### TITLE OF DOCUMENT:

Birch Bay Community Park Master Plan

### ATTACHMENTS:

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) No</th>
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<td>SEPA review completed?</td>
<td>( X ) Yes</td>
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| 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.)

Request approval of the Birch Bay Community Park Master Plan by resolution

### COMMITTEE ACTION:

| COUNCIL ACTION: |

### Related County Contract #:

| Related File Numbers: |

### Ordinance or Resolution Number:

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

TO: Members of the Council and County Executive

FROM: Michael McFarlane, Director

DATE: March 21, 2017

RE: Resolution approving Birch Bay Community Park Master Plan

The Parks & Recreation Department is requesting Council approval by resolution of the *Birch Bay Community Park Master Plan*. The approved master plan will provide a clear direction for future development of the proposed facility and be a key application element for state grant funding opportunities in the future.

The plan is the result of over six months of community and agency meetings, public comment and review by the Whatcom County Parks Commission.

Please contact me at 5855 should you have any questions or require additional information.
RESOLUTION APPROVING THE BIRCH BAY COMMUNITY PARK
MASTER PLAN

WHEREAS, in November 2014 Whatcom County acquired property on Birch Bay for use as a public park; and
WHEREAS, the County Council authorized funding for park planning purposes; and
WHEREAS, through a public planning process engaging the community, the Parks & Recreation Department has completed the master plan for the park; and
WHEREAS, the master plan addresses recreational use, visitor parking, connectivity and public restroom accommodations; and
WHEREAS, the Parks and Recreation Commission has provided additional citizen input and review of the proposed plan and recommends its approval;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Birch Bay Community Park Master Plan be approved and that the Parks & Recreation Department is hereby authorized to pursue funding and development to implement the plan which is attached hereto.

APPROVED this 4th day of April, 2017.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

[Signature]

Elizabeth Gallery, Civil Deputy Prosecutor
supportive + balanced + flexible + simple + responsive

Birch Bay Community Park
Master Plan Report

Whatcom County Department of Parks & Recreation

Robert W. Droll, Landscape Architect, PS

April, 2017
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Acknowledgements

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

**Whatcom County Parks & Recreation Department**
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Christ Thomsen, MBA, PMP, Parks Operations Manager

**Birch Bay Community Park Steering Committee**
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**Public Meeting Space Host**
Birch Bay Bible Community Church
Tim Thiessen, Lead Pastor

**Public Meetings Facilitators**
Rod Lamb, PLA, LEED®AP, Design & Development Supervisor
Bob Droll, ASLA

**Steering Committee Facilitators**
Mike McFarlane Director
Rod Lamb, PLA, LEED®AP, Design & Development Supervisor
Christ Thomsen, MBA, PMP, Parks Operations Manager

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

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

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

Phase 2 implementation finishes the improvements on the south side of the Central Walk; Open Field Play and Special Event Hosting Space, Multi-Purpose Shelter/Performance Pavilion, Landscape Improvements, and Site Amenities. Estimate of Probable Costs for Phase 2 improvements totals $609,100. Annual Maintenance Cost for Phase 1 and 2 is projected to be $108,800.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adjacent Land Use
Adjacent land use to the north consists of a single family home and a small Recreational Vehicle/Mobile Home community (all are at one level). Sea Links at Birch Bay, a single family planned community borders the eastern property edge. Golden Tides Condos, a one level residential development, borders the south. Birch Bay Drive forms the western property edge; no development exists on the Tideland portion of this Whatcom County property. Adjacent properties are zoned Resort Commercial District.
Birch Bay Community Park
Whatcom County Parks & Recreation Department

Site Analysis

Figure 2 Site Analysis

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

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

Birch Bay

Asphalt One-Lane Roads

Potential Screening of Residential

Residential

Site Topography:
- Essentially Level (elevation 12' dominates) w/ Forested 15:1 Slope
- 352' +/- to toe of slope
- 401'+

80' Wide Driveway Access

Sweeping Vistas of Birch Bay

Flat, Open, & Irregular Lawn Area

Asphalt One-Lane Roads

Potential Screening of Residential

Residential
south. Birch Bay Drive forms the western property edge; no development exists on the Tideland portion of this Whatcom County property. Adjacent properties are zoned Resort Commercial District.

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

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

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

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

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

**Political:**
This site is served by the elected County Council, Port of Bellingham, and PUD Commissioners of District 3.
Public Involvement Summary
Birch Bay Community Park Master Plan is a conceptual design document that generally describes and guides the future design, management, and development of this important park resource. Its preparation included a robust public process element to ensure that the needs of the public are met while preserving the ecological function and environmental quality of the site and while complying with Whatcom County’s policies, budget realities, and maintenance limitations.

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

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

Birch Bay Community Park Master Plan Steering Committee Meeting 1, July 13, 2016
The steering committee discussed the best and broadest methods of notifying the public of the master process and meeting dates. It was decided the County’s website and social media pages, local newspapers, and interested individuals email list would likely produce the best turn out. Other discussion items included Grant funding opportunities, outreach to elected officials, utility needs to accommodate various functions envisioned at the park (water, electricity etc.), security cameras, and why the park cannot include a community center building because of specific Conservation Futures Program funding restrictions.

Birch Bay Community Park Master Plan Public Meeting 1, August 6, 2016
Public Workshop 1 commenced with the statement of Project Goals and anticipated Outcomes, a description of the Master Plan Process, an invitation for the public to be involved in the Master Planning Process, a clear description of the means by which the Public can offer their input, an overview of the site’s influencing characteristics (Site Analysis), a list of Potential Program Elements, a list of Special Events hosted on the site, and an overview of the Project Schedule.

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

- Open and flexible space/staging area for community events/lawn areas
- Parking
- The “Beach” was the real draw for residents and visitors; protection of views to Beach and access and an ADA Route to the Beach was important
- Restrooms
- Picnic Shelter

- An Amphitheatre/Performance Space
- Address multi-generational interests
- Picnic opportunities
- Low Impact Development
- Outdoor wash-off showers
- Shade
- Environmental and Cultural Interpretation opportunities
- Safe vehicular & pedestrian access

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

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

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

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

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

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

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

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

- Preferred location of Restroom
- Park Host
- Nature Play
- Flexible Open Space
- Central Walk to Beach
- Outdoor Wash-off Showers
- Adult Fitness Stations
- Multi-Purpose Shelter
Open Fire Pit
Move Parking east; consider retaining wall to create space
Solar Powered Lighting
Mobile Food Vendor

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

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

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

**Birch Bay Community Park Master Plan Steering Committee Meeting 3, Oct. 16, 2016**
The Steering Committee identified the following for further consideration.
- BBQ facilities locating them near fixed picnic tables and also a BBQ ash container
- Multi-purpose shelter needs water, power and sewer hookup (and perhaps stubbing out utilities from the restroom for an undetermined future structure).
- Gated entry
- Movie night
- Consider design strategies that are identified in or supported by Whatcom County’s “Committing Whatcom County to Adopt A ‘Healthy Planning’ Approach” (Resolution 2015-038)
Birch Bay Community Park Master Plan Public Meeting 3, October 18, 2016

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

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

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

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

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

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

Frontage Improvements
Frontage improvements comply with Standard Drawing 505.D-1 with the five-foot sidewalk (Pervious Concrete) next to the curb proposed along the entire frontage. Pedestrian activated crosswalk warning light systems and signs are proposed (not shown). A pull-out is shown for patron drop-offs which eliminates additional turning movements in/out of the park. Whatcom Transit Authority may be interested in adding, or relocating one of their transit stops to the park. Two Seating Nooks are located just off the sidewalk to provide Walkers a restful space with a beautiful Birch Bay view.

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

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

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

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

Three types of Picnic Table opportunities are proposed. Free-standing Picnic Tables provide the freedom and flexibility for park patrons to arrange picnic tables to suit their desires and needs. Accessible Routes to ADA compliant Picnic Tables are found throughout the Park. Picnic Table Alcoves provide a nestled, territorial, and an attractive space within the landscape beds. All ADA compliant Picnic Tables and
Picnic Table Alcoves have secured, free standing BBQ grills (not shown for clarity). A fire ash receptacle is located near the Restroom (not shown for clarity).

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

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

**Landscape Improvements**

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

**Frontage Landscape**

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

**Open Field Play & Enclosure**

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

**Perimeter Screening**

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

**LID Parking Lot**

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

**Steps w/ ADA Ramp to Beach**

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

Figure 4 Preferred Master Plan

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

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

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

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

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

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

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

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

A map of proposed utilities is attached as Exhibit E.

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

The site is presumed to have soils suitable for stormwater infiltration based on preliminary analysis. All new uncovered paving surfaces within the site and for frontage improvements will be pervious asphalt. Roof runoff from the main building and multipurpose shelter will be collected and routed to subsurface infiltration trenches. All stormwater is expected to be managed with these approaches.
Other Program Element Considerations
Several Program Elements suggested and discussed through the Steering and Public Meetings were considered by Parks and not included in the Preferred Master Plan due to space limitations, maintenance concerns, or management practices. A dedicated Mobile Food Vendors (MFV) space was not shown; Parks can accommodate Mobile Food Vendors by cordoning off parking stalls as needed for the MFV plus stalls for to accommodate wait lines. Parks believes dedicated hard sport courts would consume valuable Park space; such sport courts can be accommodated operationally by temporarily cordoning the Parking Lot and providing permanent court striping. Such court striping addresses the average daily demand for sport courts while addressing peak demand for parking.

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

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

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

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

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

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

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

Master Plan Level Estimate of Probable Cost Summary

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

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

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

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

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

**Whatcom County Parks and Recreation Department**

**Master Plan Level Estimate of Probable Cost Summary**

<table>
<thead>
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# Birch Bay Community Park

**Whatcom County Parks and Recreation Department**

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

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Robert W. Droll, Landscape Architect, PS

360.456.3813
## Birch Bay Community Park
### Whatcom County Parks and Recreation Department
#### Phase I - Master Plan Level Estimate of Probable Cost

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<th>Line</th>
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# Birch Bay Community Park

**Whatcom County Parks and Recreation Department**

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

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<th>Line</th>
<th>Item Description</th>
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<th>Item Subtotal</th>
<th>Mobilization at 12%</th>
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# Birch Bay Community Park

## Whatcom County Parks and Recreation Department

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

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Robert W. Droll, Landscape Architect, PS  
360.456.3813

35
# Birch Bay Community Park
## Whatcom County Parks and Recreation Department
### Phase 3 - Master Plan Level Estimate of Probable Cost

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| Line | Subtotal | $192,293.92 |  |
| 24   | Taxes @ 8.5% | $16,344.98 |  |
| 25   | Subtotal | $208,638.90 |  |
| 26   | Seasonal Competition Factor @ 0.0% | $0.00 |  |
| 27   | Contingency @ 12% | $25,036.67 |  |
| 28   | Permits | $3,000.00 |  |
| 29   | Subtotal | $25,036.67 |  |
| 30   | A/E Services @ 8% | $18,934.05 |  |
| 31   | Project Development Subtotal | $255,609.62 |  |
| 32   | Escalation to Construction Year @ 3.8% per year |  |
| 33   | Project Development Total | $255,609.62 |  |
| 34   | Project Development Total-Rounded | $255,600.00 |  |

Robert W. Droll, Landscape Architect, PS
360.456.3813
Appendix B .......... Master Plan Estimate of Probable Annual Maintenance Costs by Phase
<table>
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<tr>
<th>Task Description</th>
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<th>Oct</th>
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**TOTAL LABOR AND MATERIALS**

- Labor Costs: $54,674
- Materials: $10,000
- Total Costs: $64,674

**Total Annual Maintenance Cost**

- Low: $50,000
- High: $70,000

**Total Annual Maintenance Cost**

- Low: $50,000
- High: $70,000

*Note: This document includes the labor and material costs for the annual maintenance of the park, excluding special events and capital improvements. The costs are based on the labor and material rates quoted and are subject to change based on the specific needs of the park.*
## Birch Bay Community Park Annual Maintenance Cost Projection
### Phase 2 Annual Task Frequency Schedule*

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<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
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**Total Hours: 1,003**

*This Annual Task Frequency does not include any time/cost for programming & hosting Special Events, nor does it account for Capital Improvements, repairs/replacement.

| Total Adjusted Hours for Mov/Demol/Holidays/Sick Days, etc. (15%) | 1,223 |

| Labor Costs (Hour @ 33.33 per hour) | $64,796 |
| Total Administrative Costs (10% of Labor Cost) | $3,430 |
| Materials Adjustment (materials, change orders, etc.) (5%) | $5,459 |
| Irrigation Water Use (mass of turf per 100 cft) | $11,000 |
| Power Costs | $1,000 |
| Total Annual Maintenance Cost | $149,259 |
| High Annual Maintenance Cost (15%) | $187,785 |
| Low Annual Maintenance Cost (5%) | $97,164 |
**Whatcom County Parks & Recreation Department**  
**Birch Bay Community Park Annual Maintenance Cost Projection**  
**Phase 3 Annual Task Frequency Schedule**

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**TOTAL HOURS:** 1,105

**TOTAL ADJUSTED HOURS for Holidays, Snow Days, etc. @ 10%** 1,225

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**Total Annual Maintenance Cost:** $109,939

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

**Low Annual Maintenance Cost (≥ 20%)** $98,085

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

Prepared By:
Garth L. Baldwin, MA, RPA

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

Drayton Archaeology Report: 0316J
Redacted for Public Release: January 30, 2017
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Ongoing Cultural Resources Review at the Proposed Whatcom County Birch Bay Community Park.

Author: Garth Baldwin
Date: January 30, 2017
Location: Birch Bay, Whatcom County, Washington
USGS Quads: Blaine (1994)
Legal: Township 40 North, Range 1 East, Section 30

INTRODUCTION

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

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

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

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

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

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

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

REGULATORY CONTEXT

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

PROJECT AREA AND DESCRIPTION

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

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

Environmental Context

Topography and Geology

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

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

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

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

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

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

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

**Fauna**

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

**Cultural Context**

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

**Ethnographic**

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

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

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

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

**Historic**

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

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

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

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

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

![Edgewater Resort, Birch Bay, Wash](image)

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

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

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

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

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

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

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

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

CULTURAL RESOURCE EXPECTATIONS

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

FIELD INVESTIGATION

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

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

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

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

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

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

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

RESULTS AND RECOMMENDATIONS

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

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

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

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

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

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

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

F. Design of any structures, their locations, and incorporation of fill to avoid excavation in the most sensitive area should be seriously considered.
The following is only offered as a guide and is not the complete text of any code, regulation or law. Washington State law provides for the protection of all archaeological resources under RCW Chapter 27.53, Archaeological Sites and Resources, which prohibits the unauthorized removal, theft, and/or destruction of archaeological resources and sites. This statute also provides for prosecution and financial penalties covering consultation and the recovery of archaeological resources. Furthermore, RCW Chapter 27.44, Indian Graves and Records, states that the willful removal, mutilation, defacing, and/or destruction of Indian burials constitutes a Class C felony. The assessment of the property has been conducted by a professional archaeologist and meets or exceeds the criteria set forth in RCW: 27.53 for professional archaeological reporting and assessment. The most recent addition to Washington legal code, RCW 68.50.645, Notification, provides a strict process for the notification of law enforcement and other interested parties in the event of the discovery of any human remains regardless of perceived patrimony.
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Appendix D ........ Public Meeting Comments Summary
Birch Bay Community Park Meeting
August 6, 2016

Comments

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

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

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

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

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

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

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

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

9. "Blue postal mail drop box."

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

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

The site plan groups brought up lots of interesting ideas.

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

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

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

Am looking forward to your preliminary schematic."

**Meeting Notes – “Program Elements”**

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

Meeting Notes — “Site Observations”

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

Comments

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

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

3. “Use one way angle parking at 36”.

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

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

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

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

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

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

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

Comments

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

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

Received Letters

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

   When we all purchased our condos most of us had a view and this would destroy our view of the bay, this would also lessen the value of our properties. We ask that you go with Concept A which is a reasonable request from units #_ #_ #_ and #_ at __________."
Appendix E .......... Utilities & Stormwater
TO: Robert Droll, ASLA of Robert W. Droll, Landscape Architect PS
FROM: Rhett Winter, P.E., LEED AP ND
SUBJECT Whatcom County Parks: Birch Bay Community Park
Existing and Proposed Use of Utilities
JOB NO.: 2016-070
DATE: 1/19/2017

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

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

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

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

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

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

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

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

Enclosures:

Exhibit A: Existing Utilities
Exhibit B: Proposed Utilities
This memo describes the stormwater management approach to address the proposed Birch Bay Community Park site development in accordance with the Whatcom County Municipal Code and the 2014 Stormwater Management Manual for Western Washington. In depth detail of the approach will be provided in a subsequent stormwater design report. The following outlines what is planned for stormwater management to address a few of the minimum requirements based on the current information available.

**Existing Conditions**

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

**Soil Information**

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

**Proposed Conditions**

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

**Minimum Requirements**

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

MR #5: On-site Stormwater Management

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

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

MR#6: Runoff Treatment

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

MR#7: Flow Control

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

Enclosure:

Exhibit B-Proposed Utilities & Stormwater
Appendix F .......... Master Plan Alternatives
Birch Bay Community Park
Whatcom County Parks & Recreation Department

**Concept A**

- Berm Trail
- Screen Planting
- Site Vehicular Access
- Frontage Walk
- Transit Stop & Drop-off
- Kiosk, Bike Rack, ADA
- Drinking Fountain, Jug Filler, Dog Dish w/ Circular benches
- Crosswalk
- Steps w/ ADA Ramp to Beach
- Shower Wash-of w/ Elliptical Bench
- Bench
- Screen Planting

- Residential

- Mobile Food Vendor/Plaza
- Play Area
- Multi-Purpose Shelter/Performance Pavilion & Restrooms; 6 Uni-Gender, Storage, Shelter
- 131 Parking Stalls; 6 ADA: 34 Compact
- Free Standing Picnic Tables
- Open Field Play/Special Event Area

Robert W. Droll, Landscape Architect, PS
Birch Bay Community Park
Whatcom County Parks & Recreation Department

Concept B

- Berm Trail
- Screen Planting
- Site Vehicular Access
- Frontage Walk
- Transit Stop & Drop-off
- Kiosk, Bike Rack, ADA
- Drinking Fountain, Jug Filler, Dog Dish
- Crosswalk
- Steps w/ ADA Ramp to Beach
- Shower Wash-off w/ Circular Bench
- Bench
- Picnic Table Alcove
- Multi-Purpose Shelter/Performance Pavilion: 1225 sf +/-
- Special Event Staging
- Screen Planting
- Nature Play
- Restrooms: 6 Uni-Gender, Storage, Shelter
- 129 Parking Stalls: 6 ADA; 34 Compact
- Circular Bench (summer), Fire Ring (winter)
- ADA Picnic Table
- Free Standing Picnic Tables
- Open Field Play/Special Event Area

Robert W. Droll, Landscape Architect, P.S.
5/21/2023
**TITLE OF DOCUMENT:**
Resolution GMA counties rely Dept Ecology determine legal water availability

**ATTACHMENTS:**
Resolution

**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.)

Resolution requesting the state legislature amend the growth management act to carify that counteis can rely on department of ecology guidance for determining legal water availability.

**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.
RESOLUTION NO. ____________

REQUESTING THE STATE LEGISLATURE AMEND THE GROWTH
MANAGEMENT ACT TO CLARIFY THAT COUNTIES CAN RELY ON
DEPARTMENT OF ECOLOGY GUIDANCE FOR DETERMINING LEGAL WATER
AVAILABILITY

WHEREAS, in 2012, a group of citizens and environmental groups, known as
Hirst et al, challenged the Whatcom County Comprehensive Plan as it related to
residential development and permit-exempt groundwater withdrawals; and

WHEREAS, in 2013, the Growth Management Hearings Board ruled in favor
of Hirst et al; and

WHEREAS, in 2013, Whatcom County appealed this ruling and the State
Department of Ecology, Washington Association of Realtors, and Washington
Association of Counties, and other groups, filed Amicus briefs in support of the
County; and

WHEREAS, in 2015, the State Appeals Court overturned the Growth
Management Hearings Board’s order and Hirst et al appealed to the State Supreme
Court; and

WHEREAS, on October 6th, 2016 the Washington State Supreme Court
issued its decision, now known as the Hirst ruling; and

WHEREAS, in response to the Hirst ruling, the Whatcom County
Council adopted Ordinance 2016-048, which imposed an emergency 30-day
moratorium on building permits for properties relying on permit-exempt
groundwater withdrawals in areas affected by the Hirst ruling; and

WHEREAS, on December 6, 2016 the Whatcom County Council adopted
Ordinance 2016-066, a three-month interim ordinance ending the emergency
moratorium and amending Whatcom County Code consistent with the Hirst ruling,
which has placed considerable restrictions on the issuance of building permits
relying on permit-exempt groundwater withdrawals in affected areas of the County;
and

WHEREAS, on March 7, 2017 the Whatcom County Council adopted
Ordinance 2017-008, a six-week interim ordinance similar to the first; and

WHEREAS, under the interim ordinances, issuance of building permits
April 18, 2017

relying on permit-exempt groundwater withdrawals in the affected areas has been limited to those where the application was submitted prior to the Hirst ruling, and those on lots in subdivisions where an approved groundwater source has been put to beneficial use, lots that are part of a shared well agreement approved prior to the Hirst ruling, and lots where another source of adequate water supply was approved prior to the Hirst ruling; and

WHEREAS, the County’s moratorium and subsequent interim ordinances act as a temporary bridge to minimize legal risk to the County and property owners until a permanent solution is reached; and

WHEREAS, Washington State lacks enabling legislation that protects counties and property owners from legal risk and uncertainty about which actions or decisions would or would not comply with state law following the Hirst ruling; and

WHEREAS, the County does not wish to take legislative action that could later cause property owners legal difficulties similar to those encountered by Skagit County property owners who were issued building permits and were later found to be lacking a legal water supply by a Supreme Court decision; and

WHEREAS, the County does not wish to take legislative action that places the County in jeopardy of achieving compliance with the Growth Management Hearings Board order, or is potentially inconsistent with future State legislative action; and

WHEREAS, hundreds of property owners suddenly have been unable to obtain building permits for properties they have lawfully subdivided, and even begun infrastructure improvements on; and

WHEREAS, residential water withdrawals from permit-exempt wells represents a tiny fraction of total water consumption in Whatcom County; and

WHEREAS, while the Hirst ruling impacts 29 counties planning under GMA, Whatcom County is the only defendant in this case and is therefore uniquely vulnerable and subject to immediate review for Growth Management Act compliance by the Growth Management Hearings Board and to potential subsequent state sanctions, and

WHEREAS, half of Whatcom County’s budget comes from state or federal grants and programs, and

WHEREAS, the Whatcom County Council recognizes the precious value of clean and plentiful potable water; and

WHEREAS, The Whatcom County Council will continue to engage all stakeholders to collaborate on issues of water quality and water quantity; and
WHEREAS, the Whatcom County Council recognizes the financial and
environmental impacts created by conversion of resource lands to low-density,
residential sprawl; and

WHEREAS, denying citizens the ability to use permit-exempt groundwater
withdrawals to provide for their homes and families is an inappropriate strategy for
preventing sprawl; and

WHEREAS, the County recognizes the need to adopt local regulations
consistent with state law to provide predictability and not put the County,
taxpayers, and property owners at further risk of additional lawsuits; and

WHEREAS, the employees of Whatcom County are working to respond to
the Hirst ruling and authorize appropriate development approvals consistent with
the ruling and other applicable water laws, without jeopardizing the further legal
liability and exposure of Whatcom County government, taxpayers, and property
owners; and

WHEREAS, the County continues to support long-term water resource
planning initiatives in coordination with the WRIA 1 Watershed Management Board,
the cities, the Water Utility Coordinating Committee (WUCC), the Public Utility
District #1 of Whatcom County (PUD), the Lummi Nation, the Birch Bay Water &
Sewer District, and the Ag Water Board and the individual watershed improvement
districts (WIDs); and

WHEREAS, Whatcom County, along with other stakeholders, initiated
cooperative watershed planning under the Watershed Planning Act (RCW 90.82) in
1999 which resulted in the preparation of the WRIA 1 Management Plan in 2005,
the WRIA 1 Detailed Implementation Plan in 2007, and the Lower Nooksack
Strategy in 2010. This process also included the preparation of numerous technical
studies including an instream flow study and the Lower Nooksack Water Budget
that provide the technical foundation for water planning. Whatcom County and
local tribes and other local partners are furthering that knowledge by developing a
groundwater model for the northern portion of the county which will better
characterize the interaction between groundwater and surface water and preparing
the WRIA 1 Ecosystem Recovery Plan to address water quantity, stream flow, and
habitat issues under the Puget Sound Partnership recovery management process; and

WHEREAS, the County has worked with the WUCC to develop and adopt the
Coordinated Water System Plan Update in 2016 to identify municipal water rights
and strategies to improve delivery of public water supplies and the County is
currently working to identify and assign the Department of Ecology well log data
base to parcels by watershed sub-basin which is a critical first step to help identify
existing and future private (permit-exempt withdrawals) and public (Group A/B)
domestic water demand in affected basins; and
WHEREAS, the PUD recently completed an assessment of agricultural water 
rights in the county and is leading a multiple party Drought Contingency Plan effort 
to identify long-term water supply needs and strategies to meet those needs; and

WHEREAS, the Lummi Nation recently initiated a study to identify potential 
water supply and/or mitigation solutions to address long-term water supply needs 
and mitigation options to help maintain adopted instream flows; and

WHEREAS, the Birch Bay Water & Sewer District is drilling several test wells 
to conduct deep aquifer explorations in the county to identify possible new 
groundwater supplies; and

WHEREAS, the Ag Water Board and the individual WIDs are working on their 
individual comprehensive plans and obtained a grant to study model stream 
augmentation on Bertrand Creek;

WHEREAS, the County Council supports further study to find suitable 
mitigation options to address impairment of instream flows that may include: water 
banking, fee-in-lieu mitigation payments, site-based consumptive use conservation 
and water use efficiency strategies, stream and/or groundwater augmentation, 
改进 storage (winter flow capture) and improved cost-efficient delivery of 
public water; and

WHEREAS, the County will continue to meet with the Hirst petitioners in 
good faith settlement talks with the goal of identifying suitable mitigation strategies 
for impacts to instream flows from domestic permit-exempt groundwater 
withdrawals; and

WHEREAS, there have been productive meetings with the State Legislature, 
support from the Washington State Association of Counties and other groups, and 
meetings with local state legislators of both parties and of both chambers; and

WHEREAS, state legislative action is needed so that the County can adopt 
permanent water availability regulations that restore certainty for property owners 
and remove the severe restrictions necessitated by the Hirst ruling.

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council 
requests the State Legislature’s urgent attention to this matter, and strongly 
recommends amendments to the Growth Management Act that would resolve the 
uncertainty created by the Hirst decision while adequately protecting instream 
flows. The County is supportive of legislation that would:

- Allow counties to rely on state-adopted instream flow rules to determine 
  legal water availability

- Establish a Department of Ecology mitigation program for permit-exempt 
  wells in closed basins – with a fee-in-lieu mitigation payment option for 
  affected permit applicants, which would allow permits to proceed while state 
  and counties provide for the actual instream flow mitigation
April 18, 2017

- Allow counties to condition local permits to limit daily use of state permit exempt groundwater withdrawals to less than 5,000 gallons per day
- Allow use of unexercised municipal water rights for mitigation purposes
- Allow for an "out-of-kind" instream flow impairment mitigation option that provides an overall net ecological benefit
- Provide financial assistance for developing public rural water supplies, mitigation projects and/or water banks.

APPROVED this ____ day of __________, 2017.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

[Signature]

Civil Deputy Prosecutor
April 11, 2017  

To: All Interested Parties  

From: Whatcom County Council  

Re: Impact of Hirst on Subdivision and Building Permits Relying on Permit Exempt Withdrawal  

The County’s interim ordinance seeks to comply with the Supreme Court’s Hirst decision and the GMA, while allowing the legislative session to finish. County staff will continue to evaluate each pending land use permit decision that relies on a permit exempt groundwater withdrawal on a case-by-case basis to identify the particulars of every situation’s unique characteristics for compliance with the new legal water reality brought on by the Hirst decision. In general, there is more flexibility for property owners in situations where a domestic groundwater withdrawal has already been put to beneficial use than for situations in which a brand “new” withdrawal is required. New groundwater withdrawals needed for new development are subject to the requirements of the interim ordinance. However, some new developments may have the ability to utilize an “existing” (pre-Hirst) approved withdrawal that qualifies as a legal water supply for permitting purposes. A condition will be placed on approved permits informing applicants that the water supply may be subject to future curtailment or restrictions on availability that could impact its reliability for the intended use. The tables below provide staff a general legal framework to consider when analyzing specific permit scenarios:

<table>
<thead>
<tr>
<th>Sub-Division</th>
<th>Action</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete subdivision application filed after Hirst, relying on new withdrawal</td>
<td>Evidence of legal availability required per interim ordinance.</td>
<td></td>
</tr>
<tr>
<td>Complete subdivision application filed prior to Hirst, relying on new withdrawal, but no decision yet.</td>
<td>Evidence of legal availability required per interim ordinance.</td>
<td></td>
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<tr>
<td>Preliminary subdivision approval prior to Hirst, relying on a new withdrawal, but no Final Plat approval</td>
<td>Qualified approval of final plat if consistent with preliminary. Approval will include condition that the proposed use of water may not be adequate under current law to support building permit application pursuant to RCW 19.27.097.</td>
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<table>
<thead>
<tr>
<th>Building Permit (SFR) for undeveloped lot</th>
<th>Action</th>
<th>Requirement</th>
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</thead>
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<tr>
<td>Complete building permit application filed after Hirst, relying on new withdrawal</td>
<td>Evidence of legal availability required per interim ordinance.</td>
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<tr>
<td>Complete building permit application filed prior to Hirst, relying on new withdrawal</td>
<td>Approve application.</td>
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<tr>
<td>Development that will rely on an existing permit-exempt withdrawal that currently serves other developed lots in a subdivision</td>
<td>Legal availability may be approved based on analysis of existing withdrawal and site specific factors.</td>
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<tr>
<td>Complete building permit application relying on existing withdrawal through shared well with neighboring parcel</td>
<td>Legal availability may be approved based on analysis of existing withdrawal and site specific factors.</td>
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These tables are not intended to provide a definitive answer for individual permit scenarios. It is difficult to codify qualifying circumstances due to the wide range of issues and unique aspects of each particular situation that affect a potential permit decision. The Health Department and PDS are working with individual applicants and interested property owners to define their particular situations and the options available to them. We encourage individuals to contact County staff with their specific questions and issues about their property.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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**TITLE OF DOCUMENT:**
Presentation of the Sylvia Center for the Arts

**ATTACHMENTS:**

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

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

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

*Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).*
Our goal is to provide affordable, accessible space for Whatcom County's many small performing arts organizations to teach, rehearse, and perform, while creating a new hub for Whatcom County residents and tourists to discover and enjoy locally-created entertainment.

**SYLVIA CENTER WILL SERVE:**

- **40,000** arts patrons seeing shows annually
- **500** students attending classes weekly
- **16** arts organizations teaching, rehearsing, and performing
- **dozens** of community organizations holding events, meetings, retreats, etc
Amendment No. 1 to Ordinance No. 2014-073 Establishing the 2015 Courthouse Fire Alarm System and Juvenile Roof Improvement Fund and Establishing a Project Based Budget for Courthouse Fire Alarm System and Juvenile Roof Improvements

ATTACHMENTS:
1. Ordinance
2. Exhibit A
3. Supplemental Budget Request

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.)

Requesting Council approval for additional budget authority of $811,907 to be added to the project budget for the fire alarm project and various other improvements. In addition, requesting the title of the fund be changed to “Courthouse Improvement Fund”.

COUNCIL ACTION:
4/4/2017: Introduced 6-0, Weimer absent
ORDINANCE NO. _________

AMENDMENT NO. 1 TO ORDINANCE NO. 2014-073 ESTABLISHING THE 2015 COURTHOUSE FIRE ALARM SYSTEM AND JUVENILE ROOF IMPROVEMENT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR COURTHOUSE FIRE ALARM SYSTEM AND JUVENILE ROOF IMPROVEMENTS

WHEREAS, this fund was established to replace the Courthouse fire alarm system and the roof over Juvenile; and

WHEREAS, the roof project has been completed, the fire alarm system proved to be higher cost than originally estimated; and

WHEREAS, several other courthouse repair and replacement projects need to be accomplished over the next two years in addition to the fire alarm system replacement; and

WHEREAS, funding for these projects is available from Real Estate Excise Tax Fund I (REET I) and the Public Utilities Improvement Fund (EDI), and

WHEREAS, it is proposed that the name of the fund should more appropriately be changed to “Courthouse Improvement Fund”,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance 2014-073 is hereby amended by adding $811,907 of expenditure authority, as described in Exhibit A, to the original project budget of $260,000, for a total amended project budget of $1,071,907, and

BE IT FURTHER ORDAINED by the Whatcom County Council that the 2015 Courthouse Fire Alarm System and Juvenile Roof Improvement Fund’s title be changed to “Courthouse Improvement Fund”.

ADOPTED this ___ day of __________________, 2017.

ATTEST: ________________________________

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM: ________________________________

( ) Approved ( ) Denied

Jack Louws, County Executive
Date: ________________________________
EXHIBIT A

COURTHOUSE IMPROVEMENTS - FUND 357

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Original Project Budget</th>
<th>Amendment #1 to Ord. 2014-073</th>
<th>Total Amended Project Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenditures</td>
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<tr>
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<td>$811,907</td>
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<td>8301.326</td>
<td>REET I Transfer</td>
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<td>$1,071,907</td>
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</table>
Supplemental Budget Request

Status: Pending

Administrative Services

Supp/ID # 2257  
Fund 357  
Cost Center 357100

Facilities Management

Originator: Michael Russell

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

Name of Request: Project Budget Fund Authorization

X M. E. Russell  
3-13-2017

Department Head Signature (Required on Hard Copy Submission)

Date

<table>
<thead>
<tr>
<th>Costs</th>
<th>Object</th>
<th>Object Description</th>
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<tbody>
<tr>
<td>6510</td>
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<td>Tools &amp; Equip</td>
<td>$26,815</td>
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<td>Operating Transfer In</td>
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<tr>
<td>8301.326</td>
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<td>Operating Transfer In</td>
<td>($560,216)</td>
</tr>
</tbody>
</table>

Request Total $0

1a. Description of request:
Wheelchair Lift Replacement
Amag Prox System Panel Replacement
The Courthouse Projects (Fire Alarm, Duress Alarm & Flange Couplings)

1b. Primary customers:
The ADA Lift would be primarily for any citizens or employees who needs assistance with stairs in the Courthouse Rotunda
The Amag System would primarily be for Whatcom County Employees.
The Courthouse Projects would primarily be for all employees and citizens who use the Courthouse daily.

2. Problem to be solved:
The ADA Lift stalls out several times each year. We have it serviced as required. The lift is required to meet the ADA accessibility requirements. By replacing this 20 plus year old wheelchair lift, we will be giving the citizens and employees that utilize the lift a much more reliable system to access the Courthouse.

The Amag System replacement will give us the equipment to upgrade the old un-supported mdu-4 panels. We have been running the Amag Access Control System for 15+ years and most of the original equipment is still in use. We have been told that several of the field panels we still have in place are no longer supported, which means that when it quits working, that’s it. The problem with this is having a main portion of the prox system being down while we have to order the new panel and parts and we will still need to install, program and enroll it into the security network, this will take some time (days or even weeks). While this is happening there will be doors that will not lock or un-lock, depending on the panel. There are a lot of County employees whose only access through a locked door is with their prox ID badge, as they don’t necessarily have a key.
The other benefit will be the use of new current field panels and technology that we will be able to use with new features and the security will be enhanced, we currently have the very latest software but we cannot use some of the new features with the older panels and their firmware. At this time we have been experiencing difficulties with some of these panels failing to communicate with the main system.

The fire alarm system has been outdated for 16 years, parts are no longer available. This system has been problematic for several years. This will bring the Courthouse up to present day codes. Once the fire panel is replaced, code will require the rest of the building brought up to code within 24 months.
The duress alarm system - parts are no longer available and we have been having problems keeping the system operational. This system silently alerts the 911 operator of an emergency.

These Flange Coupling Seals are leaking and are causing water damage to the ceiling of the 6th floor and we are losing treatment chemicals from the boilers. As you can imagine, if we have a major leak on the 7th floor of the Courthouse, the damage would be quite extensive.

3a. Options / Advantages:

ADA Lift – At this time we have no other options; we service the lift as required. The lift is required to meet the ADA accessibility requirements. By replacing the 20 plus year old wheelchair lift, we will be giving the citizens and the employees a much more reliable system to access the Courthouse.

Prox System: Facilities has been having issues with the original building system controllers. These device (MDU-4) panels are dropping out and failing to hold the programming. The age of the panels are an issue because they are no longer supported by the manufacturer. The replacement of these panels are critical to keep theprox system running properly.

Fire Alarm System: There are no other options; it is the only option, parts are no longer available, if the system goes down there is no repairing it.

Duress Alarms: The staff in the building has the ability to call 911. However, a panic system is a silent way to get help immediately. This system is used in many county buildings and is a standard for alerting 911 silently. There are no other options; Facilities has been having difficulties keeping the system running, it is no longer serviceable, parts are not available.

Flange Coupling Seals: Continued costly repair. Facilities will no longer have to make costly repairs and Juvenile Detention as well as the entire Courthouse will not have to endure leaks.

3b. Cost savings:

ADA Lift – There will not be any actual cost savings as there will still be a cost to maintain the lift as we do with our other elevators.

Amag Prox System – This installation is for the safety and security of the staff and to keep the public from restricted areas of the building.

There is no monetary cost savings for the fire alarm system or duress system. These are safety and security issues for the Courthouse

For the Flange Coupling Seals, there will be a minor improvement in the water usage, less cost for chemicals and less repairs for the floors below once the seals have been replaced.

4a. Outcomes:

ADA Lift: There will be less repairs and staff time to assist in any persons stranded when the lift malfunctions.

Amag Prox System: The prox system will be running properly, we will no longer have panels that malfunction.

Fire & Duress: Once these systems are in place; the building & citizens will have a functioning fire alarm system. When the duress system has been replaced, the employees of the courthouse will gain a functioning silent 911 call system available in the event of an emergency.

Flange Coupling Seals: Once the seals have been replaced, we will not have to deal with leaks and chemical loss.

4b. Measures:

Monday, March 13, 2017
### Supplemental Budget Request

<table>
<thead>
<tr>
<th>Administrative Services</th>
<th>Facilities Management</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supp ID #</strong>: 2257</td>
<td><strong>Fund</strong>: 357</td>
</tr>
<tr>
<td><strong>Cost Center</strong>: 357100</td>
<td><strong>Originator</strong>: Michael Russell</td>
</tr>
</tbody>
</table>

**ADA Lift**: When we no longer have to send staff over to help the public out of the stalled lift, make repairs or do other maintenance.

**Amag Prox System**: Secure areas of the building will be kept secure and public will be allowed in areas that are for public only. Employees will be able to gain access to the areas they are allowed entrances to.

**Fire & Duress**: When new reliable systems are up and running properly. This will bring the Courthouse up to present day codes and give the County and citizens security that the building & personnel is being protected from fire and the duress system will also be reliable if there is an emergency and staff has the need for law enforcement to respond quickly and silently to aid in the emergency.

**Flange Coupling Seals**: When the seals have been replaced we will not have worry about leaks or chemical loss. We should have a minor savings in water usage and chemical costs, less leaks and no more repairs.

#### 5a. Other Departments/Agencies:

**ADA Lift**: No other department or agencies will be impacted

**Duress Alarm**: Emergency Services, PDS, Public Works and the agencies that utilize the building, they will need to be aware of how the system work and when to use it.

**All three Courthouse Projects**: All Departments within the Courthouse, this replacement will be coordinated by Facilities Management

#### 5b. Name the person in charge of implementation and what they are responsible for:

Name the person in charge of implementation and what they are responsible for:

Michael Russell, Facilities Management

#### 6. Funding Source:

- REET 69% of each project
- EDI 31% of each project
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
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<td>Originator:</td>
<td>MDC</td>
<td>3/24/17</td>
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<td>4/4/17</td>
<td>Intro</td>
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<td>Division Head:</td>
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<td>Dept. Head:</td>
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<td></td>
<td></td>
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<tr>
<td>Prosecutor:</td>
<td>KNF</td>
<td>3/24/17</td>
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<td>4/18/17</td>
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<td>3/24/17</td>
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<td>Executive:</td>
<td>KKS</td>
<td>3/28/17</td>
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</table>

**TITLE OF DOCUMENT:** 2017 Supplemental Budget Request #4

**ATTACHMENTS:** Ordinance, Memoranda & Budget Modification Requests

**SEPA review required?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
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<td>( )</td>
<td>( X )</td>
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</table>

**SEPA review completed?**

<table>
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<tr>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td>( )</td>
<td>( X )</td>
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</tbody>
</table>

**Should Clerk schedule a hearing?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>( )</td>
<td>( X )</td>
</tr>
</tbody>
</table>

**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 #4 requests funding from the General Fund:**

1. To appropriate $38,865 in Non Departmental to fund adjustment to What Comm dispatch costs.
2. To appropriate $75,000 in Health to fund additional substance use disorder professional for Homeless Outreach Team from grant proceeds.
3. To appropriate $18,375 in Sheriff to fund Recreational Boating Safety grant – 2017 program.
4. To appropriate $25,087 in Sheriff to fund Boating Safety Program overtime patrols.

From the Road Fund:

5. To appropriate $200,000 to fund Ferry Terminal electrical repair.

From the Emergency Management Fund:

6. To appropriate $25,000 to fund installation of AHAB warning siren at Birch Bay from donation proceeds.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

4/4/2017: Introduced 6-0, Weimer absent

**Related County Contract #:**  
**Related File Numbers:**  
**Ordinance or Resolution Number:**
ORDINANCE NO.
AMENDMENT NO. 4 OF THE 2017 BUDGET

WHEREAS, the 2017-2018 budget was adopted December 6, 2016; and,
WHEREAS, changing circumstances require modifications to the approved 2017-2018
budget; and,
WHEREAS, the modifications to the budget have been assembled here for deliberation by
the Whatcom County Council.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2017-2018
Whatcom County Budget Ordinance #2016-068 is hereby amended by adding the following
additional amounts to the 2017 budget included therein:

<table>
<thead>
<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
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<tbody>
<tr>
<td>Non Departmental</td>
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<td>-</td>
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<tr>
<td>Health</td>
<td>75,000</td>
<td>(75,000)</td>
<td>-</td>
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<tr>
<td>Sheriff</td>
<td>43,462</td>
<td>(18,375)</td>
<td>25,087</td>
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<tr>
<td>Total General Fund</td>
<td>157,327</td>
<td>(93,375)</td>
<td>63,952</td>
</tr>
<tr>
<td>Road Fund</td>
<td>200,000</td>
<td>-</td>
<td>200,000</td>
</tr>
<tr>
<td>Emergency Management Fund</td>
<td>25,000</td>
<td>(25,000)</td>
<td>-</td>
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<tr>
<td>Total Supplemental</td>
<td>382,327</td>
<td>(118,375)</td>
<td>263,952</td>
</tr>
</tbody>
</table>

ADOPTED this ___ day of __________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

Jack Louws, County Executive

( ) Approved ( ) Denied

Date: ____________________
<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
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<td>General Fund</td>
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<tr>
<td>Non Departmental</td>
<td>To fund adjustment to What.Comm 911 dispatch costs.</td>
<td>38,865</td>
<td>-</td>
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<tr>
<td>Health</td>
<td>To fund additional substance use disorder professional for Homeless Outreach Team from grant proceeds.</td>
<td>75,000</td>
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<tr>
<td>Sheriff</td>
<td>To fund Recreational Boating Safety grant - 2017 program.</td>
<td>18,375</td>
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<tr>
<td>Sheriff</td>
<td>To fund Boating Safety Program overtime patrols.</td>
<td>25,087</td>
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<td>25,087</td>
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<tr>
<td><strong>Total General Fund</strong></td>
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<td>157,327</td>
<td>(93,375)</td>
<td>63,952</td>
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<tr>
<td>Road Fund</td>
<td>To fund Ferry Terminal electrical repair.</td>
<td>200,000</td>
<td>-</td>
<td>200,000</td>
</tr>
<tr>
<td>Emergency Management Fund</td>
<td>To fund installation of AHAB warning siren at Birch Bay from donation proceeds.</td>
<td>25,000</td>
<td>(25,000)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td></td>
<td>382,327</td>
<td>(118,375)</td>
<td>263,952</td>
</tr>
</tbody>
</table>
MEMORANDUM

TO: Jack Louws, Whatcom County Executive
    Whatcom County Council

FROM: Tawni Helms, Administrative Coordinator

DATE: March 22, 2017

SUBJECT: What-Comm User Agency Share for 911 Dispatch

Requested Action:
We are requesting Council consideration and approval of the attached 2017 budget supplemental to increase the What-Comm expenditure authority in the amount of $38,865.

Background and Purpose:
On October 15, 2016, the What-Comm Board approved the 2017 User Agency Share amount schedule. Whatcom County's share was $710,315 for the Sheriff's Office dispatch and $230,478 for county fire district dispatch for a total of $940,793.

2016 adjustments were added to 2017 first quarter payments in the amount of $48,183 for fire dispatch and a credit of $9,318 for law enforcement to bring this budget supplemental request to $38,865.

Funding Amount and Source:
We are asking for an increase in 2017 expenditure authority from the General Fund.

Please contact Tawni Helms at extension 5208, if you have any questions or concerns regarding the terms of this agreement.
Supplemental Budget Request

Non-Departmental

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

Name of Request: User Agency Share for 911 Dispatch

Department Head Signature (Required on Hard Copy Submission)

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
<tr>
<td>7210</td>
<td>Intergov Prof Svcs</td>
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<tr>
<td>Request Total</td>
<td></td>
<td>$38,865</td>
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</tbody>
</table>

1a. Description of request:
Covers the increased amount of the What-Comm Dispatch user share for 2016 as reflected in the adjustments included on the first quarter What-Comm invoice.

1b. Primary customers:
Whatcom County Citizens

2. Problem to be solved:
2016 User Agency Share was $38,865 more than budgeted. Additionally, the 2016 share amounts were underpaid for the Fire Districts’ dispatch by $48,183. Contrastly, the share amount was over budgeted for the Sheriff's Office dispatch by $9,328.

Year end adjustments are included in the first quarter What-Comm invoice. This budget supplemental covers the increased amount for the County Fire Districts Dispatch Fees while deducting the credit adjustment for the Sheriff’s Office Dispatch fees.

3a. Options / Advantages:
n/a

3b. Cost savings:
n/a

4a. Outcomes:
Adequate budget authority

4b. Measures:

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:
Current expense

Wednesday, March 22, 2017

Rpt: Rpt Suppl Regular
Supplemental Budget Request
Status: Pending

Health
Human Services

Suppl# ID: 2261
Fund 1
Cost Center: 675500
Originator: Patty Proctor

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

Name of Request: North Sound HOT SUDS

[Signature]
Department Head Signature (Required on Hard Copy Submission) Date: 3/20/17

Costs:

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<th>Object</th>
<th>Object Description</th>
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<td>6610</td>
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<tr>
<td>Request Total</td>
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<td>$0</td>
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</tbody>
</table>

1a. Description of request:
Funding for one FTE substance use disorder (SUD) professional provided as a team member on the Homeless Outreach Team (HOT). The professional will engage homeless people at camps and other venues within the community.

This professional will provide opiate street outreach, care coordination to get people into assessments and treatment. The professional will provide expertise to HOT and ensure appropriate care, including referrals to syringe exchange, treatment, mental health services, health services, and housing.

1b. Primary customers:
Opiate addicts and people with other substance use disorders that are homeless

2. Problem to be solved:
The Homeless Outreach Team (HOT) lacks clinical support for substance use disorders (SUD) yet, more than 80% of the people they contact have SUD issues. We are building towards the possibility of having homeless outreach provided to areas in the County outside of Bellingham.

3a. Options / Advantages:
To ensure professional SUD services (currently lacking) on the HOT and to ensure appropriate interventions for those who need services.

3b. Cost savings:
Services will be contracted with a local provider.

4a. Outcomes:
Ensure access to SUD services for opiate addicted people who are homeless and provide coordinated care to housing.

4b. Measures:
Number of people getting in for SUD assessment
Number of people served
Number of people getting into other SUD services, such as syringe exchange or Suboxone clinics.

5a. Other Departments/Agencies:
City of Bellingham
Whatcom County Homeless Services Center

5b. Name the person in charge of implementation and what they are responsible for:
Opportunity Council coordinates and directs the HOT team. This request provides an additional member for that team.

Wednesday, March 22, 2017
<table>
<thead>
<tr>
<th>Health</th>
<th>Human Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suppl ID #: 2261</td>
<td><strong>Fund 1</strong></td>
</tr>
</tbody>
</table>

6. **Funding Source:**

- North Sound Behavioral Health Organization, Federal Substance Abuse Block Grant.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: March 13, 2017
SUBJECT: Supplemental Budget ID# 2258
Recreational Boating Safety Grant - 2017

The attached Supplemental Budget requests budget authority for the 2017 Recreational Boating Safety Grant.

Background and Purpose
The Sheriff's Office received a Recreational Boating Safety Grant Letter of Award from Washington State Parks and Recreation Commission dated March 1, 2017 for the period March 1 through September 30, 2017. This is an annual grant awarded to the Sheriff's Office to conduct on the water patrols during the peak boating period.

Funding Amount and Source
$18,374.57 provided by Washington State Parks and Recreation Commission, Recreational Boating Safety Federal Financial Assistance Grant, CFDA No. 97.012.

Please contact Undersheriff Jeff Parks at extension 6610 if you have any questions.

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff Operations

Supp1ID # 2258

Fund 1 Cost Center 1003512006 Originator: Dawn Pierce

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

Name of Request: Recreational Boating Safety Grant - 2017

Department Head Signature (Required on Hard Copy Submission) Date

X


1a. Description of request:
The Sheriff's Office will conduct on-the-water patrols to increase education and enforcement activities encouraging greater compliance with boating safety laws in an effort to reduce boating-related loss of life, personal injury, and property damage.

1b. Primary customers:
Whatcom County citizens and visitors

2. Problem to be solved:
The Sheriff's Office is currently the only law enforcement agency in Whatcom County that operates a state approved boating safety program under WAC 352-65. The Sheriff's Office provides recreational boating safety patrols and enforcement of both county code and state law.

3a. Options / Advantages:
Grant funds are awarded specifically for boating safety education, assistance, and enforcement activities.

3b. Cost savings:
Cost savings of $18,375.

4a. Outcomes:
Marine patrols will be conducted during the peak boating period from May to September 2017.

4b. Measures:
Written vessel inspections using approved State Parks inspection forms will be completed and submitted.

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

Sunday, March 12, 2017
March 1, 2017

Undersheriff Jeff Parks
Whatcom County Sheriff’s Office
311 Grand Avenue
Bellingham, WA 98225-4048

Re: Recreational Boating Safety Federal Financial Assistance Grant Letter of Award

Dear Undersheriff Parks:

The Washington State Parks and Recreation Commission has reviewed and accepted your application for a Recreational Boating Safety (RBS) Federal Financial Assistance Grant and is awarding $18,374.57 to your agency. The grant is for the period March 1 to September 30, 2017.

**Award Information:** Federal Award Identification: 3317FAS170153
Federal Award Date: 1/10/17
CFDA Number: 97.012

**Terms of Acceptance:** Acceptance of a Federal Financial Assistance award carries with it the responsibility to comply with the terms and conditions of the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application form, as approved by State Parks. The signed grant application contains the terms and conditions to which your agency has agreed. I urge you to carefully review your application (enclosed) so you are familiar with each requirement.

**Specifically You Have Agreed To:**
- Provide your agreed upon local funding match as submitted in your A-300 form.
- Carry out your approved prevention plan and reach the measureable prevention goals as submitted in your A-300 form.
- Execute the patrol plans / emphasis patrols / enforcement policies by doing the activity / product during the time frame / target date to achieve your purpose / outcome as submitted in your A-300 form.
- Conduct the number of vessel safety inspections as submitted in your A-300 form.
- Conduct the number and type of educational classes and activities as submitted in your A-300 form.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: March 13, 2017
SUBJECT: Supplemental Budget ID# 2259
Boating Safety Program OT Patrols - 2017


Background and Purpose
The Sheriff’s Office is currently the only law enforcement agency in Whatcom County that operates a state approved boating safety program under WAC 352-65. State approved boating safety programs require that certified deputies patrol the waterways during peak recreational boating periods. The Sheriff’s Office provides recreational boating safety patrols and enforcement of both county code and state law, and VRF Reserve Accounts funds are needed for water patrols in 2017.

Funding Amount and Source
$25,087 from the Vessel Registration Fee (VRF) Reserve Account.

Please contact Undersheriff Jeff Parks at extension 6610 if you have any questions.

Thank you.
Supplemental Budget Request

Sheriff Operations

Status: Pending

Suppl ID # 2259  Fund 1  Cost Center 2960  Originator: Dawn Pierce

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

Name of Request: Boating Safety Program OT Patrols - 2017

X

Department Head Signature (Required on Hard Copy Submission) Date 3/13/17

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1a. Description of request:
The Sheriff's Office operates a state approved boating safety program under WAC 352-65 and provides recreational boating safety patrols and enforcement of both county code and state law.

Vessel Registration Fees (VRF) are collected by the State and allocated to counties for approved boating safety/education and law enforcement programs. In accordance with state law, these funds are deposited into an account dedicated solely for supporting the jurisdiction's boating safety program.

1b. Primary customers:
Whatcom County citizens and visitors

2. Problem to be solved:
State approved boating safety programs require that certified officers patrol the waterways during peak recreational boating periods. The Sheriff's Office schedules water patrols during the boating season from Memorial Day weekend through Labor Day weekend on extra-duty overtime so as not to adversely impact the regular patrol schedule. VRF Reserve Account funds are needed to conduct water patrols in 2017.

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:
Water patrols will be conducted per state approved Boating Safety Program requirements.

4b. Measures:
The Sheriff's Office will provide marine patrols and enforcement of boating laws and regulations.

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

Sunday, March 12, 2017
### Supplemental Budget Request

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<td><strong>Fund 1</strong> Cost Center 2960 <strong>Originator:</strong> Dawn Pierce</td>
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Vessel Registration Fee (VRF) Reserve Account.
MEMORANDUM

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

Through: Jon Hutchings, Director

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

Date: February 21, 2017

Subject: 2017 Supplemental Budget Request
          Ferry Terminal Electrical and Painting Project (CRP #916020)

Requested Action
Enclosed for your review and consideration is a supplemental budget request for 2017 (see attached Supplemental Budget Request #2017-2251).

Background and Purpose
This request authorizes $200,000 of additional expenditure authority for the construction of the electrical portion of this project to be completed during dry dock this summer.

This project, Item No. 30 on the approved 2017 Annual Construction Program (ACP), consists of an electrical overhaul of the Gooseberry Point terminal followed by painting and structural steel repair at both terminals. As included in the 2017-2022 Six-Year Transportation Improvement Program, construction was originally scheduled for the summer of 2018 with the design and permitting work to be completed in 2016/2017.

The electrical portion of design and permitting was completed ahead of schedule to address the deteriorating state of the electrical system at the Gooseberry Point terminal. The 2017 ACP has sufficient funds to finalize project design and permitting, however a portion of construction funding needs to be shifted from 2018 to complete this construction phase in 2017. If approved, the $200,000 of additional 2017 expenditure authority enables completion of the electrical portion of construction during dry dock this summer. Painting of both terminals is still on track for construction in 2018.

Funding Amount and Source
This supplemental budget request authorizes $200,000 of additional funds from the County Road Fund balance.

Please contact James Lee at extension 6264 if you have any questions or concerns regarding this request.
Supplemental Budget Request

Public Works

Status: Pending

Expenditure Type: One-Time

Year 1 2017

Add'l FTE □
Add'l Space □
Priority 1

Name of Request: Ferry Terminal Electrical Repair and Painting

X

Department Head Signature (Required on Hard Copy Submission) 2/16/17

Date

Costs:

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1a. Description of request:

The project consists of painting and structural steel repair at both terminals and an electrical overhaul of the Gooseberry Point terminal. As included in the 2017-2022 Six-Year Transportation Improvement Program, construction of this project was originally scheduled for the summer of 2018 with the design and permitting work to be completed in 2016/2017.

The electrical portion of the design and permitting has been completed ahead of schedule to address the deteriorating state of the electrical system at the Gooseberry Point terminal. Therefore, this supplemental budget request will authorize $200,000 of additional expenditure authority for the construction of the electrical portion of the project during dry dock this summer. Painting of both terminals is still on track for construction in 2018.

This project is listed as Item No. 30 on the approved 2017 Annual Construction Program (ACP). The current ACP has sufficient funds to finalize project design and permitting, however additional funds are needed for construction this summer.

1b. Primary customers:

General public and local residents of Lummi Island

2. Problem to be solved:

The existing electrical system is deteriorated due to age and the effects of the harsh saltwater environment.

3a. Options / Advantages:

The Gooseberry Ferry Terminal has been plagued with electrical issues for the past few years consisting of broken junction boxes being inundated with saltwater, old sensors not working properly, etc. This has led to maintenance costs and repair outages. This project will overhaul and update the electrical system a year ahead of schedule which will avoid additional maintenance expenses and disruptions to service.

3b. Cost savings:

N/A

4a. Outcomes:

The project will be constructed during the 2017 drydock window.

4b. Measures:

The project will be constructed and a new electrical system put into place.

5a. Other Departments/Agencies:

Thursday, February 16, 2017

Rpt: Rpt Suppl Regular
### Supplemental Budget Request

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<td>Cost Center 916020</td>
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**5b. Name the person in charge of implementation and what they are responsible for:**

N/A

**6. Funding Source:**

Road Fund

---

*Thursday, February 16, 2017*

Rpt: Pp1 Suppl Regular
## Supplemental Budget Estimate

### Ferry Terminal Electrical Repair and Painting, CRP 916020

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MEMO

RECEIVED

MAR 17 2017

JACK LOUWS
COUNTY EXECUTIVE

To: Jack Louws
Whatcom County Executive

From: Sheriff Bill Elfo, Director
John Gargett, Deputy Director
WCSO-Division of Emergency Management

Subject: Supplemental Budget Request ID # 2264

Date: March 17, 2017

The attached Supplemental Budget Request seeks budget authority to cover the costs of installing an All Hazard Alert Broadcast (AHAB) siren at Birch Bay.

- Background and Purchase
  Providing early warning of and ongoing information is essential to enable people to respond more efficiently and effectively to any disaster, thereby reducing the impact of that disaster. Among other hazards, coastal communities in Whatcom County have been identified as being at risk for tsunami effects. AHAB Warning Systems, commonly called Tsunami Sirens in coastal communities, provide both tone and voice alerts for natural, human-caused, or technological hazards.

  The AHAB Warning System is a nation-wide program for early alert and notification. AHABs are an integral piece of the all-hazard alert and warning strategy for both Washington State, through its Emergency Management Division (WA-EMD), and for Whatcom County. Currently, there are four AHABs located in Whatcom County, one each at Point Roberts and Sandy Point and two in the Lummi Nation. This project will increase the coverage of all-hazard early warning notifications to the Birch Bay community.

  Whatcom County will purchase an AHAB unit from WA-EMD (budget authority for this purchase has already been established through the continuing appropriation process). This Budget Supplemental covers the cost of installing the AHAB.

- Funding Amount and Source
  $25,000 for the cost of installation from a donation received from Phillips 66.
Supplemental Budget Request

Sheriff

Emergency Management

Supp'l ID #: 2264

Fund: 167  Cost Center: 16741

Originator: Frances Burkhart

Expenditure Type: One-Time  Year: 2017

Add'l FTE  Add'l Space  Priority: 1

Name of Request: AHAB Warning Siren - Birch Bay

Department Head Signature (Required on Hard Copy Submission)

Costs:

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Request Total: $0

1a. Description of request:

Whatcom County Sheriff’s Office Division of Emergency Management (WCSO-DEM) is requesting budget authority to cover the costs of installing an All Hazard Alert Broadcast (AHAB) siren at Birch Bay.

1b. Primary customers:

The Birch Bay community.

2. Problem to be solved:

Providing early warning of and ongoing information is essential to enable people to respond more efficiently and effectively to any disaster, thereby reducing the impact of that disaster. Among other hazards, coastal communities in Whatcom County have been identified as being at risk for tsunami effects. AHAB Warning Systems, commonly called Tsunami Sirens in coastal communities, provide both tone and voice alerts for natural, human-caused, or technological hazards.

3a. Options / Advantages:

The AHAB Warning System is a nation-wide program for early alert and notification. AHABs are an integral piece of the all-hazard alert and warning strategy for both Whatcom County and Washington State’s, through its Emergency Management Division (WA-EMD).

3b. Cost savings:

$25,000 (funding provided by a donation)

4a. Outcomes:

An AHAB siren will be installed in Birch Bay during Spring 2017.

4b. Measures:

Upon installation, the AHAB Warning System will be tested for satisfactory operation.

5a. Other Departments/Agencies:

In addition to the overarching coordination provided by WCSO-DEM and WA-EMD, North Whatcom Fire & Rescue will help coordinate testing, maintenance, and activation of the Birch Bay AHAB.

5b. Name the person in charge of implementation and what they are responsible for:

Fire Chief Bill Pernett will coordinate NWFR’s responsibilities for the Birch Bay AHAB.

6. Funding Source:

Phillips 66 donated $50,000 for the purchase of an AHAB for the Birch Bay community: $25,000 for the purchase of the AHAB (budget authority for this purchase has already been established through the continuing appropriation process). $25,000 for the cost of installation.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
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<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>3/22/17</td>
<td></td>
<td>4/04/17</td>
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<td>R. Ney</td>
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<td>3/28/17</td>
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<td>Jon Hutchings</td>
<td>#</td>
<td>3/24/17</td>
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<td>Dan Gibson</td>
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<tr>
<td>Jack Louws</td>
<td>Y</td>
<td>3/08/17</td>
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**TITLE OF DOCUMENT:**

Amendment No. 4 to Ordinance No. 2014-083 Establishing the Cedar Hills/Euclid Storm Water Improvements Fund and Establishing a Project Based Budget for Cedar Hills/Euclid Storm Water Improvements.

**ATTACHMENTS:**

1. Ordinance
2. Exhibit A
3. Cover Memo
4. Supplemental Budget Request

**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.)

Amendment No. 4 to the Cedar Hills/Euclid Storm Water Improvements Fund Project Budget requests additional appropriation authority of $36,909 for a new Project Based Budget total of $1,792,495

**COMMITTEE ACTION:**

<table>
<thead>
<tr>
<th>COUNCIL ACTION:</th>
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<tbody>
<tr>
<td>4/4/2017: Introduced 6-0, Weimer absent</td>
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</table>

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
ORDINANCE NO. 4

AMENDMENT NO. 4 TO ORDINANCE NO. 2014-083 ESTABLISHING THE CEDAR HILLS/EUCLID STORM WATER IMPROVEMENTS FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR CEDAR HILLS/EUCLID STORM WATER IMPROVEMENTS

WHEREAS, the Lake Whatcom Comprehensive Stormwater Management Plan identified the Cedar Hills/Euclid Natural Drainage Retrofit as a high priority capital improvement project, and

WHEREAS, construction work is currently underway for this project through a contract with Stremler Gravel, and

WHEREAS, this request will fund additional unanticipated expenses of utility relocations, and

WHEREAS, these additional expenses will be funded by the Lake Whatcom Water and Sewer District,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance No. 2014-083 is hereby amended adding $36,909 of expenditure authority, as described in Exhibit A, to the amended project budget of $1,755,586 for a total amended project budget of $1,792,495.

ADOPTED this ____ day of April, 2017.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Jack Louws, County Executive

( ) Approved  ( ) Denied

Date Signed: ___________________________
EXHIBIT A

CEDAR HILLS/EUCLID STORMWATER IMPROVEMENTS - Fund 367

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**Revenues**

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<td><strong>$36,909</strong></td>
<td><strong>$1,792,495</strong></td>
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</tbody>
</table>
MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Rob Ney, Special Projects Manager
       Kirk N. Christensen, P.E., Stormwater Supervisor

DATE: March 20, 2017

RE: Supplemental Budget Request #2262 - Cedar Hills/Euclid

Please find attached for your approval a supplemental budget request from Public Works-Stormwater for the Cedar Hills-Euclid Stormwater Improvements project.

- Background and Purpose
The Lake Whatcom Comprehensive Stormwater Management Plan identified high priority Capital Improvement Projects (CIPs) to address water quality. CIP-10 Natural Drainage Retrofits Cedar Hills/Euclid is one of these CIPs. Construction work is currently underway for this CIP through a contract with Stremler Gravel. Construction includes installation of bio-retention swales, stormfilter vaults, pretreatment structures, utility relocations, stormwater piping, stream stabilization, and native plantings. The Stormwater Division was successful in obtaining a Combined Water Quality Financial Assistance grant from the Department of Ecology (DOE) to aid in funding the design and construction of the stormwater retrofits.

This request will fund additional unanticipated expenses for utility issues. The expenses will be reimbursed by the Lake Whatcom Water and Sewer District.

- Funding Amount and Source
This request, in the additional amount of $36,909 will be funded by Lake Whatcom Water and Sewer District.

Please contact Kirk Christensen at extension 6297, if you have any questions or concerns regarding the terms of this agreement,

Encl.
Supplemental Budget Request

Public Works

Stormwater

Supp'1 ID # 2262  Fund 367  Cost Center 367100  Originator: Kirk Christensen

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

Name of Request: Cedar Hills Supplemental #4

X

Department Head Signature (Required on Hard Copy Submission)  Date 3/20/17

Costs:

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<td>$36,909</td>
</tr>
<tr>
<td><strong>Request Total</strong></td>
<td></td>
<td><strong>$0</strong></td>
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</table>

1a. Description of request:

This water quality improvement project establishes low impact development stormwater control facilities and stormwater treatment facilities specifically designed to remove phosphorus in urban runoff draining to Euclid Creek. Construction work is currently underway through a contract with Stremler Gravel. Construction includes installation of bio-retention swales, storm filter vaults, pretreatment structures, utility relocations, stormwater piping, stream stabilization, and native plantings.

The Stormwater Division was successful in obtaining a Combined Water Quality Financial Assistance grant from the Department of Ecology (DOE) to aid in funding the design and construction of the stormwater retrofits.

Additional expenses will be required for utility issues. The expenses will be reimbursed by the Lake Whatcom Water and Sewer District.

1b. Primary customers:

The primary customers of this project are the citizens of Whatcom County, residents of the City of Bellingham, and anyone who benefits from recreational use of Lake Whatcom.

2. Problem to be solved:

This project addresses the problem of water quality. Lake Whatcom supplies drinking water to approximately 100,000 residents in the Bellingham area. Elevated levels of phosphorus have caused Lake Whatcom to be placed on Washington State's 303(d) listing as an impaired water body. This project will treat and infiltrate stormwater runoff to reduce phosphorus loading to Lake Whatcom. It will also reduce peak flows and pollutant loading to Euclid Creek.

3a. Options / Advantages:

Moving forward with this request will improve phosphorus removal.

3b. Cost savings:

The failure to reduce phosphorus loading to Lake Whatcom can result in costly removal/treatment of excessive algae blooms, increased costs for maintaining drinking water filters, reduced use of Lake Whatcom as a fishing and recreational facility, and the overall deterioration of the biological function of the watershed. This project will contribute to the overall goal of water quality and assist with meeting the TMDL requirements of retrofitting development to mimic the phosphorus loading of a forested watershed.

4a. Outcomes:

Construction of the bio-infiltration facilities, the installation of the stormwater filter vaults and the channel stabilization to treat stormwater entering Euclid Creek and Lake Whatcom.

4b. Measures:

Monday, March 20, 2017

Rpt: Rpt Suppl Regular
The construction and installation of the stormwater facilities will indicate that the project outcomes have been met. In addition, the Stormwater Division intends to fit one of the bio-infiltration facilities for effectiveness monitoring. This monitoring will assist the Stormwater Division in quantifying in-field phosphorus reduction and provide information for the continuing improvement of water quality design work in the Lake Whatcom watershed.

5a. Other Departments/Agencies:
Lake Whatcom Water and Sewer District.

5b. Name the person in charge of implementation and what they are responsible for:
Kirk Christensen

6. Funding Source:
Lake Whatcom Water and Sewer District.
# WHATCOM COUNTY COUNCIL AGENDA BILL

**NO.** 2017-079A

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>Dept. Head:</td>
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<td>Daniel L. Gibson</td>
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<tr>
<td>Executive:</td>
<td></td>
<td></td>
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</table>

**TITLE OF DOCUMENT:**
Amendment No. 3 to Ordinance No. 2012-050 Establishing the Birch Bay Drive and Pedestrian Facility Project Fund and Establishing a Project Based Budget for the Birch Bay Drive and Pedestrian Facility

**ATTACHMENTS:**
1. Ordinance
2. Exhibit A - Project Budget Request Tracking Sheet
3. Cover Memo to County Executive and Council
4. Supplemental Budget Request
5. Project Narrative

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

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

**Should Clerk schedule a hearing?** ( ) Yes ( x ) NO

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

Requesting Council approval for the additional budget authority in the Birch Bay Drive and Pedestrian Facility Project Based Budget Fund (Fund # 339), for a new current budget expenditure amount of $3,600,000. This authorization will fund Land Acquisition and additional field archaeological testing associated with permitting and the preliminary engineering (design phase). This is CRP#907001.

Current project status is design at 90% complete, all permits submitted and working through regulatory channels, and 60% of the property acquisition completed.

**COMMITTEE ACTION:**

4/4/2017: Introduced 6-0, Velmer absent

**Council action:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

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

Through: Jon Hutchings, Director

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

Date: March 20, 2017

Subject: Amendment No. 3 to Ordinance 2012-050 Amending the Birch Bay Drive and Pedestrian Facility Project Based Budget Fund, Cost Center 339100, CRP #907001

Enclosed for your review and signature is one (1) original of Amendment No. 3 to Ordinance 2012-050 associated with the Birch Bay Drive and Pedestrian Facility Project Based Budget fund.

Requested Action
Public Works respectfully requests that the County Council and the County Executive sign the ordinance amending the Birch Bay Drive and Pedestrian Facility Project Based Budget Fund.

Background and Purpose
The Birch Bay Drive and Pedestrian Facility Project Based Budget Fund was established by Ordinance 2012-050 for an amount of $1,072,324 on November 27, 2012. On June 17, 2014, Ordinance 2014-036 amended the project fund amount to $2,200,000 for consultant design services. On December 6, 2016, Ordinance 2016-069 amended the project fund amount to $2,700,000 for consultant design services and property acquisition. This request is to amend the project fund amount by $900,000, for Land Acquisition and Preliminary Engineering (design phase) services, bringing the current project budget authority to $3,600,000.

Current project status is design at 90% complete, 60% of the property acquisition complete, and additional field archaeological testing required to complete design and permitting.

As Land Acquisition is finalized in 2017, and related design issued completed, the Council can expect an additional Supplemental Budget Request for Construction funds in 2017.

Funding Amount and Source
The Land Acquisition and Preliminary Engineering work will be funded by a transfer from the Road Fund. Sufficient budget authority exists in the approved 2017 Road Fund Capital Budget for this transfer.

Please contact Jim Karcher at extension 6271, if you have any questions or concerns regarding the terms of this agreement.
ORDINANCE NO. __________

AMENDMENT No. 3 TO ORDINANCE No. 2012-050 ESTABLISHING THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY

WHEREAS, the preliminary engineering (design phase) of the Birch Bay Drive and Pedestrian Facility is over 90% complete, with all permits submitted and property rights acquisition over 60% complete, and;

WHEREAS, it is necessary to add to the project budget to continue the property acquisition phase and address additional archaeological field testing required by Section 106 of the federal NEPA process, and;

WHEREAS, there is sufficient budget authority in the approved 2017 Road Fund Capital Budget for a transfer into this project fund, and;

WHEREAS, a County Road Project identified as CRP No. 907001 titled “Birch Bay Drive and Pedestrian Facility” is listed as project priority No. 1 on both the STIP and ACP,

NOW, THEREFORE, BE IT ORDAINED, by the Whatcom County Council that Ordinance No. 2012-050, associated with establishing the project based budget and initiating the design phase is hereby amended by adding an additional amount of $900,000 of expenditure authority for an amended project budget total of $3,600,000 as described in Exhibit “A”.

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

Chief Civil Deputy Prosecutor

Jack Louws, Executive Date
**Project Based Budget - Budget Request Tracking Sheet**

Project Title: Birch Bay Drive and Pedestrian Facility  
Project Codes: CRP No. 907001; Cost Center 339100  
Project Based Budget Request: No. 4  

<table>
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<td>Preliminary Engineering (In-Hse &amp; Consultant)</td>
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**TOTAL**  
$2,700,000  
$900,000  
$3,600,000

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<td>Local Funds (transfer from Road Fund)</td>
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**TOTAL**  
$2,700,000  
$900,000  
$3,600,000
Supplemental Budget Request

Public Works

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<td>2239</td>
<td>108</td>
<td>339100</td>
<td>Jim Karcher</td>
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Expenditure Type: One-Time
Year 1 2017
Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Birch Bay Dr and Ped Facility - suppl for R/W & PE

Department Head Signature (Required on Hard Copy Submission) 3/20/17

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<td></td>
<td>8301.108</td>
<td>Operating Transfer In</td>
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</table>

Request Total $0

1a. Description of request:
This Birch Bay community-driven project is located parallel to Birch Bay Drive and consists of a Public Works project to construct a 1.58 mile separated berm with pathway to encourage pedestrian use along the waterfront from Cedar Avenue to the mouth of Terrell Creek. Several key attributes of the project will be pedestrian safety with the separated trail, and a soft shore berm to protect the Birch Bay Drive roadway from storm damage. In addition, the project will provide mitigation for beach erosion. It is the #1 priority project for the Public Works Department’s 2016 & 2017 Annual Construction Programs.

This supplemental budget request will add expenditure authority of $900,000 to the existing project based budget for a new total expenditure authority of $3,600,000. The additional expenditure authority will fund the continued acquisition of property rights needed for the project, as well as fund additional archaeological field testing associated with permitting issues and preliminary engineering (design phase).

1b. Primary customers:
The primary customers of this project are the citizens of Whatcom County, residents of the Birch Bay community, and anyone who benefits from the recreational use of the Birch Bay waterfront beach.

2. Problem to be solved:
As originally budgeted, the project had minimal costs associated with property rights acquisition; however, after the appraisal and review appraisal phase was completed, it was apparent that acquisition costs would be substantially higher. In addition, consultation with local Indian Tribes about construction impacts related to cultural resources, precipitated a Tribal request for additional field testing for archaeological resources. This supplemental budget request will provide the budget authority to continue the acquisition phase and provide additional budget for the archaeological field testing.

3a. Options / Advantages:
No other options are available with no budget authority. This option is the best option because it adds budget authority incrementally as full acquisition costs become known, or as additional permitting or design issues are encountered.

3b. Cost savings:
There are no specific cost savings associated with this request.

4a. Outcomes:
The outcome will be that there is sufficient budget authority to continue with property rights acquisition without delay and initiate additional field testing for archaeological resources associated with permitting.
When all acquisition rights have been secured to accommodate the design, and all associated permits received, then the project will be bid and constructed. Due to the unknowns associated with property rights acquisition and permitting, the best available schedule currently shows completion of both acquisition and permitting by Summer 2017.

4b. Measures:
When all property rights have been acquired to accommodate the project design, and all Tribal issues satisfied on cultural / archaeological resources, then FHWA and WSDOT will certify the property acquisition and permitting phases which allow the project to proceed to the construction phase. Success will be measured by achieving the 'certifications', and when the construction phase is authorized, then Whatcom County can obligate additional federal grant funds related to construction ($1,610,000).

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:
The funding source is Local Road Funds available from the capital 2017 Annual Construction Program.
**Birch Bay Drive and Pedestrian Facility**

**CRP #907001**

**Construction Funding Year(s):** 2017 / 2018 / 2019

**Project Narrative:**
This project is located parallel to Birch Bay Drive from Cedar Avenue to the mouth of Terrell Creek, in Sections 30 and 31, T40N, R1E, and Sections 24 and 25, T40N, R1W. This is a 1.58 mile separated berm with pathway to encourage pedestrian use along Birch Bay Drive to support safety and to protect the roadway from storm damage. In addition, the project will provide mitigation for both beach erosion and roadway protection. This project is listed **#R1** on the 2017-2022 Six-Year Transportation Improvement Program.

**Project Status:**
Phase I of the Feasibility Study was completed in 2006. Phase 2A (Preliminary Construction Cost Estimate) was completed in 2007, and updated in spring of 2013. Preliminary Engineering began in late 2013, R/W acquisition began in 2016 and construction is planned for 2017 / 2018 / 2019. Additional funding sources will be pursued as they become available.

| Total Estimated Project Cost: | $11,450,000 |
| Expenditures to Date:         | $2,450,000  |

**Environmental Permitting**
- Whatcom County-Shorelines; WDFW-HPA, Army Corps of Engineers, DOE; Sec 404 Clean Water Act

**Right-of-Way Acquisition (Estimate)**
- TBD

**County Forces (Estimate)**
- N/A

**Funding Sources:**
- Federal: $3,172,000 (STP and TAP)
- State: $0
- Local: $8,278,000
# Resolution to set hearing to sell Tax-Title property by public auction

**TR2017-02**

**ATTACHMENTS:** Map

- **SEPA review required:** ( ) Yes ( ) NO
- **SEPA review completed:** ( ) Yes ( ) NO

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

The Property Management Committee recommends that the resolution be passed to effectively meet the legal requirement for the disposal following parcel.

Parcel #370432.037424.0000 / PID 35580
GLENHAVEN LAKES DIV 4 LOT 22 BLK 22
TOWNSHIP 37 RANGE 04E SECTION 24

For no less than taxes, interest, penalties and foreclosure costs of **$2,545.59**

**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.
WHEREAS, the following described property is now, and has been the property of the County of Whatcom, State of Washington since: as noted per parcel below and, 

WHEREAS, the Whatcom County Council does deem it in the best interest of the County and the people thereof that said property be sold; and, 

WHEREAS, the Whatcom County Property Management Committee recommends that the resolution be passed to effectively meet the legal requirement for the disposal; 

NOW, THEREFORE, BE IT RESOLVED that it is in the best interest of the County to sell: 

Parcel # 370432.037424.0000 / PID 35580 
GLENHAVEN LAKES DIV 4 LOT 22 BLK 22 
TOWNSHIP 37 RANGE 04E SECTION 32 

For no less than taxes, interest, penalties and foreclosure costs of $2,545.59 to the highest and best bidder; and, 

BE IT FURTHER RESOLVED by the Whatcom County Council, that a public hearing on the matter of the sale of said property, under said terms, be held on the _______day of _________2017, at _____ p.m., at the __________________________, 

Whatcom County, Washington; and, 

BE IT FURTHER RESOLVED that the Clerk of the Whatcom County Council
shall give notice of such hearing in the manner prescribed by law under RCW 36.34.030.

APPROVED this ______ day of _________ 2017.

ATTEST:

WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair

APPROVED AS TO FORM:

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

**CLEARANCES**

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<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>4/18/2017</td>
<td>Finance/Council</td>
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**Division Head:**

**Dept. Head:**

**Prosecutor:**

**Purchasing/Budget:**

**Executive:**

**TITLE OF DOCUMENT:** Resolution to set hearing to sell Tax-Title property by public auction *Reg. #TR2017-03*

**ATTACHMENTS:** Map

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>(X) NO</th>
<th>Requested Date:</th>
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</table>

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
The Property Management Committee recommends that the resolution be passed to effectively meet the legal requirement for the disposal following parcel.

Parcel #370408.326046.0000 / PID 33383
SUDDEN VALLEY DIV 28 LOT 47
TOWNSHIP 37 RANGE 04E SECTION 08

For no less than taxes, interest, penalties and foreclosure costs of $2,545.59

**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.
WHEREAS, the following described property is now, and has been the property of the County of Whatcom, State of Washington since: as noted per parcel below and,

WHEREAS, the Whatcom County Council does deem it in the best interest of the County and the people thereof that said property be sold; and,

WHEREAS, the Whatcom County Property Management Committee recommends that the resolution be passed to effectively meet the legal requirement for the disposal;

NOW, THEREFORE, BE IT RESOLVED that it is in the best interest of the County to sell:

Parcel # 370408.326046.0000 / PID 33383
S UDDEN VALLEY DIV 28 LOT 47
TOWNSHIP 37 RANGE 04E SECTION 08

For no less than taxes, interest, penalties and foreclosure costs of $2,527.86 to the highest and best bidder; and,

BE IT FURTHER RESOLVED by the Whatcom County Council, that a public hearing on the matter of the sale of said property, under said terms, be held on the _______day of _________2017, at _____ p.m., at the _______________________.

Whatcom County, Washington; and,

BE IT FURTHER RESOLVED that the Clerk of the Whatcom County Council
shall give notice of such hearing in the manner prescribed by law under RCW 36.34.030.

APPROVED this _____ day of _________ 2017.

ATTEST:

WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair

APPROVED AS TO FORM:

Civil Deputy Prosecuting Attorney
### Associate Development Organization designation for the County

#### ATTACHMENTS:
- Memo to Council
- Memo from Dept of Commerce

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>(x) No</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>(x) No</th>
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<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>(x) No</td>
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</table>

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

1. County Executive Jack Louws requests confirmation of his re-designation of the Port of Bellingham as ADO (Associate Development Organization) for the County for the Department of Commerce to increase the support for and coordination of community and economic development services in communities or regional areas

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

FROM: JACK LOUWS, COUNTY EXECUTIVE

DATE: MARCH 28, 2017

SUBJECT: COUNTY ADO CERTIFICATION/DESIGNATION

Attached you will find a memo from the Department of Commerce requesting that I designate the County’s Associate Development Organization that will increase the support for and coordination of community and economic development services in Whatcom County. This is due to them by May 15, 2017.

I am planning to re-designate the Port of Bellingham to act in this capacity for the County, and I would appreciate your approval of this decision.

Thank you.
March 9, 2017

The Honorable Jack Louws, County Executive
Office of County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225-4082

RE: Action Requested by May 15, 2017

Dear Executive Louws:

Every two years, the Department of Commerce begins the process of contracting with Associate Development Organizations (ADOs) by sending a letter to the Board of County Commissioners or County Executive in each county requesting designation of an ADO.

Commerce is directed by RCW 43.330.080 to contract with county-designated ADOs to increase the support for and coordination of community and economic development services in communities or regional areas.

As part of the contracting process, please complete the enclosed ADO Certification/Designation Form for the 2017-2019 biennium, returning to Commerce by May 15, 2017. Your county can choose to re-designate the current ADO or make a new designation. Please provide documentation of the County executive or governing body’s action designating the identified organization as the ADO.

If you have any questions or need assistance feel free to contact me at (360) 725-4187 or email ado@commerce.wa.gov. Thank you for your consideration in helping to move the contracting process forward. I look forward to working with our ADO partners during the next biennium.

Sincerely,

Kathy Carlson
ADO Contracts Coordinator
Office of Economic Development & Competitiveness

Enclosure

cc: Port of Bellingham
Associate Development Organization Certification/Designation Form
(For use by County officials.)

(Name of County) affirms/ designates the (Name of ADO)
as the Associate Development Organization to coordinate economic development services for
the county under contract with the Washington State Department of Commerce. Consistent
with statutory requirements:

1. □ The prospective ADO is a non-profit organization.

OR

□ A public entity that has formed an authority or committee with full
operating authority to carry out the duties of the ADO. It is important to
recognize that this group would have its own authority and budget, not just
the power to recommend actions/plans/expenses.

2. Economic development is the primary mission of the prospective ADO,
and not just a secondary activity. This can be demonstrated with a written
mission statement in a brochure, web-page, newsletter, etc. It may also be
documented in the organization’s by-laws.

3. For economic interests in the county, this organization serves as a
networking tool and resource hub for business retention, expansion, and
relocation in Washington.

4. This organization has/will have the capacity during the period under
contract with Commerce to carryout work activities as detailed in RCW
43.330.080

This designation is effective on the date signed below, and shall remain in effect for the 2017-
2019 biennium. Please provide documentation of the County executive or governing
body’s action designating the above-identified organization as the ADO.

Signature

Print Name

Title

Date

PLEASE SUBMIT THIS FORM AND DOCUMENTATION TO:
Kathy Carlson, Contracts Coordinator
Office of Economic Development and Competitiveness
Washington State Department of Commerce
Post Office Box 42525
Olympia, WA 98504-2525
360-725-4187
TITILE OF DOCUMENT:
Interlocal Agreement between Whatcom County and Fire District #4 for lost EMS Levy Revenue

ATTACHMENTS:
Interlocal Agreement
Memo

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

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

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

Executive Louws requests Council approval of the Interlocal Agreement between Whatcom County and Fire District #4 for reimbursement of lost District EMS levy revenue due to County wide levy.

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.
Originating Department: Executive Office
Division/Program: (i.e. Dept. Division and Program) EMS Administration
Contract or Grant Administrator: Tawni Helms/Tyler Schroeder
Contractor’s / Agency Name: Fire District #4

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

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

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

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

Is this the result of a RFP or Bid process? 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 work is for less than 120 days.
- ☒ Interlocal Agreement (between Governments).
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Work related subcontract less than $25,000.
- ☐ Public Works - Local Agency/Federally Funded FHWA.

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

This Amendment Amount:
$ 

Total Amended Amount:
$

Summary of Scope:

Council approval required for: all property leases, contracts or bid awards exceeding $40,000, and professional service contracts 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.

Term of Contract: 6 years
Expiration Date: December 31 2022

Contract Routing: 1. Prepared by: TWH Date: 
2. Attorney signoff: Daniel Gibson Date: 04-11-17 
3. AS Finance reviewed: Date: 
4. IT reviewed (if IT related): Date: 
5. Contractor signed: Date: 
6. Submitted to Exec.: Date: 
7. Council approved (if necessary): Date: 
8. Executive signed: Date: 
9. Original to Council: Date: 

Last edited 10/31/16
MEMORANDUM

To: Whatcom County Council Members
From: Tyler Schroeder, Deputy Executive
Subject: Interlocal Agreement defining reimbursement of EMS levy revenue to impacted Districts
Date: April 11, 2017

BACKGROUND

The purpose of this Agreement is to establish the terms for the County to reimburse the District for its lost EMS revenue resulting from the levying of the County EMS Levy and the limitations in RCW 84.52.069(6).

In 2016, County voters approved a ballot measure authorizing Whatcom County to levy a six (6) year EMS Levy pursuant to RCW 84.52.069(2). The results of this successful countywide levy will impact Fire District #4 which has a pre-existing EMS levy.

The County Treasurer, as necessary, must reduce the pre-existing district levy rates to $.205 to ensure the combined levy rate does not exceed $.50. The EMS revenue lost by the District as a result of the levy rate reduction shall be reimbursed.

This Agreement between Whatcom County and Fire District 4 terminates on December 31, 2022 the last year for collection of the County EMS Levy.

FUND SOURCE

The impacted District will be reimbursed through the EMS Fund.
Interlocal Cooperation Agreement
Between Whatcom County and Fire Protection District #4
for the Purpose of Defining the Allocation of Funds Received from the
Property Tax Rate Increase of $.295 or Less Per $1000 of Assessed Valuation for
Countywide Emergency Medical Services

This Agreement ("Agreement") is entered into between Whatcom County (the "County") and
Whatcom County Fire Protection District #4 (the "District") for the purpose of distributing certain
Emergency Medical Services (EMS) tax revenues to the District to compensate for the reduction
of EMS levy collections as described in Section 7 of County Ordinance 2016-167.

RECITALS

This Agreement is based the following relevant facts and circumstances:

A. The District has a permanent EMS levy pursuant to RCW 84.52.069(2).

B. In 2016, County voters approved a ballot measure authorizing Whatcom County
to levy a six (6) year EMS Levy pursuant to RCW 84.52.069.

C. Whatcom County began levying an EMS Levy pursuant to RCW 84.52.069 in the
calendar year 2016 (the "County EMS Levy") for collection in 2017. The EMS
Levy is a regular property tax levy on all taxable property located in Whatcom
County and is in addition to the statutory tax rate limit of RCW 84.52.043.

D. County EMS Levy proceeds shall be deposited into the County Emergency
Medical Services Fund and all levy proceeds authorized in the ordinance shall be
used in accordance with RCW 84.52.069.

E. EMS Levy proceeds are based on assessed valuations that fluctuate from year to
year, thereby resulting in fluctuating impacts and resultant compensation to the
District.

F. Pursuant to RCW 84.52.069(6), since the District had a pre-existing EMS levy at
the time that the County began levying an EMS Levy, the District's EMS Tax
Levy must be reduced by the County Treasurer, as necessary, so that the
combined County EMS Levy and the District EMS Levy do not exceed $0.50.
Hereinafter, the annual amount of the EMS revenue lost by the District as a result
of this levy rate reduction, if any, shall be referred to as the "Reimbursement
Amount").
G. In 2016, for collection in 2017, District #4 resolved to levy an EMS tax of $0.294312443154 per thousand dollars of assessed valuation, and the County resolved to levy $0.295 per thousand dollars of assessed valuation, which results in a decrease of the 2016 District EMS Levy rate to $0.20500003133 per thousand dollars of assessed valuation.

TERMS AND CONDITIONS

1. Term.

This Agreement takes effect upon the execution hereof by the authorized representatives of all parties. This Agreement will terminate on December 31, 2022 (the last year for collection of the EMS Levy), unless terminated earlier as provided in the Termination Section herein.

2. Purpose.

The purpose of this Agreement is to establish the terms for the County to reimburse the District for its lost EMS revenue resulting from the levying of the County EMS Levy and the limitations in RCW 84.52.069(6).

3. Mutual Consideration.

The parties do not intend to create any new or separate legal or administrative entity by this Agreement. The terms and conditions contained herein reflect the voluntary participation of the parties.

A. THE DISTRICT'S RESPONSIBILITIES: The District hereby agrees as follows:

(i) The District shall continue to provide first response emergency medical services within the boundaries of the District as outlined in the Emergency Medical Services Agreement between Whatcom County and Fire District No. 4 signed on December 31, 1984.

(ii) The District shall comply with RCW 84.52.069 (5).

B. WHATCOM COUNTY'S RESPONSIBILITIES: The County hereby agrees as follows:

The County shall deposit the amount received from the County EMS Levy into the Whatcom County Emergency Medical Services Fund.

(i) The County shall use all funds deposited into the Whatcom County Emergency Medical Services Fund (the “Fund”), through this Agreement, solely for the support of countywide emergency medical services consistent with the Emergency Medical Services Funding Work Group Recommendations dated March 2016.
(ii) During the term of this Agreement, the County shall annually reimburse the District the Reimbursement Amount. Such reimbursement shall be made in two (2) approximately equal payments no later than May 1 and November 1.

4. Relationship of the Parties.

The parties hereto agree that each is an independent entity operating pursuant to the terms and conditions of this Agreement. No agent, employee, or representative of any party shall be deemed to be an agent, employee, or representative of any other party for any purpose. Each party shall be solely and entirely responsible for the acts of its agents and employees during the term of this Agreement.

5. Termination.

This Agreement shall terminate when one of the following occur: (1) if the County EMS Levy is rescinded, then this Agreement shall terminate on December 31 of the year in which the County no longer levies an EMS tax, or; (2) if the District EMS Levy has expired or is not being collected pursuant to RCW 84.52.069(4), whichever comes first.

6. Indemnification and Hold Harmless.

A. The District agrees to protect, defend, save harmless and indemnify the County from and against all claims, suits, and actions arising from negligent acts or omissions of the District, or its authorized contractors or subcontractors, including its agents or employees, in the performance of this Agreement. In the event the County is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the District agrees to pay the County’s reasonable legal fees, costs and disbursements incurred in establishing the right to indemnification.

B. The County agrees to protect, defend, save harmless and indemnify the District from and against all claims, suits, and actions arising from negligent acts or omissions of the County, or its authorized contractors or subcontractors, including their agents or employees, in the performance of this Agreement. In the event the District is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the County agrees to pay the District’s reasonable legal fees, costs and disbursements incurred in establishing the right to indemnification.


All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Interlocal Cooperation Agreement between
Whatcom County and Fire Protection District #4
or to such other address as the foregoing parties hereto may from time-to-time designate in
writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt
or refusal to accept delivery.

8. Captions.

The captions of this Agreement are for convenience and reference only and in no way define,
limit, or describe the scope or intent of this Agreement.


In case any one or more of the provisions contained in this Agreement shall for any reason be
held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
unenforceability shall not affect any other provision hereof, and this Agreement shall be
construed as if such invalid, illegal, or unenforceable provision had never been contained
herein.


Each of the provisions of this Agreement have been reviewed and negotiated, and represents
the combined work product of all parties hereto. No presumption or other rules of construction
which would interpret the provisions of this Agreement in favor of or against the party preparing
the same shall be applicable in connection with the construction or interpretation of any of the
provisions of this Agreement.

11. Modification.

No changes or additions to this Agreement shall be valid or binding on either party unless such
changes or additions shall be in writing executed by both parties.

12. Survivability.

All covenants, promises and performance which are not fully performed as of the date of
termination shall survive termination as binding obligations.

The failure of the County or District which is party hereto to insist upon strict performance of any of the covenants and conditions of this Agreement, or to exercise any options herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

14. Dispute Resolution.

A. In the event of a dispute between the parties arising from this Agreement or any obligations hereunder, the parties shall meet within thirty (30) days of any party’s request for a meeting to resolve the dispute. The parties promise to make a good faith attempt to resolve the dispute at this meeting.

B. In the event the parties are unable to resolve the dispute under the procedure in Section 14. A, then the parties hereby agree that the matter shall be referred to mediation. The parties shall stipulate to a mediator to assist them in resolving their differences. The mediator’s fees and expenses shall be borne equally by the parties. The parties agree to select the mediator within ten (10) working days from a party’s written request for mediation. The mediation will occur within thirty-five (35) days from the mediator’s selection. The parties will participate in good faith in mediation.

C. Following an unsuccessful mediation, a party may then pursue any available judicial remedies.

15. Venue.

This Agreement, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington and the parties agree that, in any action, venue shall lie exclusively in the Superior Court of the State of Washington for Whatcom County.

16. Recording.

Upon execution of this Agreement by the parties hereto, the County shall cause it to be recorded with the Whatcom County Auditor or, alternatively, listed by subject on its website or other electronically retrievable public source, pursuant to the recording requirement contained within RCW 39.34.040.

** IN WITNESS WHEREOF, the County and Fire Protection District #4 of Whatcom County have executed this Interlocal Cooperation Agreement as of the date and year last written below. **
ENTERED INTO this _______ day of ______________________, 2017.

Accepted for FIRE PROTECTION DISTRICT #4:

________________________

CHIEF WILLIAM PERNETT

Attest: Approved as to Form:

________________________

Fire Commissioner

ENTERED INTO this _______ day of ______________________, 2017.

WHATCOM COUNTY:

Approved as to form:

________________________

Prosecuting Attorney

Approved:

Accepted for WHATCOM COUNTY:

________________________

JACK LOUWS, Whatcom County Executive

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 _____________________

Interlocal Cooperation Agreement between
Whatcom County and Fire Protection District #4

Page 6 of 6
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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**EXECUTIVE:**

**TITLE OF DOCUMENT:**
Interlocal Agreement between Whatcom County and Fire District #11 for lost EMS Levy Revenue

**ATTACHMENTS:**
Interlocal Agreement
Memo

<table>
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<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
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<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( X ) NO</td>
<td>Requested Date:</td>
<td></td>
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</table>

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

Executive Louws requests Council approval of the Interlocal Agreement between Whatcom County and Fire District #11 for reimbursement of lost District EMS levy revenue due to County wide levy.

**COMMITTEE ACTION:**

<table>
<thead>
<tr>
<th>RELATED COUNTY CONTRACT #:</th>
<th>RELATED FILE NUMBERS</th>
<th>ORDINANCE OR RESOLUTION NUMBER</th>
</tr>
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</table>

**COUNCIL ACTION:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
<table>
<thead>
<tr>
<th>Whatcom County Contract No.</th>
<th>2017040010</th>
</tr>
</thead>
</table>

**Contractor’s / Agency Name:** Fire District #11

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):

Cost Center: __________

Is this contract the result of a RFP or Bid process?

Contract

Yes ☑ No ☐

If yes, RFP and Bid number(s):

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 work is for less than 120 days.

☒ Interlocal Agreement (between Governments).

☐ Contract for Commercial off the shelf items (COTS).

☐ Work related subcontract less than $25,000.

☐ Public Works - Local Agency/Federally Funded FHWA.

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

$ __________

Reimbursement rate __________

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: Interlocal Agreement between Whatcom County and Fire District #11 for lost EMS levy revenue due to county wide levy.

Term of Contract: 5 years

Expiration Date: December 31 2021

Last edited 10/31/16
MEMORANDUM

To: Whatcom County Council Members
From: Tyler Schroeder, Deputy Executive
Subject: Interlocal Agreement defining reimbursement of EMS levy revenue to impacted District
Date: April 11, 2017

BACKGROUND

The purpose of this Agreement is to establish the terms for the County to reimburse the District for its lost EMS revenue resulting from the levying of the County EMS Levy and the limitations in RCW 84.52.069.(6).

In 2016, County voters approved a ballot measure authorizing Whatcom County to levy a six (6) year EMS Levy pursuant to RCW 84.52.069(2). The results of this successful countywide levy will impact Fire District #11 which has a pre-existing EMS levy.

The County Treasurer, as necessary, must reduce the pre-existing district levy rates to $.205 to ensure the combined levy rate does not exceed $.50. The EMS revenue lost by the District as a result of the levy rate reduction shall be reimbursed.

This Agreement between Whatcom County and Fire District 11 terminates on December 31, 2021 the last year for collection of the District EMS Levy.

FUND SOURCE

The impacted District will be reimbursed through the EMS Fund.
Interlocal Cooperation Agreement
Between Whatcom County and Fire Protection District No. 11
for the Purpose of Defining the Allocation of Funds Received from the
Property Tax Rate Increase of $.295 or Less Per $1000 of Assessed Valuation for
Countywide Emergency Medical Services

This Agreement ("Agreement") is entered into between Whatcom County (the "County") and
Whatcom County Fire Protection District No. 11 (the "District") for the purpose of distributing
certain Emergency Medical Services (EMS) tax revenues to the District to compensate for the
reduction of EMS levy collections as described in Section 7 of County Ordinance 2016-167.

RECITALS

This Agreement is based the following relevant facts and circumstances:

A. The District has a six-year EMS levy pursuant to RCW 84.52.069(2) that will be
   levied until 2020 and collected through 2021.

B. In 2016, County voters approved a ballot measure authorizing Whatcom County
to levy a six (6) year EMS Levy pursuant to RCW 84.52.069 that will be levied
   until 2021 and collected through 2022.

C. Whatcom County began levying an EMS Levy pursuant to RCW 84.52.069 in the
   calendar year 2016 (the "County EMS Levy") for collection in 2017. The EMS
   Levy is a regular property tax levy on all taxable property located in Whatcom
   County and is in addition to the statutory tax rate limit of RCW 84.52.043.

D. County EMS Levy proceeds shall be deposited into the County Emergency
   Medical Services Fund and all levy proceeds authorized in the ordinance shall be
   used in accordance with RCW 84.52.069.

E. EMS Levy proceeds are based on assessed valuations that fluctuate from year to
   year, thereby resulting in fluctuating impacts and resultant compensation to the
   District.

F. Pursuant to RCW 84.52.069(6), since the District had a pre-existing EMS levy at
   the time that the County began levying an EMS Levy, the District's EMS Tax Levy
   must be reduced by the County Treasurer, as necessary, so that the combined
   County EMS Levy and the District EMS Levy do not exceed $0.50. Hereinafter,
   the annual amount of the EMS revenue lost by the District as a result of this levy
   rate reduction, if any, shall be referred to as the "Reimbursement Amount").
G. In 2016, for collection in 2017, District No. 11 resolved to levy an EMS tax of $0.383256466474 per thousand dollars of assessed valuation, and the County resolved to levy $0.295 per thousand dollars of assessed valuation, which results in a decrease of the 2016 District EMS Levy rate to $0.205000002400 per thousand dollars of assessed valuation.

TERMS AND CONDITIONS

1. Term.

This Agreement takes effect upon the execution hereof by the authorized representatives of all parties. This Agreement will terminate on December 31, 2021 (the last year for collection of the District EMS Levy), unless terminated earlier as provided in the Termination Section herein.

2. Purpose.

The purpose of this Agreement is to establish the terms for the County to reimburse the District for its lost EMS revenue resulting from the levying of the County EMS Levy and the limitations in RCW 84.52.069(6).

3. Mutual Consideration.

The parties do not intend to create any new or separate legal or administrative entity by this Agreement. The terms and conditions contained herein reflect the voluntary participation of the parties.

A. THE DISTRICT’S RESPONSIBILITIES: The District hereby agrees as follows:

(i) The District shall continue to provide first response emergency medical services within the boundaries of the District as outlined in the Emergency Medical Services Agreement between Whatcom County and Fire District No.11 signed on December 26, 1984.

(ii) The District shall comply with RCW 84.52.069 (5).

B. WHATCOM COUNTY’S RESPONSIBILITIES: The County hereby agrees as follows:

The County shall deposit the amount received from the County EMS Levy into the Whatcom County Emergency Medical Services Fund.

(i) The County shall use all funds deposited into the Whatcom County Emergency Medical Services Fund (the “Fund”), through this Agreement, solely for the support of countywide emergency medical services consistent with the Emergency Medical Services Funding Work Group Recommendations dated March 2016.
(ii) During the term of this Agreement, the County shall annually reimburse the District the Reimbursement Amount. Such reimbursement shall be made in two (2) approximately equal payments no later than May 1 and November 1.

4. Relationship of the Parties.

The parties hereto agree that each is an independent entity operating pursuant to the terms and conditions of this Agreement. No agent, employee, or representative of any party shall be deemed to be an agent, employee, or representative of any other party for any purpose. Each party shall be solely and entirely responsible for the acts of its agents and employees during the term of this Agreement.

5. Termination.

This Agreement shall terminate when one of the following occur: (1) if the County EMS Levy is rescinded, then this Agreement shall terminate on December 31 of the year in which the County no longer levies an EMS tax, or; (2) if the District EMS Levy has expired, whichever comes first.

6. Indemnification and Hold Harmless.

A. The District agrees to protect, defend, save harmless and indemnify the County from and against all claims, suits, and actions arising from negligent acts or omissions of the District, or its authorized contractors or subcontractors, including its agents or employees, in the performance of this Agreement. In the event the County is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the District agrees to pay the County's reasonable legal fees, costs and disbursements incurred in establishing the right to indemnification.

B. The County agrees to protect, defend, save harmless and indemnify the District from and against all claims, suits, and actions arising from negligent acts or omissions of the County, or its authorized contractors or subcontractors, including their agents or employees, in the performance of this Agreement. In the event the District is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the County agrees to pay the District's reasonable legal fees, costs and disbursements incurred in establishing the right to indemnification.


All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:
or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

8. Captions.

The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.


In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.


Each of the provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

11. Modification.

No changes or additions to this Agreement shall be valid or binding on either party unless such changes or additions shall be in writing executed by both parties.

12. Survivability.

All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

The failure of the County or District which is party hereto to insist upon strict performance of any of the covenants and conditions of this Agreement, or to exercise any options herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

14. Dispute Resolution.

A. In the event of a dispute between the parties arising from this Agreement or any obligations hereunder, the parties shall meet within thirty (30) days of any party’s request for a meeting to resolve the dispute. The parties promise to make a good faith attempt to resolve the dispute at this meeting.

B. In the event the parties are unable to resolve the dispute under the procedure in Section 14. A, then the parties hereby agree that the matter shall be referred to mediation. The parties shall stipulate to a mediator to assist them in resolving their differences. The mediator’s fees and expenses shall be borne equally by the parties. The parties agree to select the mediator within ten (10) working days from a party’s written request for mediation. The mediation will occur within thirty-five (35) days from the mediator’s selection. The parties will participate in good faith in mediation.

C. Following an unsuccessful mediation, a party may then pursue any available judicial remedies.

15. Venue.

This Agreement, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington and the parties agree that, in any action, venue shall lie exclusively in the Superior Court of the State of Washington for Whatcom County.

16. Recording.

Upon execution of this Agreement by the parties hereto, the County shall cause it to be recorded with the Whatcom County Auditor or, alternatively, listed by subject on its web site or other electronically retrievable public source, pursuant to the recording requirement contained within RCW 39.34.040.

***

IN WITNESS WHEREOF, the County and Fire Protection District No. 11 of Whatcom County have executed this Interlocal Cooperation Agreement as of the date and year last written below.
ENTERED INTO this _______ day of ________________________, 2017.

Accepted for Fire Protection District No. 11:

________________________________________
Chief Duncan McLane

Attest: Approved as to Form:

________________________________________
Fire Commissioner Brian Snure

ENTERED INTO this ____ day of ________________________, 2017.

WHATCOM COUNTY:
Approved as to form:

[Signature]
Prosecuting Attorney

Approved:
Accepted for WHATCOM COUNTY:

________________________________________
JACK LOUWS, Whatcom County Executive

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 ____________________
# WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
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<tr>
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<td>Twh</td>
<td>04/11/17</td>
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<td>Finance/Council</td>
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<td>Division Head:</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:**

Interlocal Agreement between Whatcom County and Fire District #16 for lost EMS Levy Revenue

**ATTACHMENTS:**

- Interlocal Agreement
- Memo

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( X ) NO</td>
</tr>
</tbody>
</table>

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

Executive Louws requests Council approval of the Interlocal Agreement between Whatcom County and Fire District #16 for reimbursement of lost District EMS levy revenue due to County wide levy.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>EMS Administration</th>
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<tbody>
<tr>
<td>Division/Program: (i.e. Dept, Division and Program)</td>
<td>EMS Administration</td>
</tr>
<tr>
<td>Contractor/Grant Administrator:</td>
<td>Tawni Helms/Tyler Schroeder</td>
</tr>
<tr>
<td>Contract's / Agency Name:</td>
<td>Fire District #16</td>
</tr>
</tbody>
</table>

**Is this a New Contract?** Yes [x] No [ ]  If not, is this an Amendment or Renewal to an Existing Contract? Yes [ ] No [x] If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:  

**Does contract require Council Approval?** Yes [x] 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 [x] If yes, grantor agency contract number(s): CFDA#:  

**Is this contract grant funded?** Yes [ ] No [x] If yes, Whatcom County grant contract number(s):  

**Is this contract the result of a RFP or Bid process?** Yes [ ] No [x] If yes, RFP and Bid number(s):  

**Is this agreement excluded from E-Verify?** No [ ] Yes [x] If no, include Attachment D Contractor Declaration form.

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

**Contract Amount:** (Sum of original contract amount and any prior amendments): $ [ ] Reimbursement rate  

**This Amendment Amount:** $ [ ]  

**Total Amended Amount:** $ [ ]

**Summary of Scope:** Interlocal Agreement between Whatcom County and Fire District #16 for lost EMS levy revenue due to county wide levy.

**Term of Contract:** 6 years  

**Expiration Date:** December 31, 2022  

1. Prepared by: TWH  
   Date:  
2. Attorney signoff: Daniel Gibson  
   Date:  
3. AS Finance reviewed: bennett  
   Date:  
4. IT reviewed (if IT related):  
   Date:  
5. Contractor signed:  
   Date:  
6. Submitted to Exec.:  
   Date:  
7. Council approved (if necessary):  
   Date:  
8. Executive signed:  
   Date:  
9. Original to Council:  
   Date:  

Last edited: 10/31/16  

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MEMORANDUM

To: Whatcom County Council Members
From: Tyler Schroeder, Deputy Executive
Subject: Interlocal Agreement defining reimbursement of EMS levy revenue to impacted District
Date: April 11, 2017

BACKGROUND

The purpose of this Agreement is to establish the terms for the County to reimburse the District for its lost EMS revenue resulting from the levying of the County EMS Levy and the limitations in RCW 84.52.069.(6).

In 2016, County voters approved a ballot measure authorizing Whatcom County to levy a six (6) year EMS Levy pursuant to RCW 84.52.069(2). The results of this successful countywide levy will impact Fire District #16 which has a pre-existing EMS levy.

The County Treasurer, as necessary, must reduce the pre-existing district levy rates to $.205 to ensure the combined levy rate does not exceed $.50. The EMS revenue lost by the District as a result of the levy rate reduction shall be reimbursed.

This Agreement between Whatcom County and Fire District 16 terminates on December 31, 2022 the last year for collection of the County EMS Levy.

FUND SOURCE

The impacted District will be reimbursed through the EMS Fund.
Interlocal Cooperation Agreement
Between Whatcom County and Fire Protection District #16
for the Purpose of Defining the Allocation of Funds Received from the
Property Tax Rate Increase of $.295 or Less Per $1000 of Assessed Valuation for
Countywide Emergency Medical Services

This Agreement ("Agreement") is entered into between Whatcom County (the "County") and
Whatcom County Fire Protection District #16 (the "District") for the purpose of distributing
certain Emergency Medical Services (EMS) tax revenues to the District to compensate for the
reduction of EMS levy collections as described in Section 7 of County Ordinance 2016-167.

RECITALS

This Agreement is based the following relevant facts and circumstances:

A. The District has a permanent EMS levy pursuant to RCW 84.52.069(2).

B. In 2016, County voters approved a ballot measure authorizing Whatcom County
to levy a six (6) year EMS Levy pursuant to RCW 84.52.069.

C. Whatcom County began levying an EMS Levy pursuant to RCW 84.52.069 in the
calendar year 2016 (the "County EMS Levy") for collection in 2017. The EMS
Levy is a regular property tax levy on all taxable property located in Whatcom
County and is in addition to the statutory tax rate limit of RCW 84.52.043.

D. County EMS Levy proceeds shall be deposited into the County Emergency
Medical Services Fund and all levy proceeds authorized in the ordinance shall be
used in accordance with RCW 84.52.069.

E. EMS Levy proceeds are based on assessed valuations that fluctuate from year to
year, thereby resulting in fluctuating impacts and resultant compensation to the
District.

F. Pursuant to RCW 84.52.069(6), since the District had a pre-existing EMS levy at
the time that the County began levying an EMS Levy, the District's EMS Tax
Levy must be reduced by the County Treasurer, as necessary, so that the
combined County EMS Levy and the District EMS Levy do not exceed $0.50.
Hereinafter, the annual amount of the EMS revenue lost by the District as a result
of this levy rate reduction, if any, shall be referred to as the "Reimbursement
Amount").
G. In 2016, for collection in 2017, District #16 resolved to levy an EMS tax of $0.499999970193 per thousand dollars of assessed valuation, and the County resolved to levy $0.295 per thousand dollars of assessed valuation, which results in a decrease of the 2016 District EMS Levy rate to $0.205000008975 per thousand dollars of assessed valuation.

TERMS AND CONDITIONS

1. Term.

This Agreement takes effect upon the execution hereof by the authorized representatives of all parties. This Agreement will terminate on December 31, 2022 (the last year for collection of the EMS Levy), unless terminated earlier as provided in the Termination Section herein.

2. Purpose.

The purpose of this Agreement is to establish the terms for the County to reimburse the District for its lost EMS revenue resulting from the levying of the County EMS Levy and the limitations in RCW 84.52.069(6).

3. Mutual Consideration.

The parties do not intend to create any new or separate legal or administrative entity by this Agreement. The terms and conditions contained herein reflect the voluntary participation of the parties.

A. THE DISTRICT’S RESPONSIBILITIES: The District hereby agrees as follows:

(i) The District shall continue to provide first response emergency medical services within the boundaries of the District as outlined in the Emergency Medical Services Agreement between Whatcom County and Fire District No. 4 signed on December 31, 1984.

(ii) The District shall comply with RCW 84.52.069 (5).

B. WHATCOM COUNTY’S RESPONSIBILITIES: The County hereby agrees as follows:

The County shall deposit the amount received from the County EMS Levy into the Whatcom County Emergency Medical Services Fund.

(i) The County shall use all funds deposited into the Whatcom County Emergency Medical Services Fund (the “Fund”), through this Agreement, solely for the support of countywide emergency medical services consistent with the Emergency Medical Services Funding Work Group Recommendations dated March 2016.
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(i) The County shall use all funds deposited into the Whatcom County Emergency Medical Services Fund (the “Fund”), through this Agreement, solely for the support of countywide emergency medical services consistent with the Emergency Medical Services Funding Work Group Recommendations dated March 2016.
(ii) During the term of this Agreement, the County shall annually reimburse the District the Reimbursement Amount. Such reimbursement shall be made in two (2) approximately equal payments no later than May 1 and November 1.

4. Relationship of the Parties.

The parties hereto agree that each is an independent entity operating pursuant to the terms and conditions of this Agreement. No agent, employee, or representative of any party shall be deemed to be an agent, employee, or representative of any other party for any purpose. Each party shall be solely and entirely responsible for the acts of its agents and employees during the term of this Agreement.

5. Termination.

This Agreement shall terminate when one of the following occur: (1) if the County EMS Levy is rescinded, then this Agreement shall terminate on December 31 of the year in which the County no longer levies an EMS tax, or; (2) if the District EMS Levy has expired or is not being collected pursuant to RCW 84.52.069(4), whichever comes first.

6. Indemnification and Hold Harmless.

A. The District agrees to protect, defend, save harmless and indemnify the County from and against all claims, suits, and actions arising from negligent acts or omissions of the District, or its authorized contractors or subcontractors, including its agents or employees, in the performance of this Agreement. In the event the County is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the District agrees to pay the County's reasonable legal fees, costs and disbursements incurred in establishing the right to indemnification.

B. The County agrees to protect, defend, save harmless and indemnify the District from and against all claims, suits, and actions arising from negligent acts or omissions of the County, or its authorized contractors or subcontractors, including their agents or employees, in the performance of this Agreement. In the event the District is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the County agrees to pay the District's reasonable legal fees, costs and disbursements incurred in establishing the right to indemnification.


All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:
or to such other address as the foregoing parties hereto may from time-to-time designate in
writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt
or refusal to accept delivery.

8. Captions.

The captions of this Agreement are for convenience and reference only and in no way define,
limit, or describe the scope or intent of this Agreement.


In case any one or more of the provisions contained in this Agreement shall for any reason be
held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
unenforceability shall not affect any other provision hereof, and this Agreement shall be
construed as if such invalid, illegal, or unenforceable provision had never been contained
herein.


Each of the provisions of this Agreement have been reviewed and negotiated, and represents
the combined work product of all parties hereto. No presumption or other rules of construction
which would interpret the provisions of this Agreement in favor of or against the party preparing
the same shall be applicable in connection with the construction or interpretation of any of the
provisions of this Agreement.

11. Modification.

No changes or additions to this Agreement shall be valid or binding on either party unless such
changes or additions shall be in writing executed by both parties.

12. Survivability.

All covenants, promises and performance which are not fully performed as of the date of
termination shall survive termination as binding obligations.

The failure of the County or District which is party hereto to insist upon strict performance of any of the covenants and conditions of this Agreement, or to exercise any options herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

14. Dispute Resolution.

A. In the event of a dispute between the parties arising from this Agreement or any obligations hereunder, the parties shall meet within thirty (30) days of any party's request for a meeting to resolve the dispute. The parties promise to make a good faith attempt to resolve the dispute at this meeting.

B. In the event the parties are unable to resolve the dispute under the procedure in Section 14. A, then the parties hereby agree that the matter shall be referred to mediation. The parties shall stipulate to a mediator to assist them in resolving their differences. The mediator's fees and expenses shall be borne equally by the parties. The parties agree to select the mediator within ten (10) working days from a party's written request for mediation. The mediation will occur within thirty-five (35) days from the mediator's selection. The parties will participate in good faith in mediation.

C. Following an unsuccessful mediation, a party may then pursue any available judicial remedies.

15. Venue.

This Agreement, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington and the parties agree that, in any action, venue shall lie exclusively in the Superior Court of the State of Washington for Whatcom County.

16. Recording.

Upon execution of this Agreement by the parties hereto, the County shall cause it to be recorded with the Whatcom County Auditor or, alternatively, listed by subject on its web site or other electronically retrievable public source, pursuant to the recording requirement contained within RCW 39.34.040.

**************

IN WITNESS WHEREOF, the County and Fire Protection District #16 of Whatcom County have executed this Interlocal Cooperation Agreement as of the date and year last written below.

Interlocal Cooperation Agreement between
Whatcom County and Fire Protection District #16

Page 5 of 6
ENTERED INTO this _______ day of ______________________, 2017.

Accepted for FIRE PROTECTION DISTRICT #16:

CHIEF HANK MALENG

Attest: Approved as to Form:

__________________________________
Fire Commissioner

ENTERED INTO this _______ day of ______________________, 2017.

WHATCOM COUNTY:
Approved as to form:

Prosecuting Attorney

Approved: Accepted for WHATCOM COUNTY:

JACK LOUWS, Whatcom County Executive

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 ___________________
WHATCOM COUNTY COUNCIL AGENDA BILL

TITLE OF DOCUMENT:
Residential Lease Agreement for 5305 Nielsen Avenue, Ferndale, WA, between Whatcom County Parks and Recreation and Michael Atkins and Maria Palileo.

ATTACHMENTS:
Residential Lease 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: (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 a new lease agreement between Whatcom County Parks and Recreation and Michael Atkins and Maria Palileo to reside at 5305 Nielsen Road, Ferndale, WA; located within Hovander Homestead Park. The term of this agreement is one year, commencing on March 17, 2017 and ending on February 28, 2018 at which point it reverts to a monthly lease agreement. Monthly rent is $950.00.

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.
Enclosed find two copies of a residential rental lease for the house at 5305 Nielsen Avenue at Hovander Homestead Park for your signature. This is a one year lease agreement for a rate of $950.00 per month that changes to a month to month basis after the initial one year period.

Should you have any questions or need additional information please contact Christ Thomsen at 5865.

Thank you.
This is a new residential lease agreement between Whatcom County Parks and Recreation and Michael Atkins and Maria Palileo to reside at 5305 Nielsen Avenue, Ferndale, WA; located within Hovander homestead park. The term of this agreement is one year, commencing on March 17, 2017 and ending on February 28, 2018 at which point it reverts to a monthly lease agreement. Monthly rent is $950.00.

Term of Contract: One year, then converts to monthly
Expiration Date: 02/28/18, then converts to Monthly

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.

Last edited 10/31/16
RESIDENTIAL LEASE AGREEMENT
Whatcom County

THIS AGREEMENT, dated as of March 15, 2017, is made and entered into between WHATCOM COUNTY (PARKS AND RECREATION DEPARTMENT), a municipal corporation in the State of Washington, hereinafter referred to as "Landlord", and Michael Atkins and Maria Palileo, hereinafter referred to as "Tenant".

In consideration of the covenants and agreements hereinafter set forth, Landlord does hereby lease to Tenant those certain premises situated at 5305 Nielsen Avenue, Ferndale, WA 98248, located within Hovander Homestead Park, hereinafter referred to as "Premises."

INSERT PROPERTY DESCRIPTION

for a term of one (1) year commencing on March 17, 2017 and ending on February 28, 2018 upon the following terms and conditions. Upon expiration of one (1) year from commencement date, this lease agreement reverts to a monthly lease agreement. The County may require an additional one year lease for continued occupancy.

1. OCCUPANCY SHALL BE LIMITED to the following persons (adults and children).

   Michael Atkins, Maria Palileo, and one male child. Note: Landlord/agent must approve sublet of premises, or overnight visitors staying more than 7 consecutive days or a total of over twenty (20) days in any 12-month period.

   Provision for pets/animals: No pets or animals allowed.

   Number of vehicles, make, model and license plate(s): Honda, Civic, 2006, WA ALS3091; Kia, Spectra, 2007, WA AZU0749.

   RV/Boats and license plate: No RV/Boat

2. RENT: Rent is joint and several with all adult tenants. Tenant shall pay monthly rent of $950.00 (S950.00) (SRENT VALUATION plus SLEASEHOLD TAX VALUATION leasehold tax of 12.84%), in advance on or before the first day of each month to Landlord or to such other person(s) as Landlord from time to time designates in writing.

3. UTILITIES: paid by landlord (checked): XX electric, XX gas, XX water, XX sewer, XX garbage, ______ (other) Not Applicable. Tenant must pay all other utilities; failure to promptly call in for service may result in a $35 charge. See Exhibit A for a list of utility providers if applicable. Upon vacating the premises, Tenant is responsible for filling the propane tank. If this does not occur Landlord will deduct the cost to fill the tank form the Tenant's Damage, Cleaning and Security Deposit.

4. SECURITY/Damage Deposit: Tenant shall pay a security/damage deposit in the amount of $950.00. Of this deposit, none shall be retained by Landlord as an automatic non-refundable cleaning fee. Upon termination of this tenancy, all or a portion of the remainder of this deposit may be retained by Landlord, and any refund to the Tenant is conditioned as follows:

   a. Tenant shall have fully performed the obligations hereunder and those set forth in the 1973 Residential Landlord-Tenant Act as amended, or as subsequently amended.

   b. Tenant shall have occupied the premises for a minimum of six months or longer.

   c. Tenant shall have returned to Landlord all keys provided during the tenancy. A charge of $10.00 will be assessed for each key not returned by Tenant.

Lease Agreement: Hovander Homestead/5305 Nielsen/Atkins/March 2017
d. Tenant shall have cleaned and restored premises to its original condition at commencement of this tenancy, except for normal wear and tear resulting from ordinary use. Cleaning shall include thorough commercial cleaning of all carpets.

e. Tenant shall have remedied or repaired to Landlord's satisfaction any damage to premises or furnishings.

f. Unpaid utilities which are billed to the County.

g. Within fourteen (14) days after termination of tenancy and vacation of the premises, Landlord will give Tenant a written statement of the basis for retaining any or all of the deposit together with the payment of any refund due.

Any refundable pre-paid rent shall first apply to final balances due landlord not covered by security fee. Refund checks void if not cashed or deposited within 90 days. For tenant-responsible damages or neglect during tenancy, costs may be deducted anytime from the security fee following 10-day written notice to cure, with 30-day deadline for tenant to replenish fee.

5. TENANT AGREES AND UNDERSTANDS: That any of said security /damage deposit may not be applied by the tenant toward rent at any time. Any security fee refund or shortage, as per itemized statement (or estimate), shall be processed between 2 and 14 days following rental agreement termination and vacation of premises. The security deposit is held in trust per RCW 59.18.270 at Key bank.

6. DELIVERY OF RENT AND Notices: All due on the first day of each monthly rental period, it is the responsibility of the tenant to mail/deliver rent payment (cash, check, money order/cashier check, at landlord/agent option; checks should be made payable to Whatcom County Parks and Recreation) to the following address or location: Parks Operations Manager, Whatcom County Parks & Recreation, 3373 Mt. Baker Highway, Bellingham WA 98226. Landlord/agent will not be responsible for any lost or missing cash payments not personally handed to landlord/agent. If by commencement date, tenant fails to call/show up, get keys, and pay all move-in money due, landlord/agent may immediately terminate agreement with no refunds.

7. LATE/NSF/DEFAULT RENT: Any rent due not paid by the 5th day of the monthly rental period is subject to a $75.00 late fee charge. Late fees assessed concurrent with rent due shall be considered rent as due. NSF checks shall be assessed $30.00 each. If tenant defaults in rent payment, is absent from the premises without notice, and there is reason or cause to believe tenant is terminating occupancy, the premises will be considered abandoned, entitling landlord or agent to post notice, take immediate possession, change locks, and store of any remaining items in a manner and time required by law.

8. NOTICES: Tenant shall give the landlord or agent at least 20 days' written notice prior to the end of the rental period of intention to vacate the premises. (Shorter notices, or notices other than for the end of the period, require approval of landlord.) Landlord or agent may also give 20-day no-cause notice to tenant to terminate tenancy. Tenant shall, at the expiration of either and all notices, surrender the premises and keys to the landlord or agent in accordance with this agreement.

a. Maintenance & Showing: Except in the case of emergency or if it is impracticable to do so, following 48 hour landlord/agent notice, tenant shall allow access to unit at reasonable times. Tenant failure to so
honor access is cause to assess tenant for any service cancellation costs, and $100 per RCW 59.18.150(5).

9. SIGNS/ACCESS: Landlord/agent may enter yard and place/maintain business signs/postings (e.g. rent, lease, sale) on the premises as deemed necessary for business operations. Additionally, landlord or agent may enter the tenant’s premises for purposes of: (1) inspection; (2) cleaning, repairs or alterations; (3) other services; or (4) showing premises; provided, access is at reasonable times with proper notice (no notice required for emergency, end/term or abandonment). Tenant notice to vacate, or request for service or repairs, shall constitute tenant-approved notice of respective access by landlord or agent (in absence of tenant objection).

10. PUBLIC SAFETY: Dwelling is equipped with three battery-operated smoke/heat detectors, and three Carbon Monoxide (CO) alarms in working order. Maintenance of smoke detection devices and CO alarms, including the replacement of batteries when needed, shall be the responsibility of the tenant, who shall maintain the devices as specified by the manufacturer. Tenant is responsible to maintain the devices in working order and conduct a monthly check to determine that the devices are in working order. Tenant(s) failure to comply includes a $200 fine per RCW 43.44.110(4). If any device is later found inoperable, landlord may charge tenant $50 compliance fee/each. The tenant(s) must immediately notify the County if the tenant is unable to repair or determine if the smoke alarms or CO alarms are operable.

11. Operable Fire Extinguishers are located in the following locations: Laundry Room. The tenant is required to check the fire extinguisher(s) monthly to determine if they are fully charged. The tenant(s) must immediately notify the County if there is not a full charge or there is a need for repair or replacement.

12. CHANGE IN TERMS OR RENT: effective anytime upon written approval of all affected parties, or upon 30 days written notice by landlord/agent effective at the end of the corresponding rental month. All other provisions shall remain intact.

13. INSURANCE/REPAIRS: Tenant is not insured under Landlord’s insurance (Landlord/agent is not responsible for damaged/missing tenant property). Tenants should obtain insurance on their personal property to include theft, vandalism, pests, accident, storm, cold or heat, mold, flood, water, and electrical damages, as a minimum. (Landlord/agent not responsible for damaged/missing tenant property.) Landlord/agent will promptly respond to tenant written requested repairs, but will not be monetarily responsible for: (1) tenant disruptions or inconveniences during habitable periods of repair, drying, scheduling or bidding of same; (2) tenant/guest injuries incurred in or around obvious areas of maintenance, repair, or construction; nor (3) housing or other costs incurred by tenant during good-faith periods of landlord repairs or other activities.

14. ATTORNEY’S FEES: In the event suit shall be brought regarding the performance of the terms and provisions of this Agreement or because of a breach of any of Tenant’s obligations, then Tenant agrees to pay to Landlord reasonable attorney’s fees as authorized by RCW Chapter 59.18. Attorney’s fees as required and/or allowed by law will apply equally to both tenant and landlord.

15. PREMISES USE: Tenant shall not use said or neighboring premises for any illegal purpose, or for any other purpose than that of a residence. No excessive traffic or visitors (e.g. more than 3-4 drive-ups or walk-ins per day) without landlord/agent approval. Tenant shall not allow entry of anyone in violation of court protection orders. Tenant to conform to all covenants, codes, statutes, ordinances; and landlord/agent rules regarding
occupancy. Absolutely no unlawful drugs, excessive drinking, public disturbances, verbal abuse, spiteful threats, unauthorized pets/firearms/smoking on premises. Violations are cause for eviction.

16. OPERATION, MAINTENANCE, STORAGE, ALTERATIONS TO PREMISES: On a continuing basis, tenant agrees to:

a. **Keep premises** in a clean, neat, and sanitary condition; **no parking**, storage or accumulation of debris on lawn or yard;

b. **Dispose of** all rubbish, garbage, and waste in a clean and sanitary manner—at reasonable intervals—and assume all costs of extermination and fumigation for infestation caused by tenant; not feed straying pets or animals; not temporarily host pets;

c. **Properly ventilate and operate** all electrical, gas, heating, plumbing, septic, facilities, fixtures, doors, windows, locks, and

d. **No** portable kerosene/gas/incense burning; **keep** hot water tank at 120 degree maximum; all burning candles must be kept in a non-flammable container; all candles must be extinguished if tenant leaves the residence; no excessive odorous chemicals/sprays/vapors; **restrict** toilets to biological waste and tissue paper; keep drains clear;

e. **No BBQs** or open fires in units or under eaves, canopies, balcony over-heads, in public areas, or under building structures or covers; *(Note: Carbon monoxide (CO) is a very poisonous combustion gas that cannot be seen or smelled, and can afflict or kill!)*

f. **Pay for, replace or repair** in a landlord-approved manner, all items (including doors, windows, locks, smoke/heat/CO alarms) damaged or made inoperable during occupancy; **correct or repair** plumbing and fixtures clogged or broken by misuse or neglect; and where applicable, **use due precaution** against freezing or stoppage of water pipes in and around the premises;

g. **Report all** plumbing/roof/water leaks, **and** all mold, code and other hazardous conditions to landlord/agent within 48 hours to avoid charges for inspections, presumptive damages, and increased utility fees **caused by** lack of timely reporting to landlord;

h. **Not deface, damage, impair, or remove** any property, facilities, equipment, and appliances; **not install** TV/radio antennas, decorations, signs, postings, nor other equipment without landlord/agent approval except as authorized under FCC regulations; For any installations, landlord/agent may assess an added refundable $250 security fee to cover removal costs;

i. **Not grow** medically-approved or other marijuana in or around the premises; **Limit supply** for own medical purposes per RCW 69.51A.040; **Not smoke/vaporize** same anywhere inside premises, nor in any unauthorized outside areas;

j. **Not make unauthorized alterations**, climb ladders/roofs, paint/wallpaper, change fixtures/locks, or run dangerous equipment; any alteration must be pre-approved in writing by the Parks Operations Manager or their designee.

k. **Not store non-operating vehicles**, nor boats, RV’s, motor cycles, trailers, firearms, equipment, tools, hazardous materials, liquids, paints, fuels/oils, chemicals, waste or non-using items **on premises** without landlord/agent approval; no waterbeds;
1. **Maintain reasonable peace and quiet** with other tenants/neighbors and pay for any caused damages therein; no fireworks; No disturbing TV’s, sound systems, musical instruments, or other disturbing activities; No fireworks of any kind.

17. **MOLD/LEAD PAINT**: XX Copy of State-approved mold information hand-out is provided per RCW 59.18.060(12). For pre-1978 housing, XX a federal-approved pamphlet on lead poison prevention is also provided. **BEWARE**: Touching, breathing or eating lead paint chips/construction dust can be hazardous to people...especially children!

18. **YARD/OUTSIDE PREMISES**: Where applicable (y/n)YES, tenant agrees to mow, water, weed, and maintain grounds in good condition (subject to any landlord specifics); and to keep own driveways, walks, porches, and garages clean and clear of obstructions, and pay costs of any used utility. Failure to comply following notice will result in charges to tenant for necessary remedy. Landlord/agent may reasonably enter yard/buildings without notice to service common areas and outside yard/structures. No trampolines, swimming pools, swing or climbing sets, or other such “attractive nuisances” without written approval of landlord/agent. Unauthorized parking, storage, or accumulation of waste may be assessed up to $10.00 per day per violation.

19. **FURNISHINGS PROVIDED**: Included (if checked) are XX stove, XX refrigerator, _drapes, _shades, _curtains, XX blinds, XX smoke/CO alarms, and also the following: Not Applicable.

20. **CONDITION REPORT UP-DATE**: Tenant to complete and return any/all condition report up-dates by 30 days of move in.

21. **DELIVERY OF POSSESSION**: If for any reason landlord or agent fails to deliver possession of these premises at the start of this agreement, rent shall be abated until tenant possession. All other aspects of this agreement shall remain in full force. In no event shall landlord or agent be liable for damages caused by failure to deliver possession of the premises. If possession is not given tenant within 7 days of the start date, tenant may terminate this agreement with full refund by giving written notice.

22. **EVICTION PURSUANT TO WRIT OF RESTITUTION**: Tenant(s) HEREBY OBJECTS to the storage of their personal property. Tenant(s) understand this will result in their property being placed on the nearest public right-of-way.

23. **RECEIPT OF MONEY PAID**: 1. Tenant has paid $950.00 in CHECK for security/damage deposit. 2. Tenant has paid $459.75 in CHECK for rent covering period March 17, 2017 through March 31, 2017. In addition: Not applicable.

24. **TENANT’S DEFAULT AND LANDLORD’S RE-ENTRY**: The occurrence of any of the following constitutes a material default and breach of this agreement:
   a. Failure to pay rent.
   b. Failure to observe and perform any other required provisions of this agreement.
   c. Committing waste, maintaining a nuisance, being declared a sex-offender or convicted of a crime; tenants and or guests which cause law enforcement contact as a result of a violation of the law which results in an arrest.
   d. Landlord may terminate tenancy prior to the end of the agreement if Tenant receives three notices for “3-day pay or vacate” or three notices for “10-day comply-or-vacate” within a 12-month period.
25. **LANDLORD'S DUTY**: Landlord agrees to keep the shared and common premises clean and fit for human habitation and to comply with all state and local laws regarding maintenance and repair of the premises, unless otherwise agreed to in this agreement.

26. **OTHER CONDITIONS**: This agreement also is subject to these other conditions:

   a. **INSERT CONDITIONS SPECIFIC TO THE PARK/PROPERTY**

27. **NO WAIVER**: Failure of Landlord to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of Landlord's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

28. **HOLD HARMLESS**: Tenants shall indemnify and hold Landlord harmless from claims of loss or damage to real and personal property and of injury or death to persons caused by the acts or negligence or wrongful acts of Tenants, Tenants' family, guests, licensee or invitees. Tenants expressly releases Landlord from any and all liability for any loss or damage to property or effects arising out of water leakage, breaking in or theft, or other causes beyond the reasonable control of Landlord. There is no warrant that there will be no criminal acts or that Tenants will be free from the violent tendencies of third parties.

29. **JOINT AND SEVERAL LIABILITY**: It is understood and agreed that each party signing this Agreement as Tenant is liable for the full amount of rent provided herein. The obligation of Tenants is joint and several.

30. **SEVERABILITY**: The construction validity and effect of this Agreement shall be governed by the laws of the State of Washington. Any provision of this agreement prohibited by such laws shall be ineffective to the extent of such prohibition without invalidating the remaining provisions thereof.

31. **KEYS**: Two (2) keys will be provided at time of possession. Keys may not be duplicated or provided to other persons, nor locks replaced, without the permission of the Landlord.

32. **REPORT TO CREDIT/TENANT AGENCIES**: Tenants are hereby notified that a nonpayment, late payment or breach of any of the terms of this residential lease agreement may be submitted/reported to a credit and/or tenant reporting agency, and may create a negative credit record on your credit report.

33. **ADDITIONAL TO AGREEMENT**: The following Exhibits are attached: 1. Mold and mildew addendum. 2. Condition of premises to be signed by tenant(s) and County. 3. Lead pamphlet. 4. Smoking Policy.

**LIST Remaining EXHIBITS AS NECESSARY**

Exhibit A: Utilities

Exhibit B: Notice to Tenant of Location in Flood Hazard Area
Tenants acknowledge that they have read this agreement and will abide by its terms and will comply with all rules and regulations adopted by Landlord.

**TENANTS**

Name 1

Name 2

Phone(s):

(206) 465-2324

2018 604 1074

Email: MARIAPALILEO@GMAIL.COM

**STATE OF WASHINGTON**

COUNTY OF WHATCOM ) ss.

On this 15 day of March, 2017, before me personally appeared Michael Atkins and Maria Palileo to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledges that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 15 day of March, 2017.

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

My Commission expires: 4/11/2019

Executed as of the date first written above.

Lease Agreement: Hovander Homestead/5305 Nielsen/Atkins/March 2017
## Exhibitch A

Utilities for 5305 Nielsen Avenue, Ferndale WA

<table>
<thead>
<tr>
<th>Service</th>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Puget Sound Energy (electric)</td>
<td>360.671.3704</td>
</tr>
<tr>
<td>Sanitary Service (garbage)</td>
<td>360.734.3490</td>
</tr>
<tr>
<td>City of Ferndale (water)</td>
<td>360.384.4302</td>
</tr>
<tr>
<td>CHS (propane)</td>
<td>360.380.0578</td>
</tr>
</tbody>
</table>
Exhibit B
NOTICE TO TENANT OF LOCATION
IN FLOOD HAZARD AREA

Notice is hereby given that the following described real property is located within a flood hazard area.

(Put in legal description and address of property being leased or rented)

5305 Nielsen Avenue, Ferndale, WA 98248

Dated this: 15 day of March 2017

Signature of Owner/Agent ________________________________

ACKNOWLEDGEMENT OF TENANT

The undersigned tenant(s) of the above described real property hereby acknowledge receipt of notice that such property is located within a flood hazard area.

Dated this: 21 day of March 2017

Signature of Tenant(s) ________________________________

Renters Flood Insurance: The owner's insurance does not insure the tenant against loss of personal property or injury. Renter's insurance including flood insurance is available to cover losses of property or injury caused by flooding, wind damage or other casualty loss. Consult with an insurance professional of your choice.
**TITLE OF DOCUMENT:**
Interlocal Cooperative Agreement between the City of Sumas and Whatcom County Parks & Recreation for the Sumas Senior Activity Program

**ATTACHMENTS:**
Interlocal Agreement

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>Yes</td>
<td>NO</td>
</tr>
</tbody>
</table>

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

Request approval for Whatcom County Parks & Recreation to enter into an Interlocal Agreement with the City of Sumas to operate a senior activity center program at the Sumas Community Center. The term of the agreement is from January 1, 2017 through December 31, 2032.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: Jack Louws, County Executive
FROM: Michael McFarlane, Director
DATE: March 21, 2017
RE: Interlocal Cooperative Agreement for the Sumas Senior Activity Program

Enclosed are two (2) Interlocal Cooperative Agreements between Whatcom County Parks & Recreation Department and the City of Sumas for use of the Sumas Community Center and Library Center to operate the Sumas Senior Activity program for your review and signature.

- **Background and Purpose**
  The City and County jointly funded construction of the Sumas Community Center. Renewal of this contract will allow Whatcom County Parks & Recreation to staff and operate the Sumas Senior Activity Program. Currently the County is operating the program 2 days a week.

- **Funding Amount and Source**
  Whatcom County pays a portion of the utilities based on program days used per week.
# WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Parks &amp; Recreation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Senior Services</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Michael McFarlane</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>City of Sumas</td>
</tr>
</tbody>
</table>

Is this a New Contract? Yes ☒ No ☐
If not, is this an Amendment or Renewal to an Existing Contract?
Yes ☐ No ☒
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:
Does contract require Council Approval? Yes ☒ No ☐
If No, include WCC:
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

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

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

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

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

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: The City and County jointly funded construction of the Sumas Community Center and Library Center. This Interlocal Agreement will allow Whatcom County Parks & Recreation to continue to utilize the community center to operate the Sumas Senior Activity Program 2 days a week.

<table>
<thead>
<tr>
<th>Term of Contract:</th>
<th>January 1, 2017</th>
<th>Expiration Date:</th>
<th>December 31, 2032</th>
</tr>
</thead>
</table>

Contract Routing:
1. Prepared by: Darla Smith
2. Attorney signoff:
3. AS Finance reviewed:
4. IT reviewed (if IT related):
5. Contractor signed by City:
6. Submitted to Exec:
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

Date: 03/21/17
Date: 3/20/17
Date: 3/15/17
Date: 3/30/17

Last edited 10/31/16
INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN THE
CITY OF SUMAS AND WHATCOM COUNTY PARKS & RECREATION
FOR THE SUMAS SENIOR ACTIVITY PROGRAM

This Agreement made and entered into by WHATCOM COUNTY, a municipal corporation, hereinafter referred to as "COUNTY"; and the CITY OF SUMAS, a municipal corporation, hereinafter referred to as "CITY" pursuant to the authority granted by chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

WHEREAS, the CITY and the COUNTY have jointly funded the construction of a building at 450 Second Street, Sumas, Washington, known as the Sumas Community Center and Library Complex;

WHEREAS, the COUNTY, through its Parks and Recreation Department, operates a program to coordinate benefits and activities for senior citizens at selected senior citizen centers strategically situated throughout Whatcom County;

WHEREAS, since January 4, 1990 through the December 31, 2016 the CITY and COUNTY have jointly agreed to the use of the Sumas Community Center to operate the Sumas Senior Activity Program;

WHEREAS the parties have agreed to the extension of their relationship for a period of fifteen (15) years;

NOW THEREFORE the parties hereto agree as follows:

1. **EXTENT OF USE**: The CITY consents to the use of the Community Center space as a Senior Activity Center Program during the full term of this Agreement. This building is the property of the CITY and its use shall be governed by this Agreement.

2. **TERM**: Agreement shall run for a full term of fifteen years (15) from its original date of signing.

3. **PREFERENTIAL USE**: Use of this building for the Senior Activity Center Program shall not be exclusive in that it is to remain available to other public use at selected times for selected occasions and meetings.

   The COUNTY shall have preferential use of the Community Center for at least two entire days each week during the term of the agreement for the Senior Activity Center Program. Currently the Senior Activity Center Program is scheduled Monday and Friday from 10:30 am – 1:30 pm. The COUNTY is entitled to schedule special events with prior approval from the CITY.

   The use by others shall be at times as scheduled by the CITY and shall not conflict with usage by Senior Activity Center Program’s regular programmed days.

4. **SCHEDULING OF USERS**: Control of the building and its use shall remain with the CITY, with specific times for its use to be coordinated by the CITY staff in order to avoid conflicts in scheduling.
Scheduling conflicts will be resolved on a basis of first scheduled users of the building. Conflicts may also be settled by parties in conflict by rescheduling one of the meetings. The CITY may, for special uses, impose a fee on use of building by groups other than Sumas Senior Activity Center Program.

5. **SUPERVISION OF ACTIVITIES AND KEYS:** The City will issue a set of keys to County to provide access to Senior Activity Center Program Area.

The formulation, presentation, funding, and supervision of the Sumas Senior Activity Program conducted in the building will be the responsibility of the COUNTY, aided by the Whatcom Council on Aging.

It is understood that no part of the premises or building will be used for any illegal or unlawful purpose activity.

6. **USE FEES:** The Sumas Senior Activity Center Program shall not be charged any rent, license, or fee for their use of the building.

All policies governing the use of the building, including the setting of fees and charges therefore, shall be established by the CITY. All revenue from fees and charges shall go into a fund to be used for upkeep of the building and related site.

7. **JOINT RESPONSIBILITIES of the CITY and COUNTY:**
   a. Major replacement or repairs to the building, grounds, or a major physical alteration of the plant would include roof replacement, major building renovation, complete exterior or interior painting, replacement of floor covering, etc. These items must be mutually agreed to before the work is to commence. The cost will be shared equally by the CITY and the COUNTY.

   b. The cost of all utilities for the Community Center portion of the building other than telephone (i.e. heat, lights, sewer, water, etc.) shall be allocated based on the number of days a week it is used by the Sumas Senior Activity Program. If used on a two days per week schedule, the COUNTY shall be responsible for 2/7 of the total of these expenses. The CITY shall be responsible for the remaining 5/7. If there is any variation from this formula in actual use of the community center by days or portions of days, then appropriate alterations in said formula for sharing the costs shall be made based on actual use. If the CITY rents out the building after the Sumas Senior Activity Program has completed one of their regular scheduled days to another party, the utilities billing will be credited on the last quarter of the calendar year. The Sumas Senior Activity Program will be responsible to keep the center clean and rentable at the end of their scheduled days. The same responsibility of keeping the center clean and rentable would apply to the CITY after a group rents the building.

   c. Structural changes to the building shall be made only by mutual written agreement of the CITY and COUNTY.
8. RESPONSIBILITIES OF THE CITY AS RELATES TO THE BUILDING:
   a. The CITY agrees to provide all insurance necessary for the facility such as fire, liability, etc. In the event of loss of the building, the monies collected from CITY insurance shall be used to build a new facility.
   b. The CITY shall be responsible for proper operation, maintenance and safety of the building and grounds and comply with all federal, state and local laws.

9. RESPONSIBILITIES OF THE COUNTY SUPPORTED BY THE WHATCOM COUNCIL ON AGING:
   a. Select and employ the Senior Activity Center program staff.
   b. Provide equipment to support the nutrition meal program. All equipment purchased with State or Federal Funds shall be kept on a separate inventory list and shall go back to the Whatcom Council on Aging in the event Sumas Senior Activity Center meal program should ever be discontinued.
   c. Provide a telephone for the Senior Activity Center program at the expense of the COUNTY.

10. GRIEVENCES: Representatives of the COUNTY will be accorded fair consideration of any matter they may bring to the CITY’S attention concerning this Agreement, the rights and privileges hereunder, and the equitable adjustment of any grievances that may arise regarding this Agreement, the building or condition, use or maintenance thereof.

11. INDEMNITY: To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

   In the event of any concurrent act or omission of the parties, each party shall pay its proportionate share of any damages awarded. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

   a. Survival of Indemnity Obligations. The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

   Each Party shall immediately notify the other Party of any dangerous structural condition it or its employees or volunteers observes, and shall barricade, closure or other effective means prevent contact by its program staff and participants with the dangerous condition.

12. INDEPENDENCE OF PARTIES AND EMPLOYEES: The CITY and COUNTY shall not be deemed hereby to become joint operators of the Sumas Community Center or the Sumas Senior Activity Center program. The Sumas Senior Activity Center program shall remain the sole activity and
responsibility of the COUNTY. All employees and volunteers engaged or serving the COUNTY in
the operation of the Sumas Senior Activity program shall not by this Agreement or activities or
programs contemplated herein be construed to be employees, agents or volunteers serving the
CITY.

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

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

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

14. TERMINATION: This Agreement may be altered, amended, or supplemented at any time by
mutual written agreement of both parties. With sixty (60) days written notice mailed postage-
paid by certified mail, return receipt requested, to the party’s last known address for the
purposes of giving notice under this paragraph.

Should the building be unavailable to the Sumas Senior Activity Program for any reason,
anticipated or unanticipated, the CITY shall repay the COUNTY an amount equal to the
COUNTY’S investment together with interest of eight percent.

15. ADMINISTRATION OF CONTRACTS: The following individuals are designated as representatives
of the respective parties. The representatives shall be responsible for administration of this
Agreement and for coordination and monitoring performance under this Agreement. In the
event such representatives are changed, the party making the change shall notify the other
party.
   a. The CITY representative shall be Robert Bankhead, designee or successor
   b. The COUNTY representative shall be Darla Smith, designee or successor

Page 4 of 6  Interlocal Whatcom and Sumas - Senior Center
IN WITNESS WHEREOF, the parties have executed this Agreement this 15th day of March, 2017.

APPROVED:

CITY OF SUMAS

Dated this 15th day of March, 2017

[Signature]

By:

STATE OF WASHINGTON)

COUNTY OF WHATCOM )

On this 15th day of March, 2017, before me personally appeared Robert Banks, to me known to be the Mayor of the CITY OF SUMAS and who executed the above instrument and acknowledged to me the act of signing and sealing thereof.

Given under my hand and official seal this 15th day of March, 2017.

[Signature]

NOTARY PUBLIC in and for the State of Washington

Residing in Lynden, WA

My Commission expires: 2/14/21
APPROVED:

WHATCOM COUNTY

_________________________
Jack Louws, County Executive

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

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

Given under my hand and official seal this ___ day of __________, 2017.

_________________________
NOTARY PUBLIC in and for the State of Washington
Residing in Bellingham.
My Commission expires: __________

WHATCOM COUNTY PARKS & RECREATION DEPARTMENT

_________________________
Michael McFarlane, Director

APPROVED AS TO FORM:

_________________________
Deputy Prosecuting Attorney

Page 6 of 6  Interlocal Whatcom and Sumas - Senior Center
# WHATCOM COUNTY COUNCIL AGENDA BILL

## CLEARANCES

<table>
<thead>
<tr>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
</tr>
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<tr>
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<td>03/28/17</td>
<td></td>
<td>04/18/2017</td>
<td>Finance/Council</td>
</tr>
</tbody>
</table>

## RECEIVED

APR 11 2017
WHATCOM COUNTY COUNCIL

## TITLE OF DOCUMENT:
Approval to Purchase Radios and Related Accessories

## ATTACHMENTS:
Memos from Finance and Public Works

## SEPA review required
Yes ( ) NO ( x )

## SEPA review completed?
Yes ( ) NO ( x )

## Should Clerk schedule a hearing?
Yes ( ) NO ( x )

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

Public Works is requesting approval to purchase radios and related accessories for using the Washington State Contract #06913 (expires 06/30/2018). The vendors are Harris RFCD, JVC Kenwood, and Motorola Solutions. Radios and related accessories are purchased on an as-needed basis, and the total expenditures will not exceed $100,000.00 for the duration of the contract. This is a regularly budgeted expenditure.

## COMMITTEE ACTION:

## COUNCIL ACTION:

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council)
DATE: March 28, 2017
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Approval to Purchase Radios and Related Accessories

Background & Purpose

Public Works is requesting approval to use the Washington State Contract #06913 (expires 06/30/2018) to purchase radios and related accessories. The State Contract has been awarded to multiple vendors, including Harris RFCD (Tumwater, WA), JVC Kenwood (Tumwater, WA), and Motorola Solutions, Inc. (Redmond, WA). Installation will be provided by Northwest Communications & Cellular, Inc., located in Bellingham.

Radios and related accessories are purchased on an as-needed basis, and installed in Public Works and Sheriff's Department vehicles. Total annual expenditures will not exceed $100,000.00.

Funding

These are a regularly budgeted item, and funds exist in the current budget. I concur with this recommendation.

[Signature]
AS Finance Manager

Approved as recommended:

__________________________
County Executive

Date of Council Action ___________________
MEMORANDUM

To: Brad Bennett, AS Finance Manager
Through: Jon Hutchings, Public Works Director
From: Eric L. Schlehuber, PW Equipment Services Manager
Date: March 16, 2017
Re: Washington State Contract 06913 (Public Safety Radio Communication Equipment)

- Requested Action
After researching costs for assorted vehicle public safety communication system (radios, related accessories, etc.), I am requesting Executive approval to purchase the following equipment as needed from the Washington State Bid Procurement List (current state contract term is for the period of 7/1/2016 through 6/30/2018):

<table>
<thead>
<tr>
<th>MATERIAL</th>
<th>STATE CONTRACT NO.</th>
<th>EXPIRATION DATE</th>
<th>ANNUAL EXPENDITURES NOT TO EXCEED</th>
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<tr>
<td>Radio and Related Accessories</td>
<td>06913</td>
<td>June 30, 2018</td>
<td>$100,000.00</td>
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This state contract has been awarded to multiple vendors. These units will be purchased from Harris RFCD of Tumwater, Washington, JVC Kenwood of Tumwater, Washington, and Motorola Solutions, Inc. of Redmond, Washington and installed by Northwest Communications & Cellular, Inc. located in Bellingham, Washington.

- Background and Purpose
The Public Works and Sheriff’s Departments use these units in their vehicles to provide safety for county personnel and citizens. These units were approved in the 2017-2018 Equipment Rental and Revolving Fund Budget. The above listed departments will use these units in the performance of county business.

- Funding Amount and Source
These are regularly budgeted expenditures for equipment, which is used on an annual basis as needed and has been budgeted during the 2017-2018 budget process. Expenditures were $30,281 for 2013, $26,727 for 2014, $43,556 for 2015, and $12,026 for 2016.

- Recommended Action
Please approve this purchase and forward to the Executive and the Whatcom County Council for approval at the April 4, 2017 Whatcom County Council Meeting.

Please contact Eric L. Schlehuber at extension 6405 if you have any questions or concerns.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<tr>
<td>Division Head:</td>
<td>Mark Peterson</td>
<td>3/28/2017</td>
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<td>Dept. Head:</td>
<td>Sam Ryan</td>
<td>3/28/2017</td>
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<td>Prosecutor:</td>
<td>Royce Buckingham</td>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
<td>JackLouisa</td>
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**RECEIVED**

MAR 28 2017
WHATCOM COUNTY COUNCIL

**TITLE OF DOCUMENT:**

2016 Critical Areas Ordinance Update
- Review of certain questions, comments, and suggestions by Council members related to Article 3, Volcanic Hazard Areas; Article 2, Administrative Provisions; and Article 7, Habitat Conservation Areas

**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 4/3/17
- Best Available Science Report 2016 (previously distributed)
- Chapter 16.16 Draft Critical Areas Ordinance - 2016-06-09, PC adopted (previously distributed)

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
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</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( X ) Yes</td>
<td>( ) NO</td>
<td>Requested Date:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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:**

4/4/2017: Discussed and amended

**COUNCIL ACTION:**


**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO:       The Honorable County Council
          Jack Louws, County Executive
FROM:    Cliff Strong, Senior Planner
THROUGH: Mark Personius, Asst. Director
DATE:    April 3, 2017
SUBJECT: 2016 Critical Areas Ordinance Update
          County Council Review Workshop for April 18, 2017

On April 18, 2017 the Council will continue its review of the 2016 Critical Areas Ordinance Update.

Topics to be covered include:

- Review of certain questions, comments, and suggestions by both staff and Councilmembers related to:
  - Global Issues
  - Article 3. Geologically Hazardous Areas
  - Article 4. Frequently Flooded Areas
  - Article 5. Critical Aquifer Recharge Areas
  - Article 6. Wetlands

To prepare for this meeting, please review this memo, the draft code, and the 2016 BAS Report Addendum. The yellow highlighted text in this memo indicates newly proposed edits (post-Planning Commission recommendation).

(Councilmembers also have suggestions for Article 5, Critical Aquifer Recharge Areas, and Article 8, Conservation Program on Agriculture Lands, but we will review them at a later date.)
**Holdover from last workshop**

**ISSUE 44. (Brenner)**
At Council's 4/4/17 workshop, Council discussed Councilmember Brenner's proposal for this section. No decision was reached, and Council asked staff to provide a clean version of it (i.e., without all the strikeout/underlines). Here it is:

**16.16.350 Volcanic hazard areas – Standards.**
B. **Lahar Hazard Zones.** Implement evacuation procedures and other emergency preparedness measures. Create a lahar warning system. All property owners within Lahar Hazard Zones will be notified of risks and will sign a Hold Harmless Agreement with the County. This will also be attached to title of property. All commercial buildings in Lahar Hazard Zones will have signage placed at entrances.

She also proposed some statements that staff suggested be put into the Findings of Fact if her proposal is accepted, to which she and the rest of the Council agreed.

The Council postponed this discussion, and Councilmember Browne made a motion, which passed, outlining what Council expects of lahar regulations. The motion was:

"The County's primary responsibility with regard to lahars is to:
1. Warn property owners of the potential risks before they invest.
2. Monitor potential sources of the risk.
3. Include the risk within the County's emergency management plan.
4. Warn people present of the risks that exist and alert them when a hazardous event is anticipated.
5. Provide clear guidance to persons present how to best evacuate the area when necessary."

**Staff Response:** Staff would suggest that the only point in this motion that could/should become a CAO regulation is the first. This can be done by (1) keeping our volcanic hazard map current, updating it as new Best Available Science is available and continue to make it available online; and, (2) requiring a notice on title that a property is within a volcanic hazard area when someone applies for a permit. And pursuant to 16.16.265(B), this is already a requirement of the CAO. We could also require that for any new building permits issued for commercial or public uses signage be placed at entrances or other visible places (similar to Maximum Occupancy signs). This could help further point 4 of Councilmember Browne's motion.

The rest of these items would need to be put on a work program, perhaps under Emergency Management. It would entail paying for (or helping pay for) monitoring equipment, revising our emergency management plan, installing community signage, and producing informational materials.

However, having heard clearly from Council as to their goals, staff has prepared yet another alternative that we hope captures what Council's looking for:
- It allows all uses allowed per the property's zoning district and expansion of nonconforming uses.
- For anything more than single-family residences, duplexes, accessory structures, and sewer lines, it requires a property specific Emergency Management Plan.
- And it requires that all uses put a notice on title that the property is in a volcanic hazard area (compliance with WCC 16.16.265).
In subsection (B), we’ve highlighted text for your consideration that would allow the requirement for an Emergency Management Plan to be waived if farther away from Mount Baker. This would mean that applicants farther away, say near Ferndale, wouldn’t need to prepare such a plan. We’ve left the travel time blank for Council to decide where that line should be.

16.16.350 Standards – Volcanic hazard areas.
A. Subject to WCC 16.16.320(A, B, and C) and WCC 16.16.265, the following uses are allowed in any volcanic hazard areas:
2. Accessory structures not involving human occupancy.
3. Sewer collection facilities, communication facilities, and other utilities that are not likely to cause harm to people or the environment if inundated by a lahar. Underground utilities such as pipelines shall be allowed if demonstrated through a geotechnical analysis to be sufficiently buried as to not likely be damaged by scour caused by a lahar.
4. Agricultural and forestry uses not including human habitation.

B. Subject to WCC 16.16.320(A, B, and C) and WCC 16.16.265, the following uses may be allowed in volcanic hazard areas subject to the submittal and approval of a Volcanic Hazard Emergency Management Plan meeting the requirements of subsection (C); however, this requirement may be waived for properties located in an area with an estimated lahar arrival time of more than XXX minutes:
1. Expansion of legal nonconforming uses meeting criteria of WCC 16.16.270 and WCC 20.83.
2. All other uses allowed per the property’s zoning district.

C. Volcanic Hazard Emergency Management Plan. Where required by subsection A, a Volcanic Hazard Emergency Management Plan shall be submitted for approval and meet the following requirements:
1. Is consistent with and integrated into a community emergency plan maintained by the Sheriff’s Office of Emergency Management.
2. Includes an emergency evacuation plan showing that the proposed project is that is within walking distance to a legally accessible area outside of the lahar inundation zone in an amount of time less than the anticipated time that it takes a lahar to reach the site, ideally after the triggering of a lahar warning system. The County will maintain travel time projection maps to estimate lahar approach times.
3. Is required to be updated and exercised every three years.
4. Evacuation route maps must be posted on the premises.

Global Issues

ISSUE 45. (Brenner)
Throughout the code, Councilmember Brenner proposes to delete language that obligates the County to address cumulative impacts. This is reflected by deletions in the following sections:
- 16.16.100 Purpose and intent, subsection (B)(10)
- 16.16.235 Activities allowed with notification, subsection (B)(5)(c).
- 16.16.255 Critical areas assessment reports, subsection (B)(4).
• 16.16.700 Purpose, subsection (D).
• 16.16.720 Habitat conservation areas – General standards, subsection (G)(4).
• 16.16.900 Definitions. (Definition of cumulative impact)

However, there are several places where cumulative impacts are mentioned but not proposed for deletion:
• 16.16.680 Wetland mitigation, subsection (A)(2).
• 16.16.710 Habitat conservation areas – Designation, mapping, and classification, subsection (D)(1)(i).
• 16.16.750 Habitat conservation areas – Review and reporting requirements, subsection (B)(2).
• 16.16.760 Habitat conservation areas – Mitigation standards, subsection (A)(2).

**Staff Response:** Staff recommends against. While there is no GMA requirement to address cumulative impacts via the CAO, most jurisdictions have incorporated this practice. The reason is that SEPA *does* require addressing cumulative impacts, and the legislature has made several attempts, most recently in 2013, to streamline SEPA by relying on local ordinances to meet the requirements of state review for environmental impacts (see WAC 365-196 below). It has been the legislature’s intent to have local environmental or other state environmental regulatory review satisfy mitigating below the significant adverse impact threshold in SEPA; this requires cumulative impact analysis review. If we do not address cumulative impacts when addressing critical areas, then we would be obligated to do so through SEPA, making for a lengthier, parallel permitting process.

Nonetheless, if it is Council’s desire to strike cumulative impact analysis from the CAO, you should do so in all instances where cumulative impacts are mentioned (the second list above).

**WAC 365-196 GROWTH MANAGEMENT ACT—PROCEDURAL CRITERIA FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS**

**Part 7 - RELATIONSHIP OF GROWTH MANAGEMENT PLANNING TO OTHER LAWS**

**WAC 365-196-705 Basic assumptions**
(1) Where the legislature has spoken expressly on the relationship of the act to other statutory provisions, the explicit legislative directions shall be carried out. Examples of such express provisions are set forth in WAC 365-196-745.

**WAC 365-196-745 Explicit statutory directions.**
(j) RCW 43.21C.240 (project review under the act);

**RCW 43.21C.240 Project review under the growth management act**
(1) If the requirements of subsection (2) of this section are satisfied, a county, city, or town reviewing a project action shall determine that the requirements for environmental analysis, protection, and mitigation measures in the county, city, or town's development regulations and comprehensive plans adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws and rules provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action to which the requirements apply. Rules adopted by the department according to RCW 43.21C.110 regarding project specific impacts that may not have been adequately addressed apply to any determination made under this section. In these situations, in which all adverse environmental impacts will be mitigated below the level of significance as a result of mitigation measures included by changing, clarifying, or conditioning of the proposed action and/or regulatory requirements of development regulations adopted under chapter 36.70A RCW or other local, state, or federal laws, a determination of nonsignificance or a mitigated determination of nonsignificance is the proper threshold determination.
(2) A county, city, or town shall make the determination provided for in subsection (1) of this section if:
(a) In the course of project review, including any required environmental analysis, the local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, or other local, state, or federal rules or laws; and
(b) The local government bases or conditions its approval on compliance with these requirements or mitigation measures.
(3) If a county, city, or town's comprehensive plans, subarea plans, and development regulations adequately address a project's probable specific adverse environmental impacts, as determined under subsections (1) and (2) of this section, the county, city, or town shall not impose additional mitigation under this chapter during project review. Project review shall be integrated with environmental analysis under this chapter.
(4) A comprehensive plan, subarea plan, or development regulation shall be considered to adequately address an impact if the county, city, or town, through the planning and environmental review process under chapter 36.70A RCW and this chapter, has identified the specific adverse environmental impacts and:
(a) The impacts have been avoided or otherwise mitigated; or
(b) The legislative body of the county, city, or town has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW.
(5) In deciding whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the county, city, or town shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the county, city, or town shall base or condition its project approval on compliance with these other existing rules or laws.
(6) Nothing in this section limits the authority of an agency in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by this chapter.
(7) This section shall apply only to a county, city, or town planning under RCW 36.70A.040.

**ISSUE 46. (Brenner)**
Throughout the code, Councilmember Brenner suggests adding the use of “detailed written findings” to many decision points.

**16.16.255 Critical areas assessment reports.**
E. The technical administrator may reject or request revision of the field and literature findings and conclusions reached in a critical areas assessment report when he can demonstrate that the assessment is inaccurate, incomplete, or does not fully address the critical areas impacts involved.

**16.16.260 General mitigation requirements.**
C. Mitigation Monitoring and Maintenance.
3. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265. If the technical administrator establishes additional
requirements beyond the standards of the code, he/she shall issue detailed written findings as the basis.

16.16.660 Standards—Wetland buffer increases.
Based on detailed written findings, the technical administrator shall have the authority to increase the width of the standard buffer width on a case-by-case basis when there is sound evidence that a larger buffer is required by an approved habitat management plan as outlined in WCC 16.16.750, or such increase is necessary to:

16.16.690 Standards—Compensatory wetland mitigation plan.
B. All compensatory mitigation projects shall be monitored in accordance with WCC 16.16.260(C) for a period necessary to establish that performance standards have been met. Based on detailed written findings, the technical administrator shall have the authority to extend the monitoring period for up to 10 years and require additional monitoring reports when any of the following conditions apply:

16.16.720 Habitat conservation areas—General standards.
D. Access to private development sites may be permitted to cross habitat conservation areas if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW. Exceptions or deviations from technical standards may be considered by the Technical Administrator on a case-by-case basis where the resulting outcome reduces overall impacts to any identified Critical Area for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible. The technical administrator shall issue detailed written findings if the exception or deviation is denied.
G. Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted in a habitat conservation area buffer on a case-by-case basis when the technical administrator, with detailed written findings, determines that all of the following are met:

16.16.730 Standards—Locally important habitats and species—Standards.
Alterations that occur within a locally important habitat area or that may affect a locally important species as defined herein shall be subject to review on a case-by-case basis. Based on detailed written findings, the technical administrator shall have the authority to require an assessment of the effects of the alteration on species or habitats and may require mitigation to ensure that unmitigated adverse effects do not occur. This standard is intended to allow for flexibility and responsiveness with regard to locally important species and habitats.

16.16.740 Standards—Habitat conservation area buffers—Standards.
C. Buffers for Other Habitat Conservation Areas. The technical administrator shall determine appropriate buffer widths for other habitat conservation areas based on the best available information and detailed written findings to that effect. Buffer widths for non-stream habitat conservation areas shall be as follows identified in Table 1:

Table 1. Buffer Requirements for HCAs (last cell)
The need for and dimensions of buffers for other locally important species or habitats shall be determined on a case-by-case basis with detailed written findings, according to the needs of the specific species or habitat area of concern. Buffers shall not be required adjacent to the Chuckanut wildlife corridor. The technical administrator shall coordinate with the Washington State Department of Fish and Wildlife and other state, federal or tribal experts in these instances, and may use WDFW PHS management recommendations when available.
Based on detailed written findings, the technical administrator shall have the authority to increase the width of a habitat conservation area buffer on a case-by-case basis when there is clear evidence that such increase is necessary to achieve any of the following:

16.16.860 Monitoring and Compliance

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

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

Staff Response: Staff mildly recommends against. Staff agrees and strongly supports the notion that findings should be made for all decisions, as doing so not only helps applicants and the public understand the rationale for decisions, but any appeal body as well. This is why staff proposed language in 16.16.250, below. It was put into this section as this section applies to all decisions reached pursuant to the CAO. Having it here covers all the other sections where Councilmember Brenner has added such language, as well as sections where she hasn’t. So basically we’re opposed since adding that language throughout is redundant and only serves to lengthen the code.

16.16.250 Submittal requirements and critical areas review process.

C. The technical administrator shall be responsible, in a timely manner, to make one of the following determinations regarding critical areas review:

3. Decision to Approve, Condition, or Deny. The technical administrator shall review all pertinent information pertaining to the proposed development and shall approve, condition, or deny the permit based on their review, and shall provide a written decision, including findings of fact to support the decision made. Such determinations shall be provided to the applicant in writing.

**Article 1. Purpose & Intent**

**ISSUE 47. (Brenner)**

**16.16.100 Purpose and intent.**

B. By regulating development and minimizing critical area alterations, this chapter seeks to:

1. Protect the public from reduce harm due to landsides, earthquakes, erosion, volcanic events, flooding, and other natural hazards.

2. Ensure there are no adverse impacts to the quality and quantity of water resources protect against adverse impacts to water quality and quantity resources.

Staff Response: Throughout the code, several word changes are proposed that would seem to lessen the County’s ability to protect the public. Staff recommends against.
ARTICLE 2. ADMINISTRATIVE PROVISIONS

ISSUE 48. (Brenner)

16.16.215 Relationship to other jurisdictions.
A. Permit applicants are responsible for complying with all federal, state, tribal, and local regulations that may pertain to a proposed development. Compliance with the provisions of this chapter does not necessarily constitute compliance with other regulations and permit requirements; provided, that the following shall apply:

Staff Response: Staff is neutral. Whether “may” is here or not has no real effect on the code. We had just tried to remove superfluous words.

ISSUE 49. (Brenner)

16.16.220 Identification and mapping of critical areas.
B. Property owners, the technical administrator, and/or members of the public may use these maps as a general guide, but the maps do not provide a comprehensive accounting of areas subject to this chapter nor do they provide a definitive critical areas designation. Critical area locations and boundaries shown on the County’s maps are approximate and do not include buffers that may be associated with critical areas, and some critical areas may not be shown on the maps at all. It is also possible that some maps showing critical areas in certain areas may not be accurate.

C. Field investigation, analysis by a qualified professional, and/or consideration of other sources of credible scientific information may be required to confirm the presence or absence of a critical area and its boundaries and buffers. The County shall update the maps on a regular and consistent basis as new information becomes available.

C.D. Planning and Development Services has the authority and shall update critical areasthe maps and shall do so as new critical areas are identified and as new information becomes available.

Staff Response: Staff is OK with these amendments. The statement in (B) is accurate, and the sentence in (C) is covered by (D) (and thus redundant).

ISSUE 50. (Brenner)

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

Staff Response: Staff recommends against. Staff surmises that this exemption for landscaping was included with the first CAO, as undoubtedly there were many instances where people had encroached their landscaping into areas that under the CAO they couldn’t. This exemption essentially “grandfathered” (made legally nonconforming) those instances. Deleting the words “existing, lawfully established” would basically allow anyone to encroach into critical areas or their buffers with their
ISSUE 51. (Brenner)

16.16.235 Activities allowed with notification.

B. The following activities as specified in subsection (B) are authorized within critical areas and buffers; provided, that:

3. Notification shall be submitted to the technical administrator at least 10 full business days prior to initiating work. The technical administrator shall issue approval within that timeframe.

Staff Response: Staff supports, but with a modification. The proposed language says we must approve it; it should say we must issue a decision within so many days (not all requests are approved). Additionally, some actions might require SEPA review, a request for additional information, or something else that would extend the timeframe for issuing a decision. Furthermore, subsection (3) is something that the applicant must do; directives to staff are found in the last subsection. Staff suggest a better alternative might be:

16.16.235 Activities allowed with notification.

A. The following activities as specified in subsection (B) are authorized within critical areas and buffers; provided, that:

1. The applicant provides a written notification to the technical administrator (see Appendix B of this chapter) on a form provided by the department.

2. The notification will provide a site plan (in a common scale), photos, and specific information describing the activity and the mitigation to be implemented, if required by the Technical Administrator, to document that the activity will not result in increased risk to public health, safety, and welfare; that adverse impacts to critical areas are minimized; and that disturbed areas are restored as soon as possible following the activity.

3. Notification shall be submitted to the technical administrator at least 10 full business days prior to initiating work.

4. Upon receipt of the notification, the County Technical Administrator shall issue a decision within 10 days unless additional information is required from the applicant or other review processes necessitate additional time. Additionally, the Technical Administrator may provide guidance on best management practices for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and use of chemical applications to be used in the execution of the following activities listed in Subsection (B).

4.5. Unless otherwise specified, notification shall be valid for one year per activity; provided, that there is no change in the scope of the project including, but not limited to, the location and/or extent of the activity allowed under the notification process.

5. Upon receipt of the notification, the County may provide guidance on best management practices for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and use of chemical applications to be used in the execution of the following activities.

ISSUE 52. (Brenner)

16.16.235 Activities allowed with notification.

C. Activities allowed with notification:

9. Routine maintenance of drainage channels ditches on agricultural lands; provided, that all of the following are met:

   a. The maintenance is necessary to support ongoing agricultural operations;
b. The maintenance activity does not expand the dimensions of the drainage channel beyond the original, lawfully established dimensions; The agricultural activities are conducted pursuant to an approved conservation farm plan prepared pursuant to WCC 16.16.290;
c. The farm operator obtains a hydraulic project approval (HPA), if required, from the Washington State Department of Fish and Wildlife (WDFW) prior to the maintenance activity; and
d. The farm operator provides a copy of the HPA to the technical administrator as part of the written notification. No other written notification is needed.

Staff Response: Staff is OK with deleting “ongoing” in subsection (a) and the sentence following (b). However, we oppose deleting “lawfully established” in subsection (b) because any ditches proposed to be expanded must go through both County and State review (WDFW at a minimum), and in some instances, Federal review. Yet someone could illegally expand a ditch when no one’s watching then claim that that was the original configuration. Anyone who’s expanded a ditch legally should have the documentation to show that they did so.

ISSUE 53. (Brenner)

16.16.240 Technical administrator and hearing examiner authority.
A. The technical administrator shall have the primary responsibility for reviewing development proposals for compliance with this chapter and is authorized to approve, deny, or condition permits in accordance with the standards set forth herein. The technical administrator shall also have the following authority:

2. Authority to grant, condition, or deny reasonable use permits for single-family residential building permits residences proposed to be located outside of geologically hazardous areas within critical areas and/or their buffers if the permits do not satisfy the applicable regulations.

C. The Whatcom County hearing examiner is hereby vested with responsibility and authority to hear appeals and perform the following duties:

2. Authority to grant, condition, or deny reasonable use permits for all non-single-family developments, except single-family building permits affecting critical areas if permits do not satisfy the applicable regulations and for all developments in geologically hazardous areas.

D. In granting, revising, or extending a permit, the technical administrator, or hearing examiner, to the extent allowed by applicable laws as appropriate, may attach such conditions, modifications, or restrictions thereto regarding...

Staff Response: Staff is unclear what the language added to (A)(2) or (C)(2) is intended to do: “Authority to grant, condition, or deny reasonable use permits... if the permits do not satisfy the applicable regulations?”

As for (D) the addition isn’t really necessary, as we can only condition as law allows. It doesn’t change anything to add it here, and is redundant.

ISSUE 54. (Brenner)

16.16.245 Interdisciplinary team.
B. The interdisciplinary team shall include the applicant and/or their technical representative, local, state, or federal agency or tribal representatives with expertise in the field if appropriate, and/or independent qualified professionals with expertise relating to the critical area issue.
ISSUE 55. (Brenner)

16.16.250 Submittal requirements and critical areas review process.

D. The technical administrator may waive the requirement for critical areas review under this chapter when he/she determines that all of the following conditions are met:

1. The proposed development activity is located on a parcel that received approval of a previous critical areas review within the prior 5 years, site conditions have not changed, and the applicable regulations have not substantively changed, and appropriate County permits were issued;

2. All critical areas on the parcel have been identified and delineated and the effects of the proposed development activity have been thoroughly considered in accordance with the most current regulations in effect at the time and Best Available Science regulations in effect at the time;

3. The activity is in compliance with all permit conditions including mitigating measures, as applicable, that were imposed as part of the prior review and there are no outstanding violations of conditions that were imposed as part of the previous review. If a permit was obtained, the activity is in compliance with all permit conditions, including mitigating measures, as applicable, that were imposed as part of the prior review and there are no outstanding violations of conditions that were imposed as part of that review;

Staff Response:

(D)(1) – Staff recommends that Council not delete “and the applicable regulations have not substantively changed.” The reason is that Council (or the State) may at some point change the regulations, in which case we would think Council would want future developments to comply with those newer regulations. We’ve no issue with deleting “and appropriate County permits were issued.”

(D)(2) – Staff has no issue with this deletion.

(D)(3) - Staff has no issue with this change, and the grammar works better if “and appropriate County permits were issued” in (D)(1) is deleted.

ISSUE 56. (Brenner)

16.16.260 General mitigation requirements.

Developments permitted pursuant to this chapter that adversely impact or alter a critical area or buffer shall include mitigation sufficient to minimize risks associated with geologic hazards and/or maintain or replace critical areas functions and values. Any proposed development that cannot adequately mitigate critical area impacts as determined by the technical administrator shall be denied unless a reasonable use variance is obtained.

Staff Response: Staff recommends against this for a couple of reasons. First, a reasonable use exception is not the same as a variance, so it’s not a "reasonable use variance." There is no such mechanism as a reasonable use variance. Secondly, even for reasonable use exceptions or variances, mitigation is required. This section is intended to say that no matter the permit type obtained, if impacts can’t be adequately mitigated, then the permit must be denied. Perhaps the proposed wording assumes that this is true unless ones availed themselves of either the reasonable use exception or variance mechanisms? If so, a better way to state it might be: “Unless otherwise allowed pursuant to this Title, Any proposed
development that cannot adequately mitigate critical area impacts as determined by the technical administrator shall be denied.”

ISSUE 57. (Brenner)

16.16.260 General mitigation requirements.
B. Mitigation Plan.
   2. The mitigation plan shall contain the following information:
      d. The goals, objectives, and performance standards that the proposed mitigation action(s) shall achieve or demonstrate consistency with.

Staff Response: Staff recommends against. This language was added since goals, objectives, and performance standards of a plan are often written in the general (think CompPlan). When a project comes in years later, it may not fit precisely within what was envisioned, even though it’s consistent with them. The addition seemed to add some flexibility.

ISSUE 58. (Staff)

16.16.260 General mitigation requirements.
Developments permitted pursuant to this chapter that adversely impact or alter a critical area or buffer shall include mitigation sufficient to minimize risks associated with geologic hazards and/or maintain or replace critical areas functions and values. Any proposed development that cannot adequately mitigate critical area impacts as determined by the technical administrator shall be denied.
A. Mitigation Sequence.
   1. When an alteration or impact to a critical area or buffer is proposed, the applicant shall conduct an alternatives/mitigation sequencing analysis and demonstrate that all reasonable efforts have been taken to mitigate impacts in the following prioritized order:
      a. ...
   2. Compensatory mitigation shall be provided for all unavoidable adverse alternations to a critical area or buffer. Mitigation for individual projects may include a sequenced combination of the above measures as needed to achieve the most effective protection, compensation for buffer functions and values, or compensatory mitigation for critical area functions and values.
   3. ...
B. Mitigation Plan.
   1. Compensatory mitigation shall be provided for all unavoidable adverse alternations to a critical area or buffer. A mitigation plan shall be developed in accordance with an approved critical areas assessment report and be consistent with best available science. Where appropriate, the mitigation plan should be compatible with watershed and recovery planning goals for Whatcom County. The intent of these provisions is to require a level of technical study and analysis sufficient to protect critical areas and/or protect developments and occupants from critical areas involving hazards. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.
   2. ...

Reason: Natural Resources staff recommends the text in double strikeout/underline be moved from subsection B.1 to A.2, as providing mitigation is a general requirement requiring a mitigation plan and not a component of the plan. Other language added for consistency with use of the terms “functions and values.” Compensatory mitigation is specific to direct wetland impacts as a form of compensation for impacts.
ISSUE 59. (Brenner)

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. Required monitoring reports shall be submitted to the County annually during the monitoring period to document milestones, successes, problems, and contingency actions of the compensatory mitigation. The technical administrator may reduce the monitoring timeframe to three years for minor mitigation projects involving critical area or buffer revegetation or vegetation enhancement, but not for projects involving wetland creation, wetland restoration, stream restoration or other activities that require manipulation of soils or water. All mitigation areas shall be maintained and managed to prevent degradation and ensure protection of critical area functions and values subject to field verification by the technical administrator.

Staff Response: Staff supports. The Technical Advisory Committee had recommended striking throughout as they wanted to remove some of the discretion staff has.

ISSUE 60. (Brenner)

16.16.260 General mitigation requirements.
C. Mitigation Monitoring and Maintenance.
   3. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.

E. Permanent Protection. All mitigation areas shall be protected and managed to prevent degradation and ensure protection of critical area functions and values in perpetuity. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265. If additional development is proposed that impacts a mitigation area and those impacts are accounted for under a new, approved mitigation plan, such protection may be removed so long as the final plan meets the requirements of this chapter for all cumulative impacts.

Staff Response: Staff recommends against. Eliminating the requirement to put a notice on the title that there is a permanent restriction would mean that subsequent buyers wouldn’t know that there are protected areas on the property prior to purchasing the property. It seems like it would be in public’s interest to know this before buying a property.

ISSUE 61. (Brenner)

16.16.262 Watershed-Based Management Plans.
D. Watershed-Based Management Plans shall be approved by the County Council by ordinance and appended to this chapter. The process for approval shall be as follows:
   1. The plan shall be reviewed by the technical administrator to ensure compliance with the purposes of this chapter, the Whatcom County Shoreline Management Program (WCC Title 23), and with the comprehensive plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the technical administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources if appropriate, and/or other local, state, federal, and/or, if appropriate, tribal agencies or experts.
ISSUE 62. (Brenner)

16.16.263 Mitigation Banking.
B. Mitigation banks shall require a major project permit in accordance with Chapter 20.88 WCC and shall be subject to a formal review process including public review as follows:
   3. If the technical administrator determines that the bank prospectus is complete, technically accurate, and consistent with the purpose and intent of this chapter, s/he/she shall forward the prospectus to the County Council for initial review. If the proposed bank involves conversion of agricultural land to nonagricultural uses, the County Council shall seek an initial recommendation from the Agricultural Advisory Committee as to whether the conversion shall be allowed. The Committee’s recommendation shall be nonbinding. The County Council may require mitigation for the loss of agricultural lands.

Staff Response: Staff supports this change.

ISSUE 63. (Brenner)

16.16.263 Mitigation Banking.
6. Following receipt of the recommendation, the County Council shall proceed with review in accordance with the procedures outlined in Chapter 20.88 WCC. The county council shall seek a final recommendation from the agricultural advisory committee if the proposal involves conversion of agricultural land. The County council shall seek a final recommendation from the agricultural advisory committee if the proposal involves conversion of agricultural land.

Staff Response: No need to reinsert this; it was stricken because (B)(3) (above) already states this (though we could strike “initial” in (B)(3) if that is Councilmember Brenner’s concern).

ISSUE 64. (Brenner)

16.16.265 Critical areas protective measures.
When an impact to critical area or a buffer has been proposed or a buffer will occur because of a proposed development, a standard buffer width has been altered, or mitigation is required, one or more of the following protective measures shall be applied:

Staff Response: Staff is neutral; they both mean the same thing (all impacts are “proposed” prior to the development being built).

ISSUE 65. (Brenner)

16.16.265 Critical areas protective measures.
B. Notice on Title. The owner of any property containing any critical area or buffer for which a development permit is about to be issued and for which the proposed development will impact a critical area or buffer shall record a notice with the County Auditor real estate records, in a format approved by the technical administrator, and provide a copy of the filed notice to the Planning and Development Services Department at the time the permit is issued. The notice shall state advise of the general presence of the impacted critical area or buffer on the property, and the fact that limitations on actions in or affecting the critical area or buffer exist. The notice shall provide that restrictions on uses within the critical area exist until such time as the technical administrator
approves a change in restriction and such approval is filed. This notice on title shall not be required for a development proposal by a public agency or public or private utility within a right-of-way or easement for which they do not have fee-simple title. This requirement may shall be waived by the Technical Administrator for certain geologically hazardous areas if s/he finds that the risk is so low as to not warrant notification (e.g., old alluvial deposits), and/or if the technical administrator determines there will be no impacts to critical areas or buffers on the development site.

Staff Response: The proposed amendments here change the standard as to whether something is recorded on the title from having a critical area onsite to having an impacted critical area onsite. That’s fine, if that’s how Council wants to proceed, though it does means that subsequent buyers wouldn’t know that there are critical areas on the property prior to purchasing the property. It seems like it would be in the public’s interest to know this before buying a property.

Additionally, this section seems to be contradictory to the proposed deletion of 16.16.260(C) & (E) (Issue 59, above), for even if it just applies to an impacted critical area onsite this section still says it needs to be recorded, though she’s proposed deleting that requirement in the other two sections.

ISSUE 66. (Brenner)

16.16.265 Critical areas protective measures.

D. Building Setback. The County shall require buildings and other structures to be set back a minimum distance of 10 feet from the edge of geological hazard setback, a critical area buffer, or from the critical area where no buffer is required. The following uses are allowed in the building setback:

3. Building overhangs 18 inches or less, less than 18 inches;

Staff Response: Staff has no issue with this.

ISSUE 67. (Brenner)

16.16.270 Reasonable use.

B. Reasonable Use Standards.

2. To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:

a. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;

b. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since September 30, 2005, the effective date of the ordinance codified in this chapter, change in use, reduction in size, change in timing of activity, and/or revision of project design;

Staff Response: Staff recommends against, as this could lead to someone short platting a property, leaving a parcel where a reasonable use exemption would be needed, and thus necessitating an impact.

ISSUE 68. (Donovan)

Is 16.16.270(B)(2)(k) 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” use 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. However, also see Issue 67 regarding what that size might be.

ISSUE 69. (Brenner)

16.16.270 Reasonable use.
B. Reasonable Use Standards.
a. To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:
k. For single-family residences, the maximum impact area shall be no larger than $2,500 - 3000$ square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages, decks, driveways, parking, utilities (exclusive of an on-site septic system), and all lawn and landscaping, with the following exceptions:
a. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the $2,500 - 3000$ square foot maximum impact area provided that the access road meets the standards of WCC 16.16.620(E) or 16.16.720(C), as applicable.

Staff Response: Staff had originally proposed 2,500 s.f. since it’s consistent with the Shoreline Management Program rule, and so we’d used it for years as a guideline for reasonable uses. However, the Natural Resources Supervisor now says that such inconsistency is OK, as the 2,500 s.f. rule would still apply in the shoreline jurisdiction, where lots tend to be smaller. In fact, he now believes that, given that rural, non-shoreline lots tend to be much larger (5 & 10 acres), we could actually bump this up to 4,000 s.f. or 10% of the parcel size, whichever is smaller.

ISSUE 70. (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 (staff felt that 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.

ISSUE 71. (Brenner)

16.16.270 Reasonable use.
D. Reasonable Use and Variance Procedures.
1. Procedural requirements for variances and reasonable use permit applications shall be as follows:
f. Any person aggrieved by the granting, denying, or rescinding of a reasonable use permit by the technical administrator may seek review from the hearing examiner pursuant to WCC 16.16.280.

**Staff Response:** Staff supports, as this is a repeat of the rule already in subsection (e).

**ISSUE 72. (Brenner)**

**16.16.273 Variances.**

B. **Variance Standards.** In cases where the reasonable use criteria of subsection A of this section do not apply, or for a variance from other standards of this chapter, the hearing examiner may grant a variance from the dimensional any requirements in this chapter when the applicant proves by clear, cogent, and convincing evidence of all of the following elements:

**Staff Response:** Staff recommends against. Variances are supposed to be only applicable to dimensional requirements, not use or procedural requirements. Variances are intended to allow someone to enjoy a property right that his/her neighbors are enjoying, but that s/he can’t due to the property or a previous change in the law.

**ISSUE 73. (Brenner)**

**16.16.275 Nonconforming uses/buildings.**

The following provisions shall apply to legally existing uses and/or buildings and/or structures that do not meet the specific standards of this chapter:

A. The lawful use of any legal nonconforming building, structure, land, or premises existing on September 30, 2005 the effective date of the adoption or amendment of this chapter, or authorized under a permit or approval issued, or otherwise vested, prior to that effective date of the adoption or amendment of this chapter, may be continued, subject to the provisions for a nonconforming structure in Chapter 20.83 WCC; provided, that agricultural activities shall conform to section WCC 16.16.290Article 98 (Conservation Program on Agriculture Lands). If a nonagricultural nonconforming use is intentionally abandoned for a period of 12 months or more, then any future use of the nonconforming building, land, or premises shall be consistent with the provisions of this chapter.

B. Expansion, alteration, and/or intensification of a nonconforming use is prohibited.

B.C. Expansion, alteration, and/or intensification of a legal nonconforming building, or structure, or use (excluding normal maintenance and repair), is prohibited unless if such use will produce significant impacts that degrade the critical area, including but not limited to vegetation clearing; additional impervious surfaces; generation of surface water runoff; discharge, or risk of discharge of pollutants; increased noise, light or glare, or significant increased risk associated with geologically hazardous areas.

C.D. Nonconforming structures that are destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind if there is no alternative that allows for compliance with the standards of this chapter; provided, that the following are met:

1. The reconstruction process is commenced within 18 months of the date of such damage; and
2. The reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsection B.C of this section.

D.E. Nonconforming uses in shoreline areas shall be governed by the shoreline management provisions of the WCC Title 23.

E.F. When a development permit is sought for a parcel containing a nonconforming building or structure that has been intentionally abandoned for a period of 12 months or more, the technical
administrator may require removal of the nonconforming building and restoration of the critical area or buffer in accordance with this chapter as a condition of permit approval.

Staff Response:
Subsection (A) – Staff is OK with this deletion.

Subsection (B) & (C) – Staff recommends against the deletion of the prohibition on nonconforming uses in subsection (B) and the addition of "or use" to subsection (C). Most jurisdictions don’t typically allow the expansion of a nonconforming use, only the structures, since in general a jurisdiction does not want facilitate more nonconforming uses.

Subsection (C) – Staff recommends against the introduction of the concept of "significant" impacts to the CAO. That standard is from SEPA, and is not in the GMA. Under the GMA we are to protect the functions and values of critical areas. Prohibiting only significant impacts would by default allow nonsignificant impacts, which over time would degrade the functions and values.

Subsection (D) – Staff recommends against the deletion of “if there is no alternative that allows for compliance with the standards of this chapter; provided that:” If a structure is destroyed to the point that it needs to be completely rebuilt, and there is ample space to rebuild on the property without impacting critical areas, then we should have the applicant move it to a better location.

Subsection (D)(1) – Staff recommends against this deletion. This language mimics 20.83 (Nonconforming uses), and our codes ought to be consistent.

Subsection (F) – Staff recommends against deleting the first half of this subsection, regarding getting rid of old derelict buildings in critical areas or their buffers, but we’re OK with getting rid of the requirement to restore.

ISSUE 74. (Brenner)

16.16.280 Appeals.
A. Final permit decisions made by the technical administrator shall be subject to appeal in accordance with the procedures of Chapter 2.33 WCC and WCC Title 20; provided, that the applicant may request administrative review by the director of planning and development services prior to initiating a formal appeal process. Decisions of conditions applied to specific permits shall be subject to the appeal provisions for that permit. A request to the director for an administrative review stays the appeal process.

G. Any issue not raised by the time of appeal in the original appeal filing to superior court is thereafter waived.

Staff Response:
Subsection (A) - Since the appeal hasn't actually started, staff suggests that this read, "A request for administrative review shall stay the time within which one must file an appeal until a decision on the review is issued."

Subsection (G) - Staff recommends against. This was proposed by staff so as to ensure all appeal issues are raised with the first appeal body in the appeal process. Eliminating it would mean that someone could appeal to the Hearing Examiner, not raise certain issues, then appeal to the County Council and add new issues, then appeal to the courts and add new issues. Normally in any appeal process the appellant must raise all issues up front so that each appeal body addresses the same issues.
ISSUE 75. (Brenner)

16.16.285 Penalties and enforcement.
Throughout this section Councilmember Brenner suggests changing the time frame for enforcement activities from “calendar” days to “working” days.

Staff Response: Staff is OK with this, though suggests using the term “business” days, as that is commonly used in other parts of the WCC.

ISSUE 76. (Brenner)

16.16.285 Penalties and enforcement.
B. If work activity has occurred on a site in violation of this chapter, prompt corrective action, restoration, or mitigation of the site will be required when appropriate. If this provision is not complied with, the County may restore or mitigate the site and charge the responsible person property owner responsible person who is liable for the full cost of such an activity. Additionally, any and all permits or approvals issued by the County may be denied for that site for a period of up to six years.

Staff Response: Staff recommends against. The Prosecuting Attorney recommended changing “responsible person” to “property owner” because “responsible person” is ambiguous, and since the property owner must give permission for all work done on their property and are thus ultimately responsible, regardless of who did the work. Otherwise, if someone illegally builds something then sells the property, it then becomes legal since we can’t prosecute the new property owner. Holding the property owner responsible is the same as how the building code works for building code violations.

ISSUE 77. (Brenner)

16.16.285 Penalties and enforcement.
F. After the Fact Permit Fee. After the fact application fees shall be double the amount established by the Unified fee schedule.

Staff Response: Staff recommends against. This section was added since some people take the position that it’s easier to ask for forgiveness rather than permission. It seems like we should encourage asking permission. Additionally, After the Fact (ATF) permits costs more in staff time. This is consistent with how PDS handles ATF building permits.

ARTICLE 3. GEOLOGICALLY HAZARDOUS AREAS

ISSUE 78. (Brenner)

16.16.310 Designation, mapping, and classification.
(C)(1) Landslide Hazard Areas. Landslide hazard areas shall include areas potentially susceptible to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to mass movement due to any combination of bedrock, soil, slope (gradient), slope aspect, slope form (concave, convex, planar), geological structure, surface and subsurface hydrology, or other physical factors. Landslide hazard areas shall also include areas along which landslide material may be routed or which may be subject to deposition of landslide delivered material. Potential landslide hazard areas include but are not limited to the following areas. Landslide hazard areas shall be further classified as follows:
16.16.375 Review and reporting requirements.

A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration is, or may be, located within an active or potential geologically hazardous area, the technical administrator shall have the authority to require the submittal of a geological assessment report.

Staff Response: In both of these subsections, the proposed change deletes the term “potentially” or “potential” (used in reference to geohazardous areas). Staff is OK with this; however, it should be pointed out that this terminology was recommended by Dan McShane, a local geologist and member of the Citizens Advisory Committee. His argument was that in geologist terms, all geohazardous areas are only “potential” unless they’re in the act of actually moving. However, staff doesn’t believe that removing the term will have any effect on the code.

ISSUE 79. (Brenner)

16.16.320 Geologically hazardous areas – General standards.

B. Impact Avoidance. Impact avoidance measures shall include, but not be limited to if possible, locating the use/development outside of the hazard area, reducing the number, size or scale of buildings, driveways and other features; altering the configuration or layout of the proposed development; implementing special engineering methods for construction, drainage, runoff management etc.; foregoing construction of accessory structures; preserving native vegetation; and other feasible protective measures as determined by an alternatives analysis. For some geologic hazards, impact avoidance may mean no development will be permitted on a property; impact avoidance may not be possible. In those instances the applicant will be made aware of risks and will sign a “Hold Harmless” agreement with the county, which will also be attached to title of property.

Staff Response: Staff doesn’t have an issue with the first amendment (changing “but not be limited to” to “if possible,” as we don’t see that it will have an impact on the code.

Staff recommends against deleting, “Impact avoidance may mean no development will be permitted on a property.” This line comes straight from the WAC. Deleting it could lead to development not only in lahaur hazard areas, but in other geohazard areas, such as active landslides, known debris flows, or alluvial fans, as well.

Additionally, this change may be considered inconsistent with CompPlan Policy 10E-10, which states, "Require applicants for development permits located in natural hazard areas to provide development plans designed to minimize the potential to exacerbate the natural hazard as well as the risk of damage to property or threats to human health and safety. In natural hazard areas where engineering solutions cannot be designed to withstand the forces expected to occur under the design event of a particular natural hazard, or off-site adverse impacts to adjacent properties or ecosystems cannot be adequately mitigated, Whatcom County may deny development permits intended for permanent or seasonal human habitation as described in the Critical Areas Ordinance." (emphasis added)

As to the last sentence about a hold harmless agreement, staff is OK with but recommends the following instead:

Where assessment by a qualified professional has shown that mitigation of the hazard or avoidance cannot fully eliminate the risk to human safety, the technical administrator may require the applicant to enter into a Release and Indemnification Agreement with the county, which will be attached to title of the property along with a Notice on Title for Regulated Critical Areas. The Release and Indemnification Agreement shall not substitute for the implementation of all reasonable mitigation measures.
recommended by the qualified professional to minimize the risk to human safety, and shall only be used
to allow development in a geologically hazardous area when the risk to human safety has been
minimized to as low as reasonably practicable.

ISSUE 80. (Brenner)

16.16.320 Geologically hazardous areas – General standards.

E. Review by Qualified Professional. A qualified professional geologist or other qualified
professional geotechnical engineer, licensed in the State of Washington, shall review projects
development proposals that occur in potentially geologically hazardous areas to ensure that they
are properly designed and constructed as provided for in WCC 16.16.225 determine the potential
risk. If development takes place within an identified geologically hazardous area requiring design or
structural elements to mitigate/minimize the hazard, the design/mitigation shall be approved designed
by a qualified professional geotechnical engineer licensed in the State of Washington with expertise
in mitigation of geological hazards.

Staff Response: Staff recommends against, as the change is inconsistent with the rest of the text.

ISSUE 81. (Brenner)

16.16.320 Geologically hazardous areas – General standards.

I. Land Subdivision. Land that is located wholly within a landslide hazard area, riverine or coastal
erosion hazard area, alluvial fan hazard area, laharc hazard area, or mine hazard area or its buffer
may not be subdivided to create buildable parcels entirely within the hazardous area. Land that is
located partially within a hazard area or its buffer setback may be divided provided that each
resulting lot has sufficient buildable area outside of the hazardous area with provision for drainage,
erosion control and related features that will not adversely affect the hazard area or its
buffers setback.

Staff Response: Staff strongly recommends against. This would greatly increase the potential population
density within the lahar hazard areas over time. The County has a duty to protect not only the current
population, but future generations as well. Prior to allowing increased densities, a public risk analysis
should be performed, as Dan McShane provided an example of in his presentation to Council on 4/4/17,
followed by his comment letter on the same day.

As an option land division could be allowed in lahar hazard areas downstream of Nugent’s Corner or
Deming, but prohibited upstream, should the Council desire to be less conservative in regard to lahar
hazard regulations. This could be justified in that we heard from the experts (USGS, Dr. Easterbrook,
and Mr. McShane) that there is no evidence of lahars ever extending that far downslope, and even there
models show this as unlikely.

ISSUE 82. (Brenner)

16.16.325 Landslide Hazard Areas – Standards.

A. General Standards. The following activities may be allowed in active landslide hazard areas when
all reasonable measures have been taken to minimize risks and other adverse effects associated
with landslide hazards, and when the amount and degree of the alteration are limited to the
minimum needed to accomplish the project purpose:

1. Developments that will not increase the threat to the health or safety of people and will
not increase potential for landslides on or off the site and meet the reasonable use standards as
set forth in WCC 16.16.270.
3. Access roads and trails that are engineered and built to standards that avoid minimize the need for major repair or reconstruction beyond that which would be required in non-hazard areas. Access roads and trails may be permitted only if the applicant demonstrates that no other feasible alternative exists, including through the provisions of Chapter 8.24 RCW. If such access through critical areas is granted, exceptions or deviations from technical standards for width or other dimensions and specific construction standards to minimize impacts, including drainage and drainage maintenance plans, may be required specified.

**Staff Response:** Both of these proposed amendments lessen the County’s ability to protect people from landslides.

**ISSUE 83. (Brenner)**

**16.16.325 Landslide Hazard Areas – Standards.**

B. **Landslide hazard Management Zone Standards.** Alteration may be allowed within 300 feet of an active landslide hazard area when the technical administrator determines that the following standards are met:

1. The proposed alteration is located outside of an active landslide hazard area and any required setback buffer, as set forth in WCC 16.16.335.
2. The development is outside of the area of potential upslope or downslope surface movement or potential deposition in the event of a slope failure.

**Staff Response:** Staff recommends against. The proposal would delete two of the 8 standards that allow development within 300 feet of an active landslide area. An active landslide area is an area in which the landslide is actively occurring, i.e., now, and not potentially in the future. Deleting subsection (2) would allow develop in these areas, and deleting subsection (5) would allow development on the upper lip of the landslide, or in its runout area.

**ISSUE 84. (Brenner)**

**16.16.340 Seismic Hazard Areas – Standards.**

Development may be allowed in seismic hazard areas when all of the following apply:

B. Public roads, bridges, utilities, and trails shall be allowed when there are no feasible alternative locations and geotechnical analysis and design are provided that ensure the minimize damage to roadway, bridge, and utility structures and facilities will not be susceptible to damage from seismically induced ground deformation. Mitigation measures shall be designed in accordance with the most recent version of the American Association of State Highway and Transportation Officials (AASHTO) Manual or other appropriate document.

As well as in:

**16.16.345 Alluvial Fan Hazard Areas – Standards.**

C. Roads, utilities, bridges, and other infrastructure that are located and designed to prevent reduce adverse impacts on critical areas and avoid the need for channel dredging or diking or other maintenance activities that have the potential to substantially degrade river and stream functions.

And:

**16.16.355 Erosion hazard areas – Standards.**

A.1 Developments that will have no minimize threat to the health or safety of people and will not increase the risks of alluvial fan hazards on or off the site and meet the reasonable use or variance standards as set forth in WCC 16.16.270.
Staff Response: Staff is neutral. Again, these amendments seem to lessen the County’s ability to protect from “ensure” or “prevent” to “reduce” or “minimize,” but on the other hand, it may be an unattainable goal to design infrastructure to “ensure the structures and facilities will not be susceptible to damage.”

ARTICLE 4. FREQUENTLY FLOODED AREAS

ISSUE 85. (Brenner)

16.16.400 Purpose.
B. Avoid and/or minimize impacts to fish and wildlife habitats that occur within frequently flooded areas.

Staff Response: Staff is OK with this.

ISSUE 86. (Staff)

16.16.420 Frequently flooded areas – General standards.
A. All development shall conform to the provisions of WCC Title 17, Flood Damage Prevention, and the applicable provisions of this chapter.
B. Development within frequently flooded areas shall be allowed only when it is consistent with all of the following:
   1. FEMA’s National Flood Insurance Program (NFIP), including the protection standards for critical habitats for listed species, which shall be demonstrated through submittal of a habitat assessment, and if necessary, a mitigation plan prepared by a qualified professional, in accordance with the FEMA Regional Guidance for the Puget Sound Basin. The plan shall identify any federally listed species and associated habitats, and demonstrate that no harm will occur to such species or habitats as a result of development within frequently flooded areas; and,
   2. The mitigation sequence in WCC 16.16.260;
   3. Article 7, Habitat Conservation Areas, of this chapter; and,
   4. The applicable general protective measures found in WWC 16.16.265.
C. The technical administrator shall have the authority to require a habitat assessment, and if necessary, a mitigation plan prepared by a qualified professional, in accordance with the FEMA Regional Guidance for the Puget Sound Basin and mitigation for adverse impacts to floodplain-the ecological functions of Frequently Flooded Areas; provided, that such mitigation shall be consistent and compatible with the goal of protecting health and safety and minimizing risks to property.

ISSUE 87. (Staff)

16.16.430 Review and report requirements.
C. In addition to the requirements of WCC 16.16.225, critical areas assessment reports for frequently flooded areas shall:
   1. Meet the requirement of WCC 17.12.010 and 16.16.255. Identify any federally listed species and associated habitats, and demonstrate that no harm will occur to such species or habitats as a result of development within frequently flooded areas.
   2. Address adverse impacts to ecological functions and processes, including riparian vegetation. Positive impacts may also be discussed.
   2. Include mitigation for adverse effects on Frequently Flooded Areas’ ecological functions, where applicable.
**Reason:** Natural Resources and Public Works’ Flood staff recommends that the first sentence in 16.16.420(B)(1) be moved to subsection (C), and that the last sentence of 16.16.420(B)(1) be moved to 16.16.430(C)(1) as those topics relate more to those headings. The language is only moved, not changed.

**ISSUE 88. (Brenner)**

**16.16.430 Review and report requirements.**

F. Critical areas assessment report requirements may be waived for single-family developments and structures accessory to agricultural uses when the technical administrator and the public works department determine that no-minimal adverse impacts or risks to life, property, or ecological functions will occur.

**Staff Response:** Staff recommends against. Again, these amendments seem to lessen the County’s ability to protect and remove the ability to assess risks to life, property, or ecological functions. This would violate the FEMA BiOp and is not consistent with GMA or ESA.

**ARTICLE 5. CRITICAL AQUIFER RECHARGE AREAS**

**ISSUE 89. (Brenner)**

**16.16.520 Critical aquifer recharge areas – General standards.**

In addition to the applicable general protective measures found in WCC 16.16.265, all development in a critical aquifer recharge area shall meet the following standards:

A. The proposed development will not cause significant contaminants contamination to enter the aquifer and will not significantly adversely affect the recharging of the aquifer in an adverse manner.

**Staff Response:** Staff recommends against. What constitutes “significant” contamination versus insignificant contamination?

**ARTICLE 6. WETLANDS**

**ISSUE 90. (Staff)**

**16.16.610 Wetlands Designation, Rating, and Mapping.**

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

**Reason:** Natural Resources staff recommends changing “identified” to “delineated,” as it is the term used in WAC 36.70A.175, and “determined to be wetlands in accordance with” instead of “meeting the criteria,” as this is the language used in the Army Corps Manual.
ISSUE 91. (Brenner)


D. All wetlands shall be regulated regardless of size; provided, that hydrologically isolated Category IV wetlands less than one tenth acre (4,356 1,000 (4956 square feet) in size) may be adversely impacted shall be exempt from the requirements of this article when all of the following criteria are met:

7. Adverse impacts are mitigated pursuant to WCC 16.16.680 The wetland meets the criteria set forth in the entire section.

Staff Response: PDS recommends against deleting “hydrologically isolated,” as that’s part of the state definitions of Category IV wetlands, and it’s based on federal case law (Rapinos).

As for the size, 1/10th of an acre is 4,356 sf, not 4,956 (we suspect this was a typo).

As for the issue of whether to reduce the size of Class IV wetlands to be protected, or leave it at 1/10th of an acre, let us reiterate that this was a recommendation from the Department of Ecology, based on their guidance, which in turn is based on Best Available Science. Diane Hennessey, our DOE representative on the Technical Advisory Committee (following Susan Meyer’s departure), has forwarded seven papers addressing this issue. They include:


These articles will be posted for your reading to the website where the rest of the BAS is found (http://www.whatcomcounty.us/2417/County-Council-Review).

As for the subsection (7), this was proposed by the TAC. It’s deletion would mean that impacts to small wetlands would not need to be mitigated, which is currently the case and probably makes no sense in a section aimed at exempting certain wetlands. Staff is OK with deleting it.

ISSUE 92. (Brenner)


The following activities may be permitted in wetlands and/or wetland buffers as specified when all reasonable measures have been taken to avoid adverse effects on wetland functions and values as documented through an alternatives analysis, the amount and degree of alteration are limited to the
minimum needed to accomplish the project purpose, and compensatory mitigation is provided for all adverse impacts to wetlands that cannot be avoided, and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose. [category 4 wetlands are exempt from this section]

Staff Response: Deleting “as documented through an alternatives analysis” would have no bearing on the code; it’s only a reminder of this requirement, found in 16.16.225, Critical Areas Assessment Reports.

Adding “category 4 wetlands are exempt from this section” is problematic on two accounts. First WCC 16.16.610(D) exempts Cat IV wetlands less than a certain size, not all Cat IV wetlands. Secondly, this section is about what’s allowed in wetlands and their buffers, so exempting them from this section would mean that none of the listed uses that follow would be allowed in any Cat IV wetlands. We don’t think this is what Councilmember Brenner intended.

Therefore, staff recommends against these amendments.

ISSUE 93. (Brenner)


E. Agricultural Uses as follows:

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

2. Existing and ongoing agricultural activities subject to the following:
   i. The activities are conducted in accordance with all applicable provisions of this chapter and WCC Title 17; or
   ii. The agricultural activity is in compliance with the Conservation Program on Agricultural Lands (CPAL) as described in WCC 16.16.290, and Appendix AA. Article 8 of this chapter. This requirement is for property owners who have an existing farm plan.

Staff Response: Staff recommends against. In subsection (1), “appurtenant” and “primary” were added by the Technical Advisory Committee as a way to preclude non-agricultural structures from being allowed in a critical area. For instance, if a farm operator decided to open a second, unrelated business on their site.

In subsection (1)(i), we cannot delete “ongoing,” as new buildings cannot be built for new agriculture in a way that impacts critical areas; therefore we cannot allow them in wetlands or their buffers.

In subsection (1)(ii), the addition of “for new construction” is OK, as that’s the only time we’d look for less impactful alternatives.

In subsection (2), again, we cannot delete “ongoing,” as we cannot allow new agriculture to impact wetlands (or other critical areas).
And in subsection (2)(ii), this is one of the ways we get people to sign up for the CPAL program. Making this section only applicable to those who already have a farm plan would reduce the incentive to create one.

**ISSUE 94. (Brenner)**

**16.16.620 Wetlands – General standards.**

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

a. Private trails shall not exceed 4 feet in width, and public trails shall not exceed 10 feet in width.

b. They shall be made of pervious material or on an elevated structure where feasible.

c. They shall be designed to avoid minimize removal of significant trees.

**Staff Response:** Staff recommends against the first amendment. In most jurisdictions 6 feet is the standard width used for private trails, and 10 feet for public trails. The reason is that public trails tend to attract a larger number of users than private trails (used just by the residents of a particular development).

Staff is neutral on the second edit.

**ISSUE 95. (Staff)**

**16.16.630 Wetland buffer widths.**

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

A. Wetland buffers shall be established to protect the integrity, functions and values of the wetland. Wetland buffers shall be measured horizontally from a perpendicular line established by to the wetland boundary based on the base buffer width identified in Table 2. Standard Buffer Widths edge on all sides as marked in the field. Buffers shall not include areas that are functionally and effectively disconnected from the wetland by an existing, legally established road or other substantial developed surface.

**Reason:** Natural Resources staff recommends changing this language to clarify that the buffer is a polygon a distance from the edge of the wetland in accordance with Table 2.

**ISSUE 96. (Department of Ecology)**

**16.16.630 Wetland buffer widths.**

D. Standard buffer widths are shown in Error! Reference source not found.. However, Category I or II wetlands with “special characteristics” as determined and defined through the Washington State Department of Ecology (2014) Wetland Rating System (including Estuarine, Coastal Lagoons, Wetlands of High Conservation Value, Bogs, Forested, and Interdunal wetlands) only buffers in the highest habitat score (8-9) group are applied.

**Staff Response:** Staff supports this edit. Upon further review by the WA State Department of Ecology, they recommend this language to account for wetlands with “special characteristics.”
ISSUE 97. (Brenner)

16.16.670 Review and reporting requirements.
A. A wetland assessment report describes the characteristics of the subject property and adjacent areas and must be consistent with WCC 16.16.255. The assessment shall include the occurrence, distribution, delineation, and determination of the wetland category and standard wetland buffers as set forth in WCC 16.16.630. The investigation shall also include field identification and a complete delineation of all wetland boundaries (with delineations field flagged and left in the field for County verification), and may include analysis of historical aerial photos, and review of public records, and interviews with adjacent property owners. Assessment reports shall include the following site- and proposal-related information unless the technical administrator determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

Staff Response: Staff is OK with this edit.

ISSUE 98. (Staff)

16.16.670 Review and reporting requirements.
B.7(b)(ii) Parcel map, with scale, showing all wetlands within 300 feet of the development footprint unless access is denied in writing by the adjacent property owner. Parcel map shall include all streams and drainages (Type 1S, 2, 3F, 4Np, or 5Ns streams), shorelines, floodplains, flood prone areas and critical habitat for threatened and endangered species within 150 feet of the development footprint.

B.7(c) Wetland Analysis. A wetland delineation report shall provide an analysis of all wetlands and buffers (to the extent they can be legally accessed) within 150 feet of the development footprint including, at a minimum, the following information:

Reason: Natural Resources staff recommends changing the language in 7(b)(ii) if we move to the newer DNR stream-typing system discussed at your last workshop, and deleting the “within 150 feet” language as it conflicts with the 300-foot requirement in 16.16.670(7)(b)(ii)).

ISSUE 99. (Brenner)

16.16.670 Review and reporting requirements.
D. When the proposed single-family dwelling and associated features are located outside the standard buffer required under WCC 16.16.630 (no encroachment), no assessment report shall be required. When the proposed single-family dwelling and associated features are located outside the standard buffer required under WCC 16.16.630 (no encroachment), no assessment report shall be required.

Staff Response: Reinserting this language isn’t really necessary, as per WCC 16.16.250 only projects that would potentially impact a critical area is required to submit an assessment. This language was proposed for deletion as it’s redundant.

ISSUE 100. (Brenner)

16.16.680 Wetland mitigation.
In addition to the applicable general protective measures found in WWCC 16.16.265, activities that adversely affect wetlands and/or wetland buffers shall include mitigation sufficient to achieve no net loss of wetland function and values in accordance with WCC 16.16.260 and this section.
A. In determining the extent and type of mitigation required, the technical administrator may consider all of the following when applicable:

Staff Response: Staff has no issue with these edits.

ISSUE 101. (Staff)

16.16.680 Wetland mitigation standards.

B(2) Buffer Alterations. Compensatory mitigation for buffer impacts shall:

\begin{itemize}
\item[a.] Be consistent with WCC 16.16.630, 640, 650, and 660; and,

\item[b.] Include enhancement of degraded buffers by planting native species, removing structures and impervious surfaces within buffers, and other measures to achieve equivalent or greater buffer functions.
\end{itemize}

Reason: Natural Resources staff recommends adding 630 as another reference, and breaking this sentence into 2 subsections for ease of reading.

ISSUE 102. (Staff)

16.16.680 Wetland mitigation standards.

C. Mitigation Ratios.

1. Compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio on an area basis.

Reason: Natural Resources staff recommends this change to be consistent with the mitigation sequencing of 16.16.260 and Article 7, HCA buffer mitigation.

ISSUE 103. (Staff)

D. Re-established or created Replacement Wetlands established pursuant to these mitigation provisions shall have adequate buffers to ensure their protection. The buffer shall be based on the category of the re-established, created, rehabilitated, enhanced, or preserved wetland—provided, that the technical administrator shall have the authority to approve a smaller buffer when existing site constraints (such as a road) prohibit attainment of the standard buffer. Replacement wetlands shall not create buffer encroachments on adjoining properties.

Reason: Natural Resources staff recommends these changes to be consistent with the language of Table 3.

ISSUE 104. (Brenner)

16.16.680 Wetland mitigation.

E. The technical administrator shall have the authority to adjust the replacement ratios when one or more of the following apply:

1. When a combination of mitigation approaches is proposed. In such cases, the area of altered wetland shall be replaced at a 1:1 ratio through reestablishment or creation, and the remainder of the area needed to meet the ratio can be replaced by enhancement or rehabilitation using Error! Reference source not found. at a 2:1 ratio. For example, impacts to one acre of a Category I wetland requiring a 3:1 ratio for creation can be compensated by creating one acre and enhancing four acres (instead of the additional two acres of creation that would otherwise
be required). For example, impacts to one acre of a Category II wetland requiring a 3:1 ratio for creation can be compensated by creating one acre and enhancing four acres (instead of the additional two acres of creation that would otherwise be required).

Staff Response: Staff recommends against this reinsertion, as the example is no longer relevant under the new Department of Ecology tables.

**ARTICLE 7. HABITAT CONSERVATION AREAS (HCA)**

**ISSUE 105. (Staff)**

Global Change — Throughout this Article, change the phrase “compensatory mitigation” to “mitigation.”

**Reason:** Natural Resources staff recommends this global change since “compensatory mitigation” is a term of art applied to wetlands, but not other forms of mitigation.

**ISSUE 106. (Brenner)**

16.16.700 Purpose.

C. Regulate development so that isolated populations of species are not created and habitat degradation and fragmentation are avoided, minimized, especially along riparian corridors.

Staff Response: Another instance of lessening the County’s ability to protect.

**ISSUE 107. (Brenner)**

16.16.710 Habitat conservation areas — Designation, mapping, and classification.

C. For purposes of this chapter, habitat conservation areas shall include all of the following:

1. Streams. Streams, as defined in Article 9, shall be designated according to the following criteria:
   i. 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).
   ii. 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.
   iii. Non-fish-bearing streams are those streams that have no current, historic, known or potential use by anadromous or resident fish.

2. Areas in which federally and/or state-listed species are found have a primary association with, or contain suitable habitat for said listed species, as listed in the US Fish & Wildlife’s Threatened & Endangered Species List or Critical Habitat List (http://ecos.fws.gov/ecp/), as amended have a primary association.

2.3 Areas in which state listed priority species are found have a primary association with, or contain suitable habitat for said listed species, as listed Washington Department of Fish and Wildlife’s
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.

Staff Response: Staff recommends against. The criteria proposed for deletion ("historic," "known," "potential," "have a primary association with") are from the State definitions of priority habitats and species and forage fish spawning areas. Even if we don’t include them, these criteria will still be used by WDFW. It would be best if our definitions matched those of the State.

ISSUE 108. (Brener)

16.16.710 Habitat conservation areas – Designation, mapping, and classification.

C.9 Naturally occurring ponds and lakes or manmade ponds and lakes (created prior to September 30, 2005, excluding agricultural, fire protection, and stormwater facilities) under 20 acres in size. In-stream ponds shall be regulated based on associated stream type or manmade ponds and lakes (created prior to September 30, 2005, excluding agricultural, fire protection, and stormwater facilities) under 20 acres in size.

Staff Response: Staff supports this edit as it improves the grammar.

ISSUE 109. (Brener)

16.16.710 Habitat conservation areas – Designation, mapping, and classification.

14. Species and Habitats of Local Importance. Locally important species and habitats that have recreational, cultural, and/or economic value to citizens of Whatcom County, including the following:

a. Species.

   The Department of Planning and Development Services is authorized to shall maintain a current list of Species of Local Importance as designated by the County Council. As of 2016 the list includes:
   - Osprey;
   - Turkey Vulture;
   - Nooksack dace;
   - Salish sucker;
   - Osprey;

Staff Response: This deletion was already made by Council.

ISSUE 110. (Staff)

16.16.710 Habitat conservation areas – Designation, mapping, and classification.

C(14)(b)

i. The marine nearshore habitat, including coastal lagoons, and the associated vegetated marine riparian zone. These areas support productive eelgrass beds, marine algal turf, and kelp beds that provide habitat for numerous priority fish and wildlife species including, but not limited to, forage fish, seabird and shorebird foraging and nesting sites, and harbor seal pupping and haulout sites. This designation applies to the area from the extreme low tide limit to the upper limits of the shoreline jurisdiction/ordinary high water mark.
provided, that reaches of the marine shoreline that were lawfully developed for commercial and industrial uses prior to the original adoption of this chapter may be excluded from this designation, but not otherwise exempt from this chapter. See Appendix E-A of this chapter.

**Reason:** Natural Resources staff recommends these changes since the first statement includes Marine Riparian areas which extend 100m according to BAS.

**ISSUE 111. (Brenner)**

**16.16.710 Habitat conservation areas – Designation, mapping, and classification.**

D. In addition to the species, habitats, and wildlife corridors identified in subsection (C) of this section, the County Council may designate additional species, habitats of local importance, and/or wildlife corridors as follows:

1. In order to nominate an area, species, or corridor to the category of “locally important,” an individual or organization must:
   i. Demonstrate a need for special consideration based on:
      i. Identified species of declining population;
      ii. Documented species sensitivity to habitat manipulation and cumulative loss;
      iii. Commercial, recreational, cultural, or biological, other special value; or
      iv. Maintenance of connectivity between habitat areas;
   ii. Propose conceptual-relevant management strategies considered effective and within the scope of this chapter;
   iii. Identify the general effects on property ownership and use; and
   iv. Provide a map showing the species or habitat location(s).

2. Submitted proposals shall be reviewed by the County and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.

3. If the proposal is found to be complete, accurate, and consistent with the purposes and intent of this chapter and the various goals and objectives of the Whatcom County comprehensive plan and the Growth Management Act, the County Council will hold a public hearing to solicit comment. Approved nominations will become designated locally important habitats, species, or corridors and will be subject to the provisions of this chapter.

3.4. The Council may remove species, habitats, or corridors from this list if it can be shown that there is no longer a need to provide protection above and beyond that afforded by WDFW management strategies. Species and habitats of local importance that are not regulated elsewhere in this chapter may be removed if sufficient evidence has been provided by qualified professionals that demonstrates that the species no longer meets any provisions of 16.16.710(D)(1)(a)."

**Staff Response:** Staff is OK with these amendments.

**ISSUE 112. (Donovan)**

*What are the implications of the inserted “When pursuant to Article 2,” given that Article 2 would seem to expand administrative discretion?*

**16.16.720 General standards**

The following activities may be permitted in habitat conservation areas and/or their buffers when, pursuant to Article 2, all reasonable measures have been taken to avoid adverse effects on species and
habitats, any applicable Washington Department of Fish and Wildlife management recommendations have been applied, compensatory mitigation is provided for all adverse impacts that cannot be avoided, and the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose; provided, that locally important species and habitats shall be subject to WCC 16.16.730:

**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.

At your workshop on 4/4/17, Councilmember Donovan asked if staff could provide language that more precisely identifies the sections in Article 2.

**16.16.720 General standards**
The following activities may be permitted in habitat conservation areas and/or their buffers when, pursuant to WCC 16.16.255 and 16.16.260, all reasonable measures have been taken to avoid adverse effects on species and habitats, any applicable Washington Department of Fish and Wildlife management recommendations have been applied, compensatory mitigation is provided for all adverse impacts that cannot be avoided, and the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose; provided, that locally important species and habitats shall be subject to WCC 16.16.730:

**ISSUE 113. (Brenner)**

**16.16.720 Habitat conservation areas – General standards.**
E. Construction or improvements that are of a structure, other than a building, that is associated with an agricultural use in the outer 25% of the CPAL designated buffer; or the reconstruction, remodeling, or maintenance of such structures in a habitat conservation area buffer, subject to all of the following criteria:
1. The structure is located within an existing lot of record and is an existing ongoing agricultural use.
2. There is no other feasible location with less impact to critical areas. However, this provision does not apply to reconstruction, maintenance and/or remodeling of pre-existing structure.
3. Clearing and grading activity and impervious surfaces are limited to the minimum necessary to accommodate the proposed structure and, where possible, surfaces shall be made of pervious materials.
4. Unavoidable adverse effects on critical areas are mitigated in accordance with this chapter.

**Staff Response:** Staff recommends against these amendments. This section was intended to allow ongoing agriculture to continue in areas where the critical areas have historically and already been impacted. Certain allowances are allowed for ongoing agriculture; however, new agricultural uses are not supposed to be allowed to create new impacts.

**ISSUE 114. (Brenner)**

**16.16.720 Habitat conservation areas – General standards.**
G. Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted in a habitat conservation area buffer on a case-by-case basis when the technical administrator, with detailed written findings, determines that all of the following are met:
4. The discharge meets freshwater and marine state water quality standards, including the need to evaluate cumulative impacts to 303(d) impaired waterbodies and total maximum daily load (TMDL) standards as appropriate at the point of discharge. Standards should include filtration through mechanical or biological means, vegetation retention, timely reseeding of disturbed areas, use of grass-lined bioswales for drainage, and other mechanisms as appropriate within approved stormwater “special districts.”

Staff Response: This language was added by the Technical Advisory Committee, based on the argument that this is already a requirement of the federal Clean Water Act.

ISSUE 115. (Staff)

16.16.720 Habitat conservation areas – General standards.

I(1) The stabilization or protection measures shall be designed in accordance with the techniques contained within the Washington Department of Fish and Wildlife’s most recent Integrated Streambank Protection Guidelines. Deviation from these techniques requires written justification from a qualified professional/engineer.

Reason: Public Works’ Flood Division staff recommends these changes as occasionally they use techniques similar to but not precisely what’s found in the referenced Manual. Washington Department of Fish and Wildlife staff concurs.

ISSUE 116. (Staff)

16.16.720 Habitat conservation areas – General standards.

I(5) No net loss adverse impact to critical fish or wildlife Habitat Conservation Areas or associated wetlands will occur.

N(4) No net loss adverse impact to critical fish or wildlife Habitat Conservation Areas or associated wetlands will occur.

Reason: Natural Resources staff recommends these changes since we don’t use these terms any more, only HCA.

ISSUE 117. (Brenner)

16.16.720 Habitat conservation areas – General standards.

J. Construction of trails and roadways less than or equal to 30 feet wide may be permitted in a habitat conservation area buffer when not directly related to a crossing and are subject to all of the following standards:

4. Private trails shall not exceed 45 feet in width, and public trails shall not exceed 10 feet in width, and shall be made of pervious material or on an elevated structure where feasible. Trails may include limited viewing platforms that shall not exceed 12 feet in width and shall be made of pervious materials where feasible.

Staff Response: Similar to Issue 88, Staff recommends against. In most jurisdictions 6 feet is the standard width used for private trails, and 10 feet for public trails. The reason is that public trails tend to attract a larger number of users than private trails (used just by the residents of a particular development).
ISSUE 118. (Brenner)
I don’t understand why we wouldn’t allow repair, reconstruction, or maintenance of already existing private launches. Reword subsection (N) to read:

16.16.720 Habitat conservation areas – General standards.
N. Construction of docks and public launching ramps, and reconstruction, repair, and maintenance of docks and public or private launching ramps may be permitted subject to the following:

Staff Response: Staff supports this amendment with a further amendment:

N. Construction of docks and public launching ramps, and reconstruction, repair, and maintenance of docks and public or private launching ramps may be permitted subject to the following:

Councilmember Brenner’s suggestion left out docks as being allowed to be repaired and maintained.

ISSUE 119. (Staff)
16.16.720 Habitat conservation areas – General standards.
N(1) The dock or ramp is located and oriented and constructed in a manner that minimizes adverse effects on navigation; wave action, water quality, movement of aquatic and terrestrial life; ecological processes; critical saltwatern-eelgrass beds, shellfish beds, spawning habitats, and wetlands, or other critical areas.

And

16.16.740 Habitat conservation area buffers – Standards.
In Table 4, Buffer Requirements for HCAs, combine to rows for “commercial and recreational shellfish areas,” “kelp and eelgrass beds,” “surf smelt, pacific herring, and pacific sand lance areas” and rename to “critical saltwater habitats.”

Reason: Natural Resources staff recommends this change for consistency and the WAC and the change in terminology discussed at a previous workshop.

ISSUE 120. (Brenner)
16.16.720 Habitat conservation areas – General standards.
O. On-site sewage disposal systems (OSS) may be permitted in the outer 50% of stream or other aquatic HCA buffers when accessory to an approved residential structure for which 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 adverse effects on water quality and slope stability are avoided.

Reason: Staff concurs with the intent of the amendment, though suggests alternative language to further the intent:

P. On-site sewage disposal systems (OSS) may be permitted non-aquatic HCA buffers and in the outer 50% of stream or other aquatic HCA buffers when accessory to an approved residential structure for which it is not feasible to connect to a public sanitary sewer system and when operated and maintained in accordance with WCC Chapter 24.05.170; provided, that adverse effects on water quality and slope stability are avoided.
We concur since there are some HCA buffers (e.g., bird habitat) that might cover a large portion of a property and that an OSS wouldn’t impact. It is the aquatic HCAs that could likely be affected by OSS operation.

Staff also recommends changing “WCC 24.05.170” to “WCC Chapter 20.05.” In researching this proposal, we see that section 170 only addresses “Repair of failures.” The rest of the chapter also talks about installation, maintenance, etc.

**ISSUE 121. (Brenner)**

**16.16.750 Habitat conservation areas – Review and reporting requirements.**

**B. In addition to the reporting requirements of WCC 16.16.255, the Habitat Conservation Area assessment report/HMP shall describe the characteristics of the subject property and adjacent areas, including condition, quality, function, and values of the Habitat Conservation Area at a scale appropriate to the function being evaluated (see WAC 365-196-830(6)).** The assessment shall include determination of appropriate buffers as set forth in WCC 16.16.740. The assessment shall also include field identification and/or delineation of habitat areas, analysis of historical aerial photos and review of public records, and interviews with adjacent property owners as necessary to determine potential effects of the development action on critical areas. Assessment reports shall include the following site- and proposal-related information unless the technical administrator determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

**Staff Response: Staff is OK with this deletion.**

**ISSUE 122. (Brenner)**

**16.16.750 Habitat conservation areas – Review and reporting requirements.**

**B.6 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 with 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 alters 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.)**

**Staff Response: Staff supports this deletion.**

**ISSUE 123. (Brenner)**

**16.16.760 Habitat conservation areas – Mitigation standards.**

**D. The following additional mitigation standards shall apply:**

4. Compensatory mitigation shall be provided on-site whenever feasible, or off-site mitigation in the location that will provide the greatest ecological benefit to the species and/or habitats affected and have the greatest likelihood of success may be accepted at the discretion of the Technical Administrator. Mitigation shall occur as close to the impact site as possible, within the same sub-basin, and in a similar habitat type as the permitted alteration unless the applicant demonstrates to the satisfaction of the technical administrator through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same watershed would be further away from the impacted habitat the Technical
Administrator may increase the amount of mitigation required. If offsite mitigation is proposed, the applicant must demonstrate through an alternatives/ mitigation sequencing analysis (WWC 16.16.260) that the mitigation will have greater ecological benefit. Small projects, less than 1,000 square feet, shall be exempt.

**Staff Response:** Staff recommends against. No matter how small the project, if someone must mitigate but doesn’t have the room to do so onsite, there ought to be an option to do so off-site.

**ISSUE 124. (Brenner)**

**16.16.760 Habitat conservation areas — Mitigation standards.**

**B.** The following additional mitigation standards shall apply:

6. The technical administrator shall have authority to require annual monitoring of mitigation activities and submittal of annual monitoring reports in accordance with WCC 16.16.260(C) to ensure and document that the goals and objectives of the mitigation are met. The frequency and duration of the monitoring shall be based on the specific needs of the project as determined by the technical administrator. Monitoring shall be for a duration of up to 5 years.

**Staff Response:** Staff supports this amendment.

**Article 9. Definitions**

**ISSUE 125. (Staff)**

**16.16.900 Definitions**

“Delineation” means the precise determination of wetland/non-wetland boundaries in the field according to the application of the specific method described in the 1997 Washington State Wetland Delineation Manual and/or the Corps of Engineers Wetlands Delineation Manual, 1987 Edition, as amended and the Western Mountains, Valleys, and Coast Region supplement (Version 2.0) 2010 or as revised.

**Reason:** Natural Resources staff recommends these changes for clarification and to reference the newest manuals.
Memorandum

TO: The Honorable County Council
    Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner

THROUGH: Mark Personius, Asst. Director

DATE: February 8, 2017

SUBJECT: 2016 Critical Areas Ordinance Update
          County Council Review, Workshop 5, 21 February 2017

On February 21st the Council will continue its review of the 2016 Critical Areas Ordinance Update. Topics to be covered include:

Review of Certain Proposed Amendments to:

- Article 3 – Geologic Hazards (including lahars)

To prepare for this meeting, please review Article 3 of the draft code, the Best Available Science Addendum regarding that section (in your previous meeting packet materials), in which I point out the more substantive recommended amendments, and this memo, in which we describe how we got to this point and the options Council has.
Lahars in Whatcom County

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Why Staff is Presenting So Much Information, as Well as Other Options?

At the Council’s first public hearing on the Critical Areas Ordinance (CAO) the majority of the public testimony (22 of 28 people) was geared toward swaying the Council not to amend the lahar regulations, or more precisely to not have such regulations. Council made a motion for staff to develop lahar regulations based on our tsunami regulations. Staff has done this (see “Option 1: A Lahar Code Based on the Tsunami Code,” page 7). However, staff doesn’t believe that Council has had the opportunity to fully understand the context of geologic hazards at Mt. Baker or the risks posed to Whatcom County residents. While Council does have the authority to adopt whatever rules they want, it is only after having such a public discussion (see “What Tahoma Audubon Society v. Pierce County Tells Us,” page 12). Thus, staff feels it incumbent to first present what is known about lahars prior to Council making such a decision.

It should also be noted that public testimony concerning the perception of risk posed by lahars appears to be based on individually held beliefs of risk tolerance. Emerging risk assessment methodologies are available that quantify both community and individual risk posed by geologic hazards. Proposed development is commonly evaluated according to community risk tolerances, which are commonly treated more conservatively, whereas individual risk tolerance is more typically employed in scenarios such as home expansions where the increased risk exposure is assumed by the individual and not society. In considering revised regulations Council should consider the potential increase to community risk posed by the adoption of revised volcanic hazard regulations. Toward this end staff is prepared to update Council on to strides made toward improved geologic hazard characterization since the 2014 Natural Resources Committee briefing, as well as provide recommendations for future improvements; some of which would have the added benefit of informing the revision of volcanic hazard area regulations.

History (How We Got to Where We Are on the Draft Code)

Staff had not planned on updating the volcanic hazard area code when we first started the CAO update as it hadn’t been identified as a problem, nor had the CAC or the TAC identified any egregious issues requiring revision. However, after we had finished reviewing the code with the TAC and CAC, a handful of prospective applicants for marijuana processing facilities made inquiries about properties they had identified as potentially suitable locations. Staff identified that the properties fell within a lahar hazard areas and that the use wouldn’t be allowed based on staff’s interpretation of the code, which states that only single-family residences and duplexes are allowed in lahar hazard zones (see “Existing CAO Language,” page 14). Potential applicants then went to the BIAWC for help, who stepped in to lobby for a change in the code.

Most existing larger scale or more intensive development in the LHZ’s appear to have been in existence prior to adoption of the original CAO and are therefore considered nonconforming uses to the CAO. Staff was also aware that USGS-published maps depicting areas of potential lahar inundation—which had previously been adopted as best available science—were not prepared at a scale appropriate for parcel-level analysis and could only be considered approximate. Staff therefore reached out to the
USGS, who acknowledged that an updated hazard map and publication was needed for Mt. Baker and that this work is currently under production.

Based on these considerations, staff was of the opinion that adoption of significantly revised volcanic hazard area standards—especially when updated hazard mapping was forthcoming—was not advisable. As a result, staff prepared amended volcanic hazard code language that allowed all uses per the underlying zoning, but with occupancy limits comparable to single-family residential uses as in the current code. The rationale of this approach was to accommodate additional uses in these areas but preclude sensitive uses or high concentrations of people until such time that updated hazard mapping and risk assessment could be used to propose more scientifically sound volcanic hazard area regulations, as explained below.

**Development of the Proposed Lahar Hazard Zones**

In response to the Planning Commission’s request for an amended volcanic hazard area code that would be less restrictive to uses in lahar hazard areas, staff was tasked with researching lahar regulations in other Washington State counties. Of counties potentially impacted by lahar hazards, Pierce County was found to have the most evolved, defensible ordinance.

The Pierce County ordinance is built around empirically-derived lahar travel-time estimates after the work of Pierson (1998)\(^1\). Regulations are established according to travel time zones based on increasing lahar arrival times with distance from Mt. Rainier. Additional use restrictions are then applied for designated volcanic hazard areas, which correlate to three distinct lahar designations of increasing hazard severity as well as pyroclastic flow hazard areas, each of which are interpreted by the USGS to have impacted, or to have the potential to impact areas within the respective travel time zones in the future.

Paramount to the Pierce County approach is the availability of accurate models published by the USGS of lahar inundation and pyroclastic hazard areas, which were used to delineate the respective volcanic hazard areas. In addition, Pierce County’s regulatory framework is benefited by the presence of a robust seismic network at Mt. Rainier that allows for early detection of increased magmatic activity, which may presage volcanic or lahar activity, as well as a lahar alert system triggered by acoustical flow monitors. The combination of monitoring, detection, and lahar alert justifies the establishment of Pierce County’s travel time zones.

In an attempt to devise regulations similar to Pierce County, staff generated travel-time estimates for potential lahar paths traveling down the Middle and North Fork Nooksack River valleys, respectively. A lahar traveling down the Middle Fork will arrive at the confluence of the Middle and the North Fork Valley sooner and arrival times downstream of the confluence are based on a Middle Fork lahar. Travel times were estimated by two methods. The first used commonly observed lahar velocities, which are noted to decrease from high velocity in confined, steep-gradient valleys near the volcanic source to lower velocity as the lahar reaches the lowlands and the river becomes unconfined and gradient

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decreases. Lahar velocities of 50, 25, and 15 miles per hour were used for this effort. In addition, staff reached out to Dr. Tom Pierson, Cascade Volcano Observatory Research Scientist and author of the above-referenced paper, and requested assistance applying his methodology to a lahar at Mt. Baker. Dr. Pierson graciously provided staff with estimated arrival times at specific locations such as Glacier, Deming, and other key geophysical locations along the respective, potential lahar paths. These data were used to validate the arrival times determined by the former methodology, which were found to correspond well.2

In the North Fork Valley the town of Glacier lies well within Lahar Zone A, if delineated correlative to lahar zonation established in the Middle Fork Valley, where Lahar Zone A extends to the Mosquito Lake Bridge at the approximate 15 minute lahar arrival time. At the direction of the Planning Commission staff extended Lahar Zone B to the town of Glacier to allow for more uses within the established LAMIRD community and in recognition of the existing Resort-Commercial and Small Town Commercial zoning. This decision should be considered non-conservative, especially when compared to Pierce County regulations. In Pierce County the most proximal hazard zone extends to the 30 minute lahar arrival time in the Puyallup and Carbon River systems and the 60 minute lahar arrival time in the Nisqually and White River systems. Adoption of lahar hazard zonation as conservative as the Pierce County approach would extend the more restrictive regulations (Lahar Zone A) to Deming, or beyond.

In summary, it is Staff’s opinion that a number of key components are lacking in Whatcom County that make adoption of lahar regulations that mimic Pierce County’s currently inadvisable. While County Staff helped develop the Planning Commission’s proposed Volcanic Hazard code revision, staff is of the opinion that such an approach is problematic based on the following reasons:

a. **Absence of a lahar warning system or a reliable seismic network at Mt. Baker**

   In Pierce County and the Planning Commission’s proposed code revision, lahar regulations are applied with decreasing use restrictions according to increased lahar travel time. In the absence of detection and alert it cannot be assumed that evacuation will function as an effective means of hazard mitigation. This issue is further confounded by the need for a reliable seismic network that could offer early warning and allow for evacuation prior to initiation of a lahar.

b. **Non-conservative Lahar Hazard Zone Delineation**

   Were Whatcom County to adopt lahar hazard zones correlative to Pierce County the highest hazard zone (Lahar Hazard Zone A) should extend to Deming at the ~1 hour lahar arrival time. As proposed by the Planning Commission, Glacier is included in Lahar Hazard Zone B to allow for increased uses in an established community. This is highly non-conservative due to the very short lahar arrival time (<15 minutes) and the resulting inability to rely on evacuation as a form of mitigation, as well as the potential for smaller-volume, but higher frequency lahas impacts.

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2 It should be noted that Dr. Pierson’s travel times may be conservative as they are based on empirically-derived travel times for lahas averaging 107 million cubic meters in volume, which would be considered a very large, low recurrence event. Despite this conservative interpretation, Dr. Pierson urged caution with regard to the regulatory application of travel time zones in the absence of a lahar detection and alert system.
c. Modeling and delineation of lahar hazards at Mt. Baker is currently outdated and generalized. Pierce County regulations are benefited with accurate models of potential lahar inundation areas. In addition, lahar inundation models are available for lahars of varying magnitude and frequency, allowing further refinement of land use regulations. Such models for Mt. Baker are presently in production at the USGS and estimated to be available by 2019.

d. Emergency preparedness and response plans rely on a robust Lahar Detection and Alert System. Emergency planning, which could be considered a form of hazard mitigation, is severely hindered in the absence of the above-described lahar detection and alert system. While emergency plans are continually being updated and improved, until a detection and alert system is in place at Mt. Baker, response plans are effectively reactive measures. Furthermore, a lahar detection and alert system would likely only be effective in areas such as Deming, and downstream, where sufficient time (~1 hour) would be available to use evacuation routes.

Due to the non-conservative nature of the lahar hazard zones and the absence of a monitoring and alert system, staff recommended to the Planning Commission that any regulations based on lahar hazard zones maintain very low occupancy limits for any new permitted uses along the North and Middle Forks of the Nooksack River (Lahar Zones A and B). Once updated lahar mapping and risk assessment is completed, more tenable occupancy limits could be considered. Despite staff’s recommendation, and following much debate, the Planning Commission ultimately elected to support the Pierce County-based volcanic hazard code language, yet with significantly increased occupancy limits and fewer restrictions on sensitive uses. It should also be pointed out that the occupancy limits recommended by the Planning Commission are such that, with the exception of Lahar Hazard Zone A, uses within the established communities would likely be more limited by other zoning regulations, such as the floor/area ratios of the LAMIRDS, than the proposed volcanic hazard area regulations.

What Do We Know About Lahars in Whatcom County?
Cynthia Gardner and Seth Moran with the USGS-Cascade Volcano Observatory (CVO) have graciously offered to attend the February 21 COTW workshop and present the geologic history and potential hazards at Mt. Baker. They will also review monitoring efforts currently being undertaken at other volcanic centers, both in the USA and abroad, and discuss paths forward at Mt. Baker for improved monitoring and hazard awareness. The CVO maintains on-line information about hazards at Mt. Baker, which can be found at the following url: https://pubs.usgs.gov/fs/2000/fs059-00/.

What State and/or Federal Emergency Response and Preparedness Efforts are Going On?
Dr. Gardner and Mr. Moran will present this information at the February 21 COTW workshop.

Local Emergency Response and Preparedness Measures
Please see John Gargett’s “A Risk Based Planning Approach for Lahar and Volcanic Hazards in Whatcom County,” page 14.
Legal Requirements

Before we explore Council’s options, the legal requirements of WAC 365-190, Geologically hazardous areas, should be reviewed. Following are the pertinent sections; the entire text is found under “WAC 365-190-120 Geologically hazardous areas” on page 26.

(1) Geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

Section (1) basically says that geohazards pose a threat when “incompatible” development is sited in areas of “significant” hazard. However, neither of these terms is defined. Is incompatible development that which puts someone in harm’s way, or that which worsens a risk, to either an individual property owner or to the larger community? And does Council consider lahars a significant risk? Or does Council find them an insignificant risk due to their low probability? Or are they significant due to the large consequences should one occur? Remember, lahar risk should be viewed on the basis of annual probability not an annual return period. The difference is that while they are infrequent events, the chances of one happening in any one year may be relatively small, but don’t change year to year.

Staff suggests that if Council wants to adopt minimal regulations, it would behoove you to find that lahars aren’t a significant hazard.

(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

Section (2) basically says that we must avoid development in geohazard areas if the risk can’t be mitigated. Staff suggests that if Council wants to adopt minimal regulations, it may be prudent to find that an early warning and evacuation plan is adequate mitigation. Of course, this presupposes that we have such a system in place, which may not be feasible for areas proximal to Mt. Baker such as Glacier.

(10) Other geological hazard areas:

(a) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

From section (10), it is clear that lahar hazard areas must be declared a volcanic hazard area, which the proposed code does. How we respond to that is up to Council.

Options for Council

Council has a variety of options, ranging from the least restrictive (allowing all new uses in Lahar Hazard Zones that could be permitted in accordance with the underlying zoning regulations) to the most
restrictive (restricting all new development except SFR). Something in between might be to allow most lower occupancy uses allowed by the zoning code, but regulate essential facilities, hazardous facilities, and higher occupancy uses, including special occupancies, and/or covered assemblies to some degree.

Staff has identified three options for Council to consider. Whichever option is chosen, Council would have to find that the risk posed to communities and future generations is acceptable in consideration of the potential hazards. Furthermore, a warning system, signed evacuation routes, and education could be added to any of these options, though would need to be funded.

As mentioned, pursuant to *Tahoma Audubon Society v. Pierce County* (page 12) Council has the sole authority to choose the level of risk our citizens are willing to accept, though it needs to be on the record as having had a thorough discussion and understanding of the potential risks of their decision.

**Option 1: A Lahar Code Based on the Tsunami Code (as per Council motion)**

At the public hearing, a motion was approved to “Request staff to bring forward a proposal to remove lahar language and insert language that says lahars will be treated like tsunami zones, with the same level of evacuation route planning and education.”

Thus, Council has asked for lahar regulations that mimic our tsunami regulations. In actuality, the existing tsunami hazard regulations direct the technical administrator to the volcanic hazard regulations. Adopting lahar regulations that mimic the tsunami regulations would just create a logic loop in the code. However, for this discussion, staff assumed the Council intended to let people build all allowed uses, and rely on emergency warning systems, emergency preparedness, and education, but with no other mitigation (e.g., building structures to withstand a lahar, which is considered unfeasible in areas subject to high velocity lahar flows as might be experienced as far down valley as Deming).

First there are a couple of differences between these types of hazards that we’d like to point out.

1. Geologic inference suggests that tsunamis have the potential to occur more frequently than lahars.
2. Tsunamis generated by large, Cascadia Subduction Zone earthquake would trigger early detection and alert systems currently in place.
3. A lahar warning system has not been established in Whatcom County.
4. We have signed evacuation routes for tsunamis but not for lahars.
5. Most development in tsunami hazard areas is single-family residential, which is allowed by current CAO geohazard regulations. Commercial or other uses would not be allowed without mitigation capable of reducing the risk posed to the proposed development.
6. We can mitigate for tsunamis. In tsunami hazard areas, we require that structures be built so that habitable spaces are above the expected height of the tsunami/flooding, that floodwater can pass through crawl spaces without significant structural damage, and that the foundation is designed to withstand the interpreted hydraulic and impact forces. No types of structural improvements are capable of mitigating or withstanding lahar impacts for much of the proximal lahar hazard area.
7. In the tsunami hazard areas land is available for development (i.e., located outside of tsunami hazard areas) within close proximity, allowing development to proceed largely unhindered by
using avoidance as required by WCC 16.16.320(A). This is generally not the case for lahar hazard areas, especially in the foothills region where lahar hazards are interpreted to extend across the valley floor.

(8) And lastly, there is evidence that we may expect to experience an increased frequency of debris flows (sometimes used interchangeably for lahar) at Mt. Baker related to glacial retreat, as similar effects have been noted at Mt. Rainier, Mt. Hood, and other glaciated mountain ranges. While these events may not be as large as lahars, there is the potential for them to impact development relatively near the mountain, and with increased frequency and no warning. If a warning system were developed, ideally it would encompass this hazard also.

It should also be pointed out that the existing tsunami alert system (warning system, evacuation signage, and education) is not a CAO regulation, but something inherited by our Emergency Management Division of the Sherriff’s Office, who is developing a comprehensive AHABR system. Thus, if this is an approach the Council wants to implement (and planning staff supports installation of such a system, especially if the Council chooses not to limit development by regulatory means), then funds would need to be appropriated and the system would need to be set up.

Council should also consider whether they want to regulate any sort of sensitive land uses, such as emergency services, hospitals, schools, hazardous facilities, etc., in the lahar hazard zones. Assuming not (for the purposes of this memo), then below is the tsunami code, followed by a lahar regulation that mimics it, as Council has requested.

Tsunami Code

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.

Lahar Code Based on Tsunami Code

16.16.350 Standards — Volcanic hazard areas.
The standards of WCC 16.16.320 shall apply.

(The rest of the tsunami code (above in underline) couldn’t apply, as it has to do with building above the predicted flood height, which wouldn’t apply to lahars.)

In a nutshell, WCC 16.16.320, states (the complete text is found in the Draft Code):

- That new development should to be located, engineered, and constructed to as to reduce risks and not increase hazard potential;
- That impacts should be avoided;
- That new development must be directed toward portions of a parcel that are not subject to, or at risk from, geological hazards;
• That critical facilities shouldn’t be constructed or located in geologically hazardous areas if there’s a feasible alternative location outside geologically hazardous areas that would serve the intended service population;
• That a qualified professional must review development proposals that occur in potentially geologically hazardous areas to determine the potential risk;
• That proposed development should be sited far enough from erosion and landslide hazard areas to ensure at least 100 years of useful life;
• That agricultural activities are be allowed within geologically hazardous areas, and,
• That subdivisions aren’t allowed in most geohazard areas.

Option 2: Planning Commission Recommendation
As mentioned above (Development of the Proposed Lahar Hazard Zones, page 2), staff had recommended a simpler set of regulations to the Planning Commission, but with the caveat that we revisit this section after we have the newer USGS data. However, they were interested in looking at other options so staff helped developed the current proposal. One of the benefits of this scheme is that it sets up 4 different Lahar Hazard Zones based on estimated travel time of a lahar, allowing us to tailor regulations in each of those zones based on potential risk (see Table 1). In essence, it sets up a regulatory system similar to Piece County’s, though without the detailed data.

However, as you well know, a number of people testified against this language at your first public hearing. The heart of the public opposition had to do with the proposed occupancy limits (shown in Table 1), and a perception that certain businesses wouldn’t be able to expand. However, we don’t believe those testifying saw, or understood, footnote 2 of that table, which states, “Maximum occupancies listed here may be increased per WCC 16.16.350(D).”
### Table 1. Volcanic Hazard Zone Standards

<table>
<thead>
<tr>
<th>Facility/Occupancy List</th>
<th>Use Allowances and Maximum Occupancies[^2]</th>
<th>Lahar Hazard Zone</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>A</strong></td>
<td><strong>B</strong></td>
<td><strong>C</strong></td>
</tr>
<tr>
<td>Essential Facilities</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
</tr>
<tr>
<td>Hazardous Facilities</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
</tr>
<tr>
<td>Special Occupancies</td>
<td>Prohibited</td>
<td>Allowed, subject to underlying zoning, with a maximum occupancy of 100.</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
</tr>
<tr>
<td>Covered Assemblies</td>
<td>Prohibited</td>
<td>Allowed, subject to underlying zoning, with a maximum occupancy of 100.</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
</tr>
</tbody>
</table>
| All other uses allowed by Title 20, Zoning | • **Within the Glacier LAMIRD** – All other uses allowed by Title 20, with a maximum occupancy of 25.  
  • **Outside the Glacier LAMIRD** – Limited to single-family residences and their accessory structures | All other uses allowed by Title 20, with a maximum occupancy of 100. | Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265. | Allowed, subject to underlying zoning |

[^1]: See Article 9 for definitions of these facilities.
[^2]: Maximum occupancies listed here may be increased per WCC 16.16.350(D).

### 16.16.350(D) Technical Assessment and Review

In zones A & B[^3], any project proposing a maximum occupant load greater than 25 shall be required to have a volcanic hazards assessment prepared by a qualified professional that includes recommendations for siting of improvements intending to avoid volcanic hazards and a volcanic hazard management and evacuation plan. In addition, the technical administrator shall have the authority to require such assessment for any project deemed subject to an elevated risk from volcanic hazards.

This section basically says that any of the occupancy limits may be raised if the applicant has a report done by a “qualified professional that includes recommendations for siting of improvements intending to avoid volcanic hazards and a volcanic hazard management and evacuation plan.” It appears that the public testimony given against the Planning Commission’s proposal was based on misinterpretation, as the proposed language would generally allow all development per the underlying zoning. Thus, contrary

[^3]: C & D not listed since occupancy limits aren’t listed for those LI2s.
to their testimony, any of those business, schools, fire stations, etc. could expand as long as they put
together an evacuation plan to get people out of harm’s way were a lahar to occur (and meet the other
parts of the zoning code).

In summary, staff believes that the Planning Commission’s recommended language would work as a
framework for future regulations, once better data is available, but doesn’t believe that it works with
the occupant loads proposed, especially without a warning system in place. Staff’s original
recommendation using the Pierce County model would have maintained the existing lahar hazard area
limits on occupancy and/or congregations of large numbers of people until the forthcoming USGS data
could be used to adapt the proposed zonation based on a more accurate assessment of risk.

**Option 3: A Lahar Code Based on the Existing Lahar Code, with Some
Modifications**

Given Council’s intent and staff’s concerns with Options 1 and 2, we have prepared a third alternative
for consideration. The below language is based on our existing lahar code, but modified for clarity and
brevity, to eliminate the concept of lahar hazard zones and occupancy limits, and to acknowledge
existing, legal nonconforming uses, essential facilities, and cellular communication facilities. As you can
see, it, too, would allow most uses but would require any land use of greater intensity or density than
single-family residence and accessory structures to develop an emergency management and evacuation
plan for their site, and for some uses to propose hazard mitigation measures.

16.16.350 Standards – Volcanic hazard areas.

A. The following uses may be allowed in volcanic hazard areas subject to WCC 16.16.320(A, B, and C)
and the provisions below:

2. Accessory structures not involving human occupancy.
3. Sewer collection facilities, communication facilities, and other utilities that are not likely to
cause harm to people or the environment if inundated by a lahar. Underground utilities such as
pipelines shall be allowed if demonstrated through a Volcanic Hazard Assessment to not likely
be damaged by scour caused by a lahar.
4. Expansion of legal nonconforming uses meeting criteria of WCC 16.16.270 and WCC 20.83, and
subject to the submittal and approval of a Volcanic Hazard Assessment meeting the
requirements of subsection B(1-3).
5. Essential facilities, subject to the submittal and approval of a Volcanic Hazard Assessment
meeting the requirements of subsection B(1-3).
6. All other uses allowed per the property’s zoning district, subject to the submittal and approval
of a Volcanic Hazard Assessment meeting the requirements of subsection B(1-4).

B. Volcanic Hazard Assessment Requirements. Where required by subsection A, a Volcanic Hazard
Assessment shall be submitted for approval. Said assessment shall be prepared by a qualified
professional or pertinent local, state, or federal agency and include the following elements:

1. A travel time analysis that determines the amount of time anticipated for a lahar to reach the
proposed project site.
2. If available, a description of existing or proposed detection and notification systems installed and maintained by a public entity. Until detection and notification systems are available, provide information on available resources for volcanic hazard monitoring and emergency preparedness.

3. An emergency management plan for the facility that:
   a. Is consistent with and integrated into a community emergency plan maintained by the Sheriff’s Office of Emergency Management.
   b. Includes an emergency evacuation plan showing that the proposed project is that is within walking distance to a legally accessible area outside of the lahar inundation zone in an amount of time less than the anticipated time that it takes a lahar to reach the site, ideally after the triggering of a lahar warning system.
   c. Is required to be updated and exercised every three years.

4. Hazard mitigation measures deemed capable of withstanding lahar impacts and ensure life safety.

Summary

- Staff does not believe adopting regulations similar to the tsunami regulations is appropriate as it fails to provide sufficient mitigation for the interpreted hazards and would pose increased risk to our mountain communities. However, if after having this public discussion of risk Council wants to adopt regulations that allows higher occupancies and/or congregations of large numbers of people, staff suggests it would be prudent to find:
  o that lahars are not a significant hazard,
  o that an early warning and evacuation plan is adequate mitigation; and,
  o that the risk is acceptable.

- Though the Planning Commission’s recommended language provides a good framework for the future, once better data is available, staff does not believe that it works with respect to occupant loads proposed. Staff’s original recommendation using the Piece County model would have maintained the current limits on occupancy and/or congregations of large numbers of people until the forthcoming USGS data could be used to adapt the proposed zonation based on an accurate assessment of risk.

- Staff believes the 3rd option, a modified version of our current regulations, is the best interim approach to protecting people and property from potential volcanic hazards until a volcanic hazard monitoring system and emergency management plan is implemented and forthcoming hazard mapping can be included.

- Staff believes a robust volcanic hazard monitoring system and emergency management plan is warranted.

- Staff believes that the regulations should be revisited after we’ve received and analyzed the new lahar modeling data and volcanic hazard report we expect from the USGS within the next couple of years.
What Tahoma Audubon Society v. Pierce County Tells Us
(CPSGMHB Consolidated Case No. 05-3-0004c)
(The below text is verbatim from the decision.)

Tahoma Audubon Society challenged the provisions of Ordinance 2004-57s (Pierce County’s CAO) concerning "covered assemblies" in certain volcanic hazard zones. Park Junction Partners intervened on behalf of the County. Petitioner Tahoma Audubon argued that Pierce County failed to use the best available science in allowing 400-person occupancy in a lahar inundation zone that would be inundated within one hour of a lahar event, in a valley where no early warning system was feasible. Pierce County responded that risk assessment is a public policy choice which must be left to elected officials. Park Junction Partners asserted that Mount Rainier visitors “voluntarily choose to assume volcanic-related risks” and that Pierce County was entitled to weigh the lahar risk against the economic goals of the County in encouraging tourism.

The Board found that the County had used best available science in mapping the lahar inundation zones and in calculating the time for lahars to reach locations within the inundation zones. The Board found that the GMA mandate to use best available science to protect the “functions and values” of critical areas – RCW 36.70A.172 – has no apparent application to volcanic hazard areas and that no other GMA provision appears to require the County to make human life and safety its paramount concern when adopting critical areas regulations. The Board determined that Petitioner Tahoma Audubon did not carry its burden of proving Pierce County’s action was non-compliant with the GMA. The Board agreed with the County that life-safety risk assessment is a public policy determination that rests with the moral conscience of elected officials, not with the Board. The Tahoma Audubon petition was dismissed.

This Board held that the state’s “minimum guidelines” (365-190 WAC) are not mandatory, only advisory. However, the Board also concluded, “If the county does not use [the minimum guidelines] ... it must explicitly identify those indicators it does use to satisfy the statutory analysis requirements.”

Pierce County’s regulations for volcanic hazard areas establish three sets of Lahar Inundation Zones based on the size of lahars as determined by the USGS – Case I, largest and least frequent, Case II, and Case III, most frequent but less destructive. Lahar travel times zones A, B, C, and D5 are based on the estimated time for a lahar flow to reach a specific area, adjusted for the availability of warning systems in the Puyallup River and Carbon River basins. No warning systems are practicable in the Upper Nisqually Valley because the likely source of lahars is too close to the population.

The County prohibits bonus densities in any of the volcano hazard areas. “Essential facilities” and “hazardous facilities” are also prohibited. (“Special Occupancy Structures” include schools, day care centers, nursing homes.)

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4 “Essential facilities” are necessary to maintain life and safety functions, such as police and fire stations, emergency medical facilities.
5 “Hazardous facilities” house or support toxic or explosive chemicals.
In a Case II Lahar Inundation Zone, Travel Time Zone A, the occupancy of a “covered assembly” is limited to 100 persons unless the project proponent satisfies certain requirements, in which case the occupancy may be increased to 400. The special conditions involve providing for evacuation of all occupants to a safe height out of the lahar inundation zone in the time appropriate to the lahar travel time zone.

Tahoma Audubon claims that the County’s “covered assembly” occupancy allowance in Lahar Inundation Zones violates RCW 36.70A.010 because the “safety” of the state’s residents is not protected. However, the Board must look to sections of the statute that impose specific requirements because the Board’s jurisdiction is limited to “the requirements of this chapter.” The Board concurs with the County. RCW 36.70A.010 – Legislative findings – indicates general legislative intent but does not create specific duties enforceable by this Board.

The Board is persuaded that Pierce County used best available science to designate its volcanic hazard areas. The County also incorporated best scientific analysis in its regulations by differentiating land use allowances based on current mapping of lahar inundation zones and, in particular, the lahar travel times from likely sources high on the flanks of Mount Rainier to populated areas in the lowlands. In addition, new lahar early warning systems were designed and installed in two drainages – Puyallup River and Carbon River – through close collaboration between Pierce County staff and USGS volcanologists.

The Board finds no direct requirement in the GMA that would allow it to substitute its judgment for that of the Pierce County elected officials on this matter. The GMA defines geologically hazardous areas as areas that “are not suited to siting of... development consistent with public health or safety concerns,” [RCW 36.70A.030(9)], but there is no affirmative mandate associated with this definition except “protect the functions and values.” Petitioners have not persuaded the Board that the requirement to protect the functions and values of critical areas has any meaning with respect to volcanic hazard areas or that the GMA contains any independent life-safety mandate.

The Board agrees with Pierce County that land use policy and responsibility with respect to Mount Rainier Case II lahars – “low probability, high consequence” events – is within the discretion of the elected officials; they bear the burden of deciding “How many people is it okay to sacrifice?”
A Risk Based Planning Approach for Lahar and Volcanic Hazards in Whatcom County

John Gargett, Deputy Director, Division of Emergency Management, Whatcom County Sheriff's Office

Whatcom County faces the potential for a variety of risk, safety and security, and emergency/crisis events from its coastal waters on the Salish Sea to its eastern border in the North Cascades. The risks and threats have been well documented in the 2016 Whatcom County Natural Hazard Mitigation Plan. The Mitigation Plan is used to help guide both land use and emergency planning efforts. The 2016 Whatcom County Comprehensive Emergency Management Plan addresses how Whatcom County will respond to a catastrophic event that affects the entire county.

While many of the natural hazard risks have been known and existed for years, the density of population in these risk areas has grown, the nature of the responsibility of Whatcom County government to provide a response has grown, and residents and users of these areas are expecting more of government.

The Federal Emergency Management Agency has been conducting an update to the risk map (RiskMap) for Whatcom County since 2011. The primary goal of the Federal Emergency Management Agency RiskMap program is to reduce the loss of life and property through an integrated community approach of Risk Based Emergency Planning. The preliminary results of this work were presented in January 2017 and the information is a valuable tool in helping Whatcom County develop a resilience strategy to the risks facing Whatcom County.

One of the rationales for Risk Based Emergency Planning in Whatcom County is that we are a diverse geological environment that has continued, and will continue, to change over time. Landslides, volcanic eruptions, lahars, mud flows, floods, earthquakes, tsunamis, wild fires, wind storms and severe weather are part of living in Whatcom County. The Whatcom County Natural Hazard Mitigation Plan is a living and active document that addresses many of these hazards from a comprehensive planning perspective, the results of should be incorporated into land use regulations. Mitigation efforts and land use regulations do have a positive impact on the effects of many of these hazards but they do not eliminate the hazard and are only a part of Risk Based Planning.

The Whatcom County Sheriff’s Office Division of Emergency Management is responsible for the Whatcom County Natural Hazard Mitigation Plan and Comprehensive Emergency Management Plan. The Whatcom County Sheriff’s Office Division of Emergency Management recognizes that there also must be site, hazard, and threat specific planning that builds beyond the base provided by the Natural Hazard Mitigation Plan and Comprehensive Emergency Management Plan. You cannot eliminate all risk through land use planning and you cannot have comprehensive planning apply to every risk. We must live in harmony with our natural environment and build a resilient community that ensures that
property rights, environmental protection, economic development, land use planning, and emergency management are balanced, and that the risks are understood, reasonable strategies employed, and communities protected.

Risk Based Emergency Planning recognizes that some areas in Whatcom County have unique risks that may require this balanced approach, and that it is not possible to mitigate all effects of a hazardous event. Risk Based Emergency Planning views the sub segments of a community as an ecosystem comprised of the natural environment, existing and proposed land use policies, emergency detection, warning and action plans. (See Figure 1)

![Risk Based Planning Methodology Diagram](image)

**Figure 1 - Risk Based Planning Methodology**

**Case 1: Risk Based Emergency Planning Applied to the Tsunami Threat in Coastal Whatcom County**

Tsunamis are a potential threat for our coastal communities here in Whatcom County, although arguably one of the lower threats. Winter Storms, Erosion, Severe Winds, and Tidal Overflow all occur regularly, have significant impact, and regularly cause damage to our coastal areas.

Beyond the Washington State Department of Natural Resources and National Oceanic and Atmospheric Administration Tsunami Hazard Map of the Bellingham Area⁶, there has been no published scientific

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information on the tsunami threat to Whatcom County. Even in the study one of the limitations is, "while the modeling can be a useful tool to guide evacuation planning, it is not of sufficient resolution to be useful for land-use planning"

Tsunamis are unquestionably a potential risk that must be planned for the coastal areas of Whatcom County. While there may be scientific debate about frequency, size, type, and other details related to the specific impacts, the Washington State Department of Natural Resources and National Oceanic and Atmospheric Administration Tsunami Hazard Map does suggest that the coastal areas of Whatcom County should plan for surge inundations of between three and five meters. There has been some additional modeling—expected to be published in 2017—that suggests the planning for a surge in Whatcom County could be between five and seven meters. The Risk Based Emergency Planning approach is shown in Figure 2.

![Figure 2 - Risk Based Planning for Tsunami’s In Whatcom County](image)

What we do know about tsunamis in Whatcom County is that:

- The risk of a tsunami is real based on the best available science;
- There is a potentially significant impact on our coastal communities;
- There is an international warning system for regional or distant tsunamis;

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• The building code requires mitigation for structures built in tsunami threatened Coastal Communities;

When the risk of tsunamis is considered against what Whatcom County has done, the results are generally that Whatcom County is not prepared for a tsunami because it has:

• No comprehensive coastal warning system;
• No Coastal Community specific emergency response plans;
• Never exercised its Whatcom County Comprehensive Emergency Management Plan for a tsunami;
• Held minimal, if any, training with Whatcom County departments, local fire districts, or regional partners on a tsunami response in the Coastal Communities of Whatcom County.

If a formal audit were conducted on the state of readiness of Whatcom County following a tsunami today, the summary would probably say that while Whatcom County was aware of the risk and did undertake some building standards, but it did not have a comprehensive warning system, had not done Coastal Community Emergency Planning, and was generally unprepared as shown in Figure 3.

![Figure 3 - Possible Audit Outcome on Whatcom County Tsunami Preparedness](image)

The fact that the Whatcom County Sheriff’s Office Division of Emergency Management has begun Risk Based Emergency Planning specifically for Tsunamis in 2017 would perhaps mitigate these shortcomings and be a positive factor in the final report since the work was underway.
Case 2: Jones Creek Landslide – A Risk Based Emergency Planning Success

Whatcom County has one of the largest landslide risk profiles in Washington State. The Jones Creek alluvial fan and associated deep-seated landslide in Acme is an example of effective Risk Based Emergency Planning. The 27-acre slide area in Jones Creek that is currently moving is not new or unique in the drainage. The town of Acme is built on the alluvial fan of Jones Creek, created by the outflow of previous slides over thousands of years. The Acme Elementary School is in the outflow area, as are most of the buildings (both commercial and residential) in the town of Acme. Jones Creek has had debris flows for thousands of years and will continue to experience them.

Because of the 2009 debris flow, as well as the work of Kerr Wood Leidal in 2003 on the slide, the community of Acme, along with Whatcom County, began a comprehensive look at how to live with the identified hazard. Whatcom County Public Works has engineered mitigation that should redirect potential flows away from Acme and is currently seeking funding to undertake additional work.

Whatcom County Planning has incorporated the hazards into the process for new building permits. The Whatcom County Sheriff’s Office Division of Emergency Management has developed a response strategy in concert with Whatcom County Fire District #16, Whatcom County Public Works, Mt. Baker School District, and the Washington State Department of Natural Resources. The United States Geological Survey has placed a gauge on Jones Creek as a detection measure with funding from Whatcom County Public Works. Whatcom County Fire District #16 is responsible for early warning. The Whatcom County Sheriff’s Office Division of Emergency Management leads the ongoing review, update, exercising, and implementation of the emergency plan.

Figure 4 - Jones Creek Risk Based Planning
The Whatcom County Sheriff’s Office Division of Emergency Management has applied Risk Based Emergency Planning to Jones Creek; thus, Whatcom County is aware of the hazard and is addressing the hazard from all possible perspectives.

If a formal audit were conducted on the state of readiness of Whatcom County following a landslide at Jones Creek today, the summary would probably say that Whatcom County was aware of the hazard, had undertaken Risk Based Emergency Planning, incorporated the hazards into its land use planning, had a detection and warning system in place, had planned its response, and was undertaking mitigation activities. (See Figure 5.)

![Figure 5 – Possible Outcome on Whatcom Counties Preparedness for a Jones Creek Landslide](image)

**Case 3: Risk Based Emergency Planning Applied to the Volcanic and Lahar Threat in Whatcom County**

Mt. Baker is an active volcano and a threat for communities in Whatcom County, although, as with tsunamis, arguably one of the lower threats. Based on the Federal Emergency Management Agency RiskMap report, lahars are a clear risk in Whatcom County, “A *lahar* is a mudflow or debris flow from the slope of a volcano that originates from melted snow and ice. An eruption from Mount Baker could cause a lahar to follow the Nooksack River drainage and through portions of Ferndale. Mount Baker has erupted in the past and will erupt again. While the probability of an eruption is low, volcanic activity will cause massive destruction of property and probable loss of life. Volcanic activity that results in a debris flow could also cause flooding along the Nooksack River. There may be little warning for nearby populations to evacuate in the event of a lahar. An eruption could also trigger earthquakes and landslides (Whatcom County 2015).”
The United States Geological Survey, through the David A. Johnston Cascades Volcano Observatory, has studied and documented the potential hazards of Mt. Baker. These include Lava Flows, Pyroclastic Flows, Tephra, and Lahars. While all are potential threats to the general population of Whatcom County, Lahars present the largest threat to the Nooksack River communities, as shown in Figure 6.

Figure 6 - Lahar Hazard to Whatcom County

Lahars are a known documented hazard in Whatcom County and directly threaten communities along the Middle and North Forks of the Nooksack River, including the towns of Glacier, Maple Falls, and Deming. Lahars also could cause damage in the towns of Everson, Sumas, Lynden, and Ferndale. In the 2017 Federal Emergency Management Agency RiskMap Report, over 600 buildings in Ferndale are identified that may be at risk from Mt. Baker Lahars. According to the United States Geological Survey,

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6800 years ago there was a lahar (not caused by a volcanic eruption but rather a landslide) that is described where: “deposits in the Middle Fork indicate that the debris flow was at least 100 m (325 ft) deep as it moved downvalley. Deposits from this event can be traced from the Middle Fork to the main Nooksack River and as far downstream as Deming. Beyond Deming, these deposits are buried by river sediments; however, on the basis of the behavior of similarly sized cohesive debris flows at Mount Rainier and Mount St. Helens, it is likely that this debris flow continued downstream to Puget Sound.”

The lahar that occurred about 6800 years ago is not unique in the documented history of events from Mt. Baker. To ensure that the information on the hazards of Mt. Baker is well understood, the United States Geological Survey is in the process of updating the models for the potential effects of lahars from Mt. Baker. Other scientists have expressed their belief that the effects of lahars may be overstated, however, all agree that the threat does exist at least as far downstream as Deming.

Lahars are unquestionably a potential hazard with associated risks that must be planned for the Middle and North Fork of the Nooksack River drainages of Whatcom County. While there may be scientific debate about frequency, size, type, and other details related to the specific impacts, the United States Geological Survey, Washington State Department of Natural Resources, and both Whatcom County and Private Geologists do agree that Whatcom County should plan for lahars. In terms of the Risk Based Emergency Planning approach, this is shown in Figure 7.

Figure 7 - Risk Based Planning for Lahar’s In Whatcom County
What we do know in Whatcom County about Lahars is that:

- The hazards and risk of lahars is real based on the best available science;
- There is a potentially significant impact on our riverine and mountain communities;

When the risk of lahars is considered against what Whatcom County has done, the results are that Whatcom County is not prepared for a Lahar because it has:

- Very limited detection;
- No Warning System
- No Mountain or Riverine community specific emergency response plans;
- Never exercised its Whatcom County Comprehensive Emergency Management Plan for a lahar or eruption of Mt. Baker;
- Held minimal, if any, training with Whatcom County departments, local fire districts, or regional partners on a lahar response in Whatcom County.

If a formal audit were conducted on the state of readiness of Whatcom County following a lahar today, the summary would probably say that Whatcom County was aware of the hazards and potential risks, but due to a lack of detection equipment, warning systems, Risk Based Emergency Planning, clear land use requirements, and limited mitigation efforts, was woefully unprepared (Figure 8).

![Diagram of Lahar Preparedness](image)

**Figure 8 – Possible Audit Outcome on Whatcom County Lahar and Volcanic Preparedness**

The fact that the Whatcom County Planning and Development Services has undertaken community based land use planning since at least 2005 and the Whatcom County Sheriff's Office Division of
Emergency Management has begun planning for a 2018, lahar-based volcanic hazard full-scale exercise would perhaps mitigate for these short-comings and be a positive factor in the final report since the work was underway. It is critical for Whatcom County to demonstrate that it is aware of its hazards and potential risks and is addressing those risks from all possible perspectives.

**Conclusion**

Whatcom County needs to undertake Risk Based Emergency Planning for it volcanic and lahar hazards and associated risks as the density of population in these risk areas has grown, the nature of the responsibility of Whatcom County government to provide a response has grown, and the expectations of the residents and users of these areas are expecting more of government. Landslides, volcanic eruptions, lahars, and mud flows are realities of living in Whatcom County. You cannot eliminate all risk through land use planning alone and you cannot have comprehensive emergency planning that applies to every risk. We must live in harmony with our natural environment and build a resilient community that ensures that property rights, environmental protection, economic development, land use planning, and emergency management are balanced, that the risks are understood, reasonable strategies are employed, and communities are protected through Risk Based Emergency Planning.
Existing CAO Language

Article 3. Geologically Hazardous Areas

16.16.310 Designation, mapping and classification.
C. For purposes of this chapter, geologically hazardous areas shall include all of the following:
   4. Volcanic Hazard Areas. Volcanic hazard areas shall include areas subject to lava flows, pyroclastic flows, pyroclastic surges, mud flows, lahars, debris flows, debris avalanche, ash (tephra) clouds or ash (tephra) fall, lateral blast, ballistic debris, or flooding resulting from volcanic activity.

16.16.350 Standards - Volcanic hazard areas.
Development may be allowed in volcanic hazard areas; provided, that all reasonable measures have been taken to minimize risks and other adverse effects associated with volcanic hazards, and when the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose. For lahar inundation zones, the following activities shall be allowed as specified:
A. Developments that meet the reasonable use or variance standards and procedures as set forth in WCC 16.16.270.
B. Sewer collection facilities and other utilities that are located underground and not likely to cause harm to people or the environment if inundated by a lahar.
C. Critical facilities, as defined in subsection 1 of “critical facilities,” Article 8 of this chapter, of 50 or more persons may be permitted within lahar inundation zones subject to the conditional use permit requirements of Chapter 20.84 WCC; provided, that the following criteria are also met:
   1. The applicant demonstrates through submittal of a travel time analysis prepared by a qualified professional or local, state, or federal agency the amount of time that is anticipated for a lahar to reach the proposed project and evacuation route, together with a description of existing or proposed detection and notification systems to be installed and maintained by a public entity.
   2. The applicant has provided an emergency evacuation plan prepared by a qualified professional or local, state, or federal agency showing that the proposed project is located directly adjacent to a safety zone that is within walking distance in an amount of time less than the anticipated time that it takes a lahar to reach the site after the triggering of an alarm and notification.
D. Accessory structures not involving human occupancy shall be allowed.
E. Single-family developments and duplexes may be permitted in lahar hazard areas subject to WCC 16.16.320(A).

16.16.320 Geologically hazardous areas - General standards.
The following requirements shall apply to all activities in geologically hazardous areas:
A. Alterations shall be directed toward portions of parcels or parcels under contiguous ownership that are not subject to, or at risk from, geologic hazards and/or are outside any associated buffer established by this article.
16.16.800 Definitions.

"Critical facilities (essential facilities)" means buildings and other structures that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow or earthquakes pursuant to the International Building Code (IBC), 2003 Edition. These include, but are not limited to:

1. Buildings and other structures that represent a substantial hazard to human life in the event of failure including, but not limited to:
   a. Buildings and other structures where more than 300 people congregate in one area;
   b. Buildings and other structures with elementary school, secondary school or day care facilities with an occupant load greater than 250;
   c. Buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities;
   d. Health care facilities with an occupant load of 50 or more resident patients but not having surgery or emergency treatment facilities;
   e. Jails and detention facilities;
   f. Any other occupancy with an occupant load greater than 5,000;
   g. Power-generating stations, water treatment for potable water, wastewater treatment facilities and other public utility facilities not included in subsection 2 of this definition;
   h. Buildings and structures not included in subsection 2 of this definition containing sufficient quantities of toxic or explosive substances to be dangerous to the public if released.

2. Buildings and other structures designed as essential facilities including, but not limited to:
   a. Hospitals and other health care facilities having surgery or emergency treatment facilities;
   b. Fire, rescue, and police stations and emergency vehicle garages;
   c. Designated earthquake, hurricane or other emergency shelters;
   d. Designated emergency preparedness, communication, and operation centers and other facilities required for emergency response;
   e. Structures containing highly toxic materials as defined by IBC Section 307 where the quantity of the material exceeds the maximum allowable quantities of IBC Table 307.7(2);
   f. Aviation control towers, air traffic control centers and emergency air-craft hangars;
   g. Buildings and other structures having critical national defense functions;
   h. Water treatment facilities required to maintain water pressure for fire suppression;
   i. Power-generating stations and other public utility facilities required as emergency backup facilities for structures listed above.
Chapter 365-190 WAC Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands, and Critical Areas

WAC 365-190-120 Geologically hazardous areas

(11) Geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

(12) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

(13) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:
   (a) Erosion hazard;
   (b) Landslide hazard;
   (c) Seismic hazard; or
   (d) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rock falls, and differential settlement.

(14) Counties and cities should assess the risks and classify geologically hazardous areas as either:
   (a) Known or suspected risk;
   (b) No known risk; or
   (c) Risk unknown – data are not available to determine the presence or absence of risk.

(15) Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas.

(16) Landslide hazard areas include areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:
   (a) Areas of historic failures, such as:
      (i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;
      (ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology Washington coastal atlas; or
(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

(b) Areas with all three of the following characteristics:
   (i) Slopes steeper than fifteen percent;
   (ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
   (iii) Springs or groundwater seepage.

(c) Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

(17) Seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;

(b) The distance from the source of an earthquake;

(c) The type or thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

(18) Other geological hazard areas:

(b) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(c) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 12:40 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 CHIEF CIVIL DEPUTY PROSECUTOR DANIEL GIBSON REGARDING PENDING LITIGATION, SWIFT CREEK (AB2017-018)

Attorney Present: Daniel Gibson

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 1:15 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Mann moved to go into executive session until no later than 1:15 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, Buchanan, Mann, Donovan and Weimer (6)

Nays: None (0)

Absent: Browne (out of the room) (1)

OTHER BUSINESS

ADJOURN

The meeting adjourned at 1:00 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
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 2:20 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

COMMITTEE DISCUSSION

1. CONTINUATION OF COUNCIL’S REVIEW OF THE 2016 CRITICAL AREAS ORDINANCE UPDATE (AB2016-276K)

Mark Personius, Planning and Development Services Department, introduced the discussion. He answered questions throughout the presentation.

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), and Article 9 - Definitions

Ryan Ericson, Planning and Development Services Department, gave a staff report on the list of issues and additional proposed amendments, beginning on Council packet page 152, and answered questions.

Brenner stated the proposed changes in Issue 1 should include a reference to the Planning Unit, which represents all watershed users, and moved to amend Whatcom County Code (WCC) sections 16.16.263(A.3), .680(A.6), .720(B) and (M), and .760(A.6) in this issue on Council packet page 152, “…Watershed Management Salmon Recovery Board habitat project list, including the Planning Unit or by the Washington State…”

The motion was seconded.

Councilmembers discussed references to the Planning Unit throughout the sections in Issue 1, on Council packet page 152, and these sections addressing the project list of the board.

The motion to amend failed by the following vote:

Ayes: Brenner (1)
Nays: Sidhu, Browne, Buchanan, Donovan, and Weimer (5)
**Absent:** Mann (out of the room) (1)

Ericson continued the staff report on the list of issues and additional proposed amendments, beginning on Council packet page 152.

*Brenner moved* to amend WCC 16.16.230(D), "Low impact activities when the activity does not cause adverse impacts, such as hiking, canoeing, viewing, nature study, photography, hunting, fishing, education or scientific research."

The motion was seconded.

The motion to amend carried by the following vote:

*Ayes:* Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)

*Nays:* None (0)

**Absent:** Weimer (out of the room) (1)

Ericson continued the staff report on Issues 3, 4, and 5. He submitted a substitute for proposed language on Issue 5 to WCC 16.16.620(K) and .720(U), “Whatcom County improved voluntary water quality improvement program best management practices may be installed in wetland buffers to treat runoff from existing development.”

Councilmembers discussed the process for going forward, the process for making these staff proposed amendments, and holding a public hearing. Staff will make all the changes prior to a public hearing.

Ericson continued the staff report on Issue 6 and 7.

Councilmembers discussed resident fish and identifying ditches that are considered fish streams.

*Brenner moved* to amend 16.16.710(A)(1)(b), “ii. The waterway is used by anadromous or resident salmonid or other resident fish populations; or....”

The motion was seconded.

The motion to amend carried by the following vote:

*Ayes:* Brenner, Weimer, Sidhu, Browne, Buchanan, and Donovan (6)

*Nays:* None (0)

**Absent:** Mann (out of the room) (1)

Ericson continued the staff report on Issues 8 through 11.

Councilmembers discussed an appropriate definition for “reasonable use.”

Ericson continued the staff report on Issues 12 through 14.

Brenner stated amend the definition of streams, “...and/or the waterway is used by anadromous fish or other fish populations, resident fish, or flows directly into...”

*The Committee concurred.*
Councilmembers discussed who decided on the current list of species of local importance. Ericson stated any changes to the list must be approved by the County Council as an attachment.

Ericson continued the staff report on Issues 15 and 16.

Brenner moved to amend Issue 16, section 16.16.750(B), “The technical administrator shall have the authority to waive the report requirement when he/she....”

The motion was seconded.

Councilmembers discussed whether the technical advisor has the option to not waive the requirements and under what circumstances the technical administrator would choose to not waive the requirements.

Brenner amended her motion and moved to delete .750(B).

The amended motion was seconded.

The motion to amend carried by the following vote:

Ayes: Brenner, Weimer, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)
Absent: Mann (out of the room) (1)

Ericson continued the staff report on Issue 17.

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

Ericson continued the staff report with the list of issues regarding questions, comments, and suggestions by councilmembers, beginning on Council packet page 159. He reported on Issue 18.

Councilmembers discussed the level of flexibility and authority provided to the applicant and to inexperienced staff.

Brenner moved to amend language from “shall” to “may” and to “shall have the authority to” throughout the sections listed in Issue 18 on Council packet pages 159 and 160.

The motion was seconded.

Browne suggested a friendly amendment to first vote on the first three sections on Council packet page 159, sections .255, 260(C)(1), and .270(4), separate from the last three sections on Council packet page 160.
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Brenner accepted the friendly amendment to divide the motion and amended her motion to amend 16.16.255, .260(C)(1), and .270(4), “shall have the authority to” on Council packet page 159.

The motion to amend carried by the following vote:

- **Ayes:** Brenner, Weimer, Sidhu, Browne, Buchanan, and Donovan (6)
- **Nays:** None (0)
- **Absent:** Mann (out of the room) (1)

Brenner moved to amend section .255(E), “shall may” on Council packet page 160.

The motion was seconded.

The Councilmembers discussed whether a revision should be required if an assessment is inaccurate or incomplete.

The motion to amend failed by the following vote:

- **Ayes:** Brenner (1)
- **Nays:** Weimer, Browne, Mann, Sidhu, Buchanan, and Donovan (6)

Brenner moved to amend section .680(A) on Council packet page 160, “shall may.”

The motion was seconded.

Councilmembers discussed whether the technical administration should be required to consider all the items listed in subsections (1) through (6).

The motion to amend carried by the following vote:

- **Ayes:** Brenner, Browne, Buchanan, and Donovan (4)
- **Nays:** Weimer and Mann (2)
- **Absent:** Sidhu (out of the room) (1)

Ericson continued the staff report on Issues 19 and 20.

Councilmembers discussed whether the Washington Administrative Code (WAC) requires protection of ecosystems in the critical areas ordinance.

Buchanan stated that this item will be held in Committee to the next meeting in March.

2. **DISCUSSION OF PROPOSED COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE CHERRY POINT URBAN GROWTH AREA (ORDINANCE SCHEDULED FOR INTRODUCTION THIS EVENING) (AB2017-063)**

Brenner referenced the staff memo on Council packet page 171 and moved to replace the Planning Commission proposal with Alternative 1, beginning on Council packet page 185.

The motion was seconded.
Councilmembers discussed Councilmember Brenner’s alternative version compared to the Planning Commission version. Councilmembers concurred to work from the Planning Commission version of the ordinance.

Brenner withdrew her motion.

Weimer moved to amend page 4 of the ordinance, lines 38-41, “Whatcom County does not enforce the Magnuson Amendment through the local permitting process. However, the County can encourage federal agencies to enforce the Magnuson Amendment and 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, or, if necessary, seek to enforce the Magnuson Amendment through the court system. (see Policy 2CC-15).”

The motion was seconded.

Councilmembers discussed including a reference to the Magnuson Amendment.

The motion to amend carried by the following vote:
Ayes: Sidhu, Mann, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

Weimer moved to amend page 7 of the ordinance, lines 25-29, “These industries need to be protected from the inappropriate encroachment of incompatible uses; particularly residential uses that could affect their ability to expand, at the same time, the expansion of these industries needs to be done in ways that do not significantly impact the ecology of the Salish Sea or encourage expanded export of unrefined fossil fuels.”

The motion was seconded.

Browne suggested a friendly amendment to substitute “export” with “transshipment.”

Weimer referenced and the councilmembers discussed the definition of transshipment, which is the shipment of goods or containers to an intermediate destination and then another destination, and the County’s lack of authority to regulate exports or interstate commerce.

Weimer did not accept the friendly.

Browne moved to amend the amendment to substitute “export” with “transshipment.”

The motion was seconded.

The motion to amend the amendment carried by the following vote:
Ayes: Sidhu, Mann, Browne, Buchanan, and Donovan (5)
Nays: Weimer and Brenner (2)
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Brenner moved to amend the amendment to page 7 of the ordinance, 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 off the North American Coast.”

The motion was seconded.

Councilmembers discussed a company’s need to send unrefined fossil fuel to other locales during improvements or cleanup work and making sure shipments can go to other facilities on the North American coast.

The motion to amend the amendment failed by the following vote:
Ayes: Brenner and Sidhu (2)
Nays: Mann, Browne, Buchanan, Donovan, and Weimer, (5)

The main motion to amend, as amended, carried by the following vote:
Ayes: Sidhu, Mann, Browne, Buchanan, and Donovan (5)
Nays: Weimer and Brenner (2)

Donovan moved to amend page 8 of the ordinance, Policy 2CC-2, “Ensure that developments in the Cherry Point UGA maintain and operate under management plans to accomplish the goals of the Aquatic Reserve Management Plan.”

The motion was seconded.

Councilmembers discussed whether existing refineries need to operate under a management plan, whether they are part of the aquatic reserve, who would enforce the regulations, Planning Commission finding 29 regarding the Department of Natural Resources (DNR) not altering the terms and conditions of existing leases and easements,

Matt Aamot, Planning and Development Services Department, answered questions.

Sidhu suggested a friendly amendment, “Ensure that developments in the Cherry Point UGA should maintain and operate under management plans to accomplish the goals of in compliance with the Aquatic Reserve Management Plan.”

Donovan accepted the friendly amendment.

Pete Sim, BP Cherry Point, answered questions. The DNR has determined that their aquatic reserve is consistent with the uses in the Cherry Point area. Existing management plans accomplish the goals.

Donovan amended his motion, “Ensure that developments in the Cherry Point UGA to maintain and operate under management plans to accomplish the goals of consistent with the Aquatic Reserve Management Plan.”

The motion to amend carried by the following vote:
Ayes: Brenner, Mann, Browne, Buchanan, Sidhu, Weimer and Donovan (7)
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Nays: None (0)

Buchanan stated this item will be held in committee for two weeks.

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL

1. RESOLUTION INITIATING PROPOSED COMPREHENSIVE PLAN AND ZONING AMENDMENTS (AB2017-083)

This item was not discussed.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 4:30 p.m.

The Council approved these minutes on ______________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL
Regular County Council Meeting

March 7, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:00 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

SPECIAL PRESENTATION

1. VIDEO PRESENTATION TO PROVIDE INFORMATION RELATED TO THE SUPREME COURT’S HIRST DECISION, FOLLOWED BY TIME FOR COUNCILMEMBERS TO ASK QUESTIONS OF STATE AND LOCAL WATER EXPERTS (AB2016-309E)

Forrest Longman, Council Legislative Analyst, introduced the video presentation.

(Clerk’s Note: Council played the video presentation, which can be found on the County’s YouTube page at https://www.youtube.com/watch?v=cTb-kcm10RQ&feature=youtu.be&t=921)

The following panel experts answered councilmember questions:

- Tadas Kasalius, Attorney
- Bob Carmichael, Attorney
- Chuck Lindsay, Hydrogeologist
- Steve Jilk, Public Utility District (PUD) #1 Manager

Councilmembers asked questions from the panel members and discussed the following topics:

- There needs to be a discussion on the basis for the Nooksack Basin instream flow rule, which is simply a median average historical flow.
- The Court agreed with the instream flow rule, but ignored the part of the rule that allows exempt wells.
• Ecology didn’t conduct a maximum net benefit analysis when it set the minimum instream flow.
• The legislature could fix the situation.
• Locally, they can come up with mitigation programs and create a task force to get at some of these problems.
• The types of mitigation could open options right now.
• About 20 percent of 500 gallons of single family home indoor water use is consumptive.
• An option for mitigation is the Ecology rainwater catchment program that would remove someone from this issue by using it for drinking water or mitigation water.
• Another option for mitigation is getting water from a nearby water purveyor.
• Drawing water lowers the instream flow, but Whatcom County has a large uninhabited area for surface water and a lot of rainfall available for aquifer recharge.
• The Supreme Court case law standard is that one molecule of impact to surface water is considered impairment.
• The County must comply with Supreme Court decisions.
• The timing of the moratorium is legally debatable.
• Invalidity is worse than noncompliance, which allows time to become compliant before a compliance hearing, which is scheduled in May.
• Whatcom County, as the named party to the case, is in a different position from all the other counties.
• The decision referenced what the County must do when processing building applications and subdivision applications, which influences the decision-making process.
• The moratorium provided the County time to come into compliance.
• The Court concluded that it’s the County’s job to assess whether water is available when issuing a building permit.
• Issuing a building permit doesn’t prevent conflict between a senior water right holder and junior water right holder.
• The consumptive use formula from the U.S. Geological Survey (USGS) is between 10 and 20 percent of daily use.
• Water use needs to be defensible in a permit applicant’s mitigation plan.
• No state law indicates rainwater catchment is legal, but exempt wells are illegal.
• Department of Ecology Policy 1017 says rainwater catchment is a viable option for mitigation and for drinking water.
• The total number of gallons that must be mitigated by remaining undeveloped lots in the county could be millions of gallons per day.
• The instream flow rule applies to most tributaries, not just the main stem of the Nooksack River.
• Begin reviewing all the water that enters the county and manage it as an entire system.
• Current water law doesn’t allow the PUD to move its available water around the county.
• The necessity of a water bank.
• There is uncertainty due to senior water rights that haven’t been adjudicated.
• The County could make an effort to look at what the municipalities, water districts, and water associations have through some kind of work group, referencing the Coordinated Water System Plan.
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- The Lower Nooksack Strategy included a component to identify water sources and uses according to use, and tie the information to land management, but that component was not funded or completed.
- The PUD is informally engaging in groundwater modeling, drought contingency planning, and other water planning efforts.
- A challenge to creating a water bank is that mitigation must be at point of use.
- Creating a water bank using City of Bellingham water rights would be legally possible, if there is the will to create it, since it’s all in the same river system.
- Deep water aquifer that doesn’t impact surface water can be used for mitigation.
- Barriers include the cost of infrastructure and water right holders who are hesitant to open up their water rights to reallocation for fear of the rights being relinquished.
- The County has discretion in taking action on compliance.
- Counties not subject to this rule have taken the same action Whatcom County has taken.
- Sharing water rights won’t be a quick solution for anyone.
- Support efforts to have enough information on groundwater and surface water resources, interconnectivity, and habitat needs to satisfy tribal claims and instream flow habitat before new Ecology instream flow rules or a determination on tribal water rights.
- The Lummi have two water rights: 1. A right from the Winters Doctrine for out-of-stream consumptive right, and 2. A right to fish, which will drive the instream flow requirements.
- Be proactive about determining the instream flow needs for fish.
- Include private well owners and the Planning Unit in any planning efforts.
- It would be tough for an attorney to successfully sue the County on behalf of a client, given everything they know and if the client signed a waiver and had time to consult an attorney.
- There seems to be a lack of trust among the stakeholders.

PUBLIC HEARINGS

1. ORDINANCE ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE TITLE 15 (BUILDINGS AND CONSTRUCTION), TITLE 20 (ZONING), TITLE 21 (LAND DIVISION REGULATIONS), AND TITLE 24 (HEALTH CODE), RELATING TO WATER RESOURCES (AB2016-309D)

Mark Personius, Planning and Development Services Department, gave a staff report on the format changes.

Buchanan opened the public hearing, and the following people spoke:

Dave Onkels submitted and read from his testimony (on file) and described the story of a recent building applicant in performing a hydrogeologist review and the impact of the Hirst decision.

Linda Twitchell, Building Industry Association of Whatcom County, stated she is opposed to the interim ordinance because the County staff can overrule a hydrogeologist's report. Define the qualified technical review staff team who can throw out the study done
by a licensed professional report. The County should absorb the cost if it denies the qualified study. Department of Ecology determined that 90 percent of water used from a well is returned to the system.

Mary Kay Robinson, Whatcom County Association of Realtors, stated take care of the people who are halfway through the process and have spent thousands of dollars on their project. Don’t restrict someone from enlarging their home by 50 percent. Identify what is the financial assurance required by the mitigation plan, which is a problem for most people who have to finance their projects.

Jim Hansen stated he is indifferent to this ordinance. State legislative action won’t add water to the streams. Begin developing options to make it easier for people to use the water they have, do water conservation, and benefit farmers. The County should make inspections mandatory, but provide a funding subsidy for financial hardship. Provide low- and no-interest loans to pay for failing septic systems. Impose stormwater impact fees for new construction.

Laura Sanderson stated the video presentation was biased. She spoke about a recent building applicant who submitted a hydrogeologist review that was rejected and the impact of the Hirst decision. Create the ability to transfer water rights.

Roger Almskaar, Citizens’ Alliance for Property Rights, submitted and read from his testimony (on file) and stated instream flow standards are not best available science. Allow more housing to use groundwater for beneficial uses at reasonable rates as long as there is adequate instream flow in tributaries for anadromous fish during migration. Put gauges in the tributaries.

Zach Nutting spoke about his experiences trying to finish building his home without the ability to get water. There is no loss of water according to Newton’s Law. Water is never consumptively used. It is transferred. The County legislators are supposed to guard the safety of the citizens. The Council could have given citizens time to get their permits in immediately. The County should fight the State decisions.

Karlee Deatherage, ReSources for Sustainable Communities, stated she is indifferent to the interim ordinance. If the science were improved, the rule would be more stringent. She supports relief for those such as Mr. Nutting who are caught in the middle of the process. It’s an undue hardship. Create a comprehensive water budget for the Nooksack basin.

Jay Markarian, Y-Squalicum Water Association Board Member, stated there is a recalcitrant position of no growth in the county. The duty to provide service is being squashed. His Board is willing to be a test case for allowing service with the right science to support it.

Natalie McClendon stated she hasn’t heard any information on the number of the planned permit holders whose projects stalled because of the Hirst decision.

Jerry Peterson stated it’s necessary to drill to prove adequate water supply. The well site will have already been chosen before the County does a site visit. He is recommending
Patrick Alesse stated the goal is growth management, not water control.

Wendy Harris stated the Hirst decision simply upheld the law that already existed. They must consider the rights of senior water right users and not allow junior water users to take water from those senior users. There are inherent risks when buying property when it’s necessary to drill a well. Climate change affects the amount of available water. Focus on ecosystem function and values. They must have a water budget and conservation.

Sue Croft stated banks won’t loan on a rain catchment system because it’s not a reliable source of water.

Ed Kilduff stated variation in instream flow is mostly due to precipitation. When the instream flow isn’t met, they’re expecting groundwater to make up for a fluctuation in precipitation. The Postema decision indicates a conflict between modeling data and actual field measurements. The Superior Court said the better set of data is the modeling data.

Hearing no one else, Buchanan closed the public hearing.

**Browne moved** to adopt the ordinance. The motion was seconded.

Mark Personius, Planning and Development Services Department, answered questions about the number of people who were in the middle of a process to build a single family home and the number of undeveloped parcels subject to the Hirst decision.

**Brenner moved** to add language to allow the several hundred people, who are in the middle of the process and have gone to the County to apply for a permit exempt well, to sign a waiver, not be affected by the Hirst decision, and finish their single family residence.

The motion was seconded.

Councilmembers and staff discussed the implication of such an amendment; why they need a second hydrologist to verify the findings of the first hydrologist; defining the steps in the process and the levels of work an applicant has done, so everyone is treated equally; creating a threshold for challenging the decision of a licensed hydrogeologist; using Donovan’s proposed language from January to begin defining the process; whether applicants have qualified under the new conditions; new applications submitted after the Hirst decision are subject to the decision; flexibility for people who already have an existing withdrawal; building permit applicants who have submitted their critical areas assessment were vested to pre-Hirst; the difference between building permit vesting and subdivision vesting; for subdivision projects filed prior to Hirst, a building permit submitted at a later date still has to be reviewed pursuant to Revised Code of Washington 19.27.097 as interpreted by the Court; and how they determine which projects and applicants are considered “in the process.”

**Brenner amended her motion** to adopt an emergency ordinance regarding Whatcom County Code 24.11.060(A)(5) to add a new subsection (c):
c. A record that the project was substantively and recently active, prior to October 26, 2016.

i. Evidence that a project was substantively and recently active prior to October 26, 2016 shall include: The applicant paid fees to Whatcom County directly related to advancing the project (including land disturbance permit fees, project permit, etc.) prior to October 26, 2016; OR the applicant invested funds on consultant services related to the proposal, OR the applicant has records of meetings with Whatcom County PDS staff related to the project within two years prior to October 26, 2016;

ii. Evidence that a project was substantively and recently active prior to October 26, 2016 shall ALSO include some combination of the following:

1. The applicant has a designed, approved septic system installed on the property prior to October 26, 2016;
2. The applicant has installed a functioning well on the property prior to October 26, 2016;
3. The applicant has established that the well water is potable prior to October 26, 2016;
4. The applicant has established a state approved private water system to serve the property (and no more than 4 total properties) prior to October 26, 2016;
5. The applicant has completed a wetlands study for the property prior to October 26, 2016;
6. The applicant has delineated wetlands and buffers prior to October 26, 2016;
7. The applicant hired an archaeological consultant and completed a study of the property prior to October 26, 2016;
8. The applicant has completed a natural resource assessment;

iii. These permits apply only to applications for residential developments of no more than [four] total properties that use, on annual average, no more than 200 gallons of water per day, per property.

iv. A permit issued under this section is conditional; The applicant may be required to mitigate water use so as not to impair rights that are senior. Mitigation may include water conservation, the use of low flow plumbing fixtures, and other conservation methods.

v. A permit issued under this section does not grant the applicant water rights.

Brenner stated that if anyone has done any of the things in subsections (i) – (v), then they are vested and can move ahead with their project.

Councilmembers discussed allowing people to decide whether or not they want to take on the risk, the appropriate process for including this language in an ordinance, whether or not an emergency exists to justify an emergency ordinance or emergency amendment, not putting homeowners and landowners in the position of having to stop their
Weimer moved to call the question on Councilmember Brenner’s proposed emergency ordinance. The motion was second. The motion carried by the following vote:

**Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

**Nays:** Brenner (1)

Brenner amended and restated her motion to adopt an emergency ordinance that states:

Anyone who has a single family residential project activated prior to October 26, 2016 will be allowed to continue and finish the project and evidence that a project was substantively and recently active prior to October 26, 2016 shall include:

- The applicant paid fees to Whatcom County directly related to advancing the project (including land disturbance permit fees, project permit, etc.) prior to October 26, 2016; OR
- The applicant invested funds on consultant services related to the proposal, OR
- The applicant has records of meetings with Whatcom County PDS staff related to the project within two years prior to October 26, 2016.

The motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Browne moved to amend the length of the interim ordinance to six weeks from the effective date of the ordinance.

The motion was seconded.

Councilmembers discussed making changes within the next six weeks.

The motion carried by the following vote:

**Ayes:** Mann, Sidhu, Browne, Buchanan, Brenner and Donovan (6)

**Nays:** Weimer (1)

Brenner moved to amend this ordinance, section 24.11.060(A)(5), to add language:

Anyone who has a single family residential project activated prior to October 26, 2016 will be allowed to continue and finish the project and evidence that a project was substantively and recently active prior to October 26, 2016 shall include:

- The applicant paid fees to Whatcom County directly related to advancing the project (including land disturbance permit fees, project permit, etc.) prior to October 26, 2016; OR
- The applicant invested funds on consultant services related to the proposal, OR
- The applicant has records of meetings with Whatcom County PDS staff related to the project within two years prior to October 26, 2016.

The motion was seconded.
1 The motion to amend failed by the following vote:

2 **Ayes:** Brenner and Mann (2)  
3 **Nays:** Sidhu, Browne, Buchanan, Weimer and Donovan (5) 

4 Staff answered questions on the consequence of not adopting the interim ordinance.

5 The motion to adopt as amended carried by the following vote:

6 **Ayes:** Sidhu, Browne, Buchanan, and Donovan (4)  
7 **Nays:** Brenner, Mann, and Weimer (3) 

2. **ORDINANCE ESTABLISHING CHARGES/FEES FOR PROVIDING ADVANCED**

**LIFE SUPPORT (ALS) AMBULANCE TRANSPORT SERVICES IN WHATCOM**

**COUNTY (AB2017-086)**

10 Buchanan opened the public hearing, and the following person spoke:

11 Karen Brown stated ambulance fees are excessive.

12 Hearing no one else, Buchanan closed the public hearing.

13 **Mann moved** to adopt the ordinance.

14 The motion was seconded.

15 Councilmembers discussed advanced life support services.

16 The motion carried by the following vote:

17 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)  
18 **Nays:** None (0) 

3. **RESOLUTION TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION, REQUEST**

**#TR2017-01 (AB2017-087A)**

19 Steve Oliver, Treasurer, gave a staff report and answered questions on whether there is an urgency to sell the property and if owning the property incurs costs to the County.

20 Mike McFarlane, Parks and Recreation Department Director, answered questions about whether this is useful for building the Kendall Trail.

21 Buchanan opened the public hearing, and the following person spoke:

22 Zack Nutting described the history of the parcel and stated the site is currently a dump site, trees are leaning and threatening his property, and he would like to purchase the property.

23 Hearing no one else, Buchanan closed the public hearing.

24 **Brenner moved** to approve the resolution. The motion was seconded.
The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

### OPEN SESSION

The following people spoke:

- Kris Halterman submitted a handout *(on file)* and spoke about the proposed changes to the Cherry Point urban growth area in the Comprehensive Plan.
- Patrick Alesse spoke about the County purchasing a property in Birch Bay that should be for public parking.
- Carole Perry spoke about the critical areas ordinance.
- Eddy Ury, Resources for Sustainable Communities, spoke about the proposed changes to the Cherry Point urban growth area in the Comprehensive Plan and the ordinance adopting interim amendments to the Whatcom County Comprehensive Plan and Whatcom County Code relating to water resources.

### OTHER ITEMS

1. **REQUEST AUTHORIZATION TO GRANT THE WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE AN EASEMENT ON PARK PROPERTY LOCATED ON THE SOUTH END OF LAKE WHATCOM FOR THE PURPOSE OF CONSTRUCTION AND MAINTENANCE OF A FISH HATCHERY AND STREAM BANK ON BRANNIAN CREEK (AB2017-091)**

   *Donovan* reported for the Natural Resources Committee and moved to approve the request.

   The motion carried by the following vote:

   **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

   **Nays:** None (0)

2. **REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER IN TO A CONTRACT BETWEEN WHATCOM COUNTY AND COMMODITY CREDIT CORPORATION FOR A 50% COST SHARE FOR FOUR PURCHASE OF DEVELOPMENT RIGHTS EASEMENTS THROUGH THE AGRICULTURAL CONSERVATION EASEMENT GRANT PROGRAM, IN THE AMOUNT OF $593,020 (AB2017-092)**

   *Browne* reported for the Finance and Administrative Services Committee and moved to approve the request.

   The motion carried by the following vote:

   **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

   **Nays:** None (0)
3. RESOLUTION INITIATING PROPOSED COMPREHENSIVE PLAN AND ZONING AMENDMENTS (AB2017-083)

Buchanan reported for the Special Committee of the Whole meeting and stated this item is held in committee.

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT TO PORTAGE BAY SHELLFISH PROTECTION DISTRICT ADVISORY COMMITTEE, APPLICANT: MICHAEL SHEPARD (AB2017-072)

Brenner moved to appoint Michael Shepard.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. REQUEST CONFIRMATION OF COUNTY EXECUTIVE’S APPOINTMENT OF SONJA MAX TO FILL THE DISTRICT AT-LARGE POSITION ON THE PARKS AND RECREATION COMMISSION (AB2017-093)

Brenner moved to confirm the appointment. The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. REQUEST CONFIRMATION OF COUNTY EXECUTIVE’S APPOINTMENT OF KRISTI ROBERTS AND MATTHEW MCDERMOTT TO THE WHATCOM COUNTY AGRICULTURAL ADVISORY COMMITTEE (AB2017-094)

Brenner moved to confirm the appointment. The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

INTRODUCTION ITEMS

Mann moved to accept Introduction Items two through nine. Item one is held in committee. There is a substitute for Introduction Item two.

The motion was seconded.
The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

1. ORDINANCE AMENDING THE COMPREHENSIVE PLAN RELATING TO THE
   CHERRY POINT URBAN GROWTH AREA (AB2017-063)

This item is held in committee.

2. ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 2.27A TO
   PREVENT THE RELEASE AND SPREAD OF AQUATIC INVASIVE SPECIES
   (AB2017-084)

3. ORDINANCE AMENDING THE WHATCOM COUNTY UNIFIED FEE SCHEDULE
   (AB2017-085)

4. ORDINANCE AMENDING ORDINANCE 2014-075 (ESTABLISHMENT OF THE
   COURTHOUSE BUILDING ENVELOPE FUND AND BUDGET) TO INCLUDE
   ADDITIONAL FUNDING OF $2,427,809 TO COVER THE COST OF SCHEDULED
   MAINTENANCE AND REPAIRS (AB2017-095)

5. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, THIRD
   REQUEST, IN THE AMOUNT OF $2,104,121 (AB2017-096)

6. RESOLUTION AND REQUEST FOR A PUBLIC HEARING REGARDING
   COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING APPLICATIONS
   (AB2017-097)

7. ORDINANCE AUTHORIZING INTERFUND LOANS TO FINANCE CASH FLOW
   FOR STORMWATER CAPITAL PROJECT BUDGETS (AB2017-098)

8. ORDINANCE AMENDING WHATCOM COUNTY CODE 24.05, ON-SITE SEWAGE
   SYSTEM REGULATIONS (AB2017-053A)

9. ORDINANCE IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE
   AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR
   EXPANDED FACILITIES IN THE CHERRY POINT URBAN GROWTH AREA, THE
   PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF UNREFINED
   FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT (AB2016-256B)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Donovan reported for the Natural Resources Committee.

Browne reported for the Finance and Administrative Services Committee on the
following item:
1. PORT OF BELLINGHAM/ASSOCIATE DEVELOPMENT ORGANIZATION (ADO)
ECONOMIC DEVELOPMENT UPDATE (AB2017-069)

Browne moved to request that the administration create a request for proposals (RFP) for the designated Associate Development Organization (ADO) contract, given changes to the Comprehensive Plan regarding economic development.

The motion was seconded.

Tyler Schroeder, Executive’s Office, gave a staff report on the ADO designation process and invited councilmembers to attend an Economic Development Investment (EDI) Board meeting in which these questions will be discussed.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Browne moved to request that the Executive delay signing the letter that establishes the ADO until the Council has determined the ADO agency for the next contract.

Schroeder answered questions about any ramifications from a delay in signing the letter. He will have a conversation with the Council before making that decision.

Browne withdrew his motion.


Resolution condemning the recent hate crimes in Washington and other states (AB2017-102)

Sidhu moved to approve the resolution.

The motion was seconded.

Browne moved to amend to add “Whereas members of some religious groups in Whatcom County have felt under pressure to not practice their faith.”

Councilmembers discussed keeping the language more generic.

Browne withdrew his motion to amend.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN
The meeting adjourned at 11:02 p.m.

The County Council approved these minutes on ______, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
Whatcom County Council  
Surface Water Work Session  
March 14, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 10:30 a.m. in the Civic Center Garden Level Conference Room, 322 Commercial Avenue, Bellingham, Washington.

ROLL CALL

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

Absent: None

SURFACE WATER WORK SESSION (AB2017-024)

1. WATER PLANNING UPDATE

Gary Stoyka, Public Works Department, stated the last Planning Unit meeting was February 22, and the next is March 22, when there will be a presentation on water use efficiency and the results of Phase 2 and 3 of the groundwater modeling. Also, the City of Bellingham representative will talk about middle fork diversion. Geneva consulting will present an implementation strategy report.

The first meeting of the new Management Board is March 30. They are closing out the account for the old Joint Board, and must identify a funding source for administrative costs of the new Board. Staff is working with the Whatcom local integrating organization (LIO) for the Puget Sound Partnership to do an ecosystem recovery plan that encompasses all local efforts to recover Puget Sound under one document.

A supplemental budget has been approved for phase 4 of the groundwater model. They are awaiting a Puget Sound Partnership grant for part of the cost. They are working on ongoing monitoring of the groundwater modeling well network.

Stoyka answered questions on how they monitor all the creeks with the U.S. Geological Survey (USGS) and on using new technology, when the County will receive the Puget Sound Partnership grant, and average instream flow levels versus necessary instream flow levels.

2. 2016 ANNUAL REPORT AND 2017 NPDES PLANNED ACTIVITIES

Cathy Craver, Public Works Department, submitted and read from a presentation (on file) on the annual update for the national pollution discharge and elimination system (NPDES) permit. This report is open for public comment before being submitted to the Department of Ecology. She answered questions on the frequency of tasks the County must undertake as an NPDES permit holder; what triggers an area as being subject to the
permit; diverting plastics pollution; coordinating with the municipalities that are subject to the permit; funding from the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District for construction and capital projects; staffing and contracts for catch basin inspections; increased scheduling of sustainable landscape community classes; whether large industrial facilities are subject to this permit; and lack of access on property without an easement.

Rob Ney, Public Works Department, answered questions on equipment purchases to complete NPDES tasks and going beyond permit requirements to help people find solutions. They want to identify the existing status of all infrastructure, including catch basins and outfalls. Now they've moved on to the outfalls. Once they have a complete picture, the Council will be involved in the decisions on programming and expenses.

Craver continued the presentation on the final stretch of this permit cycle, which ends at the end of 2018. She answered questions about the number of properties on Lake Whatcom that have voluntarily implemented low impact development.

Gary Stoyka, Public Works Department, stated one person on the lake went through the homeowner incentive program.

Craver concluded the presentation on the upcoming permit cycle.

Councilmembers discussed other homeowners that have used the homeowner incentive program, but not on the lakefront; what happens when plastic enters the system and how to remove it before it reaches the ocean; micro plastics getting into the food chain; and whether there are bacteria that can eat plastics.

3. OVERVIEW OF WATER SUPPLY PLANNING ACTIVITIES

Gary Stoyka, Public Works Department, submitted and read from a presentation (on file). He answered questions on desalination, posting past studies on the watershed management plan website, whether the Public Utility District (PUD) conducted out-of-stream user plans for agricultural needs, and private water districts that can't provide infrastructure and extend services.

Steve Jilk, PUD #1, stated they applied to the State Department of Health to respond to the State request to support the local water associations in meeting their capacities. With the PUD's two-year grant, they are identifying water associations that are underwater in infrastructure and future planning needs. In the last few months, they are also responding to the Hirst Decision and helping people manage their resources. They’ve hired a contractor to work cooperatively with water associations. They are also engaging County flood staff to identify flood management projects to create off-stream storage and potentially tie it to a nearby water association or irrigation district to augment water needs.

ADJOURN

The meeting adjourned at 12:01 p.m.

The Council approved these minutes on ________________, 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.

ATTEST: 
WHATCOM COUNTY COUNCIL 
WHATCOM COUNTY, WASHINGTON 

Dana Brown-Davis, Council Clerk 
Barry Buchanan, Council Chair 

Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL  
Special Committee Of The Whole  

March 14, 2017  

CALL TO ORDER  

Council Chair Barry Buchanan called the meeting to order at 3:30 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.  

ROLL CALL  

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, Todd Donovan and Carl Weimer  
Absent: None  

COMMITTEE DISCUSSION  

1. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING PENDING LITIGATION, HIRST ET AL V. WHATCOM COUNTY, GMHB CASE NO. 12-2-0013 (AB2017-018)  
Attorney 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 4:30 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 4:30 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 4:30, Buchanan announced that the executive session is extended to no later than 5:00 p.m.  

OTHER BUSINESS  

ADJOURN  

The meeting adjourned at 4:40 p.m.  

The Council approved these minutes on ______ 2017.  

ATTEST: WHATCOM COUNTY COUNCIL
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:00 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.

COMMITTEE DISCUSSION

1. DISCUSSION OF PROPOSED COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE CHERRY POINT URBAN GROWTH AREA (AB2017-063)

Brenner moved to amend page two of Exhibit A, lines 37-39, "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 CO_2, which was ruled air pollution by the US Supreme Court in 2007) in Washington State (Ecology, June 2016)."

The motion was seconded.

Councilmembers spoke about the Ecology study.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: None (0)
Absent: Mann (1)

Brenner moved to amend ordinance page two of Exhibit A, page three, lines 19-21, "In December 2010,...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."

Matt Aamot, Planning and Development Services Department, answered questions about the reason the Planning Commission removed the language, which lists the specific leases in the language earlier in that section; the inaccuracy of the statement regarding the
proposed aquatic land lease; and how the Commissioner of Lands can exempt something
from a rule.

Brenner withdrew her motion.

Brenner moved to amend ordinance page three of Exhibit A, lines 32-44, “The
Management Plan acknowledges that the existing industries, complying with laws and
regulations, do not conflict with the Aquatic Reserve. Much of the Aquatic Reserve shoreline
is in substantially natural riparian vegetation and bluff processes proceed without
interference. Existing shoreline and upland stream and wetland functions and values are of
continuing importance to the recovery and protection of species identified in the Aquatic
Reserve Management Plan. The area includes undeveloped intertidal wetlands with
importance to juvenile salmon and other species. Existing industries can serve the Aquatic
Reserve’s objectives so long as they are managed according to the Plan and so long as the
lessees actively work to further goals for the Reserve (CPAR MP p. 2).”

The motion was seconded.

Aamot answered questions about and councilmembers discussed the tone of the
statement, inherent conflict with the aquatic reserve, the difference between being legally
compliant and compliant with the aquatic reserve, and whether the Council should make a
stated determination about compliance of an applicant.

Brenner amended her motion to amend ordinance page three of Exhibit A, lines
32-44, “The Management Plan acknowledges that the existing industries comply with
existing laws and regulations; Much of the...”

The amended motion was seconded.

Browne moved to call the question.

The motion to call the question was seconded.

The motion to call the question carried by the following vote:

Ayes: Sidhu, Browne, Buchanan, Weimer, and Donovan (5)
Nays: Brenner (1)
Absent: Mann (1)

The motion to amend failed by the following vote:

Ayes: Brenner (1)
Nays: Sidhu, Browne, Buchanan, Weimer, and Donovan (5)
Absent: Mann (1)

Brenner moved to amend ordinance page four of Exhibit A, 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. The county supports a limit, which allows the construction
of one additional dock or pier at Cherry Point, due to environmental and treaty right
concerns. 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.”

The motion was seconded.

Councilmembers discussed putting policy statements in a different section.

**Brenner amended her motion** to amend ordinance page four of Exhibit A, 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.”

Councilmembers discussed Councilmember Browne’s alternate proposed language.

The motion carried by the following vote:

**Ayes:** Sidhu, Browne, Buchanan, Brenner, and Donovan (5)

**Nays:** Weimer (1)

**Absent:** Mann (1)

**Brenner moved** to amend ordinance page four of Exhibit A, to delete lines 22-41, “The United States Congress approved the “Magnuson Amendment” in 1977...seek to enforce the Magnuson Amendment through the court system (See Policy 2CC-15).”

The motion was seconded.
Councilmembers discussed whether statements about compliance with federal, state, and local laws makes this section unnecessary; that the Committee added this language at the previous meeting; explaining the Magnuson Amendment for informational purposes; a reference to the Magnuson Amendment doesn't negate it or the industry; and the chance of catastrophic events with dealing with crude or refined oil products.

The motion to amend failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Sidhu, Browne, Buchanan, Weimer, and Donovan (5)

**Absent:** Mann (1)

**Weimer moved** to amend ordinance page eight of Exhibit A, Policy 2CC-3, bullet three, “Archeological review done in cooperation with the Lummi Nation; and”

The motion was seconded.

Councilmembers discussed whether the Lummi Nation would choose to cooperate.

**Weimer withdrew** his motion.

**Donovan moved** to amend ordinance page eight of Exhibit A, Policy 2CC-3, new bullet five, “Enhance existing and future industries.”

The motion was seconded.

Councilmembers discussed the meaning of “enhanced.”

**Browne suggested a friendly amendment** to also amend the first bullet point in Policy 2CC-3, “Clean and low reduced carbon emitting technology.”

**Donovan accepted** the friendly amendment.

The motion carried by the following vote:

**Ayes:** Sidhu, Browne, Buchanan, Brenner, Weimer, and Donovan (6)

**Nays:** None (0)

**Absent:** Mann (1)

**Weimer moved** to amend ordinance Policy 2CC-11:

“It is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to, consistent with:

- Honor *any* existing vested rights, approvals or agreements granted under Whatcom County’s Shoreline Master Program;
- Update the Whatcom County Shoreline Master Program to conform with this policy;
- Encourage the continued agency use of best available science;
• Support and remain consistent with the state Department of Natural Resources’ withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;

• Recognize federal actions upholding treaty rights;

• Protect traditional commercial and tribal fishing;

• Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills;

• Whatcom County’s application of the Shoreline Management Act, the Whatcom County Shoreline Master Program, Whatcom County Comprehensive Plan, Whatcom County Critical Areas Ordinance and other applicable local plans, laws and regulations including, without limit, the fire, mechanical and electrical codes adopted by Whatcom County;

• state agencies’ application of state laws and regulations including without limit the State Environmental Policy Act, Washington Indian Graves and Records Act, the Washington Archaeological Sites and Resources Act, the state Energy Facility Site Location Act, limitations imposed by the Cherry Point Aquatic Reserve Management Plan; and the federal Clean Water Act as delegated to the State of Washington; and

• federal agencies’ application of federal laws, regulations, and treaties including without limit the National Historic Preservation Act, Clean Water Act, Clean Air Act, Endangered Species Act, U.S. Coast Guard regulations regarding vessel operations, and the Magnuson Amendment to the Marine Mammal Protection Act.”

The motion was seconded.

The following staff answered questions:
• Royce Buckingham, Prosecutor’s Office
• Karen Frakes, Prosecutor’s Office

Staff answered questions and Councilmembers discussed language about projects that may or may not be vested; honoring vested rights; the study to be completed should answer questions for future councils regarding legal commitments; getting clarity on the status of existing permits and rights; the possible need to update the Shoreline Master Plan; and staff developing an opinion to the vested rights of Pacific International Terminal.

Weimer accepted as friendly amendments suggestions to change the amendment from staff and councilmembers.

Brenner moved to amend the motion to amend to add language, “Update the Whatcom County Shoreline Master Program to conform with this policy. Such an update shall not interfere with policies, settlements, or other legal agreements in place prior to the update.”

The motion was seconded.
Staff and councilmembers discussed the Magnuson Amendment and amendments to the Shoreline Master Plan that have to go to the Department of Ecology.

Brenner’s motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Sidhu, Browne, Buchanan, Weimer, and Donovan (5)

**Absent:** Mann (1)

Forest Longman, Council Legislative Analyst, *restated the amended motion* to amend ordinance 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—of 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
Brenner moved to amend ordinance page nine of Exhibit A, Policy 2CC-11, “It is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point, consistent with federal, state, and local laws. Any moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.”

Sidhu stated they’ve already covered it.

Brenner withdrew her motion.

Weimer moved to amend ordinance page ten of Exhibit A, 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 seek consultation with appropriate federal agencies if aware of applications for development permits that are submitted to the County that staff thinks may conflict with the Magnuson Amendment. If necessary, Whatcom County may initiate legal action to enforce the provisions of the Magnuson Amendment.”

The motion was seconded.

Brenner moved to substitute by deleting the entire Policy 2CC-15.

The motion was seconded.

Brenner’s motion to substitute failed by the following vote:
Ayes: Brenner (1)  
Nays: Sidhu, Browne, Buchanan, Weimer, and Donovan (5)  
Absent: Mann (1)

The main motion carried by the following vote:
Ayes: Sidhu, Browne, Buchanan, Weimer, and Donovan (5)  
Nays: Brenner (1)  
Absent: Mann (1)

Weimer moved to amend ordinance page ten of Exhibit A, Policy 2CC-16, “The County shall undertake a study to be completed if possible by December of 2018 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose can work to limit the public safety and environmental impacts from crude oil, coal, liquefied petroleum gases and natural gas 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. 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.”

The motion was seconded.
Councilmembers discussed including transportation impacts; whether or not there is intent to shut down these uses; not shifting the demand; certain gases replacing coal, which is much worse; whether the intent is to limit what’s being shipped from Cherry Point versus what’s being exported from Cherry Point; the purpose of the study to get more information on the local government’s legal powers, the community’s obligation to consider the cost of first response and other costs in an emergency, because those costs are on public entities; public safety, environmental hazards, and the local community that must pay the cost of an accident; companies that will make decisions based on the best investment, without regard to impacts to employees and local communities; creating unbiased language for future councils; “transshipment” versus “export”; broadening the scope of the study to issues other than shipment; vesting status of the fourth pier; define what they mean by and the purpose of limiting exports; and preserving and expanding jobs and economic advantages and ensuring environmental impacts are minimized.

Browne moved to substitute the motion to amend:

“The County shall undertake a study to be completed if possible 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 may choose to limit the public safety, transportation, economic impact, deterioration of the job base, 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 July 5, 2016 March 1, 2017, and attract and support clean and low carbon industry. Additionally the study should seek to identify ways to increase the economic strength of the UGA.

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.

Weimer accepted as friendly amendments the motion from Councilmember Browne and suggestions to change the amendment from councilmembers.

(Clerk’s Note: Councilmember Mann arrived at the meeting.)

Councilmembers discussed creating a definition of transshipment, saving and increasing the job base and economic benefits to the community, and enhancing public safety and environmental protection.

Browne moved to call the question.

The motion was seconded.

Browne withdrew his motion to call the question.

Sidhu moved to add language to the motion, “The County shall limit the public safety, transportation, negative economic and environmental impacts from...”
The motion was seconded.

Councilmembers continued to discuss the language.

Sidhu withdrew his motion.

Browne moved to call the question.

The motion was seconded.

The motion to call the question carried by the following vote:

**Ayes:** Sidhu, Mann, Browne, Buchanan, and Weimer (5)

**Nays:** Brenner and Donovan (2)

Buchanan read the motion into the record.

“The County shall undertake a study to be completed if possible 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 may choose 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 July 5, 2016 March 1, 2017, 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 main motion carried by the following vote:

**Ayes:** Sidhu, Mann, Browne, Buchanan, and Weimer (5)

**Nays:** Brenner and Donovan (2)

Donovan moved to amend to add a new policy, “2CC-17: Policy 2 CC-16 shall not limit existing uses, nor limit the expansion of existing facilities, nor limit maintenance and operation of existing facilities, nor limit the development of new facilities consistent with the existing uses as of March 1, 2017.”

The motion was seconded.

Councilmembers discussed and refined the sentence structure of the motion, the refinery management’s consideration of its employees, which facilities could be expanded, and defining what the study does versus what it doesn’t do.

Browne suggested a friendly amendment to substitute the motion, “2CC-17: Policy 2CC-16 shall not limit the compliant expansion of existing uses, maintenance of...
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.

existing facilities, and the development of new facilities, consistent with the existing uses as of March 1, 2017.”

Donovan accepted the friendly amendment.

Brenner moved to hold in Committee. The motion was seconded.

The motion to hold in Committee carried by the following vote:

Ayes: Weimer, Mann, Buchanan, and Brenner (4)

Nays: Browne, Sidhu, and Donovan (3)

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 3:20 p.m.

The Council approved these minutes on ____________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL  
Special Committee Of The Whole  

March 21, 2017  

CALL TO ORDER  
Council Chair Barry Buchanan called the meeting to order at 10:35 a.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. UPDATE ON NEGOTIATIONS AND DISCUSSION OF STRATEGY PLANNING REGARDING COLLECTIVE BARGAINING (AB2017-018H)  
Attorney Present: None  

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.140 (4)(a). Executive session will conclude no later than 11:00 a.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.  

Sidhu moved to go into executive session until no later than 11:00 a.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.  

The motion carried by the following vote:  
Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)  
Nays: None (0)  

At 11:00 a.m., Buchanan announced that the executive session is extended to no later than 11:15 a.m.  

OTHER BUSINESS  
ADJOURN  
The meeting adjourned at 11:10 a.m.  
The Council approved these minutes on ______ 2017.  
ATTEST: WHATCOM COUNTY COUNCIL
**TITLE OF DOCUMENT:**
Ordinance repealing and replacing WCC Chapter 2.44, and amending WCC Chapter 3.37 to integrate the Behavioral Health Advisory Board and the Chemical Dependency/Mental Health Program Fund Oversight Advisory Committee into a single Behavioral Health Advisory Committee.

**ATTACHMENTS:**
Exhibits A, B

**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.)

Repealing and replacing WCC Chapter 2.44 and amending WCC Chapter 3.37 for the purpose of creating a single Behavioral Health Advisory Committee.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
4/4/2017: Introduced 6-0, Weimer absent

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**
MEMORANDUM

TO:     Jack Louws, County Executive
FROM:  Erika Nuereenberg, Assistant Director
RE: Ordinance and County Code changes

The attached ordinance and exhibits serve to merge our Behavioral Health Advisory Board and our Chemical Dependency/Mental Health Program Fund Oversight Committee (locally known as our Behavioral Health Revenue Advisory Committee). The new committee that results from this merge will be known as the Behavioral Health Advisory Committee.

The ordinance intends to repeal and replace Whatcom County Code (WCC) Chapter 2.44, and amend WCC Chapter 3.37.

WCC 2.44 outlines the county’s Behavioral Health Program. The replacement language incorporates all functions of the program to include multiple local sources of funding and the programs and services they support. The code establishes the new Behavioral Health Advisory Committee in the structure recommended by the County Council.

WCC 3.37 has been amended to remove references to the former advisory committee. It also adds another policy goal for the behavioral health sales tax funding. This new policy goal arises from a recent Whatcom County Health Board action to support efforts to improve the health and welfare of young children and families. Additionally, the policy goals that were originally outlined in the initiating sales tax ordinance exclusively are now incorporated into the county code.

The Chemical Dependency/Mental Health Program Fund name has been changed to the Behavioral Health Fund in order to align it with current nomenclature, and to bring consistency to the Behavioral Health Program and the newly established Behavioral Health Advisory Committee.

If you have any questions, please contact Anne Deacon at extension 6054.
ORDINANCE NO. ________

REPEALING AND REPLACING WCC CHAPTER 2.44, AND AMENDING WCC CHAPTER 3.37 TO INTEGRATE THE BEHAVIORAL HEALTH ADVISORY BOARD AND CHEMICAL DEPENDENCY/MENTAL HEALTH PROGRAM FUND OVERSIGHT ADVISORY COMMITTEE INTO A SINGLE BEHAVIORAL HEALTH ADVISORY COMMITTEE

WHEREAS, the County has multiple local funds in which monies are collected and dedicated to support residents who are challenged with mental illness and/or substance use disorders, collectively known as behavioral health disorders; and

WHEREAS, the County’s Behavioral Health Advisory Board has provided guidance on general priorities for the use of County behavioral health funds; and

WHEREAS, the County’s chemical dependency/mental health program fund advisory committee, also known as the Behavioral Health Revenue Advisory Committee, has provided guidance only on the use of local sales tax monies dedicated to behavioral health services; and

WHEREAS, there is an overlap of functions of the Behavioral Health Advisory Board and the Behavioral Health Revenue Advisory Committee; and

WHEREAS, both the Behavioral Health Advisory Board and the Behavioral Health Revenue Advisory Committee agree it would be prudent to merge into a single entity that provides advice and guidance on behavioral health programs and services; and

WHEREAS, the County has established initial priority goals for the use of the local behavioral health sales tax monies; and

WHEREAS, the Whatcom County Public Health Board has recognized that very early childhood development impacts behavioral health issues later in life; and

WHEREAS, the Whatcom County Public Health Board has embraced a policy goal of improving the health of families with young children.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Behavioral Health Advisory Board and the Behavioral Health Revenue Advisory Committee are hereby dissolved; and
BE IT FURTHER ORDAINED that the Behavioral Health Advisory Committee is hereby created in Whatcom County Code Chapter 2.44; and

BE IT FURTHER ORDAINED that Whatcom County Code chapter 2.44 is hereby repealed and replaced as specified in Exhibit A in this ordinance; and

BE IT FURTHER ORDAINED that Whatcom County Code chapter 3.37 is hereby amended as outlined in Exhibit B to this ordinance; and

BE IT FURTHER ORDAINED that the policy goals referenced in ordinance 2008-027 are hereby incorporated in Whatcom County Code chapter 3.37; and

BE IT FURTHER ORDAINED that an additional policy goal is hereby added to Whatcom County Code 3.37 to include a focus on families with young children.

ADOPTED this _____ day of __________, 2017.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

WHATCOM COUNTY EXECUTIVE
APPROVED AS TO FORM:

Jack Louws, County Executive

( ) Approved     ( ) Denied

Date Signed: ____________________
EXHIBIT A

Chapter 2.44

BEHAVIORAL HEALTH PROGRAM*

Sections:
2.44.010 Department responsibilities.
2.44.020 Contracts.
2.44.030 Behavioral health advisory committee is created.
2.44.040 Severability.
2.44.050 References to state law.

*Prior legislative history: Ord. 2012-042 repealed Ch. 2.44. Ords. 87-79, 88-9, 96-032 and 96-061 were formerly codified in the chapter.

2.44.010 Department responsibilities.
A. Administration of Funding. The health department shall administer the behavioral health program under the authority of the county executive. The department shall administer funds for behavioral health programs, including substance abuse and mental health services. This administration will include state and federal funds, local sales and use tax (Chapter 82.14 RCW), local property tax (Chapter 71.20 RCW), and local two percent liquor profits and excise taxes (Chapter 71.24 RCW).

B. Compliance with Federal and State Regulations. The health department shall adhere to all federal and state laws for the administration and coordination of behavioral health services and funding (Chapters 71.24, 82.14, and 71.20 RCWs).

C. Behavioral Health Services. The health department shall plan and prioritize programs and services for people with behavioral health disorders. The health department shall ensure, to the extent allowed by state and federal laws, a system of integrated and coordinated behavioral health care.

D. Cooperation and Coordination with Other Entities. The health department may enter into contracts with and/or receive moneys from public and private entities to carry out behavioral health services. The department will work with state, regional, and local entities which provide services or funding to assure a reasonable system of care for people with behavioral health disorders.

2.44.020 Contracts.
All previous contracts, agreements, rights, claims and obligations shall continue in full force.

2.44.030 Behavioral health advisory committee is created.
A. The Whatcom county behavioral health advisory committee is created to serve in an advisory capacity to the county executive via the health department on matters of general priorities for behavioral health programs, including substance abuse and mental health services.

B. To ensure advice, implementation and evaluation, the county council authorizes the county executive to appoint ten (10) members of an eleven (11) member advisory committee consisting of one representative from each of the following areas: PeaceHealth Hospital, the judicial branch of Whatcom County government, the Whatcom County sheriff or designee, the Chief of Corrections or designee, and the Whatcom County Public Health Director or designee. The remaining five executive appointed positions shall include two people that are advocates of mental health recovery, two people that are advocates of substance use disorder recovery, and one behavioral health professional. The behavioral health advisory committee shall also include a County Council member appointed by the County Council. The priorities and framework of the advisory committee include the following:

The Whatcom County Code is current through Ordinance 2016-074, passed December 6, 2016, and Resolution 2016-52, passed December 6, 2016.
1) Provide advice regarding the planning and development of a continuum of care to effectively provide prevention, intervention, treatment and aftercare services at a capacity that will benefit residents who are impacted by mental illness, emotional disturbances, and substance use disorders.

2) Ensure the local sales and use tax (Chapter 82.14 RCW), property tax (Chapter 71.20 RCW), and two percent liquor profits and excise taxes (Chapter 71.24 RCW) are directed to the intended purpose as outlined by state statute and county code.

3) Ensure an ongoing evaluation process is established and implemented to assure quality of behavioral health programs and services provided to residents.

4) Ensure that a report is provided to County Council no less than once annually that highlights programs funded by sales tax monies.

The term of office for the advocacy and behavioral health professional positions appointed by the executive shall be three years. In order to stagger the terms of office on the initial board:

1. Two members shall be appointed to serve for three years.

2. Two members shall be appointed to serve for two years.

3. One member shall be appointed to serve for one year.

The term of office for the member appointed by the county council shall be for one year. The council member's term extends from the time of the council's reorganization meeting in January to the next such meeting in the following year.

C. At their initial meeting or as soon as possible, the advisory committee shall elect officers and adopt a charter. The committee shall adopt rules and regulations of procedure as needed for the conduct of their business.

D. The behavioral health advisory committee may advise the health department about nominees to act as representatives on other county, regional, and state advisory boards and committees.

2.44.040 Severability.
If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected.

2.44.050 References to state law.
Any and all reference to state statutes are in effect as referenced above or as hereinafter amended by state authority.
EXHIBIT B

Chapter 3.37

SALES AND USE TAX FOR CHEMICAL DEPENDENCY OR MENTAL HEALTH BEHAVIORAL HEALTH-TREATMENT SERVICES AND THERAPEUTIC COURT PROGRAMS

Sections:
3.37.010 Sales and use tax imposed.
3.37.020 Tax rate and applicability.
3.37.030 Administration and collection.
3.37.040 Establishment of chemical dependency/mental Behavioral health program fund.
3.37.050 Use of funds.
3.37.060 Administration of fund.
3.37.070 Chemical dependency/mental Behavioral health program fund oversight advisory committee.
3.37.080 Effective date.
3.37.090 Severability.

3.37.010 Sales and use tax imposed.
Pursuant to RCW 82.14.460, there is hereby imposed a sales and use tax, as the case may be, upon any taxable event, as defined in Chapters 82.08 and 82.12 RCW, occurring within Whatcom County. The tax shall be imposed upon and collected from those persons who are taxable by the state under Chapters 82.08 and 82.12 RCW. This tax shall be in addition to any other sales and use tax imposed by the state of Washington and/or Whatcom County. (Ord. 2008-027 Exh. A).

3.37.020 Tax rate and applicability.
The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used in the case of a use tax. (Ord. 2008-027 Exh. A).

3.37.030 Administration and collection.
The tax imposed by this chapter shall be administered and collected in accordance with RCW 82.14.050. The county executive or designee is hereby authorized to and directed to execute any contracts with the Washington State Department of Revenue that may be necessary to provide for the administration or collection of the tax. (Ord. - 2008-027 Exh. A).

3.37.040 Establishment of chemical dependency/mental Behavioral health program fund.
There is hereby created the chemical dependency/mental health program fund. The Whatcom County treasurer shall deposit moneys collected pursuant to this chapter in the behavioral health program fund. The treasurer may invest the fund balance and any interest earned shall be deposited into this fund. (Ord. 2008-027 Exh. A).

3.37.050 Use of funds.
Moneys deposited into the chemical dependency/mental behavioral health program fund shall be used solely for the purpose of providing new or expanded chemical dependency or mental behavioral health treatment services and for the operation of a new or expanded therapeutic court programs component for dependency proceedings, and as otherwise authorized by the laws of the state of Washington as referenced in RCW 82.14.460. Moneys collected under this chapter may be used to supplant existing funding for these programs as authorized by the laws of the state of Washington as referenced in RCW 82.14.460. (Ord. 2009-072 Exh. A; Ord. 2008-027 Exh. A).

3.37.060 Administration of fund.
The county executive shall administer the chemical dependency/mental-behavioral health program fund with the assistance of the chemical dependency/mental health program fund oversight advisory committee and the Whatcom County health department, in accordance with budgetary processes and Whatcom County administrative policies and state statutes. (Ord. 2008-027 Exh. A).

3.37.070 Chemical dependency/mental Behavioral health program fund oversight advisory committee.
To ensure oversight, implementation, and evaluation, the county council authorizes the county executive to appoint an 10-member oversight committee consisting of one representative from each of the following areas: Peace Health, Hospital, the judicial branch of Whatcom County government, the Whatcom County sheriff or designee, the chief of corrections or designee, the Whatcom County public health director or designee, and the behavioral health advisory board. The remaining four positions are to include two people that represent mental health advocacy, and two people that represent drug recovery advocacy. In coordination with the oversight committee, the executive or designee shall submit quarterly progress reports and one annual summary report for those programs supported with the sales tax revenue to the county council. (Ord. 2013-016 Exh. A; Ord. 2008-027 Exh. A).

The behavioral health advisory committee serves in an advisory capacity to the county executive via Whatcom County health department on uses of the behavioral health program fund. The committee will ensure that the following policy goals are considered for programs and services supported by the behavioral health program fund.

1. A reduction of the number of people with behavioral health problems using costly interventions such as jail, emergency rooms, and hospitals;

2. A reduction of the number of people who regularly return to the jail and other costly services repeatedly as a result of their behavioral health issues;

3. A reduction of the incidence and severity of substance use disorders, mental and emotional disorders in youth and adults;

4. Diversion of youth and adults with substance use disorder and or mental illness from initial or further justice system involvement, and

5. Early intervention and behavioral health promotion focus on young children and families.

3.37.080 Effective date.
In accordance with the Whatcom County budget cycle, this chapter shall take effect January 1, 2009. (Ord. 2008-027 Exh. A).

3.37.090 Severability.
If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected. (Ord. 2008-027 Exh. A).
Chapter 3.37
SALES AND USE TAX FOR BEHAVIORAL HEALTH SERVICES AND THERAPEUTIC COURT PROGRAMS

Sections:
3.37.010 Sales and use tax imposed.
3.37.020 Tax rate and applicability.
3.37.030 Administration and collection.
3.37.040 Behavioral health program fund.
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Pursuant to RCW 82.14.460, there is hereby imposed a sales and use tax, as the case may be, upon any taxable event, as defined in Chapters 82.08 and 82.12 RCW, occurring within Whatcom County. The tax shall be imposed upon and collected from those persons who are taxable by the state under Chapters 82.08 and 82.12 RCW. This tax shall be in addition to any other sales and use tax imposed by the state of Washington and/or Whatcom County.

3.37.020 Tax rate and applicability.
The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used in the case of a use tax.

3.37.030 Administration and collection.
The tax imposed by this chapter shall be administered and collected in accordance with RCW 82.14.050. The county executive or designee is hereby authorized to and directed to execute any contracts with the Washington State Department of Revenue that may be necessary to provide for the administration or collection of the tax.

3.37.040 Behavioral health program fund.
The Whatcom County treasurer shall deposit moneys collected pursuant to this chapter in the behavioral health program fund. The treasurer may invest the fund balance and any interest earned shall be deposited into this fund.

3.37.050 Use of funds.
Moneys deposited into the behavioral health program fund shall be used solely for the purpose of providing new or expanded behavioral health services and for the operation of a new or expanded therapeutic court component for dependency proceedings, and as otherwise authorized by the laws of the state of Washington as referenced in RCW 82.14.460.

3.37.060 Administration of fund.
The county executive shall administer the behavioral health program fund with assistance of the Whatcom County health department, in accordance with budgetary processes and Whatcom County administrative policies and state statutes.

3.37.070 Behavioral health advisory committee.
The behavioral health advisory committee serves in an advisory capacity to the county executive via Whatcom county health department on uses of the behavioral health program fund. The committee will ensure that the following policy goals are considered for programs and services supported by the behavioral health program fund,

1. A reduction of the number of people with behavioral health problems using costly interventions such as jail, emergency rooms, and hospitals;
2. A reduction of the number of people who regularly return to the jail and other costly services repeatedly as a result of their behavioral health issues;
3. A reduction of the incidence and severity of substance use disorders, mental and emotional disorders in youth and adults;
4. Diversion of youth and adults with substance use disorder and or mental illness from initial or further justice system involvement, and
5. Early intervention and behavioral health promotion focus on young children and families.

3.37.080 Effective date.
In accordance with the Whatcom County budget cycle, this chapter shall take effect January 1, 2009.

3.37.090 Severability.
If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**RECEIVED**

**MAR 29 2017**

**WHATCOM COUNTY COUNCIL**

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**TITLE OF DOCUMENT:**
Third Interim Ordinance adopting amendments to the Whatcom County Comprehensive Plan and Whatcom County Code Title 15 Buildings and Construction, Title 20 Zoning, Title 21 Land Division Regulations, and Title 24 Health Code, relating to water resources.

**ATTACHMENTS:**
- Memorandum
- Draft Ordinance

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

Third Interim Ordinance adopting amendments to the Whatcom County Comprehensive Plan and Whatcom County Code Title 15 Buildings and Construction, Title 20 Zoning, Title 21 Land Division Regulations, and Title 24 Health Code, relating to water resources.

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**COMMITTEE ACTION:**

**COUNCIL ACTION:**

4/4/2017: Introduced 6-0, Weimer absent

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

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

FROM: Gary Davis, AICP, Senior Planner

THROUGH: Mark Personius, AICP, Assistant Director

DATE: March 27, 2017

SUBJECT: Third Interim Ordinance – Water Resources

A third interim ordinance relating to development permits and water resources is scheduled for introduction on April 4, 2017, and for public hearing on April 18. The second interim ordinance, adopted on March 7, will expire April 29.

The proposed third interim ordinance (attached) makes two changes from the second: 1) requiring that the County, not the applicant, pay for any third party review of geohydrology reports and mitigation plans (see proposed 24.11.060(B)(2) and (B)(3)(a)); and 2) allowing for other ways besides financial assurances to guarantee that mitigation will remain in place for the duration of a project (24.11.060(B)(3)(c)). Aside from those changes, the code amendments in the draft interim ordinance are identical to those in the second interim ordinance. As with the second, this ordinance would require Whatcom County to verify the existence of adequate water supply in terms of water quality, quantity, and legal availability prior to accepting applications for project permits that require potable water, and applicants would be required to prove legal availability through one of several options, including a water right permit, letter from a public water purveyor stating the ability to provide water, documentation of an adequate rainwater catchment system, a study showing no impairment of senior water rights, a mitigation plan, or proof that the permit-exempt withdrawal would be in the Samish River watershed, or in Point Roberts, Eliza Island, or Lummi Island.

At the April 18 public hearing staff will provide an update on the status of proposed state legislation and County efforts to address the impacts of the Hirst decision on local property owners. Staff will also prepare a resolution for possible adoption on
April 18 that strongly encourages the State Legislature to take action to remedy the challenges the Supreme Court’s Hirst decision has placed on property owners and counties across the state.

Adoption of a third interim ordinance will allow the County needed time to continue working with the legislature to enact laws that give counties and the Department of Ecology adequate tools to permanently protect instream flows and accommodate responsible growth. County government is supportive of state enabling legislation that would:

- Allow counties to rely on state-adopted instream flow rules to determine legal water availability
- Establish a Department of Ecology mitigation program for permit-exempt wells in closed basins – with a fee-in-lieu mitigation payment option for affected permit applicants, which would allow permits to proceed while state and counties provide for the actual instream flow mitigation
- Allow counties to condition local permits to limit daily use of state permit exempt groundwater withdrawals to less than 5,000 gpd
- Allow use of unexercised municipal water rights for mitigation purposes
- Allow for “out-of-kind” instream flow impairment mitigation option that provides an overall net ecological benefit
- Provide financial assistance for developing public rural water supplies, mitigation projects and/or water banks.

Attachments:
Draft Ordinance, Proposed Amendments
ORDINANCE NO.  

AN INTERIM ORDINANCE ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15 BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE, RELATING TO WATER RESOURCES

WHEREAS, an October 6, 2016 Washington State Supreme Court decision (Whatcom County, Hirst vs. Western Washington Growth Management Hearings Board, No. 91475) has found that Whatcom County’s Comprehensive Plan does not comply with the Growth Management Act (GMA) requirements for protecting water resources; and

WHEREAS, RCW 36.70A.070(1), requires that the land use element of a county comprehensive plan “shall provide for protection of the quality and quantity of groundwater used for public water supplies.”; and

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county comprehensive plan “shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: ... protecting critical areas...and surface water and groundwater resources.”; and

WHEREAS, RCW 19.27.097(1) states: “Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An
application for a water right shall not be sufficient proof of an adequate water supply.”; and

WHEREAS, RCW 19.27.095(1) states: “A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.”; and

WHEREAS, RCW 58.17.110(2) requires that “A proposed subdivision and dedication shall not be approved unless the...county legislative body makes written findings that...appropriate provisions are made for...potable water supplies.”; and

WHEREAS, RCW 58.17.170(2) states that lots in a long subdivision “shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015,” and, “Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007.”; and

WHEREAS, Whatcom County Code (WCC) Chapter 15.04 specifies information required for a complete building permit application; and

WHEREAS, WCC Chapter 20.97 provides definitions of terms used in the code; and

WHEREAS, WCC Chapters 21.04 and 21.05 contain requirements for water supply in short subdivisions and long subdivisions, respectively; and

WHEREAS, WCC Chapter 24.11 contains requirements for drinking water; and

WHEREAS, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations regulating ground water withdrawals, adding Policy 2DD-2.C.3.6, which adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-
2.C.3.7, which adopts by reference WCC 24.11.050 and 24.11.060; and

WHEREAS, because Comprehensive Plan Policy 2DD-2.C.3.6 adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7 adopts by reference WCC 24.11.050 and 24.11.060, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and

WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and

WHEREAS, on October 6, 2016, the State Supreme Court (Court), in reversing a Court of Appeals decision, upheld the Board’s decision that the County’s Comprehensive Plan does not satisfy the GMA requirements to protect water availability, and stated, “We hold that the Board properly concluded that the GMA requires counties to make determinations of water availability.”; and

WHEREAS, the Court stated, “...the GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing building permits.”; and

WHEREAS, the Court stated, “...The county’s policies incorporate WCC provisions that do not allow water to be withdrawn from ‘an area where [the Department of Ecology] has determined by rule that water for development does not exist.’...these ordinances further provide that an application for a permit-exempt appropriation will be approved without any analysis of that withdrawal’s impact on instream flows. The Board found that these provisions result in water withdrawals from closed basins and senior instream flows—flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA...”; and

WHEREAS, Chapter 173-501 WAC Instream Resources Protection Program – Nooksack Water Resource Inventory Area (WRIA) 1 identifies water bodies in Whatcom County that are closed or partially closed to further appropriation, by listing their status as “closure,” “partial year closure,” “low flow,” or “minimum flow,”; and
WHEREAS, on October 25, 2016 Whatcom County adopted Ordinance 2016-048, an emergency moratorium on the filing, acceptance, and processing of new applications for project permits for uses that rely on permit-exempt groundwater withdrawals within a closed or partially closed basin, to allow the County time to review its Comprehensive Plan and development regulations in light of the Supreme Court ruling, and to draft and enact the necessary amendments as soon as feasible; and

WHEREAS, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within 60 days of adoption; and

WHEREAS, on December 6, 2016 the County Council adopted Ordinance 2016-066, an interim ordinance adopting amendments to the Whatcom County Comprehensive Plan and WCC Title 15, Title 20, Title 21, and Title 24 relating to water resources, which is effective until March 18, 2017, and the County has applied the provisions of the ordinance to project permit applications relying on new permit-exempt groundwater withdrawals; and

WHEREAS, on March 7, 2017 the County Council adopted Ordinance 2017-008, a second interim ordinance, which is effective until April 29, 2017; and

WHEREAS, a third interim ordinance is required to allow the County time to pursue a permanent legislative solution to the issues raised by the Court decision, and to provide clarity to project permit applicants in the meantime; and

WHEREAS, in accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of the proposed interim amendment; and

WHEREAS, this ordinance shall be effective for not longer than six months following its effective date, but may be renewed for one or more six month periods if subsequent public hearings are held and findings of fact are made prior to each renewal.

WHEREAS, the County Council is scheduled to hold a public hearing on this issue on April 18, 2017;
NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above “WHEREAS” recitals as findings of fact in support of it action as required by RCW 36.70A.390

BE IT FURTHER ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended, on an interim basis, as shown in Exhibit A; and

BE IT FURTHER ORDAINED that this ordinance shall be effective for not longer than six months following its effective date.

ADOPTED this _______ day of _____________, 2017.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

________________________
Dana Brown-Davis, Council Clerk

________________________
Barry Buchanan, Chairperson

APPROVED as to form:

________________________
Civil Deputy Prosecutor

________________________
Jack Louws, Executive

( ) Approved  ( ) Denied

Date: _______________________

Page 5 of 5
EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 15 BUILDINGS AND CONSTRUCTION

Chapter 15.04
BUILDING CODES

15.04.020 Amendments to the International Building Code.
A. The IBC is amended as follows:

. . . . .

4. Section 105.3, Application for Permit, is amended to include the following:

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

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

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

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

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

5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant’s authorized agent.

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

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

9. For a building necessitating potable water, provide evidence of an adequate water supply for the intended use of the building, as defined in 20.97.451 WCC.

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

15.04.030 Amendments to the International Residential Code.

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

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

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

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

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

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

5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.

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

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

9. For a building necessitating potable water, provide evidence of an adequate water supply for the intended use of the building, as defined in 20.97.451 WCC.

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

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**TITLE 20 ZONING**

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Chapter 20.84

**VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS**

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**20.84.200 Conditional uses.**

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**20.84.220 Criteria.**
Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:
(5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, adequate water supply as defined in WCC 20.97.451, and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

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Chapter 20.97
DEFINITIONS

********

20.97.451 Water Supply, Adequate

"Adequate water supply" means a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability, as documented by a water availability notification signed by the director of the Whatcom County Health Department, per WCC 24.11.060.

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TITLE 21 LAND DIVISION REGULATIONS

********

Chapter 21.04
SHORT SUBDIVISIONS

********

21.04.090 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a short plat, except as specified in subsection (2) of this section.

(2) For a residential short subdivision, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that
has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) The applicant demonstrates that adequate water supply exists to serve the subdivision, as defined in 20.97.451 WCC; and

(e) The short subdivision is not located within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor's water line; or

(fd) If the short subdivision is located within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor's water lines and:

(i) The purveyor water cannot be provided water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

* * * *

CHAPTER 21.05

PRELIMINARY LONG SUBDIVISIONS

* * * *

21.05.080 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and
(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) If the subdivision is within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor's water lines:

(i) The water cannot be provided to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water right(s) supply exists to serve the subdivision, as defined in 20.97.451 WCC, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the health department.

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

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**TITLE 24 HEALTH CODE**

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**Chapter 24.11**

**DRINKING WATER**

* * * * *

**24.11.050 General requirements.**
A. Applicants must submit all required forms, letters and documents to the director.
B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:

1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or

2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or

3. The existing public water system has water lines adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or

4. The existing public water system has defined a "service area boundary" in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.

D. The director will only approve a private or Non Group B 2 party well for proposed short subdivisions or long subdivisions when analytical results of untreated water samples for primary inorganic or organic contaminants do not exceed a maximum contaminate level (MCL) adopted by Washington State Department of Health.

E. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include at a minimum, possession of a water right permit or certificate for:
1. All surface water sources excluding seawater.
2. All groundwater sources using more than 5,000 gallons per day.
3. Irrigating more than one-half acre of lawn or noncommercial garden.

24.11.060 Water availability required.
Prior to issuance of a building permit or other project permits, the applicant must provide Whatcom County planning and development services evidence of adequate water supply as documented by a water availability notification signed by the director, except as described in subsection B, evidence of an adequate water supply to Whatcom County planning and development services (PDS) except when: The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.

A. The applicant must provide evidence of legal availability in the form of:

1. A water right permit from the Department of Ecology, or
2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water, or

3. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017.

B. Notwithstanding the provisions of subsection A, for a new permit-exempt groundwater withdrawal per RCW 90.44.050 the applicant must provide evidence of legal availability in the form of:

1. Documentation that the well site is located in the Samish River watershed, or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060; or

2. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or

3. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:

   a. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.

   b. A monitoring and reporting plan, including a quality assurance/quality control plan.

   c. Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for
example, financial assurances or documentation of permanent
dedication of water for mitigation purposes.

C. A water availability notification is not required for:

A. 1. A building A project permit that does not require potable water.

B. 2. A project permit relying on a permit-exempt groundwater withdrawal per
RCW 90.44.050, and proposing (a) a remodel of an existing building or (b)
replacement of a demolished or removed building, but not proposing a change of
use; however, such permits shall require current documentation of water quality
and quantity, as approved by the director. A residential remodeling does not add
additional bedrooms or result in an increase of floor space of more than 50 percent.

G. 3. A project permit relying on surface water withdrawal for potable water, and
proposing (a) a remodel of an existing building or (b) replacement of a demolished
or removed building, either of which would increase the floor area by no more than
50 percent over that of the existing building; however, such permits shall require
current documentation of water quality and quantity, as approved by the director.
PDS determines that the building will replace a demolished or removed building and
the building will not have more bedrooms or more than 50 percent greater floor
space than the previous building.
24.11.070 Determining adequacy of water supply for building permit applications proposing to use an existing public water system.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to obtain water from an existing public water system the applicant must:

1. Submit to the director, an Availability Notification for Public Water form (as amended) signed by an authorized representative of the water system proposing to serve water to the building. The authorized representative:

   a. Must indicate on the form that the water system will provide water to the proposed building.

   b. Must sign a statement that they have reviewed the system records and ensures that the water system complies with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed Availability Notification For Public Water (form) for approval. The director will approve the completed form if:

   1. The applicant and the authorized representative met all the criteria listed on the form.

   2. The purveyor of the water system has the approval from DOH or the department to provide water to the building.

   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.080 Determining adequacy of water supply for of building permit applications proposing to create a new public water system.
Prior to director approval of evidence of an adequate water supply, an applicant proposing to create a new public water system must comply with:

A. Provisions of the Whatcom County Coordinated Water System Plan.

B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.

C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.090 Determining adequacy of water supply for building permit applications proposing to use a well to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must:

   1. Notify the director of the intent to use a well.
2. Request that the director conduct a site inspection and approve the proposed well site.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well location, the applicant shall submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

BD. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060, well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.100 Determining adequacy of water supply for building permit applications proposing to use a well to serve two single-family dwellings or two single-family living units.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a well to serve two single-family dwellings or two single-family living units, the applicant must:

1. Notify the director of the intent to use a well or wells.

2. Request that the director conduct a site inspection and approve the proposed well sites.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well locations the applicant shall submit a completed Water Availability Notification Non-Group B – 2 Home Well form (as amended) and all required documents for each well to the director for approval.
D. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.110 Determining adequacy of water supply for building permit applications proposing to use a spring to serve one single-family dwelling unit or one single-family living unit.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:

1. Notify the director of the intent to use a spring.

2. Provide information to the director showing that they cannot drill an adequate well on their property.

3. Request that the director conduct a site inspection and approve the proposed location of the spring.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location the director will deny the application and give the reason for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification Private – 1 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:

1. The applicant met all the criteria listed on the form.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.120 Determining adequacy of water supply for building permit applications proposing to use a spring to serve two single-family dwelling units or two single-family living units.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:

1. Notify the director of the intent to use a spring.

2. Provide information to the director showing that an adequate well cannot be drilled on their property.

3. Request that the director conduct a site inspection and approve the proposed location of the spring.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location, the director will deny the application and give the reasons for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification – 2 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:

1. The applicant met all the criteria listed on the form.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring or spring sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

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24.11.130 Determining adequacy of water supply for building permit applications proposing to use surface water, sea water or rainwater for one or two single-family dwelling units or two single-family living units.

A. The director shall not approve use of surface water, sea water, or rainwater as evidence of an adequate water source unless the applicant:

1. Cannot obtain water from an existing public water supply.

2. Cannot use an approved source of groundwater from a well.

3. Could only use contaminated groundwater.

B. Prior to director approval of evidence of adequate water supply the applicant must:
1. Meet all applicable requirements for surface water, sea water or rainwater treatment design, maintenance and operation contained in Whatcom County health and human services Water Availability for a Private Surface Water Source (as amended) Notification as determined by the director.

2. Provide evidence of legal availability of water for the proposed project per WCC 24.11.060. The surface water site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

3. Meet all other state and local regulations.

4. Sign and have recorded with the Whatcom County auditor’s office the following documents:
   a. A document stating which contaminate the untreated source water exceeded.
   b. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Surface Water Source (as amended), and secures a potable water supply for the building.
   c. A document stating that the applicant has installed a treatment system according to the design reviewed by the director and treated water sample results that verify system performance.
   d. A document stating that the applicant agrees to adhere to the operation, maintenance, and monitoring plan for the designed treatment system.
   e. A document stating that the applicant understands that the obligation to comply with treatment system design, installation, operation and monitoring lies with the applicant and not Whatcom County.
   f. When the public system is available, any person obtaining water from contaminated source must provide current test results showing water treatment is adequately maintaining water quality below maximum contaminant levels (MCL). If the quality does not meet the MCL, the applicant is required to hook up to a public system.

24.11.140 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use an existing public water system.
A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:
1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:

   a. Must indicate that the water system will provide water to each proposed lot.

   b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed form or letter to determine the availability of adequate water. The director will make a determination of adequate water when:

1. The applicant and the authorized representative meet all the criteria listed on the form.

2. The purveyor of the water system has the approval from DOH or the department to provide water to the short subdivision, long subdivision or binding site plan, except for Group A water systems the following conditions also apply:

   a. DOH has issued a green operating permit to the purveyor; or

   b. DOH has determined that the purveyor significantly complies with Chapter 246-290 WAC

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.150 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use a new public water system.

Prior to director approval of availability of an adequate water supply where the applicant proposes to create a new public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must comply with:

A. Provisions of the Whatcom County Coordinated Water System Plan.

B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.

C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.160 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:

1. Notify the director of the intent to use a private well or wells.

2. Request that the director conduct a site inspection and approve the proposed well sites.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.

D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on the form.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.170 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.

A. The applicant shall create a Group B Public water supply as defined in Chapter 246-291 WAC when WCC Title 21 requires the applicant to provide public water service to each lot. This includes a water system where one well services two lots.

B. Prior to director approval of availability of an adequate water supply where the applicant proposes to use one well to service two lots of a short subdivision or long subdivision when public water is not required the applicant must:

1. Notify the director of the intent to use a well or wells.

2. Request that the director conduct a site inspection and approve the proposed well sites.

C. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
D. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.

E. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on each of the forms.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

...
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
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<tr>
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**TITLE OF DOCUMENT:**
Ord ammend WCC 20.92.642, Time limits, for appeals to County Council

**ATTACHMENTS:**
Ordinance and exhibit

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

**Questions for Council:**

**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 ordinance amends WCC 20.92.642 regarding time limits for appeals of Hearing Examiner decisions. It states that the county council shall dismiss an appeal for failure of the appellant to abide by any of the time limits contained in WCC 20.92.600 through 20.92.640, unless an extension has been granted pursuant to WCC 20.92.645.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
4/4/2017: Introduced 6-0, Weimer absent

**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. ______
AMENDING WHATCOM COUNTY CODE 20.92.642, TIME LIMITS, FOR APPEALS TO COUNTY COUNCIL

WHEREAS, Whatcom County Code Section 20.92, provides a process for appealing decisions rendered by the Whatcom County Hearing Examiner, and;

WHEREAS, amendments to Whatcom County Code 20.92 are necessary to clarify and update rules governing the appeal process.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Chapter 20.92 is hereby amended as indicted in Exhibit A to this ordinance.

ADOPTED this ______ day of _____________, 2017.

ATTEST: 

Dana Brown-Davis, Clerk of the Council ________________________________

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Karen Frakes, Civil Deputy Prosecutor ________________________________

Jack Louws, County Executive
EXHIBIT A
(WCC 20.92.642 Amendment)

Whatcom County Code

20.92.600 Appeal to county council.

20.92.610 Applicant appeal.
The applicant, any party of record or any county department may appeal any final decision of the hearing examiner to the county council. The appellant shall file a written notice of appeal at the county council office within 10 business days of the final decision of the hearing examiner. Any parties of record from the hearing examiner's proceedings who wish to continue to be considered parties of record must register with the county council in writing no later than 10 days after the date of the notification of appeal letter which is sent from the hearing examiner's office. The notification of appeal letter will be sent from the hearing examiner's office within three working days of receiving written notification from the county council office that an appeal has been filed. (Ord. 2008-008 Exh. A, 2008; Ord. 2000-043, 2000; Ord. 95-033, 1995).

20.92.620 Fee.
A fee, as established in the Unified Fee Schedule, shall be paid to the county council office upon filing of any appeal. This fee shall not apply to appeals initiated by a county department. (Ord. 2008-008 Exh. A, 2008; Ord. 2000-043, 2000; Ord. 95-033, 1995; Ord. 87-41, 1987).

20.92.630 Transcript.
(1) The appellant shall obtain a copy of the electronic recording of the hearing examiner's hearing from the hearing examiner's office. The appellant shall make arrangements for the preparation of the verbatim transcript of the hearing examiner's hearing by a professional transcriptionist who will include a signed transcriber certification with the verbatim transcript. The appellant shall forward the transcript to the county council office within 30 days of filing the appeal. Upon request of the council office, the hearing examiner's office shall prepare and transmit to the council office the hearing examiner's file, together with exhibits.


20.92.640 Written argument.
(1) Within two working days after receipt of the transcript of the hearing conducted by the hearing examiner, the county council office shall send a letter of notification to the appellant that a statement containing the appellant's basis for appeal and argument is due. The statement and argument, and a proof of service (affidavit of mailing) upon those parties who have registered with the county council, must be filed in writing, along with 10 copies, with the clerk of the county council within 15 calendar days after the postmark date of the letter of notification.

(2) Any argument or response by any registered party of record opposing the appeal must be filed in writing along with 10 copies, within 14 calendar days after the date of filing the appellant's argument with the council office. (Ord. 2008-008 Exh. A, 2008; Ord. 2000-043, 2000; Ord. 95-033, 1995; Ord. 87-33, 1987).
20.92.642 Time limits.
The county council, on motion of a party, shall dismiss the appeal for failure of the appellant to abide by any of the time limits contained in WCC 20.92.600 through 20.92.640, unless an extension has been granted pursuant to WCC 20.92.645. (Ord. 2008-008 Exh. A, 2008; Ord. 2000-043, 2000).

20.92.645 Time extension.
Extensions of timelines established hereinabove may be granted by the council chair upon demonstration of good cause. Requests for extensions and proof of service (affidavit of mailing) upon those parties who have registered with the county council shall be presented to the clerk of the council in writing prior to the expiration of the pertinent time limit. Any registered party who wishes to object to the requested extension shall file a written objection with the council office no later than two weeks following the council’s receipt of the request. (Ord. 2008-008 Exh. A, 2008; Ord. 2000-043, 2000; Ord. 95-033, 1995).
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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<td>Executive:</td>
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**TITLE OF DOCUMENT:**
Appointment to Wildlife Advisory Committee Citizen Position

**ATTACHMENTS:**
Application

**SEPA review required?**

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<th>Yes</th>
<th>NO</th>
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**SEPA review completed?**

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**Should Clerk schedule a hearing?**

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

Applicant: Caanah Cowles - 1 Vacancy, term expires July 31, 2017
The Wildlife Advisory Committee advises the Whatcom County Planning and Development Services Department staff and the Whatcom County Council on the value of wildlife and habitat management issues as they relate to the Whatcom County Comprehensive Plan, with the goal of integrating wildlife management and protection into the community planning process. Application deadline for this vacancy is 10 a.m. on April 11, 2017.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
4/4/2017: Introduced 6-0, Weimer absent

**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.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Caanan Cowles
Street Address: 3106 Cottonwood Ave
City: Bellingham
Mailing Address (if different from street address): 
Day Telephone: 360 778 7962 Evening Telephone: 360 303 6988 Cell Phone: 360 303 6988
E-mail address: caananC@gmail.com

Date: 3/15/17
Zip Code: 98225

1. Name of board or committee—please see reverse: Wildlife Advisory

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? 
   (If applicable, please refer to vacancy list.) ( ) yes ( ) no

4. Which Council district do you live in? ( ) One ( ) Two ( ) Three ( ) Four ( ) Five

5. Are you a US citizen? ( ) yes ( ) no

6. Are you registered to vote in Whatcom County? ( ) yes ( ) no

7. Have you ever been a member of this Board/Commission? ( ) yes ( ) no

If yes, dates: ____________________________

8. Do you or your spouse have a financial interest in or are you an employee or officer of any 
business or agency that does business with Whatcom County? ( ) yes ( ) no
If yes, please explain: I work for the City of Bellingham

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community 
activities, and education:

I am a Local Source Control Specialist for the City of Bellingham. Prior to this I was 
a wildlife biologist for 15 years, specializing in Puget Flora and fauna. Currently, 
I volunteer for North Cascades Audubon teaching & training citizen science programs.

10. Please describe why you're interested in serving on this board or commission: I feel I could add 
to an already robust group. I have an indepth knowledge of the 
local ecosystem.

References (please include daytime telephone number): Paul Woodcock - 360 966 6549, to replace his 
spat. John Bouyer 650 7217

Signature of applicant: ____________________________

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be 
available to the County Council, County Executive, and the public. All board and commission members are 
expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these 
expectations may result in revocation of appointment and removal from the appointive position.

10/2016
March 16, 2017

To the Whatcom County Council

Dear County Council Members:

I must regrettably inform you that, due to complications in my personal life, I am submitting my resignation from the Whatcom County Wildlife Advisory Committee.

It has been an honor to be appointed to the committee. I have been impressed with the knowledge and abilities of the committee members and the thoroughness of the work they are doing. With that in mind, I wish to recommend Caanan Cowles to fill my position on the committee. Mr. Cowles is a wildlife biologist and a North Cascades Audubon Society volunteer. He would be an excellent addition to the committee.

My thanks to the council for this opportunity to serve the citizens of Whatcom County.

Sincerely,
Paul A. Woodcock
Paul A. Woodcock
From: Chris Elder  
Sent: Tuesday, March 21, 2017 1:44 PM  
To: Jill Nixon  
Subject: Wildlife Advisory Committee member change  

Hello Jill ~ I hope County Council is going well today!!

Wildlife Advisory Committee member Paul Woodcock has expressed his interest in resigning from the Wildlife Advisory Committee due to personal issues(see attached letter). He has found a replacement committee member to represent his role from the North Cascades Audobon Society in Caanan Cowles(application attached). Hopefully Council will appreciate Paul’s efforts to secure a replacement for his position on the committee. Let me know if I can support further or answer any additional questions. Thanks, Chris

Chris Elder  
Planner  
Whatcom County PDS  
(360)778-5932
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Appointment to Noxious Weed Control Board - Applicant: Patricia Lenssen

**ATTACHMENTS:**
Application

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<th>SEPA review required?</th>
<th>( ) Yes ( ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes (X) NO</th>
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<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes ( ) NO</td>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

This Board promotes education of the public concerning management of noxious weeds such as tansy ragwort, knapweed, purple loosestrife, knotweed and their impacts on natural resources. Patricia Lenssen was nominated to represent the Whatcom County Noxious weed Board, District 5.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

*Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).*
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Patricia Lenssen  Date: 3-26-2017
Street Address: 451 Cove Road
City: Bellingham  Zip Code: 98229
Mailing Address (if different from street address):
Day Telephone:  Evening Telephone:  Cell Phone: 206-450-1160
E-mail address: p-lenssen@yahoo.com

1. Name of board or committee—please see reverse: Noxious Weed Board
2. You must specify which position you are applying for.
   Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?
   (If applicable, please refer to vacancy list.) (X) yes ( ) no

4. Which Council district do you live in? ( ) One ( ) Two ( ) Three ( ) Four (X) Five
5. Are you a US citizen? (X) yes ( ) no
6. Are you registered to vote in Whatcom County? (X) yes ( ) no
7. Have you ever been a member of this Board/Commission? ( ) yes (X) no

If yes, dates:

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? (X) yes ( ) no
   If yes, please explain: Landscape Architect—Consulting Contacts w/Whatcom Co.

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
   Professional Landscape Architect 1996, involved with land development, soils, weed control measures 
   and political group activities, UW BLA 2003

10. Please describe why you're interested in serving on this board or commission: I have an interest
     in protecting our county from noxious weeds and an interest
     in raising awareness and providing education about noxious weeds,
     and native and adapted plants.

References (please include daytime telephone number): Misty Philbin (360)-766-4333
                                                   Susan Willhoft (260) 306-7488

Signature of applicant: Patricia Lenssen

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

10/2015
DATE: **3-26-2017**

APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSION

WHATCOM COUNTY NOXIOUS WEED BOARD

1. Patricia Lenssen, seek the nomination of District 5 for the term of four years to the WHATCOM COUNTY NOXIOUS WEED BOARD.

THE UNDERSIGNED NOMINATE Patricia Lenssen TO REPRESENT THE WHATCOM COUNTY NOXIOUS WEED BOARD, DISTRICT 5, FOR THE TERM OF FOUR YEARS.

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<th>ADDRESS</th>
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<td>Mike McVicar</td>
<td>451 Cove Rd.</td>
<td>Bellingham</td>
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<tr>
<td>John Dunn</td>
<td>721 Lake Samish</td>
<td>Bellingham</td>
<td>WA</td>
<td>98229</td>
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<tr>
<td>Linda Morley</td>
<td>453 Cove Rd.</td>
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<td>2. [Signature]</td>
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<td>4. [Signature]</td>
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<td>5. Henry J. Hansen</td>
<td>463 Cove Rd.</td>
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<td>Kay Mason</td>
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**TITLE OF DOCUMENT:** Resolution to sell Tax-Title property by public auction

**ATTACHMENTS:** Map

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
The Property Management Committee recommends that the resolution be passed to effectively meet the legal requirement for the disposal following parcel.

Parcel # 370432.037424.0000 / PID 35580
GLENHAVEN LAKES DIV 4 LOT 22 BLK 22
TOWNSHIP 37 RANGE 04E SECTION 32

For no less than taxes, interest, penalties and foreclosure costs of **$2,545.59**

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
RESOLUTION NO.
TO SELL COUNTY TAX TITLE PROPERTY
REQUEST NO. TR2017-02

WHEREAS, RCW 36.35.120 allows the County to sell real estate acquired by tax
foreclosure where it is found to be in the best interest of Whatcom County to sell the
same; and,

WHEREAS, the Whatcom County Property Management Committee
recommends that the resolution be passed to effectively meet the legal requirement for
the disposal; and,

WHEREAS, RCW 36.35.120 requires the Council to establish the minimum price
for said unit of property and to determine whether or not a contract will be allowed, or if
it will be a cash price; and,

WHEREAS, the Whatcom County Code as well as the state law allows the
County to reserve from the sale coal, oil, gas, gravel, mineral, ores, fossils, timber or
other resources if the Council finds that it is in the best interest to reserve these;

NOW, THEREFORE, BE IT RESOLVED that it is in the best interest of the
County to sell:

Parcel # 370432.037424.0000 / PID 35580
GLENHAVEN LAKES DIV 4 LOT 22 BLK 22
TOWNSHIP 37 RANGE 04E SECTION 32

For no less than taxes, interest, penalties and foreclosure costs of $2,545.59
to the highest and best bidder;

BE IT FURTHER RESOLVED that said price shall not be allowed under contract
and shall be paid in either cash, certified check, or money order to the Whatcom
County Treasurer at the time of sale; and,

BE IT FURTHER RESOLVED that said parcels shall be sold subject to restrictive
covenants allowing for imposition of Community Association fees, if any, as set forth in
Whatcom County Resolution No. 88-37; and,
BE IT FURTHER RESOLVED that this sale transfer to the owners all coal, oil, gas, gravel, minerals, ores, fossils, timber or other resources on or in said land and the right to mine for and remove the same in conformity with zoning regulations in force and effect; and,

BE IT FURTHER RESOLVED that the Whatcom County Treasurer is hereby directed to sell such property at not less than a certified price and said sale shall take place in accordance with the duties as established in RCW 36.35.120.

APPROVED this ______ day of ______________________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair

APPROVED AS TO FORM:

Civil Deputy Prosecuting Attorney
TITLE OF DOCUMENT: Resolution to sell Tax-Title property by public auction Req. #TR2017-03

ATTACHMENTS: Map

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:
The Property Management Committee recommends that the resolution be passed to effectively meet the legal requirement for the disposal following parcel.

Parcel # 370408.326046.0000 / PID 33383
SUDDEN VALLEY DIV 28 LOT 47
TOWNSHIP 37 RANGE 04E SECTION 08

For no less than taxes, interest, penalties and foreclosure costs of $2,527.86

COUNCIL ACTION:
RESOLUTION NO.

TO SELL COUNTY TAX TITLE PROPERTY

REQUEST NO. TR2017-03

WHEREAS, RCW 36.35.120 allows the County to sell real estate acquired by tax foreclosure where it is found to be in the best interest of Whatcom County to sell the same; and,

WHEREAS, the Whatcom County Property Management Committee recommends that the resolution be passed to effectively meet the legal requirement for the disposal; and,

WHEREAS, RCW 36.35.120 requires the Council to establish the minimum price for said unit of property and to determine whether or not a contract will be allowed, or if it will be a cash price; and,

WHEREAS, the Whatcom County Code as well as the state law allows the County to reserve from the sale coal, oil, gas, gravel, mineral, ores, fossils, timber or other resources if the Council finds that it is in the best interest to reserve these;

NOW, THEREFORE, BE IT RESOLVED that it is in the best interest of the County to sell:

Parcel # 370408.326046.0000 / PID 33383
SUDDEN VALLEY DIV 28 LOT 47
TOWNSHIP 37 RANGE 04E SECTION 08

For no less than taxes, interest, penalties and foreclosure costs of $2,527.86 to the highest and best bidder;

BE IT FURTHER RESOLVED that said price shall not be allowed under contract and shall be paid in either cash, certified check, or money order to the Whatcom County Treasurer at the time of sale; and,

BE IT FURTHER RESOLVED that said parcels shall be sold subject to restrictive covenants allowing for imposition of Community Association fees, if any, as set forth in Whatcom County Resolution No. 88-37; and,
BE IT FURTHER RESOLVED that this sale transfer to the owners all coal, oil, gas, gravel, minerals, ores, fossils, timber or other resources on or in said land and the right to mine for and remove the same in conformity with zoning regulations in force and effect; and,

BE IT FURTHER RESOLVED that the Whatcom County Treasurer is hereby directed to sell such property at not less than a certified price and said sale shall take place in accordance with the duties as established in RCW 36.35.120.

APPROVED this _____ day of __________________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

__________________________
Dana Brown-Davis, Council Clerk

__________________________
Barry Buchanan, Chair

APPROVED AS TO FORM:

__________________________
Civil Deputy Prosecuting Attorney
## TITLE OF DOCUMENT:
Comprehensive Plan amendments relating to the Cherry Point Urban Growth Area.

## ATTACHMENTS:
1. Cover letter
2. Draft Ordinance

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

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

## COMMITTEE ACTION:

## COUNCIL ACTION:

**Related County Contract #:**
County Planning File #
PLN2016-00012

**Related File Numbers:**
Agenda Bill # 2017-063

**Ordinance or Resolution Number:**

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

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

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Assistant Director

DATE: March 29, 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 were also 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 County Council considered the Planning Commission recommendations and alternative proposals in a series of meetings in February and March 2017. Based upon these discussions, a draft ordinance has been prepared. It is anticipated that this ordinance will be introduced on April 18 and that Council will schedule a public hearing in May.

Thank you for considering this information.
ORDINANCE NO. ________________

ADOPTING WHATCOM COUNTY COMPREHENSIVE PLAN
AMENDMENTS RELATING TO THE
CHERRY POINT URBAN GROWTH AREA

WHEREAS, The County Council initiated proposed amendments to the Cherry Point Urban Growth Area section of the Whatcom County Comprehensive Plan in July 2016; and

WHEREAS, The Whatcom County Planning Commission considered the original Council Proposal and alternatives; and

WHEREAS, The Whatcom County Planning Commission issued recommendations in January 2017; and

WHEREAS, The Whatcom County Council considered Growth Management Act provisions, Planning Commission recommendations, and public comments; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

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 (in Chapter Two – Land Use) on July 26, 2016. In accordance with this Resolution, the County reviewed proposed amendments to the Cherry Point section 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 original County Council 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, and issued recommendations 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 Planning Commission’s 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.

16. The County Council held a public hearing on [date], 2017.

**Whatcom County Code - Approval Criteria**

17. 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**

18. The GMA establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plans.

19. 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)).

20. 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)).

21. 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)).

22. 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)).

23. 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)).
24. 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)).

25. 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)).

26. 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**

27. 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.”

28. The subject amendment would change Policy 2CC-2 to “Encourage developments in the Cherry Point UGA to maintain and operate under management plans consistent with the Aquatic Reserve Management Plan.”

29. 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.

30. 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).

31. Whatcom County does not enforce state plans such as the Cherry Point Environmental Aquatic Reserve Management Plan. Additionally, 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, revised Policy 2CC-2 encourages Cherry Point industries to operate under plans that are consistent with the Cherry Point Environmental Aquatic Reserve Management Plan. However, Policy 2CC-2 does not place Whatcom County in the role of enforcing this state plan.
New Policy 2CC-3

32. New Policy 2CC-3 states:

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

• Clean and 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.

33. Existing Whatcom County Comprehensive Plan Policy 7G-1 is to "Recognize the natural environment as a major asset and manage environmental resources accordingly. We need both economic prosperity and environmental sustainability."

34. Existing Whatcom County Comprehensive Plan Policy 10M-4 is to "Encourage land development to avoid wetland impacts. . . ."

35. Existing 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.

36. Existing 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."

37. New Policy 2CC-3, which is non-regulatory in nature, is intended to encourage a healthy environment, while enhancing existing and future industry. Additionally, it does not conflict with existing Comprehensive Plan policies.

Policy 2CC-11

38. 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.
39. The original County Council Proposal (from July 2016) would have changed this policy to prohibit additional industrial piers in the Cherry Point area.

40. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016 during the Planning Commission review process. 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.

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

42. 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.

43. 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.

44. The subject amendment to Policy 2CC-11 (formerly 2CC-10) states that it is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to “. . . Honor any existing vested rights or other legally enforceable agreements for an additional dock/pier . . .” and several other factors.

45. Additionally, the subject amendment to Policy 2CC-11 indicates “. . . Update the Whatcom County Shoreline Master Program to conform with this policy. . .” This approach provides direction to update the Whatcom County Shoreline Management Program to maintain consistency with the Comprehensive Plan.
Policy 2CC-15

46. 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.

47. 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"...

48. 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. (p. 4).

49. New Policy 2CC-15 states:

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 be subject to federal agency review under the Magnuson Amendment.
50. The subject policy language, which is non-regulatory in nature, encourages federal agencies to enforce the provisions of the Magnuson Amendment and indicates that the County will notify federal agencies if County receives a permit application that could be subject to federal agency review under the Magnuson Amendment. As such, it does not erect any local barriers to interstate or international commerce.

**Policy 2CC-16**

51. New Policy 2CC-16 states:

The County shall undertake a study to be completed if possible 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 may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017.

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 County should consider any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice publicly available.

- 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.

52. This new policy addresses a study, formulation of proposed Comprehensive plan and code amendments for future consideration, and notification. However, this policy does not impose any restrictions on Cherry Point industries.
Policy 2CC-17

53. New Policy 2CC-17 states that “Policy 2CC-16 shall not limit existing operations or maintenance of existing facilities as of March 1, 2017.”

54. This new policy ensures that implementation of Policy 2CC-16 will not hinder operation or maintenance of existing industries in the Cherry Point UGA.

County-wide Planning Policies

55. 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.

56. 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.

57. 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.

58. County-wide Planning Policy I-5 states “... Economic development shall be coordinated with environmental concerns to protect the quality of life...”
59. 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.

60. 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.

61. 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.

62. 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**

63. 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


65. 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).

66. 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).

67. 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).

68. 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).

69. The *Cherry Point Environmental Aquatic Reserve Management Plan* specifically excludes certain areas, including the three existing industrial piers, from the Reserve (p. 11).

70. 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

71. The Cherry Point area contains valuable aquatic ecosystems and fish & wildlife habitat (Cherry Point Environmental Aquatic Reserve Management Plan, DNR, amended 2017).

72. 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).

73. The Cherry Point UGA text, goals, and policies, including the subject amendments, recognize the value of industrial uses and the importance of marine waters, fish and wildlife habitat, and archeological sites.

74. 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.

75. 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.

76. The subject amendments will not adversely impact designated agricultural, forest and mineral resource lands.

77. 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.

78. 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.
79. 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

80. “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).

81. The subject proposal does not involve nor facilitate illegal spot zoning.

U.S. Constitution – Commerce Clause

82. 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.”

83. The Whatcom County Council finds that the subject amendments are not inconsistent with the Commerce Clause.

CONCLUSIONS

1. The subject amendments are consistent with the GMA planning goals.

2. The subject amendments satisfy the approval criteria of WCC 2.160.080.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Comprehensive Plan are hereby adopted as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _______ day of ________________, 2017.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

__________________________  __________________________
Dana Brown-Davis, Council Clerk  Barry Buchanan, Chairperson

APPROVED as to form:

__________________________  ( ) Approved  ( ) Denied
Jack Louws, Executive

Civil Deputy Prosecutor

Date: ________________________

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EXHIBIT A

County Council Version

March 21, 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. 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. The Reserve extends from the southern boundary of Birch Bay State Park to the
northern border of the Lummi Indian Nation Reservation. The site excludes three
existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one
proposed aquatic land lease:

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

The Management Plan acknowledges that the existing industries, complying with
laws and regulations, do not conflict with the Aquatic Reserve although their
activities may pose risks for the Aquatic Reserve. Indeed, the industries’ need for
buffer space and their compliance with shoreline management requirements means
that much of the Aquatic Reserve shoreline is in substantially natural riparian
vegetation and bluff processes proceed without interference. Existing shoreline and
upland stream and wetland functions and values are of continuing importance to
the recovery and protection of species identified in the Aquatic Reserve
Management Plan. The area includes undeveloped intertidal wetlands with
importance to juvenile salmon and other species. Existing industries can serve the
Aquatic Reserve’s objectives so long as they are managed according to the Plan and
so long as the lessees actively work to further goals for the Reserve (CPAR MP p.
2).

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

The United States Congress approved the “Magnuson Amendment” in 1977 in order
to restrict tankers carrying crude oil in the Puget Sound area. Congress found that
Puget Sound and the adjacent shorelines were threatened by the increased
possibility of vessel collisions and oil spills. Therefore, Congress restricted federal
agencies from issuing federal permits as follows:

... no officer, employee, or other official of the Federal Government shall, or
shall have authority to, issue, renew, grant, or otherwise approve any
permit, license, or other authority for constructing, renovating, modifying, or
otherwise altering a terminal, dock, or other facility in, on, or immediately
adjacent to, or affecting the navigable waters of Puget Sound, or any other
navigable waters in the State of Washington east of Port Angeles, which will
or may result in any increase in the volume of crude oil capable of being
handled at any such facility (measured as of October 18, 1977), other than
oil to be refined for consumption in the State of Washington.

Whatcom County does not enforce the Magnuson Amendment through the local
permitting process. However, the County does encourage federal agencies to
enforce the Magnuson Amendment. Therefore, the County will strive to make
appropriate federal agencies aware of applications for development permits
submitted to the County that may be subject to federal agency review under the
Magnuson Amendment before issuing local permits when possible (see Policy 2CC-15).

Cherry Point UGA Features

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

Port Access –

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

Rail Access –

Cherry Point is served by a branch line of the BNSF Railway Burlington Northern
mainline serving western Washington from Blaine to Portland. Rail service is
considered to be vital to statewide as well as local interests for the competitive
movement of freight. Rail service is particularly important in relation to water borne commerce. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. **Cherry Point industries use rail to ship and receive multiple feedstocks and products.** The BP refinery at Cherry Point uses the railroad to ship calcined coke to U.S. markets and to other port facilities for transshipment to foreign markets. Both the [Cherry Point Refinery](https://www.bp.com) and [Phillips 66 refineries](https://www.phillips66.com) receive crude oil shipments by rail.

**Proximity to Canada, Alaska and Foreign Ports**

Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to and from Alaska and to other Pacific Rim locations. **The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for commercial or industrial production with emphasis on major sustainable clean energy manufacturing or production (see Policy 2CC-3).** The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. **Compared to other port facilities in Washington and Canada, Cherry Point is not constrained by extensive upland development or vessel draft limitations.** Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.

**Presence of Necessary Utilities and Infrastructure**

Cherry Point is a major industrial area in Whatcom County. The [Phillips 66-Ferndale Refinery](https://www.phillips66.com) was constructed in 1954, the [Alicia Intalco Works](https://www.intalco.com) Aluminum Smelter in 1966, and the [BP-Cherry Point Refinery](https://www.bp.com) in 1971. The infrastructure to support these industries and future industrial users at Cherry Point is in place and includes the following:

**Electric Power:**

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

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

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

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

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

Water:

Whatcom County Public Utility District #1 currently provides industrial process
water to all major industrial facilities at Cherry Point and has additional water
available contracts in place to provide process water to properties that are currently
undeveloped. PUD #1 also operates a small system to provide potable water to
one industry (Praxair). Birch Bay Water and Sewer District provides potable water
to the BP-Cherry Point Refinery. The other industries operate their own water
treatment facilities to provide potable water for their facilities. Existing industries
consume large quantities of water, in many cases drawn from the Nooksack River.
It is the County's policy to support renewed efforts to reduce both water
consumption levels and the quantity of discharges, in favor of recycled water use
(see Policy 2CC-3 and Policy 2CC-10).

Sewer:

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

Natural gas is currently available at Cherry Point.

All-weather Roads:

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

Use Compatibility and Land Use Designation

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

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

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

Policy 2CC-2: Ensure that Encourage developments in the Cherry Point UGA to maintain and operate under management plans consistent with the accomplishment of the goals of the Aquatic Reserve Management Plan.

Policy 2CC-3: Encourage that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean and 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.

Policy 2CC-43: Assure that Cherry Point's unique features of large parcelization, port access, and pipeline, vehicular and rail transportation availability are maintained and protected from incompatible development.

Policy: 2CC-54: Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

Policy: 2CC-65: Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

Policy: 2CC-76: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

Policy: 2CC-87: Permit support activities, warehousing, shipping, machine repair and service, educational services, food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-98: Exclude Cherry Point as part of any future incorporation of Birch Bay.
  • to protect interests of the property owner in terms of taxation and urban regulations;
  • to preclude urbanism near "smokestack" industries;
  • to preserve county government tax base.

Policy 2CC-109: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential, consistent with other County policies supporting energy and water conservation.

Policy 2CC-110: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to:
• Honor any existing vested rights or other legally enforceable agreements for an additional dock/pier;

• 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; and

• Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.

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-1244: 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-1312: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.

Policy 2CC-1413: Cooperate with the DNR and existing industries to monitor the effects of industrial activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.
Policy 2CC-15: Whatcom County will encourage federal agencies, including the U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson Amendment (33 USC Sec. 476). To accomplish this the County will make appropriate federal agencies aware of applications for development permits submitted to the County that staff thinks may be subject to federal agency review under the Magnuson Amendment.

Policy 2CC-16: The County shall undertake a study to be completed if possible 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 may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017.

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 County should consider any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice publicly available.

- 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.

Policy 2CC-17: Policy 2CC-16 shall not limit existing operations or maintenance of existing facilities as of March 1, 2017.