **existing industries own about 4,400 acres of the total Cherry Point industrial**
16 **lands. A fourth large tract of undeveloped land constituting approximately**
17 **1,500 acres is designated for industrial development.**

18
19 **Commissioner Rowlson agreed to the amendment.**

20
21 **The motion carried (ayes-6, nays-0).**

22
23 Commissioner Vekved addressed the Rail Access section. The WBA proposal clarifies
24 that the rail is used for items other than crude oil. There was concern, from Petrogas,
25 about this issue.

26
27 **Commissioner Vekved moved to replace this section with the WBA language**
28 **which reads: Cherry Point is served by a branch line of the BNSF Railway**
29 **mainline serving western Washington. Rail service is considered to be vital to**
30 **statewide as well as local interests for the competitive movement of freight.**
31 **Rail service is particularly important in relation to water borne commerce. The**
32 **Cherry Point area has the rail access to support marine terminals and**
33 **industrial users in the area. Cherry Point industries use rail to ship and**
34 **receive multiple feedstocks and products. Both the Cherry Point Refinery and**
35 **the Ferndale Refinery receive crude oil shipments by rail.**

36
37 **Commissioner Rowlson seconded.**

38
39 **The motion carried (ayes-4, nays-1, abstain-1).**

40
41 **Commissioner Vekved moved to replace Policies 2CC-4, 2CC-5, 2CC-6 with the**
42 **WBA language to read:**

43 **2CC-4: Assure that Cherry Point's unique features of large parcelization,**
44 **port access, and pipeline, vehicular and rail transportation availability**
45 **are maintained and protected from incompatible development.**

46
47 **2CC-5: Support development regulations that require master site**

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1 **planning of large parcels in advance of new major development or**
2 **subdivision at Cherry Point.**

3
4 **2CC-6: Support development regulations that require site planning for new**
5 **major users (generally 40 acres or more) before the development of**
6 **accessory or supporting uses to assure that accessory or supporting uses are**
7 **compatible and coordinated with the major industrial use.**

8
9 **Commissioner Honcoop seconded.**

10
11 Commissioner Vekved stated the WBA language is less regulatory and more policy.

12
13 Commissioner Rowson referred to Policy 2CC-6. The change in language is from a
14 major user to a new major user. Would a site plan be required for a major user or only
15 new major users?

16
17 Mr. Aamot stated it would be for new users.

18
19 Commissioner McClendon asked what the development regulations now, requiring a
20 master site plan. Are they only for new major development?

21
22 Mr. Aamot stated a permit could be issued for an addition to something existing or
23 something new. The way it is worded now it would be in advance of any development
24 or subdivision.

25
26 Commissioner McClendon asked if a minor change was asked to be permitted would it
27 fall under an existing master site plan.

28
29 Mr. Aamot stated it would just be a building permit.

30
31 Commissioner McClendon asked if all of the Cherry Point industries currently have a
32 master site plan.

33
34 Mr. Personius stated some of the developments were done before there was zoning so
35 those regulations were not in place. The purpose of the proposed language is to
36 require any new development to have a master plan.

37
38 Commissioner McClendon stated she would vote no on the motion simply because she
39 was not clear on the impacts. The existing language seems to have been working.

40
41 Mr. Personius stated he would be nervous to have the wording changed without staff
42 being able to compare them against the existing regulations.

43 **The motion failed (ayes-0, nays-6).**

44
45 **Commissioner Honcoop moved to change Policy 2CC-4 to read: Assure that**
46 **Cherry Point's unique features of large parcelization, port access and pipeline.**

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1 **vehicular and rail transportation availability are maintained and protected**
2 **from incompatible development.**

3
4 **Commissioner Vekved seconded.**

5
6 **The motion carried (ayes-5, nays-1).**

7
8 Commissioner Honcoop addressed Policy 2CC-3. The policy wording does not work.
9 You either encourage or make sure it is consistent with, you can't do both.

10
11 No action was taken.

12
13 **Commissioner Honcoop moved to add language from the WBA proposal to the**
14 **preamble on page 2 of the Planning Commission draft to read: There is a**
15 **variety of stakeholders with interest in the Cherry Point UGA/Port Industrial**
16 **Area. These stakeholders include, but are not limited to, the citizens of**
17 **Whatcom County who are dependent on jobs, human services, housing,**
18 **utilities, and public infrastructure that support a healthy economy; industry; a**
19 **diverse group of Native American tribes; and environmental interests.**
20 **Whatcom County has long planned for industry at Cherry Point.**

21
22 **Commissioner Vekved seconded.**

23
24 Commissioner Rowson stated he would not support the language because it does not
25 add much more than is already stated elsewhere.

26
27 **The motion failed (ayes-3, nays-3).**

28
29 **Commissioner Honcoop moved to change page 3, line 38 to read: Existing**
30 **industries Industrial uses, within the Cherry Point UGA, can serve the Aquatic**
31 **Reserve's objectives so long as they are managed according to the Plan and**
32 **so long as the lessees actively work to further goals for the Reserve (CPAR**
33 **MP p. 2).**

34
35 Mr. Aamot stated the current language is quoted from the CPAR MP. To be consistent
36 with the document it should use that current language.

37
38 **Commissioner Honcoop withdrew the motion.**

39
40 Commissioner Vekved addressed the proposed language on page 7, lines 20-23 which
41 reads: at the same time, the expansion of these industries needs to be done in ways
42 that do not significantly impact the ecology of the Salish Sea or encourage expanded
43 export of crude oil, coal and natural gas.

44 Commissioner Vekved stated this language would be appropriate if we had the results
45 of the study. If the study shows that we would run afoul of Commerce what is the
46 effect of the proposed language?
47

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1 Mr. Aamot stated the text isn't policy. The Prosecuting Attorney had warned about
2 putting policy into text.

3
4 Commissioner Vekved stated the words chosen end up being an assertion, not so much
5 policy.

6
7 Commissioner McClendon stated this is a judgement that needs to be stated.
8 Regardless of what is being done it needs to be done in a way that does not
9 significantly impact the ecology of the Salish Sea.

10
11 Commissioner Honcoop stated the title of this section refers to use compatibility and
12 land use designation. That is what we are after. The land use designation is heavy
13 industrial. That's what it is used for. By saying "or encourage expansion" you are
14 effectively discouraging expansion on the very land you have designated for that use.

15
16 **Commissioner Honcoop moved to change the language to read: at the same**
17 **time, the expansion of these industries needs to be done in ways that do not**
18 **significantly impact the ecology of the Salish Sea or encourage expanded**
19 **export of crude oil, coal and natural gas.**

20
21 **Commissioner Vekved seconded.**

22
23 Commissioner Vekved stated he would be okay with leaving the language in if there
24 was a study to back it.

25
26 Commissioner McClendon stated it is only a value statement. We either adopt it as our
27 value or we don't.

28
29 Commissioner Vekved stated it shapes the intent of policy which shapes the intent of
30 regulation.

31
32 Commissioner Hunter stated all of this refers to a business and it is a business which
33 creates a lot of problems and is a business we need to be moving away from. There is
34 nothing about the language that says we are going to tear down the industries or
35 restrict them in ways that make it impossible for them to do business, but we are not
36 going to encourage expanded use of that. We should be restricting the use of carbon
37 based fuels in every way. This language is a judgement about where we are in the
38 world today.

39
40 Commissioner Vekved stated that judgment has already been made, well in advance of
41 this.

42
43 Commissioner Deshmane stated all of the language is addressed in other sections. The
44 language does not flow well in this section.

45
46 **Commissioner Deshmane made an amendment to remove the language from**
47 **this section.**

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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 (emailed 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.

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WHATCOM COUNTY PLANNING COMMISSION ATTEST:

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.

Tabled from March 14

- 1a) New Policy 2CC-17: Policy 2CC-16 shall not limit the expansion of existing uses nor limit the expanded operations of existing uses, nor limit maintenance of existing facilities, nor limit the development of new facilities consistent with existing uses as of March 1, 2017. (As proposed by Donovan)
- 1b) New Policy 2CC-17: Policy 2CC-16 shall not limit the compliant expansion of existing uses, maintenance of existing facilities, the development of new facilities, consistent with existing uses as of March 1, 2017. (Stopping point at work session 3/14)

Approved Changes

- 1) 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)
- 2) 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 transshipment of unrefined fossil fuels. (Weimer)
- 3) p. 8; Policy 2CC-2: ~~Ensure that~~ Encourage developments in the Cherry Point UGA ~~to maintain and operate under~~ management plans consistent with to accomplish the goals of the Aquatic Reserve Management Plan. (Donovan)

- 4) p.2; lines 43-39: 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).~~ (Brenner).
- 5) p. 4; lines 3-20: 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).~~ 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. (Brenner)
- 6) p. 8; Policy 2CC-3: Encourage that future developments or expansions within the Cherry Point UGA are consistent with the following:
- Clean and ~~low~~ reduced carbon emitting technology;
 - Avoidance of estuaries and near shore wetlands;
 - Archeological review;
 - Water recycling technology to minimize water use; and
 - Enhance existing and future industries.
- (Donovan)

7) 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 or other legally enforceable agreements for an additional dock/ pier, 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)~~

8) 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 make appropriate federal agencies aware of applications for development permits 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)

9) p. 10; Policy 2CC-16: The County shall undertake a study to be completed if possible by December of ~~2018~~ **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 may choose ~~can work~~ to limit the public safety, transportation, economic and environmental impacts from crude oil, coal, liquefied petroleum gases and natural gas transshipments or exports from the Cherry Point UGA above levels in existence as of March 1, 2017. ~~July 5, 2016, and attract and support clean and low carbon industry.~~

To provide clear guidance to current and future county councils on the County's legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code.

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)

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2016-276K

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Cliff Strong	CS	2/23/2017	<div style="text-align: center;"> RECEIVED FEB 28 2017 WHATCOM COUNTY COUNCIL </div>	3/7/2017	COTW
Division Head: Mark Personius	MP	2/23/2017		3/21/2017	COTW
Dept. Head: Sam Ryan		2/23/2017			
Prosecutor: Royce Buckingham					
Purchasing/Budget:					
Executive: Jack Louws	TL	2.28.17			

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>)

- 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:

3/7/2017: Discussed, amended, and held in Committee

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

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

RECEIVED

FEB 23 2017

JACK LOUWS
COUNTY EXECUTIVE

Memorandum

TO: The Honorable County Council
Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner *CS*

THROUGH: Mark Personius, Asst. Director *MP*

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)

16.16.620 Wetlands – General standards.

- 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. Streams¹. 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.a. 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

Permanent Water Typing	Previous Water Typing
Type S	Type 1
Type F	type 2 and 3
Type Np	Type 4
Type Ns	Type 5

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 sandlance; 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 sandlance; 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 (manmade) 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:~~
~~7. natural streams existed prior to human alteration, and/or~~
~~8. the waterway is used by anadromous or resident salmonid or other fish populations, or~~
~~9. flows directly into shellfish habitat conservation areas~~

~~are not considered ditches, but are considered streams for the purposes of this Chapter.~~

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~~6~~ 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/she 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.

16.16.680 ~~Standards~~ — Wetland mitigation.

In addition to the applicable general protective measures found in WWC 16.16.265, Aactivities 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.

Article 2. Administrative Provisions

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, r~~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:

- US Fish & Wildlife's Threatened & Endangered Species List or Critical Habitat List (<http://ecos.fws.gov/ecp/>)
- Washington Department of Fish and Wildlife's Priority Habitats and Species list (<http://wdfw.wa.gov/mapping/phs/> or <http://wdfw.wa.gov/conservation/phs/list/>)
- Department of Natural Resources' Natural Heritage Program (<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 it is

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.

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WHATCOM COUNTY COUNCIL
Special Committee of the Whole

October 25, 2016

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 2:05 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

PRESENTATION AND DISCUSSION

1. PRESENTATION AND DISCUSSION OF THE PROPOSED 2017-2018 WHATCOM COUNTY BUDGET, INCLUDING AN INTRODUCTION AND OVERVIEW BY THE COUNTY EXECUTIVE AND REVIEW OF THE FOLLOWING BUDGET REQUESTS: EXECUTIVE'S OFFICE, ADMINISTRATIVE SERVICES, NON-DEPARTMENTAL (AB2016-198A)

Jack Louws, County Executive, introduced the staff and he submitted and read from a presentation (*on file*), and described the recommendations for new staff positions. He referenced and presented on the Executive's Office budget, Volume 2. He answered questions on plans for funding and developing key performance indicators (KPIs), the funding recommendation for the Domestic Violence Commission, lower jail bed day fee revenue from other jurisdictions, and establishing a project-based budget for courthouse repairs.

Tawni Helms, Executive's Office, continued the presentation on the non-departmental budget and submitted information (*on file*). She answered questions on the transfer from the conservation futures fund to the Planning Department for the purchase of development rights (PDR) program.

Tyler Schroeder, Executive's Office, described the leave payout line item for people who are retiring and the wage settlements. He described non-departmental transfers to other funds and answered questions about the South Fork Park Fund transfer and the total cost of purchase and repair of the Civic Center building.

Forrest Longman, County Council Office, answered questions about changes to the revenue for the Public Utilities Improvement/Economic Development Investment (EDI) funds.

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1 Brad Bennett, Administrative Services Department, answered questions about the
2 balance of the bond payment for the 1997-1998 refinanced bond.
3

4 Louws continued the presentation on the Administrative Services administration
5 budget, on page seven of Volume 2.
6

7 Bennett presented on the budget for the Finance Division of the Administrative
8 Services Department. Upcoming changes include hiring a new payroll preparer, new
9 financial information reporting projects, and budget software improvements. One of two
10 approved additional services requests (ASRs) includes the use of a building to store office
11 equipment.
12

13 Karen Goens, Administrative Services Department, presented on the budget for the
14 Human Resources Division of the Administrative Services Department. They have recently
15 undergone staff changes due to retirement. The workforce has generally been stable, but
16 it's aging. There are promotional opportunities coming up in the County. The new external
17 website, intranet, and phone system have provided better information for staff and the
18 public. Job applications are now available online. Risk management efforts would be
19 improved if there were an ability to immediately do investigations if necessary, so they've
20 requested the ability to contract for investigation in the amount of \$10,000. She described
21 their civil service review for the Sheriff's Office, a request for human resources staff
22 training, and the request to purchase updated human resources software.
23

24 Councilmembers discussed and asked staff questions about the proposal to hire an
25 outside contractor for an independent review of Council staff job descriptions, how the
26 County participates in the State pension system, whether a performance review system
27 would include a 360 review, and COBRA benefits.
28

29 Perry Rice, Administrative Services Department, presented on the budget for the
30 Information Technology Division of the Administrative Services Department. He described
31 many projects completed during the 2015-2016 biennium, including new computers,
32 network switches, telecommunications system, public website, the Assessor/Treasurer
33 servers, Auditor recording system, a new battery backup center, remote access to the jail
34 courtroom, live streaming of Council meetings, deployment of mobile devices for the
35 appraisers, an upgrade of election services, and a new enterprise backup to disc system.
36 They are working on cybersecurity issues, a new enterprise storage system, land records
37 geographic information system (GIS) process, and upgrades to be compatible with a new
38 What-Comm 9-1-1 system and State Superior Court system.
39

40 The largest request for the new biennium is for a new permit system. They are
41 requesting better management for mobile devices. They manage the District Court and
42 Superior Court audio/visual systems. They will begin implementing the next five-year
43 computer refresh, GIS equipment for the Parks Department, the employee performance
44 software, and the Council request for the countywide agenda management software.
45

46 Councilmembers discussed and asked staff questions about a forced upgrade to the
47 Windows software, options for disposing of the old computers, not allowing employee-
48 owned devices to connect to the network, and the hold music on the phone system.
49

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1 Louws presented information on the Facilities Division budget and plans for capital
2 projects. He recommends Council approve a project and operations manager for 2017 to
3 put together a long-range planning program for all the necessary capital projects and allow
4 the current manager to focus on the day-to-day operations. If necessary, they've included
5 an administrative assistant for that manager in the 2018 budget. He answered questions
6 on the number of Facilities Division staff and a project for remodeling the Council
7 Chambers.

8
9 Schroeder referenced the additional services request information and presented on
10 the facilities-related ASR list for the Facilities Division.

11
12 Councilmembers and staff discussed questions about the courthouse entry x-ray
13 machine, dual-factor authentication for the criminal justice system, the courthouse exterior
14 project, and replacement of infrared cameras.

15
16
17 **OTHER BUSINESS**

18
19 There was no other business.

20
21
22 **ADJOURN**

23
24 The meeting adjourned at 4:04 p.m.

25
26 The Council approved these minutes on _____, 2017.

27
28 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

29
30
31
32
33 _____
34 Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

35
36
37
38 _____
39 Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Board of Health

January 31, 2017

CALL TO ORDER

Council Vice Chair Rud Browne called the meeting to order at 10:33 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Rud Browne, Barbara Brenner, Todd Donovan, and Satpal Sidhu
Absent: Carl Weimer, Ken Mann, and Barry Buchanan

1. PUBLIC SESSION

Carol Perry stated she's been impressed with the Health Department and hoped to hear more about septic systems in this meeting.

2. DIRECTOR/HEALTH OFFICER REPORT

Regina Delahunt, Health Department Director, referenced the Director's Report in the meeting packet and answered questions about communicating better about spending for the State Street building; having a future presentation on the human papilloma virus; adopting Occupational Safety and Health Administration (OSHA) recommendations for the County when employees are sick; and the overdose drug naloxone, or Narcan, used by the County.

Cindy Hollinsworth, Health Department, answered questions about testing for tuberculosis (TB) and what percentage of latent TB turns into active TB. She gave an update on mumps cases in Whatcom County and answered questions about how long the mumps shot lasts, how to tell if someone has had a mumps shot, whether there are tests for the zika virus, the increase of newly diagnosed syphilis cases, and what stage influenza is in right now.

Councilmembers discussed continued support of the mental health court, how federal changes in health care and programs will affect Whatcom County programs, the future social and financial impacts of changing federal policies, having coverage versus having quality healthcare, the impacts of defunding Planned Parenthood, whether Planned Parenthood could request funding for specific programs, the Health Department's needle exchange program, and testing for Hepatitis C in the Baby Boomer generation.

3. PUBLIC HEALTH ADVISORY BOARD (PHAB) UPDATE

Rachel Lucy, Public Health Advisory Board Chair, gave an advisory board update about the theme of improving the health and wellbeing of children and families by focusing on: 1. enhancing County resources to meet the needs of children, 2. supporting County employees, and 3. mitigating key stressors for children in Whatcom County.

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1
2 She described how the PHAB recently interviewed members of various advisory
3 boards and asked to what extent those boards are considering children and families in the
4 work they are doing. The results showed that crisis reduction for adults was the focus and
5 there is a need to focus on families and young children. There is a lack of behavioral health
6 resources, especially for Spanish-speaking clients, and basic needs such as housing and
7 food access for families and young children. The advisory groups that participated would
8 like more connection with the PHAB and schools. Regarding recent national events, the
9 PHAB would like to continue looking at the potential impacts of federal cuts at the local
10 level.

11 12 **4. 2017 FOCUS ON YOUNG CHILDREN AND FAMILIES**

13
14 Astrid Newell, Health Department, referenced the Health Department discussion form
15 in the Board packet. She gave a report about improving the well-being of Whatcom
16 County's youngest children and families and answered questions.

17
18 The following staff answered questions:

- 19 • Rachel Lucy, Public Health Advisory Board Chair
- 20 • Regina Delahunt, Health Department

21
22 Councilmembers discussed questions about underserved areas in Bellingham;
23 childcare for working parents; the trend toward mothers being in the workforce instead of at
24 home; business decisions to support employees to prevent turnover; the County Human
25 Resources Department's efforts to implement family friendly policies, including allowing
26 infants at work; the status of the Women, Infants and Children (WIC) program in place in
27 Whatcom County and its trends in use; what resource and educational information new
28 mothers are given at St. Joseph Hospital; when the Board would see a proposal to support a
29 child and family tax levy; and future proposed programs to support children and families.

30
31 David Webster, Opportunity Council, gave a presentation on the Prosperity Project.

32
33 Newell referenced the three action requested items at the bottom of packet page six
34 and stated the Health Department would like to partner with the Board to review policies
35 coming before the County Council from the perspective of healthy families and children.
36 She asked if the Board approves the Health Department moving forward with the three
37 action items.

38
39 ***The Board concurred.***

40 41 **5. ACCOUNTABLE COMMUNITY OF HEALTH (ACH) / MEDICAID** 42 **TRANSFORMATION WAIVER DEMONSTRATION**

43
44 Regina Delahunt, Health Department, referenced and read from the presentation on
45 Board packet page 15 and answered questions on reimbursements, working with the North
46 Sound Behavioral Health Organization instead of creating another agency, where groups get
47 operating funds before receiving reimbursement, involving people who provide alternative
48 therapies, creating incentives for people to have healthy lifestyles, and engaging evidence-
49 based solutions.

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ADJOURN

The meeting adjourned at 12:13 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Rud Browne, Council Vice Chair

Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Special Committee of the Whole

February 7, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 9:35 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: Ken Mann.

COMMITTEE DISCUSSION – CRITICAL AREAS ORDINANCE UPDATE

1. CONTINUATION OF COUNCIL'S REVIEW OF THE 2016 CRITICAL AREAS ORDINANCE UPDATE – TOPICS SCHEDULED FOR DISCUSSION:

Article 6 – Wetlands (AB2016-276G)

Cliff Strong, Planning and Development Services Department, submitted and read a presentation (*on file*).

The following staff answered questions:

- Diane Hennessey, Department of Ecology
- Erin Page, Planning and Development Services Department, submitted a handout (*on file*) on geographically isolated wetlands
- Ryan Ericson, Planning and Development Services Department

Councilmembers discussed the additional work, cost, and environmental and financial benefits from reducing the minimum size of a regulated Class IV wetland from more than 4,000 to 1,000 square feet; the State's wetland rating system; the effectiveness of mitigation; the best available science for protecting the small wetlands; and how other jurisdictions balance the protection of critical areas functions while allowing the maximum reasonable use of land.

Sidhu moved to amend 16.16.610 (E) regarding the minimum size of a regulated Class IV wetland from 1,000 to 4,356 square feet.

The motion was seconded.

The motion failed by the following vote:

Ayes: Brenner and Sidhu (2)

Nays: Browne, Buchanan, Weimer and Donovan (4)

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1 **Absent:** Mann (1)

2
3 Councilmembers asked for more information from staff on which counties are and
4 aren't requiring a minimum Class IV wetland size of 1,000 square feet and the costs of
5 implementing the smaller minimum size and implementing a change to trails in buffers.

6
7 Strong continued the presentation.

8
9 Councilmembers discussed the possibility of staff restricting future legally established
10 roads and the reason for identifying primary agricultural structures in 16.16.620(E).

11
12 **Browne moved** to strike the word "~~existing~~ legally established" in 16.16.630(A).

13
14 The motion was seconded.

15
16 The motion carried by the following vote:

17 **Ayes:** Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

18 **Nays:** None (0)

19 **Absent:** Mann (1)

20
21 **Brenner moved** to amend 16.16.620(E)(1), "Construction of a **significant**
22 appurtenant...."

23
24 The motion was seconded.

25
26 Councilmembers discussed whether small structures such as sheds can be built
27 under the critical areas ordinance.

28
29 **Brenner withdrew** the motion.

30
31 Strong continued the presentation and concluded the section on wetlands.

32
33 Councilmembers discussed why the Department of Ecology provides guidance
34 instead of rules on implementing the law, whether changes to the wetland report will result
35 in more work, and what the County is doing to establish baseline wetland studies to
36 measure future gains and losses.

37
38 Article 8 – Conservation Program on Agriculture Lands (AB2016-276I)

39
40 Strong continued on the Conservation Program on Agriculture Lands (CPAL) and
41 concluded his presentation.

42
43 The following staff answered questions:

- 44 • Ryan Ericson, Planning and Development Services Department

45
46 Councilmembers discussed the definition change from existing to ongoing farm and
47 why they penalize people who allow their farms to go fallow; the difference between
48 grammar changes and substantive changes; how many farm plans there should be
49 compared to how many there are; whether the program protects from groundwater
50 contamination; coordinating with the Food Safety Modernization Act (FSMA) and global food

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1 gap requirements from the grocery industry; and holding Article 8 in committee to allow
2 time for more discussion.

3
4 Buchanan stated this Article will be held in Committee for more discussion.
5
6

7 **OTHER BUSINESS**

8
9 There was no other business.
10
11

12 **ADJOURN**

13
14 The meeting adjourned at 11:10 a.m.
15

16 The Council approved these minutes on _____, 2017.
17

18 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

19
20
21
22
23 _____
24 Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

25
26
27
28 _____
29 Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Special Committee Of The Whole

February 7, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 12:47 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, Todd Donovan and Carl Weimer

Absent: None

COMMITTEE DISCUSSION

1. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING PENDING AND POTENTIAL LITIGATION, HIRST ET AL V. WHATCOM COUNTY, GMHB CASE NO. 12-2-0013 (AB2017-018)

Attorneys Present: Karen Frakes and Tadas Kisielius

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.110 (1)(i). Executive session will conclude no later than 1:45 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Weimer moved to go into executive session until no later than 1:45 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:

Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)

Nays: None (0)

At 1:45 p.m., Buchanan announced executive session would be extended to 2:00 p.m.

At 2:00 p.m., Buchanan announced executive session would be extended to 2:15 p.m.

At 2:15 p.m., Buchanan announced executive session would be extended to no later than 3:00 p.m.

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1 **OTHER BUSINESS**

2
3 **ADJOURN**

4
5 The meeting adjourned at 2:30 p.m.

6
7 The Council approved these minutes on _____ 2017.

8
9 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

10
11
12
13
14 _____
15 Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

16
17
18
19 _____
20 Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Regular County Council Meeting

February 7, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 7:05 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

MINUTES CONSENT

Brenner moved to approve Minutes Consent items one through 17.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

1. **SPECIAL COMMITTEE OF THE WHOLE FOR SEPTEMBER 13, 2016**
2. **REGULAR COUNTY COUNCIL FOR SEPTEMBER 13, 2016**
3. **SPECIAL COMMITTEE OF THE WHOLE FOR SEPTEMBER 20, 2016**
4. **REGULAR COUNTY COUNCIL FOR SEPTEMBER 27, 2016**
5. **SPECIAL COMMITTEE OF THE WHOLE FOR OCTOBER 11, 2016**
6. **COMMITTEE OF THE WHOLE FOR OCTOBER 11, 2016**
7. **REGULAR COUNTY COUNCIL FOR OCTOBER 11, 2016**
8. **SPECIAL COMMITTEE OF THE WHOLE FOR NOVEMBER 9, 2016 (9:30 A.M.)**

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1
2 9. SPECIAL COMMITTEE OF THE WHOLE FOR NOVEMBER 9, 2016 (10:30 A.M.)
3

4 10. REGULAR COUNTY COUNCIL FOR NOVEMBER 9, 2016
5

6 11. SPECIAL COMMITTEE OF THE WHOLE (9:30 A.M.) FOR NOVEMBER 22, 2016
7

8 12. REGULAR COUNTY COUNCIL FOR NOVEMBER 22, 2016
9

10 13. SPECIAL COMMITTEE OF THE WHOLE (1:50 P.M.) FOR DECEMBER 6, 2016
11

12 14. REGULAR COUNTY COUNCIL FOR DECEMBER 6, 2016
13

14 15. SPECIAL COMMITTEE OF THE WHOLE (11 A.M.) FOR JANUARY 10, 2017
15

16 16. SPECIAL COMMITTEE OF THE WHOLE (1:30 P.M.) FOR JANUARY 10, 2017
17

18 17. REGULAR COUNTY COUNCIL FOR JANUARY 10, 2017
19

20
21 **OPEN SESSION**
22

23 The following people spoke:

- 24 • Amy Glasser spoke about her application to the Developmental Disabilities
25 Board.
- 26 • Dan Thomas spoke about a problem with condoms in Kendall Elementary
27 School.
- 28 • Warren Sheay spoke about climate change and an exhibit at Mindport
29 Museum.
- 30 • Lynn Murphy, Puget Sound Energy, submitted a handout (*on file*) and
31 updated the Council on recent storm events.
- 32 • Edward Ury, Resources for Sustainable Communities, spoke about the
33 proposed updates to the Comprehensive Plan for Cherry Point.
34

35
36 **OTHER ITEMS**
37

38 1. RESOLUTION ACCEPTING THE TREASURER'S LIST OF PETITIONS FOR TAX
39 REFUNDS (AB2017-058)
40

41 **Browne** reported for the Finance and Administrative Services Committee and
42 **moved** to approve the resolution.
43

44 The motion carried by the following vote:

45 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

46 **Nays:** None (0)
47

48 2. RESOLUTION AMENDING RESOLUTION 2016-051 IN THE MATTER OF
49 ADOPTING A SALARY SCHEDULE AND POLICIES FOR WHATCOM COUNTY

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1 **UNREPRESENTED EMPLOYEES, EFFECTIVE JANUARY 1 THROUGH DECEMBER**
2 **31, 2017 (AB2017-059)**
3

4 **Browne** reported for the Finance and Administrative Services Committee and
5 **moved** to approve the resolution.
6

7 The motion carried by the following vote:

8 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

9 **Nays:** None (0)
10

11 **3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
12 **CONTRACT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT**
13 **AND EDGE ANALYTICAL, INC. TO PROVIDE LABORATORY ANALYSIS OF**
14 **SURFACE WATER SAMPLES FOR BACTERIA ANALYSIS, IN THE AMOUNT OF**
15 **\$85,600 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL**
16 **ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-060)**
17

18 **Browne** reported for the Finance and Administrative Services Committee and
19 **moved** to approve the request.
20

21 The motion carried by the following vote:

22 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

23 **Nays:** None (0)
24

25 **4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
26 **CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND KIMBERLY**
27 **GEARIETY, ATTORNEY, FOR PROFESSIONAL LABOR NEGOTIATOR SERVICES,**
28 **IN THE AMOUNT OF \$46,377, FOR A TOTAL AMENDED AMOUNT OF \$86,376**
29 **(AB2017-061)**
30

31 **Browne** reported for the Finance and Administrative Services Committee and
32 **moved** to approve the request.
33

34 The motion carried by the following vote:

35 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

36 **Nays:** None (0)
37

38 **5. RESOLUTION AMENDING CRP NO. 916008 AND AUTHORIZING PUBLIC**
39 **WORKS TO: 1) PROCEED WITH PETITIONING THE WASHINGTON UTILITIES**
40 **AND TRANSPORTATION COMMISSION FOR IMPROVEMENTS TO THE YACHT**
41 **CLUB ROAD AT-GRADE RAILROAD CROSSING; AND 2) CONSTRUCT**
42 **IMPROVEMENTS USING PUBLIC WORKS DEPARTMENT'S "COUNTY FORCES"**
43 **(AB2017-043A)**
44

45 **Brenner** reported for the Public Works, Health, and Safety Committee and **moved** to
46 approve the resolution.
47

48 The motion carried by the following vote:

49 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

50 **Nays:** None (0)

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1
2 **6. REQUEST APPOINTMENT OF ONE COUNTY COUNCIL MEMBER TO THE**
3 **TRANSFER OF DEVELOPMENT RIGHTS AND PURCHASE OF DEVELOPMENT**
4 **RIGHTS MULTI-STAKEHOLDER WORK GROUP (AB2017-064)**
5

6 **Weimer** reported for the Planning and Development Committee and **moved** to
7 appoint Councilmember Browne.
8

9 The motion carried by the following vote:

10 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

11 **Nays:** None (0)
12

13 **7. ORDINANCE PROVIDING LOCAL PROCEDURES TO PROCESS DEVELOPMENT**
14 **PERMIT APPLICATIONS EFFICIENTLY AND TO PROMOTE FINALITY OF**
15 **DECISIONS (AB2017-041)**
16

17 **Donovan moved** to adopt the ordinance.
18

19 The motion was seconded.
20

21 Tyler Schroeder, Executive's Office, gave a staff report on the definition for early
22 notice and answered questions.
23

24 Councilmembers discussed allowing an applicant to follow through with a permit
25 application and the cost to the County.
26

27 **Browne moved** to amend 16.08.157(1)(a), "...Determination of Significance **as**
28 **defined in WAC 197-11.**"
29

30 Councilmembers discussed referring to the early notice definition in Whatcom County
31 Code (WCC) 16.08.175.
32

33 **Browne amended his motion and moved** to amend 16.08.157(1)(a),
34 "...Determination of Significance **as defined in WCC 16.08.175.**"
35

36 The motion was seconded.
37

38 Councilmembers continued to discuss the definition of the likelihood of a
39 determination of significance.
40

41 The motion to amend carried by the following vote:

42 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

43 **Nays:** None (0)
44

45 Councilmembers discussed the impact on all kinds of people and permits, how often
46 this situation will come up, and how it will help staff.
47

48 The motion to adopt as amended carried by the following vote:

49 **Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

50 **Nays:** Brenner (1)

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1
2
3 **COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**
4

5 **1. APPOINTMENT TO FILL JAIL STAKEHOLDER WORKGROUP VACANCY**
6 **(WHATCOM COUNTY RESIDENT WHO RESIDES OUTSIDE THE CITY OF**
7 **BELLINGHAM) – APPLICANT: IRENE MORGAN (AB2017-067)**
8

9 Browne nominated all four applicants. The nomination was seconded.

10
11 Brenner voted for L. Ward Nelson.

12
13 Browne voted for Nelson.

14
15 Buchanan voted for Nelson.

16
17 Donovan voted for Mathew Babick.

18
19 Mann voted for Babick.

20
21 Sidhu voted for Babik.

22
23 Weimer voted for Babik.

24
25 The Council appointed Mathew Babick.
26
27

28 **EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**
29

30 **1. ANNUAL APPOINTMENTS TO EXECUTIVE-APPOINTED BOARDS AND**
31 **COMMISSIONS (AB2017-052A)**
32

33 ***Browne moved*** to confirm the appointments.

34
35 The motion was seconded.

36
37 The motion carried by the following vote:

38 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

39 **Nays:** None (0)
40
41

42 **INTRODUCTION ITEMS**
43

44 ***Browne moved*** to approve Introduction Items one through three.

45
46 The motion was seconded.

47
48 The motion carried by the following vote:

49 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

50 **Nays:** None (0)

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1. RESOLUTION AMENDING THE 2017 FLOOD CONTROL ZONE DISTRICT AND SUBZONE BUDGETS, FIRST REQUEST, IN THE AMOUNT OF \$143,676 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-065)
2. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, SECOND REQUEST, IN THE AMOUNT OF \$2,518,464 (AB2017-066)
3. ORDINANCE AMENDING WHATCOM COUNTY CODE 2.03, 2.22, AND 2.104 TO PROHIBIT THE APPOINTMENT OF DECLARED POLITICAL CANDIDATES TO BOARDS, COMMITTEES, AND COMMISSIONS AND REQUIRING RESIGNATION FROM THE ETHICS COMMISSION AND SALARY COMMISSION FOR MEMBERS SEEKING AN ELECTED POSITION WITHIN THE COUNTY (AB2017-057)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 7:50 p.m.

The County Council approved these minutes on _____, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Special Committee of the Whole

February 21, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 9:15 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

COMMITTEE DISCUSSION

1. CONTINUATION OF COUNCIL'S REVIEW OF THE 2016 CRITICAL AREAS ORDINANCE UPDATE – TOPIC SCHEDULED FOR DISCUSSION: ARTICLE 3 – GEOHAZARDS (AB2016-276C)

Cliff Strong, Planning and Development Services Department, submitted and read a presentation (*on file*).

Cynthia Gardner, U.S. Geological Survey (USGS) Cascade Volcano Observatory(CVO), continued the presentation on the 1995 USGS Mount Baker Hazard Assessment. She answered questions on estimating historic events in the geologic record without geologic evidence of the event, the difference between lahars and debris flows, the volcano alert level system and amount of time before a volcanic event, how long a volcano can be active, when the model can be fine-tuned to know if certain land uses and are within the lahar hazard areas, and whether lahar debris flows will be similar to a 100-year flood.

Seth Moran, U.S. Geological Survey Cascade Volcano Observatory, continued the presentation on the national risk assessment, national and local observatories, and Mount Baker unrest versus eruption. He answered questions on whether seismic activity can be monitored by other technology, such as satellites.

John Thompson, Public Works Department, continued the presentation on improved geologic hazard characterization and risk assessment progress since June 2014.

Andy Wiser, Planning and Development Services Department, continued the presentation on the quantitative risk assessment (QRA). He answered questions on how long it will take to refine the data and risk analysis; who determines the appropriate risk levels and how risk analysis is applied today; impacts of land use decisions on future generations; and creating and using F-N diagrams on all types of geo-hazards.

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1 John Gargett, Sheriff's Office Division of Emergency Management, continued the
2 presentation on risk-based emergency planning, which is viewing the whole community as
3 part of an ecosystem. He answered questions about when they'll have the data to do good
4 land use planning in lahar areas, whether clear decision points and action plans exist if
5 there is an event on Mount Baker, increasing the number of sensors on the mountain,
6 improving the emergency response plan, and warning levels for lahars and debris flows.

7
8 Staff and presenters continued to answer questions on an ongoing operating system
9 cost for additional warning systems and the lack of warning for small lahars.

10
11 Strong and Wiser continued the presentation on the legal framework and the critical
12 areas ordinance (CAO) review process and the three options:

- 13 • Option 1: A lahar code based on the Tsunami Code.
- 14 • Option 2: Planning Commission recommendation
- 15 • Option 3: A lahar code based on the existing lahar code

16
17 Strong concluded the presentation with the summary. He answered questions about
18 the source of the occupancy numbers; using the travel time analysis in the evacuation plan;
19 inviting Dr. Don Easterbrook and Dan McShane to present at a Public Works Committee
20 meeting; other possible options for the CAO; whether all three options are more permissive
21 than the existing code; additional costs; lahar calculations being a function of the
22 government, not a landowner; landowners preparing evacuation plans for their individual
23 property; focusing on protecting people rather than accessory structures; giving the public
24 more time to review this information; and whether marijuana processing facilities would be
25 allowed under option 3.

26
27 Councilmembers and staff discussed proposed changes to the CAO and next steps.

28 29 30 **OTHER BUSINESS**

31
32 There was no other business.

33 34 35 **ADJOURN**

36
37 The meeting adjourned at 12:08 p.m.

38
39 The Council approved these minutes on _____, 2017.

40
41 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

42
43
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46
47 _____
Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

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- 1 _____
- 2 Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Special Committee Of The Whole

February 21, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 3:40 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, Todd Donovan and Carl Weimer

Absent: None

COMMITTEE DISCUSSION

1. DISCUSSION WITH PUBLIC WORKS STAFF REGARDING POTENTIAL PROPERTY ACQUISITION (AB2017-018)

Attorney Present: None

2. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING PENDING LITIGATION, WHATCOM COUNTY ASSOCIATION OF REALTORS, ET AL V. WHATCOM COUNTY, GROWTH MANAGEMENT HEARING BOARD CASE NO. 16-2-0007 (AB2017-018)

Attorney Present: Karen Frakes

3. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING PENDING AND POTENTIAL LITIGATION, HIRST ET AL V. WHATCOM COUNTY, GMHB CASE NO. 12-2-0013 (AB2017-018)

Attorney Present: Karen Frakes

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.110 (1)(b) and discussion of agenda items two and three may take place in executive session pursuant to RCW42.30.110 (1)(i). Executive session will conclude no later than 6:00 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Browne moved to go into executive session until no later than 6:00 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, and Weimer (5)

Nays: None (0)

Absent: Mann and Donovan (out of the room) (2)

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

OTHER BUSINESS

ADJOURN

The meeting adjourned at 4:45 p.m.

The Council approved these minutes on _____ 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Regular County Council Meeting

February 21, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan

Absent: None

FLAG SALUTE

ANNOUNCEMENTS

Buchanan reported for the afternoon Special Committee of the Whole and stated the Committee discussed the following items in executive session.

1. Discussion with Public Works staff regarding potential property acquisition (AB2017-018)
2. Discussion with Senior Deputy Prosecutor Karen Frakes regarding pending litigation, Whatcom County Association of Realtors, et al v. Whatcom County, Growth Management Hearing Board Case No. 16-2-0007 (AB2017-018)
3. Discussion with Senior Deputy Prosecutor Karen Frakes regarding pending and potential litigation, Hirst et al v. Whatcom County, GMHB Case No. 12-2-0013 (AB2017-018)

MINUTES CONSENT

Brenner moved to approve Minutes Consent items one through four. The motion was seconded.

Browne withdrew item four.

The motion to approve Minutes Consent items one through three carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

1. SPECIAL COMMITTEE OF THE WHOLE (9:30 A.M.) FOR JANUARY 10, 2017

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

2. SPECIAL COMMITTEE OF THE WHOLE FOR JANUARY 24, 2017

3. COUNTY COUNCIL MEETING FOR JANUARY 24, 2017

4. SURFACE WATER WORK SESSION FOR FEBRUARY 14, 2017

Donovan moved to approve the Minutes. The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Buchanan, Weimer and Donovan (6)

Nays: None (0)

Abstains: Browne (1)

SPECIAL PRESENTATION

1. PORTAGE BAY PARTNERSHIP: A HISTORIC AGREEMENT TO IMPROVE WATER QUALITY IN THE NOOKSACK BASIN (AB2017-089)

Rich Apple, Ag Water Board, reported on the agreement. They want the County to work on the water quality issue in Portage Bay through a community effort to open shellfish beds as soon as possible.

Tim Ballew II, Lummi Nation Chairman, continued the report on the agreement between fishing and farming interests to provide certainty in the future. The goal is improved water quality for the Portage Bay shellfish beds and the entire Nooksack River basin. He asked that the County support their partnership. It's likely they'll develop a State or federal request soon.

Councilmembers thanked Mr. Apple and Chairman Ballew for their partnership.

Jack Louws, County Executive, stated the administration is committed to being supportive and involved however necessary. The Public Works Department staff will be a liaison between the County and the Partnership.

OPEN SESSION

The following people spoke:

- William LaFreniere spoke about Portage Bay shellfish bed pollution and septic system pollution.
- Charles Bailey, Lummi Island Ferry Advisory Committee, submitted a handout (*on file*) and spoke about the committee's work on the resolution establishing a new level of service for the Lummi Island ferry system (AB2017-081).
- Chris Colburn, Lummi Island Ferry Advisory Committee, spoke about the committee's work on the resolution establishing a new level of service for the Lummi Island ferry system (AB2017-081).
- Mary Ross spoke about the Lummi Island Ferry Advisory Committee work on the resolution establishing a new level of service for the Lummi Island ferry system (AB2017-081).

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- Rhayma Blake, Lummi Island Ferry Advisory Committee, spoke about the committee's work on the resolution establishing a new level of service for the Lummi Island ferry system (AB2017-081).
- Wendy Harris spoke about the Portage Bay Partnership, regulation of agriculture, and the staff memo about geologically hazardous areas in the critical areas ordinance.

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and *moved* to approve Consent Agenda items one through six.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

1. **RESOLUTION CANCELING UNCOLLECTIBLE PERSONAL PROPERTY TAXES (AB2017-073)**
2. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE COUNCIL ON AGING FOR STAFFING AND OPERATIONS OF THE BELLINGHAM SENIOR ACTIVITY CENTER, IN THE AMOUNT OF \$120,144 (AB2017-074)**
3. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND JET OLDSTERS ASSOCIATION OF FERNDAL TO PROVIDE SCHEDULING AND OVERSIGHT OF PUBLIC RENTALS AT THE FERNDAL SENIOR ACTIVITY CENTER, FOR A REIMBURSEMENT AMOUNT OF 75% OF ALL RECEIPTS, MINUS COUNTY EXPENSES (AB2017-075)**
4. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND JET OLDSTERS ASSOCIATION OF FERNDAL FOR STAFFING AND OPERATIONS OF THE FERNDAL SENIOR ACTIVITY CENTER, IN THE AMOUNT OF \$120,144 (AB2017-076)**
5. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE CITY OF LYNDEN TO PROVIDE STAFFING AND OPERATIONAL SUPPORT AT THE LYNDEN SENIOR ACTIVITY CENTER, IN THE AMOUNT OF \$120,144 (AB2017-077)**
6. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE CITY OF BLAINE TO PROVIDE STAFFING AND OPERATIONAL SUPPORT AT THE BLAINE SENIOR ACTIVITY CENTER, IN THE AMOUNT OF \$120,144 (AB2017-078)**

OTHER ITEMS

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1 **1. RESOLUTION AMENDING THE 2017 FLOOD CONTROL ZONE DISTRICT AND**
2 **SUBZONE BUDGETS, FIRST REQUEST, IN THE AMOUNT OF \$143,676**
3 **(COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE**
4 **DISTRICT BOARD OF SUPERVISORS) (AB2017-065)**

5
6 **Browne** reported for the Finance and Administrative Services Committee and **moved**
7 to approve the resolution.

8
9 The motion carried by the following vote:

10 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

11 **Nays:** None (0)

12
13 **2. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, SECOND**
14 **REQUEST, IN THE AMOUNT OF \$888,464 (AB2017-066)**

15
16 **Browne** reported for the Finance and Administrative Services Committee and **moved**
17 to adopt the ordinance.

18
19 Councilmembers discussed a discrepancy in the numbers and the Petrogas appeal
20 defense.

21
22 The motion carried by the following vote:

23 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

24 **Nays:** None (0)

25
26 **3. ORDINANCE AMENDING WHATCOM COUNTY CODE 2.03, 2.22, AND 2.104 TO**
27 **PROHIBIT THE APPOINTMENT OF DECLARED POLITICAL CANDIDATES TO**
28 **BOARDS, COMMITTEES, AND COMMISSIONS AND REQUIRING RESIGNATION**
29 **FROM THE ETHICS COMMISSION AND SALARY COMMISSION FOR MEMBERS**
30 **SEEKING AN ELECTED POSITION WITHIN THE COUNTY (AB2017-057)**

31
32 **Browne** reported for the Finance and Administrative Services Committee and **moved**
33 to adopt the substitute ordinance version 1. He reported on the two versions of the
34 ordinance. He **moved to amend** section 2.03.090 to include the amendments shown in
35 version 2. The motion to amend was seconded.

36
37 Councilmembers discussed encouraging people to volunteer on these committees.

38
39 The motion to amend carried by the following vote:

40 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

41 **Nays:** None (0)

42
43 **Buchanan moved to amend** sections 2.03.090, 2.22.040, and 2.104.090(D) to
44 reference the Revised Code of Washington (RCW) definition of candidate, "...candidate, as
45 defined by RCW 42.17A.005(7),..." The motion to amend was seconded.

46
47 The motion to amend carried by the following vote:

48 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

49 **Nays:** None (0)

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Councilmembers discussed whether this is a solution to an actual problem.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)

Nays: Weimer (1)

4. RESOLUTION SETTING A HEARING DATE TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION REQ. #TR2017-01 (AB2017-087)

Browne reported for the Finance and Administrative Services Committee and *moved* to approve the resolution.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

5. RESOLUTION AUTHORIZING THE USE OF PARKS PROPERTY FOR ROAD PURPOSES (AB2017-080)

Brenner reported for the Public Works, Health, and Safety Committee and *moved* to approve the resolution.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

6. APPROVAL OF FUNDING PRIORITIES FOR THE CRIMINAL JUSTICE TREATMENT ACCOUNT ESTABLISHED UNDER RCW 71.24.580 (AB2017-082)

Brenner reported for the Public Works, Health, and Safety Committee and *moved* to approve the funding priorities.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

7. RESOLUTION ESTABLISHING A NEW LEVEL OF SERVICE FOR THE LUMMI ISLAND FERRY SYSTEM (AB2017-081)

Brenner reported for the Public Works, Health, and Safety Committee and *moved* to approve the resolution.

Councilmembers discussed whether the language is too broad and the resolution being the first step to moving forward.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Nays: Mann (1)

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1 8. APPOINTMENT TO THE NOXIOUS WEED CONTROL BOARD - APPLICANT:
2 DALE YODER (PER RCW17.10.050(2) THE COUNTY LEGISLATIVE
3 AUTHORITY, WITHIN TEN DAYS OF RECEIVING NAME(S) OF NOMINEE(S),
4 SHALL APPOINT NOMINEE(S) TO THE COUNTY NOXIOUS WEED CONTROL
5 BOARD) (AB2017-071)
6

7 *Brenner moved* to appoint Dale Yoder by acclamation. The motion was seconded.
8

9 The motion carried by the following vote:

10 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

11 **Nays:** None (0)
12
13

14 INTRODUCTION ITEMS 15

16 *Brenner moved* to accept the Introduction Items. The motion was seconded.
17

18 The motion carried by the following vote:

19 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

20 **Nays:** None (0)
21

22 1. ORDINANCE ESTABLISHING CHARGES/FEEES FOR PROVIDING ADVANCED
23 LIFE SUPPORT (ALS) AMBULANCE TRANSPORT SERVICES IN WHATCOM
24 COUNTY (AB2017-086)
25

26 2. RESOLUTION TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION REQ.
27 #TR2017-01 (AB2017-087A)
28

29 3. RECEIPT OF APPLICATION(S) FOR THE PORTAGE BAY SHELLFISH
30 PROTECTION DISTRICT ADVISORY COMMITTEE, APPLICANT: MICHAEL
31 SHEPARD (APPLICATION DEADLINE FOR ANY OTHER APPLICANTS TO THIS
32 VACANCY IS 10 A.M. ON FEBRUARY 28, 2017) (AB2017-072)
33

34 4. ORDINANCE ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY
35 COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE TITLE 15
36 (BUILDINGS AND CONSTRUCTION), TITLE 20 (ZONING), TITLE 21 (LAND
37 DIVISION REGULATIONS), AND TITLE 24 (HEALTH CODE), RELATING TO
38 WATER RESOURCES (AB2016-309D)
39
40

41 COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES 42

43 Councilmembers gave committee reports and updates on recent activities and
44 upcoming events.
45
46

47 ADJOURN 48

49 The meeting adjourned at 7:57 p.m.
50

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1 The County Council approved these minutes on _____, 2017.
2
3

4 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

5
6
7
8
9
10 _____
11 Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

12
13
14 _____
15 Jill Nixon, Minutes Transcription

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	TwH	02.14.17	<div style="text-align: center;"> RECEIVED MAR 14 2017 WHATCOM COUNTY COUNCIL </div>	03.21.17	Special Presentation
Division Head:					
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive: TM	<i>[Signature]</i>	3/13/17			
TITLE OF DOCUMENT: Executive Louws to review the successful completion of the Sun House renovation and present recognition plaques to contributors.					
ATTACHMENTS: No 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.)					
County Executive Jack Louws to present the Sun House renovation project and recognize the generous contributors to the project.					
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

NO. 2017-097

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	SM	2/23/17	<div style="text-align: center;"> RECEIVED FEB 28 2017 WHATCOM COUNTY COUNCIL </div>	3/7/17	Introduction
Division Head:				3/21/17	Public Hearing
Dept. Head:					
Prosecutor:	IX	02/23/17			
Purchasing/Budget:					
Executive: TH		2.28.17			

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.

SEPA review required?	() Yes	(X) NO	Should Clerk schedule a hearing ?	(X) Yes	() NO
SEPA review completed?	() Yes	(X) NO	Requested Date:	March 21, 2017	

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:

COUNCIL ACTION:

3/7/2017: Introduced 7-0

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: 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

Jan 2017	Feb 2017	Mar 2017	Apr 2017	May 2017	Jun 2017	Jul 2017	Aug 2017	Sept 2017	Oct 2017	Nov 2017	Dec 2017	Jan 2018
<div> <div> 2017 General Purpose Grants (construction, acquisition, local assistance and planning-only) March 15th - application materials available June 1st - applications due </div> <div> September - awards announced </div> </div>												
<div> <div> 2016 Imminent Threat Grants July 1st - applications accepted until June 30, 2017 to address unanticipated public health & safety emergencies while funds </div> <div> 2016 Economic Opportunity Grants Applications accepted until June 30, 2017 while funds are available </div> <div> 2017 Public Services Grants February 3rd - application materials available April 7th - applications due </div> </div>												
<div> <div> 2017 Housing Enhancement Grants July 1st - applications accepted until April 30, 2018 with the Housing Trust Fund application while funds are available </div> <div> 2017 Imminent Threat Grants July 1st - applications accepted until June 30, 2018 to address unanticipated public health & safety emergencies while funds </div> </div>												
<div> <div> 2017 Public Services Grants February 3rd - application materials available April 7th - applications due </div> <div> July 1st - awards begin </div> </div>												

12/01/16

Application materials are available on the CDBG website at: www.commerce.wa.gov/cdbg or by calling (360) 725-5020

Memorandum

RECEIVED

FEB 24 2017

JACK LOUWS
COUNTY EXECUTIVE

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.
P.O. Box 922
Oak Harbor, WA 98277
(360) 679-6577
(800) 317-5427
Fax (360) 679-2440

San Juan County
(800) 649-5121

www.oppc.org

PROPOSED BY: _____ Executive _____

INTRODUCTION DATE: 3/7/17

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 of 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:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:



Civil Deputy Prosecutor

CDBG Public Services Grant
DRAFT ANNUAL BUDGET (July – June)

COST CATEGORIES	SERVICES		COUNTY ADMINISTRATION	
	AMOUNT	DESCRIPTION	AMOUNT	DESCRIPTION
Staffing	\$ 98,889	<p><i>Staffing to provide resource information and referral services to LMI individuals in Whatcom and Island counties.</i></p> <p><i>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.</i></p> <p><i>This budget item includes both salary and fringe benefits.</i></p>	\$	
Goods and services	\$ 11,693	<p>Goods and services include office supplies, office space costs for Island county staff, and recruitment/training expenses for the East Whatcom Regional Resource Center.</p> <p>In San Juan County, contracts will be established with three Community Resource Centers to provide information and referral services.</p>	\$	
Travel	\$ 1,753	Mileage and vehicle costs to travel to rural communities	\$	
Indirect Costs	\$ 12,918	<i>Federally approved indirect rate</i>	\$	
TOTAL	\$125,253	Cannot exceed the total grant amount minus the county administration budget.	\$	Up to \$3,500 per year can be allocated from the total grant amount for county administration costs.

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.

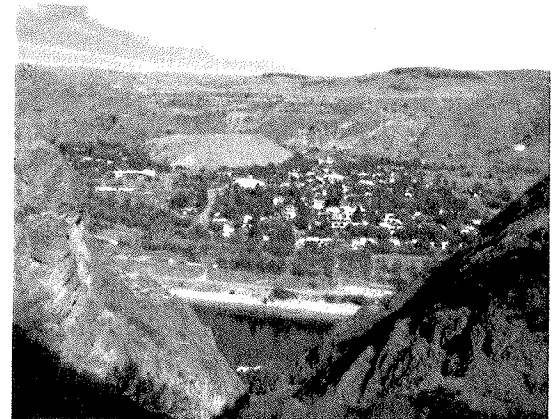


Department of Commerce

Proposed for 2017 Program Year

Community Development Block Grant Program (CDBG)

*Strengthening rural communities through projects that
benefit low- and moderate-income persons*



The Washington State CDBG Program offers:

General Purpose Grants \$9,000,000

For planning or construction of public infrastructure, community facilities, affordable housing, and economic development projects.

Competitive. Maximum grant up to \$750,000 based on project type.

Application materials available in March and due in June.

Housing Enhancement Grants \$200,000

For off-site infrastructure or the community facility component of a state Housing Trust Fund project.

Competitive. Maximum grant generally \$200,000.

Application materials available in July and accepted with a HTF Stage 2 application.

Public Services Grants \$1,500,000

For 17 counties and community action agencies to fund new or expanded services for lower income persons.

Allocated by formula based on population and poverty.

Application materials available in February and due in April.

*Funding contingent on the
US Dept of Housing & Urban Development
approval of the state's
2017 Action Plan and CDBG allocation*

CONTACT INFORMATION:

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Genny Matteson, Project Manager
Housing Activities
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genny.matteson@commerce.wa.gov

Eligibility information on reverse side

www.commerce.wa.gov/cdbg

HUD National Objectives

CDBG project activities must meet one of three HUD National Objectives:

- Principally benefits low-and moderate-income (LMI) persons
- Aids in the prevention or elimination of slums or blight
- Addresses imminent threat to public health or safety

CDBG Eligibility Guidelines

Eligible applicants are Washington State cities/towns with less than 50,000 in population and not participating in a CDBG entitlement urban county consortium; and counties with less than 200,000 in population. Eligible cities/towns and counties are listed on the CDBG website.

Special purpose districts, public housing authorities, community action agencies, economic development councils, other non-profit organizations, and Indian tribes are not eligible to apply directly to the state CDBG Program for funding, but may be a partner in projects and subrecipient of funding with an eligible city/town or county applicant.

Application materials and due dates, LMI income limits, and grant management handbooks are on the CDBG website at: www.commerce.wa.gov/CDBG.

Federal Citizen Participation Requirements for Local Government Applicants to the State CDBG Program

Federal Regulations 24 CFR 570.486 (a)

- (a) *Citizen participation requirements of a unit of general local government.* Each unit of general local government shall meet the following requirements as required by the state at Sec. 91.115(e) of this title.
- (1) Provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which CDBG funds are proposed to be used;
 - (2) Ensure that citizens will be given reasonable and timely access to local meetings, information, and records relating to the unit of local government's proposed and actual use of CDBG funds;
 - (3) Furnish citizens information, including but not limited to:
 - (i) The amount of CDBG funds expected to be made available for the current fiscal year (including the grant and anticipated program income);
 - (ii) The range of activities that may be undertaken with the CDBG funds;
 - (iii) The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and
 - (iv) The proposed CDBG activities likely to result in displacement and the unit of general local government's anti-displacement and relocation plans required under Sec. 570.488.
 - (4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals in accordance with the procedures developed by the state. Such assistance need not include providing funds to such groups;
 - (5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the state. There must be reasonable notice of the hearings and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;
 - (6) Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the state and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the state. *Substantially changed* means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the state.
 - (7) Provide citizens the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-053 A

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	MK	2/22/2017	<div style="text-align: center;"> RECEIVED FEB 28 2017 WHATCOM COUNTY COUNCIL </div>	3/7/17	Introduction
Division Head:	JW	2/22/2017		3/21/17	Hearing
Dept. Head:	RD	2/23/17			
Prosecutor:	RB	3-8-17			
Purchasing/Budget:					
Executive:	TV	2/28/17			

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

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

Should Clerk schedule a hearing? (x) Yes () NO
Requested Date:

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

Whatcom County Code 24.05 On-site Sewage System Regulations 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:**

3/7/2017: Introduced 7-0

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
Health Department**

*Leading the community in promoting health
and preventing disease.*



Regina A. Delahunt
Director

Greg Stern, M.D.
Health Officer

Memorandum

RECEIVED

FEB 27 2017

TO: Jack Louws, County Executive

FROM: Regina Delahunt, Director
Health Department

**JACK LOUWS
COUNTY EXECUTIVE**

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



509 Girard Street
Bellingham, WA 98225-4005
(360) 778-6000
FAX (360) 778-6001

PUBLIC HEALTH
ALWAYS WORKING FOR A SAFER AND
HEALTHIER WHATCOM COUNTY
www.whatcomcounty.us/health

1500 North State Street
Bellingham, WA 98225-4551
(360) 778-6102
FAX (360) 778-6104



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

APPROVED AS TO FORM:

Royce Buckingham, Civil Deputy Prosecutor

WHATCOM BOARD OF HEALTH
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Chair

WHATCOM COUNTY EXECUTIVE
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 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).

 WHATCOM COUNTY
HEALTH DEPARTMENT

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

WHATCOM COUNTY COUNCIL AGENDA BILLNO. 2016-256 B

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:				3/7/2017	Introduction
Division Head:				3/21/2017	Public Hearing
Dept. Head:		3.8.17			
Prosecutor:					
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT:*Interim ordinance imposing a moratorium on applications - Cherry Point***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.)*

This interim moratorium prohibits the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of this ordinance and vested pursuant to Washington statutes;
2. Are for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping unrefined fossil fuels not to be processed at Cherry Point will result; or
3. Are necessary to protect health and safety of the community.

This interim ordinance shall be effective for not longer than six months following its effective date, but may be renewed for one of more six-month periods if subsequent public hearing are held and finding of fact are made prior to each renewal.

COMMITTEE ACTION:**COUNCIL ACTION:**

3/7/2017: Introduced 7-0

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.

PROPOSED BY: _____
INTRODUCTION DATE: MARCH 7, 2017

ORDINANCE NO. _____
(INTERIM ORDINANCE)

**IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING
OF APPLICATIONS AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE
CHERRY POINT URBAN GROWTH AREA THE PRIMARY PURPOSE OF WHICH
WOULD BE THE SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE
PROCESSED AT CHERRY POINT**

WHEREAS, on July 12, 2016, the county received a letter from Chairman Ballew of the Lummi Business Council which included the statement that they "hope that the amendments to the Comprehensive Plan not unfairly impact the current employers within Cherry Point."; and

WHEREAS, the County Council previously adopted Title 20-Zoning of Whatcom County Code which regulates land use within unincorporated areas of Whatcom County; and

WHEREAS, the County Council adopted the Whatcom County Comprehensive Plan on May 20, 1997, which contains goals, objectives and policies regarding land use compatibility and environmental considerations; and

WHEREAS, the Whatcom County Council recently updated the Whatcom County Comprehensive Plan as required by Revised Code of Washington 36.70A; and

WHEREAS, during the Comprehensive Plan review process the Whatcom County Council received many individual public comments on fossil fuel transshipment, transport, and transfer from Cherry Point related to the protection of the health of Whatcom County's environment, economy, and residents; and

WHEREAS, the County recognizes that the existing refineries have for decades been significant shippers of refined fossil fuels such as jet fuel and calcined coke used in manufacture of aluminum while providing substantial local employment; and

WHEREAS, the refining of fossil fuels at Cherry Point provides high wage jobs which could be lost if the existing refineries were converted to crude oil export facilities; and

WHEREAS, the Whatcom County Council has requested the Whatcom County Planning Commission review language that would discourage new development that would primarily facilitate the shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, multiple trains carrying crude oil from the Bakken formation moving through the United States and Canada have derailed and exploded causing damage to property and the environment, one derailment caused significant fatalities, which is the reason regulations must be improved; and

WHEREAS, a unit train carrying Bakken crude traveling through Mosier, Oregon, on June 3, 2016, derailed and exploded causing damage to property and the Columbia River, demonstrating that recently adopted state and federal policies and corporate investment intended to reduce the risks associated with oil by rail have proven insufficient to protect communities along the rail corridor; and

WHEREAS, the Washington State Department of Natural Resources has designated waters adjacent to the Cherry Point Urban Growth Area as an aquatic reserve to ensure long-term protection of this unique aquatic environment; and

WHEREAS, the United States recently lifted a ban on the export of crude oil from the country, increasing pressure on deep water ports such as Cherry Point to develop into crude export terminals; and

WHEREAS, existing refineries at Cherry Point have recently increased their ability to accept crude oil by rail by constructing new rail offloading facilities to serve the refineries; and

WHEREAS, existing and proposed pipeline facilities have increased, or proposed to increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point; and

WHEREAS, Title 20 currently does not explicitly prohibit transshipment, transport, and transfer of unrefined fossil fuels and construction of infrastructure to facilitate expanded shipment of unrefined fossil fuels not to be processed at Cherry Point; and

WHEREAS, according to the June 27, 2016 Land Capacity Analysis report produced by Planning and Development Services, Cherry Point contains only 1,072.6 acres of developable land that is zoned Heavy Impact Industrial (HII) for the purposes of "supplying a reasonable amount of land, commensurate with demand, for the location and grouping of heavy impact industrial uses" and to "minimize the scope of impacts generated within the HII District and to provide protection for nonindustrial districts situated outside thereof..." (WCC 20.68.010); and

WHEREAS, expansion of existing facilities for purposes of shipping unrefined fossil fuels not to be processed or consumed at Cherry Point will increase the transport of dangerous fuels through our community and increase the risk of possible derailment, spills, explosions, and the fallout will pose a serious threat to the community; and

WHEREAS, pursuant to the Washington State Constitution, the general police powers granted to counties empower and authorize Whatcom County to adopt land use controls to provide for the regulation of land uses within the County and to provide that such uses shall be consistent with applicable law; and

WHEREAS, on August 9, 2016, the Whatcom County Council adopted Ordinance 2016-031, an emergency ordinance imposing a sixty day moratorium on the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, on September 27, 2016, the Whatcom County Council adopted Ordinance 2016-039, an interim ordinance prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of the ordinance and vested pursuant to Washington statutes;
2. Were for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping unrefined fossil fuels not to be processed or consumed at Cherry Point would result; or
3. Were necessary to protect health and safety of the community.

WHEREAS, the County Council finds that extending the moratorium imposed by Ordinance 2016-039 is necessary for the protection of public health and safety; 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 sixty (60) days of adoption; and

WHEREAS, the Whatcom County Council is scheduled to hold a public hearing on this issue on March 21, 2017, or a later date; and

WHEREAS, the County Council fully recognizes the limits to its authority over transportation of certain goods imposed by federal statutes and the US Constitution, and finds that this action is within its authority;

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390

BE IT FURTHER ORDAINED by the Whatcom County Council that an interim moratorium is hereby imposed prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of this ordinance and vested pursuant to Washington statutes;
2. Are for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping unrefined fossil fuels not to be processed or consumed at Cherry Point will result; or
3. Are necessary to protect health and safety of the community.

BE IT FURTHER ORDAINED by the Whatcom County Council that this interim 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.

BE IT FURTHER ORDAINED that if a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance, and if the provisions of this ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.

BE IT FURTHER ORDAINED that for the purpose of this ordinance the definition of "unrefined fossil fuel" includes but is not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted bitumen, or syncrude; coal; methane, propane, butane, and other "natural gas" in liquid or gaseous formats excluding those that are the byproduct of refinery processes in the Cherry Point UGA; and condensate.

BE IT FINALLY ORDAINED that for the purpose of this ordinance, the definition of "facility" includes but is not limited to piers, wharfs, buildings, tank farms, pipelines, rail loading and offloading facilities, road spurs, or any other such physical infrastructure intended to receive, transfer, or store unrefined fossil fuels;

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:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**

Civil Deputy Prosecutor

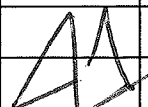
Jack Louws, County Executive

() Approved () Denied

Date Signed: _____

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-108

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	SM	3/13/17	<div style="text-align: center;"> RECEIVED MAR 14 2017 WHATCOM COUNTY COUNCIL </div>	March 21, 2017	Council
Division Head:					
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive:		3/14/17			

TITLE OF DOCUMENT: *Appointments to the North Sound Behavioral Health Advisory Board.*

ATTACHMENTS: *Memorandum from Whatcom County Human Services Staff;
Applications for Appointment*

SEPA review required? () Yes (X) NO SEPA review completed? () Yes (X) NO	Should Clerk schedule a hearing ? () Yes (X) NO Requested Date:
---	--

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

County Executive Jack Louws requests confirmation of his appointment of Arlene Feld and Natasha Raming to the North Sound Behavioral Health Organization's Advisory Board

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:

Related File Numbers:

**Ordinance or Resolution
Number:**

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

**WHATCOM COUNTY
Health Department**

*Leading the community in promoting health
and preventing disease.*



Regina A. Delahunt
Director
Greg Stern, M.D.
Health Officer

RECEIVED

MAR 14 2017

JACK LOUWS
COUNTY EXECUTIVE

OK Process

Memorandum

TO: Jack Louws, Executive

FROM: Jackie Mitchell, Behavioral Health Program Specialist

DATE: March 13, 2017

RE: North Sound Behavioral Health (NSBHO) Advisory Board
Appointees

Whatcom County Health Department is seeking the appointment of Arlene Feld and Natasha Raming as Whatcom County representatives to the North Sound Behavioral Health Organization's (BHO) Advisory Board.

Arlene has a personal and professional background in behavioral health that will enhance and enrich Whatcom County's representation.

Natasha has a background in health, statistics, behavioral health and a cultural understanding of Native American issues that makes her a strong candidate for the North Sound BHO Advisory Board.

These nominations and appointments will conclude our search for the 6 member representation to the BHO's Advisory Board.

If you have any other questions, please contact me. Thank you.

Jackie Mitchell, M.A. LMHC, CDP
Behavioral Health Program Specialist

509 Girard Street
Bellingham, WA 98225-4005
(360) 676-6724
FAX (360) 676-6771

PUBLIC HEALTH
ALWAYS WORKING FOR A SAFER AND
HEALTHIER WHATCOM COUNTY
www.whatcomcounty.us/health

1500 North State Street
Bellingham, WA 98225-4551
(360) 676-4593
FAX (360) 676-6772

7. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?

No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

Field not completed.

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

Ten years on staff of Whatcom County Behavioral Health Crisis Triage, retired in 2016. Thirty seven years as a Marriage and Family Therapist in private practice and in a large medical center. Activist in politics for mental health changes. I've taken my list of needed changes to WA US Senator Murray. Currently, serving on advisory committee to Bellingham Police Dept Chief Cook.

9. Please describe why you're interested in serving on this board or commission

I hope to continue supporting the development of Mental Health services. I am especially interested in co-occurring treatment due to working with addicts as well as the Mentally Ill.

References (please include daytime telephone number):

Vanessa Blackburn, COB Kelli Linville, COB

Signature of applicant:

Arlene Feld

Place Signed / Submitted

Bellingham, WA



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	Natasha
Last Name	Raming
Date	1/27/2017
Street Address	1902 20th Street Apt A4
City	Bellingham
Zip	98225
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	<i>Field not completed.</i>
Primary Telephone	6193848122
Secondary Telephone	<i>Field not completed.</i>
Email Address	natasharaming@gmail.com
1. Name of Board or Committee	Behavioral Health Advisory Board
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	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

NATASHA RAMING NSBHOAB 012017.pdf - attached

8. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

Please see attached

9. Please describe why you're interested in serving on this board or commission

Please see attached

References (please include daytime telephone number):

Melanie Pysden 360.303.8359 Cariad Cunningham 425.870.2105 Amy Grafmyre 360.201.8356 Tamara Pavesi 36.820.2320

Signature of applicant:

Natasha TJ Raming

Place Signed / Submitted

Bellingham, Washington

Natasha TJ Raming

1902 20th Street • Bellingham, Washington • 619.384.8122
natasharaming@gmail.com

January 27, 2017

Ms. Jackie Mitchell
Re: NSBHO Advisory Board
C/of: Whatcom County's Executive Office
311 Grand Ave #108,
Bellingham, WA 98225

Dear Ms. Mitchell,

I would like to express my interest in the current vacancy for a community member seat on the North Sound Behavioral Health Organization Advisory Board. Having moved to Whatcom County, from San Diego California in 2015, I have been struck by what seems to be an apparent disparity in the availability of behavioral health and addiction care between the two regions.

In general my interests relate to public healthcare: access, equity and quality; and when it comes to behavioral health, not only do I have professional research experience in the area – I also have personal experience with the topic. Having lost members of my family to suicide, which includes my own father in 2010, and now watching my child struggle with what could potentially be a mental health diagnosis with comorbidities ... I feel that I can offer insight and dedication to the informed decision making processes of the NSBHO Board. My interest in this board seat is vested in making a vital difference in the lives of a vulnerable population that has long too often been neglected in terms of sophisticated, timely and consistent quality healthcare.

I appreciate your consideration of my request for the opportunity to speak with you further; please find my resume enclosed.

Sincerely,

Natasha Raming

Natasha TJ Raming

1902 20th Street • Bellingham, Washington • 619.384.8122
natasharaming@gmail.com

Education

University of Arizona
Bachelor of Science in Psychology

University of California at Davis
Healthcare Analytics Certification (in progress)

Relevant Coursework

Behavioral Statistics • Finance for Management • Data Mining in Healthcare • Biomedical Ethics
Abnormal Psychology • Post-Traumatic Stress Disorder and Traumatic Death • Cognitive Psychology

Volunteer Experience

PeaceHealth United General

Quality Resources Volunteer

Sedro-Woolley, Washington (January 2016 – present)

San Diego Hospice

Patient Support Volunteer

San Diego, California (November 2008- August 2009)

Professional Experience

San Diego Hospice and Institute for Palliative Medicine

Research Assistant: Administrative support for healthcare and clinical education projects

San Diego, California (August 2009 – May 2011)

Research patient case management: regularly monitored patient medical records for symptoms of depression; conducted depression screening of patients by phone; conducted patient interviews that included administration of measures such as the Brief Psychiatric Rating Scale, Young Mania Rating Scale, the Hamilton Rating Scale for Depression, as well as other assessments of social, emotional and cognitive functioning; kept detailed medical record notes; generated weekly reports to care team in regards to patient's progress; acted as a central point of contact to patients for purposes of triaging psychiatric or physical matters to the appropriate clinician.

Database administration: defined quality management strategies for design and maintenance of project databases; performed authentication, authorization, auditing, extraction, transformation and loading of data; trained and supervised Volunteers on data entry and quality assurance procedures.

Data collection experience via: Electronic Medical Records, hard-copy chart reviews, database queries, patient interviews, administration of standardized measures, and empirical literature reviews.

Writing responsibilities: prepare database reports, spreadsheets, tables, graphs and flowcharts for project analysis, participate in the writing of Standard Operating Procedures and peer-reviewed publications.

Special projects: technical support for agency-wide online mandatory safety training, conceptual designer for EMRs screening tool, coordinator for department-wide Volunteer recognition effort.

Veteran's Medical Research Foundation

Research Associate: Administrative support for NIH funded longitudinal research study

La Jolla, California (August 2007 – August 2008)

Data collection: administered neuropsychological measures, created performance summaries, performed structural and functional magnetic resonance imaging procedures for the collection of physiological data.

Data management: maintained study related databases, tracked and reported study progress statistics.

Selected Publications

Raming, N. T. (2012). Cognitive Testing. In *Encyclopedia of Immigrant Health* (pp. 450-452). Springer New York.

Empenjo, J., Raming, N.T.; Irwin, S.A., Nelesen, R.A., Lloyd, L.S. (2011) The hospice caregiver support projects: providing support to reduce caregiver stress. *Journal of Palliative Medicine*. 14(5):593

Empenjo, J., Raming, N.T.; Irwin, S.A., Nelesen, R.A., Lloyd, L.S. (2013) The impact of additional support services on caregivers of hospice patients and hospice social workers. *Omega (Westport)*. 67(0): 53–61

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-109

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: James E. Lee, P.E.	JEL	3-7-17	<div>RECEIVED</div> <div>MAR 14 2017</div> <div>WHATCOM COUNTY COUNCIL</div>	3/21/17	Council - Introduction
Division Head: Joe Rutan, P.E.	JMR	3-7-17		4/4/2017	Council - Hearing
Dept. Head: Jon Hutchings	JH	3/8/17			
Prosecutor: Daniel L. Gibson	DG	03/09/17			
Purchasing/Budget: Brad Bennett					
Executive: Jack Louws TM	JL	3/13/17			

TITLE OF DOCUMENT:

Ordinance regarding the temporary installation of stop signs on Unick Road at Elder Road to facilitate the Slater Road/Jordan Creek Fish Passage Project construction detour.

ATTACHMENTS:

1. Cover Memo
2. Agenda Bill
3. Ordinance

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.)

To comply with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install temporary traffic control signs on Unick Road at Elder Road to facilitate the Slater Road/Jordan Creek Fish Passage Project construction detour.

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.

Jon Hutchings
Director



Joseph P. Rutan, P. E.
County Engineer/Assistant Director
322 N. Commercial Street, Ste 301
Bellingham, WA 98225-4042
Phone: (360) 778-6210
Fax: (360) 778-6211

Memorandum

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

Through: Jon Hutchings, Director *JH*

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director *JPR*
James E. Lee, P.E., Engineering Manager *JEL*

Date: March 7, 2017

Re: **Ordinance Regarding Temporary Installation of Stop Signs on Unick Road
during Construction of the Slater Rd/Jordan Creek Fish Passage Project**

Requested Action

Public Works respectfully requests that the County Council adopt the proposed ordinance to install temporary stop signs on Unick Road at Elder Road during construction of the Slater Road/Jordan Creek Fish Passage Project.

Background and Purpose

The existing 7-foot high by 10-foot wide by 190-foot long steel arch culvert under Slater Road at Jordan Creek is failing and in need of immediate repair. The existing culvert is also considered a barrier to fish passage which will be addressed as part of the project. The Slater Road/Jordan Creek Fish Passage Project Alternatives Study Report that was presented to Council in February 2016 recommended a preferred alternative including a full span bridge replacement utilizing a full road closure during construction. Since that time, design, permitting and real estate work has been completed and construction of this project is expected to begin this spring with construction activities expected to be completed in late 2017 or early 2018.

During the construction of this project local traffic will be detoured around the project site via Elder Road, Unick Road and Lake Terrell Road. Public Works proposes to install temporary stop signs on Unick Road at the intersection with Elder Road to improve safety and help manage the increased traffic this intersection will experience during the use of this detour. These temporary stop signs will be removed as soon as construction of the project is complete.

Information

This ordinance will allow for the temporary installation of stop signs and is necessary to comply with RCW 36.32.120 and 46.61.200 to install traffic control signs.

Please contact James Lee at extension 6264 with any questions regarding this ordinance.

SPONSORED BY: _____

PROPOSED BY: Public Works - Engineering

INTRODUCTION DATE: 03/21/2017

ORDINANCE NO. _____

REGARDING TEMPORARY INSTALLATION OF STOP SIGNS
ON UNICK ROAD AT ELDER ROAD DURING CONSTRUCTION OF THE SLATER
ROAD/JORDAN CREEK FISH PASSAGE PROJECT

WHEREAS, in compliance with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install traffic control signs on certain County Roads; and

WHEREAS, the existing steel arch culvert under Slater Road at Jordan Creek is failing and is considered a barrier to fish passage; and

WHEREAS, Public Works presented an alternative analysis report to Council in February of 2016 recommending replacing the failing culvert with a full span bridge with a full closure of Slater Road during construction; and

WHEREAS, design, permitting and real estate work on the project is now complete and construction of this project is expected to start in the spring of 2017 with completion anticipated in late 2017 or early 2018; and

WHEREAS, during construction of this project Slater Road will be closed at the project site and local traffic will be detoured to Elder Road, Unick Road and Lake Terrell Road; and

WHEREAS, Public Works proposes installing temporary stop signs on Unick Road at Elder Road to improve the safety of this intersection during use of this detour;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that temporary stop signs be installed on Unick Road at Elder Road this spring upon the start of project construction;

BE IT FURTHER ORDAINED that upon completion of the project the temporary stop signs will be removed;

AND BE IT FURTHER ORDAINED that the County Engineer is hereby directed to install the appropriate signs and that the Whatcom County Sheriff be notified by providing him with a copy of this ordinance.

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4 ADOPTED this ____ day of _____, 2017.
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9 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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13 Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

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16 APPROVED AS TO FORM:

() Approved

() Denied

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19 *Daniel L. Gibson*

20 Civil Deputy Prosecutor

Jack Louws, Executive

21
22 Date: _____

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-110

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: James E. Lee, P.E.	JEL	3-7-17	<div>RECEIVED</div> <div>MAR 14 2017</div> <div>WHATCOM COUNTY COUNCIL</div>	3/21/17	Council - Introduction
Division Head: Joe Rutan, P.E.	JR	3-7-17		4/4/2017	Council - Hearing
Dept. Head: Jon Hutchings	JH	3/8/17			
Prosecutor: Daniel L. Gibson	DG	03/09/17			
Purchasing/Budget: Brad Bennett					
Executive: Jack Louws	JL	3/13/17			

TITLE OF DOCUMENT:

Ordinance regarding the temporary installation of stop signs at the Oat Coles Road/Swift Creek temporary bridge crossing.

ATTACHMENTS:

1. Cover Memo
2. Agenda Bill
3. Ordinance

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

To comply with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install temporary traffic control signs on the temporary Oat Coles Road/Swift Creek Bridge crossing.

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.

Jon Hutchings
Director



Joseph P. Rutan, P. E.
County Engineer/Assistant Director
322 N. Commercial Street, Ste 301
Bellingham, WA 98225-4042
Phone: (360) 778-6210
Fax: (360) 778-6211

Memorandum

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

Through: Jon Hutchings, Director *JH*

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director *JPR*
James E. Lee, P.E., Engineering Manager *JEL*

Date: March 7, 2017

Re: **Ordinance Regarding Temporary Installation of Stop Signs at the
Oat Coles Road/Swift Creek Temporary Bridge Crossing**

Requested Action

Public Works respectfully requests that the County Council adopt the proposed ordinance to install temporary stop signs at the Oat Coles Road/Swift Creek temporary bridge crossing.

Background and Purpose

The existing Oat Coles Road/Swift Creek Bridge No. 313 deck was pulled in January 2017 due to stream sediments aggrading at the bridge to the point that Swift Creek flows risked backing up behind the bridge and jumping out of channel. Pulling the bridge deck has allowed for unimpeded flows of Swift Creek at this location and abated the immediate risk of Swift Creek jumping its banks at this location.

Public Works is proposing to install a temporary stop-controlled single-lane bridge at this location to restore access for the local community, fire district and Nooksack Valley School District among others. The proposed temporary single-lane bridge will provide additional vertical clearance at this crossing which will accommodate future channel aggradation. A permanent solution at this site will be developed in conjunction with implementation of the Swift Creek Sediment Management Action Plan.

Information

This ordinance will allow for the temporary installation of stop signs for traffic control that is needed at the proposed temporary Oat Coles/Swift Creek bridge crossing. This ordinance is necessary to comply with RCW 36.32.120 and 46.61.200 to install traffic control signs.

Please contact James Lee at extension 6264 with any questions regarding this ordinance.

SPONSORED BY: _____

PROPOSED BY: Public Works - Engineering

INTRODUCTION DATE: 03/21/2017

ORDINANCE NO. _____

REGARDING TEMPORARY INSTALLATION OF STOP SIGNS
AT THE OAT COLES / SWIFT CREEK TEMPORARY BRIDGE CROSSING

WHEREAS, in compliance with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install traffic control signs on certain County Roads; and

WHEREAS, the Oat Coles Road/Swift Creek Bridge No. 313 bridge deck was removed in January, 2017 to allow Swift Creek to flow unimpeded to assist in keeping flows within its banks; and

WHEREAS, Public Works desires to install a temporary stop-controlled single-lane bridge at this crossing that will provide additional vertical clearance to allow for future channel aggradation at this location while work continues on implementing the Swift Creek Sediment Management Action Plan (Plan); and

WHEREAS, construction of a temporary stop-controlled single-lane traffic bridge will allow the least amount of inconvenience to traffic; and

WHEREAS, that work implementing the Plan will identify a permanent solution for this temporary bridge crossing and updates on the status of the permanent solution will be provided in the future as appropriate;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that stop signs be installed at the northern and southern approaches to the temporary single-lane Oat Coles Road/Swift Creek bridge crossing.

BE IT FURTHER ORDAINED that upon removal or replacement of the temporary single-lane Oat Coles Road/Swift Creek Bridge the stop signs will be removed.

BE IT FURTHER ORDAINED that the County Engineer is hereby directed to install the appropriate signs and that the Whatcom County Sheriff be notified by a copy of this ordinance.

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ADOPTED this ____ day of _____, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Carl Weimer, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Daniel L. Gibson
Civil Deputy Prosecutor

Jack Louws, Executive

Date: _____

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-111

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	JPR	3/6/17	<div style="text-align: center;"> RECEIVED MAR 14 2017 WHATCOM COUNTY COUNCIL </div>	3/21/17	Introduction
Division Head:	JPR	3/6/17		4/4/17	Public Hearing
Dept. Head:	<i>th</i>	3/8/17			
Prosecutor:	<i>lt</i>	03/09/17			
Purchasing/Budget:					
Executive:	<i>TKS</i>	<i>3/12/17</i>			

TITLE OF DOCUMENT:

Proposed Ordinance change to the Whatcom County's Code Title 12.60 Road Naming System including Honorary Road Naming.

ATTACHMENTS:

1. Memo
2. Ordinance
3. Exhibit A: Proposed Changes to Whatcom County Code 12.60

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

Should Clerk schedule a hearing? (☒) Yes () NO
 Requested Date: 4/4/17

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.)

Amendment of Whatcom County's Road Names System, Whatcom County Code 12.60 to include Honorary Naming of Roads.

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
PUBLIC WORKS DEPARTMENT**

Jon Hutchings
Director



Joseph P. Rutan, P.E.
County Engineer/Assistant Director
322 N. Commercial Street, Ste 301
Bellingham, WA 98225-4042
Phone: (360) 778-6210
Fax: (360) 778-6211

Memorandum

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

RECEIVED

Through: Jon Hutchings, Director

MAR 13 2017

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director

**JACK LOUWS
COUNTY EXECUTIVE**

Date: March 6, 2017

Re: Proposed Honorary Road Naming Ordinance

Requested Action:

The Public Works Department requests the proposed attached changes to Whatcom County Code Title 12.60, "Road Naming System" to include Honorary Naming of Roads be scheduled for a Public Hearing.

Background and Purpose:

In May of 2016 the Whatcom County Council approved an amendment to WCC 12.60, "Road Naming System" to provide a mechanism to allow for honorary road name signs. It was subsequently discovered that the version of the existing ordinance to be amended was incorrect.

The code changes approved in May 2016 are the same as the code changes now being proposed although the correct existing version of WCC 12.60 is now used. This corrected version will supersede the May 2016 version.

Information:

The honorary naming of a roadway will not change the legal name of the roadway. The honorary roadway sign will be of a different color and will be located below the legal road name sign.

The attached proposed code amendment is based upon an existing King County Ordinance.

PROPOSED BY: Public Works - Engineering

INTRODUCTION DATE: 3/21/2017

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE CHAPTER 12.60, ROAD NAMING SYSTEM

WHEREAS, Whatcom County citizens have requested honorary names for County Roads;
and

WHEREAS, the Whatcom County Code (WCC) has no system to include honorary road
naming; and

WHEREAS, the Whatcom County Public Works Department has identified additional
changes to WCC 12.60 that, if adopted, should improve the implementation and administration
of the code; and

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Road
Naming System chapter, WCC 12.60 is hereby amended as shown on Exhibit A, with the
addition of the Honorary Road Naming section, WCC 12.60.150, and the renumbering of the
two immediately following sections of that chapter.

ADOPTED this ____ day of _____, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Daniel L. Gibson
Chief Civil Deputy Prosecutor

Jack Louws, Executive
Date: _____

Chapter 12.60 ROAD NAMING SYSTEM

Sections:

- 12.60.010 Purpose.
- 12.60.020 Definitions.
- 12.60.030 Responsibilities of the public works department.
- 12.60.040 Appointment and responsibilities of the citizen address and road name appeals committee.
- 12.60.050 Requirement for road name.
- 12.60.060 Criteria for road name selection.
- 12.60.070 Name assignment procedure.
- 12.60.080 Road name signs.
- 12.60.090 Road sign specifications.
- 12.60.100 Address numbering system.
- 12.60.110 Correction of address number sequence.
- 12.60.120 Address number assignment.
- 12.60.130 Life, safety and property protection standards for address designation markers.
- 12.60.140 Road name changes and procedures.
- 12.60.150 Honorary Road Naming
- 12.60.150 12.60.160 Master map.
- 12.60.160 12.60.170 Compliance requirements and penalties.
- 12.60.190 Severability.

12.60.010 Purpose.

The purpose of this chapter is to provide for a logical system of road naming and address numbering, which is consistent with the desires of Whatcom County residents, with the Whatcom County Comprehensive Plan, and with the practical needs of county residents, emergency service providers, and visitors. (Ord. 96-049).

12.60.020 Definitions.

A. "Address" means the appropriate combination of address number, directional prefix or suffix, road name, and road type, e.g., 100 East Bakerview Road.

B. "Address grid system" means an imaginary network of uniformly spaced horizontal and perpendicular lines used to establish regularly spaced intervals as the basis for assigning address numbers.

C. "Address marker" means a marker with numbers on two sides used to designate an address number along a road, or numbers affixed to a building.

D. "Address number" means the assigned property number which is written ahead of the road name, e.g., '525' Noon Road, and shall be numerical only.

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E. "Alpha road name" means a word, usually a proper or common noun, or a combination of words used to identify a road, e.g., 'Smith' Road, 'Trout Lake' Road.

F. "Applicant" means the individual(s) or entity responsible for initiating the creation or expansion of a road, or requesting the change of the name of an existing road.

G. "Block number" means the 100 number interval based on the address grid system.

H. "Building address number including building designation" means the property number assigned to a building.

I. "Directional prefix" is the word such as "West" or "East" placed ahead of the name of a road.

J. "Directional suffix" is the word such as "West" or "East" placed after the road type, e.g., Willow Lane East.

K. "Driveway": Primary function is to provide direct access to property.

L. "Joint driveway" means a driveway with primary function to provide direct access for up to four properties.

M. "Mobile home park" means any parcel of land or adjacent parcels of land in the same ownership which is utilized for occupancy by more than two mobile homes.

N. "Numeric road name" means an ordinal number used to identify a road, e.g., '2nd Street', '31st Avenue.

O. "Private road" means a road which is on private property and which is maintained with private funds.

P. "Recreational vehicle park" means a parcel of land in which three or more sites are primarily for occupancy by recreational vehicles for travel, recreation or vacation uses.

Q. "Right-of-way" means a legal right of passage over a piece of land, generally established by either dedication, ownership, or easement.

R. "Road" means a travel way intended for the use of motorized vehicles or other modes of transportation.

S. "Road name sign" means a sign designating the name of a travel way.

T. "Road name type" follows the road's alpha road name and indicates the type of travel way, e.g., Britton 'Road', Sunset 'Lane'. (Ord. 96-049).

12.60.030 Responsibilities of the public works department.

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A. Whatcom County department of public works, hereinafter called the department, is directed to assign and/or change address numbers to buildings and unimproved property, to facilitate and record the naming of roads, and to assure placement of road name signs, according to the provisions of this chapter.

B. The department will recommend to the executive for approval by the county council rules and regulations regarding all address numbering and road naming policies.

C. The department and the applicant shall work cooperatively and in a timely manner to facilitate and expedite the procedures required by this chapter. (Ord. 96-049).

12.60.040 Appointment and responsibilities of the citizen address and road name appeals committee.

A. The county council shall appoint a citizen address and road name appeals committee, hereinafter called the "citizen appeals committee", of five members representing the diversity of Whatcom County residents. Committee members shall serve three-year overlapping terms and shall be eligible for reappointment.

B. The responsibilities of the citizen appeals committee shall be as follows:

1. Consider and decide appeals of address numbering, and road name assignments and corrections;
2. Review and decide appeals in enacting the policies and procedures of this chapter;
3. Develop a list of preapproved road names from which applicants may choose;
4. May propose changes or additions in the county's address numbering, road naming, and sign policy.

C. Decisions by the citizen appeals committee may be appealed to the county council. (Ord. 96-049).

12.60.050 Requirement for road name.

A. Road names shall be required for all public roads and private roads now existing or hereafter created when such roads:

1. Are any length and serve five or more lots; or
2. Are 1,000 feet or greater in length and serve three or more lots.

B. Roads that are not required to be named per WCC 12.60.050.A above may also be named at the unanimous request of all the property owners served by the road when said road serves three or four existing lots. (Ord. 96-049).

12.60.060 Criteria for road name selection.

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A. Objectives. Names should be pleasant sounding, appropriate, and easy to read and pronounce (so that the public, and children in particular, can handle the name in an emergency situation) and shall meet What-Comm (9-1-1) computer programming requirements.

B. Recommended Types of Names. Names of local historic families, individuals, landmarks and events, features of the natural terrain, plants and animals, names of aesthetic or community significance.

C. Unacceptable Names. Numeric (e.g., 42nd, 56th, Fifty-Fifth, etc.) if they have already been used or if they do not conform to the address grid system; alphabetical letters (A, B, C, etc.); frivolous, complicated or unseemly names (e.g., My Road, Slick Road).

D. Avoidance of Name Duplication. Similar sounding names shall be considered duplication regardless of spelling. No duplication of names shall be permitted within Whatcom County. Road type shall not be used to distinguish road names within these areas, except in logically compelling instances where there is contiguity (e.g. Oak Circle at the end of Oak Street; but not Oak Lane at a location not contiguous with Oak Street). Directional indicators (e.g., North, South, Northeast) shall not be allowed as street names to distinguish noncontiguous roads (i.e., if there were an existing Wilson Road, "North Wilson Road" could not be considered a distinct, nonduplicative name).

E. Road Type Designations. Due to existing road names, "view", "vista", "trail", and "plaza" shall not be permitted as a road name type. The designation "highway" shall be reserved for state and federal administered roads. The road name types "road" and "street" shall be reserved for Whatcom County public roads only.

F. Directional Prefixes. Roads running east-west which intersect (cross or abut) the Guide Meridian shall be prefixed "East" on the east side of the Guide and "West" on the west side of the Guide.

G. Directional Suffixes. Directional suffixes shall not be allowed in road names. (Ord. 96-049).

12.60.070 Name assignment procedure.

A. The applicant for a new road may propose three original names: a preferred name and two alternates. The department shall provide the road applicant with a copy of this chapter and a list of preapproved names from which a road name may be selected, if the applicant prefers not to propose an original name.

B. If preapproved name is not selected, the road name approval process shall consist of submission to the department for review including What-Comm 9-1-1 and the local fire district(s) according to the criteria set forth in WCC 12.60.060.

C. If an appeal is made, the citizen appeal committee shall evaluate the appeal with regard to compliance, review proposed road names for appropriateness, and make recommendations on new road names and road name changes.

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D. When the recommendations of the department and the citizen appeals committee do not agree, or when the applicant contests the decisions of the department and the citizen appeals committee, the matter may be referred to the council for consideration. (Ord. 96-049).

12.60.080 Road name signs.

A. Signs on public county roads shall be placed and maintained by the county. When an applicant dedicates a road to the public, the applicant shall pay for the initial installation of the road name sign(s).

B. Signs on new private roads shall be installed and maintained by the applicant in accordance to Whatcom County Development Standards. On existing private roads, the responsibility for installation and maintenance of signs shall rest collectively with the owners of real property which abuts or may use the private road as access or as outlined in the plat covenants. (Ord. 96-049).

12.60.090 Road sign specifications.

A. For Arterial Roads. The color and letter size shall be consistent with current county road signs for all public county roads.

B. For Private Roads. Signs designating private roads shall be the same style as public road signs in accordance with Whatcom County Development Standards.

12.60.100 Address numbering system.

A. An address numbering system following a grid pattern of 400 three- or four-digit numbers per mile meets current and projected future needs in Whatcom County. This system provides for one address number every 26.4 feet on either side of the road. (Ord. 96-049).

B. Except for Point Roberts, the horizontal (east-west) base line is the Whatcom County and Skagit County border. Numbers 0 to 99 are reserved for parcels in Skagit County that access and are addressed on Whatcom County roads. The base line is 100, and addresses increase to the north by 100 numbers per quarter-section line, 400 numbers per approximate mile.

C. Except for Point Roberts, the vertical (north-south) base line is the dividing line between range 2 east and range 3 east (Guide Meridian for most of the county). The base line is 100 and addresses increase going east and increase going west by 100 numbers per quarter-section line, 400 numbers per approximate mile.

D. For Point Roberts, the horizontal (east-west) base line is the theoretical western section line of 40N 3W 33. The base line is 1000 and addresses increase going east by 100 numbers per quarter-section line, 400 numbers per approximate mile. The vertical (north-south) base line is the Canadian border. The base line is 0, and numbers increase to the south by 100 numbers per quarter-section line, 400 numbers per approximate mile.

E. Addresses on the north side of an east-west running road will be even numbers; addresses on the

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south side of an east-west road will be odd numbers. Addresses on the east side of a north-south running road will be even numbers; addresses on the west side of a north-south road will be odd numbers.

12.60.110 Correction of address number sequence.

The department shall make corrections where necessary to accomplish full implementation of the address numbering system for all county addresses in accordance with the following time-line and criteria:

A. The department shall correct addresses beginning in 1997, and shall continue until the entire county has been reviewed and corrected.

B. Notices of address corrections shall be mailed to affected property owners and become effective six months after notification by the department.

12.60.120 Address number assignment.

A. The department shall assign address numbers to previously unaddressed lots prior to issuance of a building permit.

B. New address number assignments and address number corrections shall follow the address number system. New address numbers shall logically fit into the existing numbering system of the particular area. When incorrect address numbers are found during the permit process, corrections should be made to those addresses at that time.

C. One address per legal lot of record shall be assigned, and except when the lot of record hosts:

1. One or more individual multiple dwelling or multiple occupant buildings (e.g., apartment buildings, condominiums, duplexes, quadplexes, office buildings, strip malls), then each building shall have a separate address.
2. One or more permitted detached accessory dwelling units, then each unit shall have a separate address.

D. For nondwelling type detached accessory structures (e.g., shops, garages, barns), separate addresses shall not be assigned different from the primary lot of record address.

E. For multiple dwelling and multiple occupant building, alpha designator or suite number suffixes shall also be used in combination with the primary lot of record address.

F. For permitted attached accessory dwelling units, alpha designator suffix use is optional in combination with the primary lot of record address.

G. For mobile home and recreational vehicle parks, site numbers shall be assigned to the individual mobile home or recreational vehicle sites and not to the mobile homes or recreational vehicles

themselves. One address number shall be assigned to the mobile home or recreational vehicle park as a whole. The address of any one unit in the mobile home or recreational vehicle park shall consist of the mobile home or recreational vehicle park address followed by the site number.

12.60.130 Life, safety, and property protection standards for address designation markers.

A. The owner of real property on which any building is located which is habitable or tenantable for residential, commercial, business, storage, or other purposes shall be responsible for ensuring that the proper address numbers are placed in such a position as to be plainly visible and legible from the road fronting the property.

B. Address Designation Marker. Where the building is not visible from the road or the address is not legible from the road, or more than one building is on a site, one address designation marker per building or address shall be provided at the junction of the driveway and the named road, and another address designation marker should be provided at the intersection of the individual driveway and the joint driveway. The ultimate responsibility for health and safety issues on private property rests with the property owner.

1. Placement. Address designation markers shall be placed so that the numbers are not obstructed by grass or landscaping. Installation and maintenance are the responsibility of the property owner.

2. Installation. Installation and maintenance of temporary address designation markers during all permitted construction shall be the responsibility of the permit applicant in compliance with subsections B and C of this section.

3. Specifications. Address designation markers must be visible at night. The minimum standard shall be three-inch numbers arranged horizontally or vertically on a clearly contrasting background. Reflective numbers and reflective backgrounds are recommended. Blue and white are the recommended colors to be used on address designation markers.

C. The property owner(s) of mobile home and recreational vehicle parks are responsible for ensuring that each space is marked with the individual site number. The site number shall be easily visible and legible and affixed to some permanent structure located on the space. In mobile home and recreational vehicle parks with multiple access lanes, the access lanes shall be marked with the range of site numbers served.

D. Map Signs. In complexes where multiple buildings exist, map signs are recommended to be posted at the main entrance of the complex. (Ord. 96-049).

12.60.140 Road name changes and procedures.

Some road names warrant being changed in order to reduce confusion arising from duplicate names or by different names on segments of the same travel way (which may or may not change direction). In addition, a request may be made to change an existing road name. Whenever possible, road name

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4. The department shall provide a staff report to the Whatcom County Council including, but not limited to, the following information:
 - a. The comments received on the requested application.
 - b. An analysis on the name change meeting the criteria of WCC 12.60.060.
 - c. Cost of changing the road signs.
5. The Whatcom County Council will hold a public hearing and make a decision on the request.
6. If the Whatcom County Council approves the request, the ordinance changing the road name will include the requirement for the applicant to reimburse the department for the actual cost of the road sign changes.

12.60.150 Honorary Road Naming.

1. An honorary road name is a subsidiary designation for a road or a portion of a road that does not replace the legal name of the road. The honorary road name shall be denoted by signs that augment but do not replace signs for the legal road name required for emergency service access. If a road or a portion of a road, except intersecting roads, has been designated with an honorary road name, no other honorary name shall be given to the road or section of a road. Honorary signs shall meet the standard road sign criteria for size and shape with a brown background and white lettering, and shall be placed underneath signs designating the legal road name.
2. The council shall designate an honorary name for a road or portion of a road by the adoption of an ordinance. Honorary road names shall be limited to recognition of individuals, organizations, entities and events of local significance to the county as determined by the county council. The actual costs of manufacturing, designing and installing or replacing signs due to damage, theft or vandalism shall be paid to the Public Works Department by the applicant requesting the honorary designation before the signs are manufactured and installed.
3. An application to the council for honorary road renaming shall contain a list of all persons having ownership in properties addressed on the road to be given the honorary name and the signatures of the majority of those persons indicating acquiescence in the honorary road name. The application shall include a statement recognizing that costs defined in subsection 2 of this section shall be borne by the applicant and noting that the legal name of the road will not change.
4. The council shall mail notice of a proposed honorary name to all property owners on

the affected road at least twenty days before council action.

~~12.60.150~~ 12.60.160 Master map.

The department shall develop a master map of all public and private roads in Whatcom County in conjunction with WCC 12.60.110 and shall maintain and keep current thereafter. (Ord. 96-049).

~~12.60.160~~ 12.60.170 Compliance requirements and penalties.

A. All address assignments or changes duly required by the department shall be recorded on title transfers.

B. Any person, firm, or corporation violating any of the provisions of this chapter, or of the codes adopted by reference by this chapter, shall be deemed guilty of a civil offense and shall be given 30 days to correct the situation and shall be fined not more than \$250.00 for each offense. (Ord. 96-049).

12.60.190 Severability.

If any portion of this chapter is deemed to be invalid or inoperative, all remaining sections shall continue in effect. (Ord. 96-049).