The Parks & Recreation department will present its report to Council

**ATTACHMENTS:**

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<tr>
<th>SEPA review required?</th>
<th>Yes</th>
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<tbody>
<tr>
<td>SEPA review completed?</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.)

Parks Director Michael McFarlane to present Parks & Recreation’s report to Council

**COMMITTEE ACTION:**  

**COUNCIL ACTION:**

**Related County Contract #:**  

**Related File Numbers:**  

**Ordinance or Resolution Number:**

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

CLEARANCES

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Division Head:  
Dept. Head:  
Prosecutor:  
Purchasing/Budget:  
Executive:  

TITLE OF DOCUMENT:  
Discussion with Sheriff regarding Electronic Home Monitoring Program

ATTACHMENTS:

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)  
Discussion with Whatcom County Sheriff Bill Eiko on expansion of the electronic home monitoring program and increased access to other jail alternative programs

COMMITTEE ACTION:  
COUNCIL ACTION:

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

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**WHATCOM COUNTY COUNCIL AGENDA BILL**  
**NO.** 2017-170

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**RECEIVED**  
MAY 23 2017  
WHATCOM COUNTY COUNCIL

**TITLE OF DOCUMENT:** Discussion regarding the creation of a Capital Facility Reserve Fund

**ATTACHMENTS:**  
Memo

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<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( x ) NO</th>
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<td>SEPA review completed?</td>
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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.)

Discussion with County Executive Louws regarding the creation of a Capital Facility Reserve Fund and the removal of EMS transfers from the General Fund.

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MEMORANDUM

TO: Whatcom County Council Members
FROM: Jack Louws, County Executive
DATE: May 19, 2017
SUBJECT: Capital Facility Reserve Fund creation

The 2017-2018 Whatcom County Council adopted General Fund budget included transfers to support Emergency Medical Services (EMS) at the 2016 level of service plus additional funding to cover system shortages. The adopted budget assumed no funding from the proposed EMS property tax levy. For the past several years the General Fund budget included support for EMS of approximately $1.4 million. In 2017, as the result of declining revenues and increasing costs, the General Fund’s support was increased $1.1 million to a total of $2.5 million and in 2018 it was increased $1.3 million to a total of $2.7 million. The impact of the increased funding was a reduction in the projected ending General Fund fund balance.

2017/2018 General Fund Adopted Budget

<table>
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<tr>
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<tr>
<td>Expenditures</td>
<td>$85,239,796</td>
<td>$86,649,985</td>
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<tr>
<td>Revenues</td>
<td>$80,367,238</td>
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<tr>
<td>Net Expenditure</td>
<td>$4,872,558</td>
<td>$5,021,609</td>
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<tr>
<td>Projected 4% lapse</td>
<td>$3,409,592</td>
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<tr>
<td>Net Expenditure after Lapse</td>
<td>$1,462,966</td>
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<tr>
<td>Adjusted Fund Balance</td>
<td>$15,169,885</td>
<td>$13,239,846</td>
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Now that the EMS levy has passed and EMS has a stable property tax funding source, we would like to discuss with the County Council the best use of the General Fund budget supplanted by the EMS levy.

We recommend creating a Capital Facility Reserve Fund. This fund will be dedicated to the long-term preservation and improvement of our general government and public safety buildings. We recommend a transfer in 2017 of $1,462,996 and in 2018 of $1,555,610. to the Capital Facility Reserve Fund. This will anticipate a net neutral budget for 2017 and 2018 with the transfer of the Net Expenditure after Lapse amount as identified in the chart above. There will be no expenditures budgeted in the fund, as utilization of the fund will require future County Council action.

The balance of the supplanted General Fund budget, approximately $1.1 million in 2017 and $1.3 million in 2018 will be removed from budget expenditures, resulting in a corresponding increase to the General Fund ending fund balance.

Recommended action: Motion to instruct Administration to:

1) Create a Capital Facility Reserve Fund ordinance

2) Remove EMS transfers and establish a transfer to the Capital Facility Reserve Fund through a budget supplemental
## WHATCOM COUNTY COUNCIL AGENDA BILL

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### TITLE OF DOCUMENT:

Ordinance establishing WCC 2.126, Business & Commerce Advisory Committee

### ATTACHMENTS:

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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

Ordinance establishing WCC 2.126, Business & Commerce Advisory Committee

### COMMITTEE ACTION:

### COUNCIL ACTION:

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ORDINANCE NO. ______

ESTABLISHING WHATCOM COUNTY CODE CHAPTER 2.126, CREATING THE WHATCOM COUNTY BUSINESS AND COMMERCE ADVISORY COMMITTEE

WHEREAS, Whatcom County has numerous advisory boards and commissions to advise the Council and the Executive on a great range of matters; and

WHEREAS, there is no board or commission with the express goal of providing business and industry perspective on regulations and policies; and

WHEREAS, Whatcom County is home to numerous businesses and industries that provide important jobs and contribute meaningfully to the community; and

WHEREAS, Whatcom County businesses have different needs to be successful in a wide variety of economic sectors ranging from individual professionals and service providers, small businesses, medium-sized businesses, and large businesses competing nationally and internationally; and

WHEREAS, Whatcom County seeks to be a place where new businesses are encouraged to start and existing businesses recognize the value of remaining and expanding, creating jobs, and increasing the resources available for all members of the community; and

WHEREAS, the actions of county government can have positive and negative effects on the overall business environment and on individual operations; and

WHEREAS, to ensure the appropriate balance between the interests of the community and the interests of businesses is met, it is critical that business and industry have a voice in policies and regulations that may impact them.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 2.126 is hereby established, creating the Whatcom County Business and Commerce Committee as outlined in Exhibit A to this ordinance.

ADOPTED this ____ day of __________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

WHATCOM COUNTY EXECUTIVE

APPROVED AS TO FORM: WHATCOM COUNTY, WASHINGTON

______________________________

Jack Louws, County Executive

(  ) Approved (  ) Denied

Date Signed: __________________________
EXHIBIT A

CHAPTER 2.126
BUSINESS AND COMMERCE ADVISORY COMMITTEE

Sections:
2.126.010 Established
2.126.020 Purpose
2.126.030 Function
2.126.040 Membership
2.126.050 Organization - Meetings

2.126.010 Established.
The Whatcom County Business and Commerce Advisory Committee is hereby established.

2.126.020 Purpose.
The committee will advise the Whatcom County Council on issues, including regulations and policies that could impact local businesses, industry, or economic development.

2.126.030 Function.
The committee reports directly to the County Council as necessary to carry out the following functions:

A. Review and provide recommendations on comprehensive plans, regulations, economic development efforts and on proposals which directly impact business and economic conditions in Whatcom County; and

B. Assist the county and provide recommendations on efforts to improve business conditions, environment and infrastructure; and

C. Assist and develop recommendations for comprehensive economic development efforts and other issues impacting business in Whatcom County.

2.126.040 Membership.
A. The committee shall consist of 13 voting members.

B. The following committee members will be appointed by the county council to four year terms:

1. One professional service provider working locally as an individual or a in a firm of less than five employees. Professional services providers include accountants, doctors, lawyers, engineers, and other professionals.

2. At least three members representing small businesses with fewer than 10 employees.

3. At least three members representing medium-sized businesses with 11 to 50 employees.

4. At least three members representing large businesses with 51 or more employees.

C. One member shall be the director of the County’s Associate Development Organizations (ADO) or designee.
D. All appointed committee members shall be from for-profit business entities and may include food and agricultural processing businesses, but not farm operations. No two members can represent or be employed by the same company.

2.126.050 Organization – Meetings.
A. Meetings of the committee shall be open and accessible to the public and shall be subject to the Open Public Meetings Act.

B. The committee shall determine its own meeting schedule, but shall meet at least four times per year.

C. At every meeting, the committee will schedule an open session to take public comment on local business issues. Written records of meetings, resolutions, findings, and recommendations shall be kept and such records shall be public.

D. The committee shall adopt its own rules and procedures for the conduct of business.

E. The committee shall elect a chairperson from among its members who shall preside at its meetings.

F. The committee shall comply with Whatcom County Charter Section 4.20, Qualifications, and with Whatcom County Code Chapter 2.03, Boards and Commissions.
County Executive seeking Whatcom County Council authorization to enter into a Jail Facility Financing and Use Agreement between Whatcom County and all Whatcom County Cities.

**ATTACHMENTS:**

1) Jail Facility Financing and Use Agreement (JFFUA) between Whatcom County and all Whatcom cities.
2) Whatcom County Council Resolution Authorizing and Approving the JFFUA
3) JFFUA Comparison Table
4) 2017 JFFUA and Ballot Measure Timeline

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

Request authorization for the County Executive to enter into a new Jail Facility Financing and Use Agreement between Whatcom County and all Whatcom County Cities.
INTERLOCAL JAIL FACILITY FINANCING AND USE AGREEMENT

This Interlocal Jail Facility Financing and Use Agreement ("Agreement") is by and between Whatcom County, a political subdivision of the State of Washington ("County"); the City of Bellingham ("Bellingham"); the City of Blaine ("Blaine"); the City of Everson ("Everson"); the City of Ferndale ("Ferndale"); the City of Lynden ("Lynden"); the City of Nooksack ("Nooksack"); and the City of Sumas ("Sumas") pursuant to RCW Chapters 70.48 and 39.34. The County Executive, or designee, will serve as the administrator of the Agreement, on behalf of the County, pursuant to RCW 39.34.

RECITALS

1. The County is charged by State law with the operation and maintenance of the Whatcom County Jail and related correctional facilities ("Jail"), presently located on Prospect and Division Streets in Bellingham, (hereinafter, the "Existing Jail").

2. The Existing Jail requires additional capacity and improved infrastructure in order to safely incarcerate the combined volume of city and county inmates currently and in the future. The city governments that have agreed and are party to this Agreement (hereinafter, collectively, the "Cities") desire to continue use of the Jail for the detention of city inmates. The County and Cities may collectively be referred to as "Parties" hereinafter.

3. The County intends to build, own and operate a new Jail located on LaBounty Road in Ferndale, Whatcom County, Washington, hereinafter the "New Jail." The New Jail will include jail housing, booking and administration facilities, expanded medical and behavioral health facilities and jail alternative programing space to serve the needs of the community for the foreseeable future (as shown and anticipated, attached hereto as Exhibit A). The size of the New Jail will be 440 beds, with a 3% increase (453) or decrease (427) allowance based on design considerations, with an additional 36 medical and behavioral health facility beds. If any city listed and intended as a party to this Agreement fails to approve and execute this Agreement by June 30th, 2017, the County may reduce the size and scope of the project, including a reduction of jail beds and medical and behavioral health facility beds. This may be commensurate with the non-participating city’s actual and expected share of the annual payment for the New Jail.

4. The Parties agree that the community and its taxpayers are best served by a cooperative, collective approach to public infrastructure, including the New Jail, through joint planning and funding, to maximize efficiency and promote economies of scale.

5. The Parties agree to form the County and Cities Finance and Operations Board to provide further collaboration and joint problem solving with respect to ongoing jail operational matters and jail finances that will assist with maintaining cost-effective, system-wide correctional services. The Parties seek to avoid, if possible, booking restrictions and the transport of pretrial inmates to locations outside of Whatcom County. Consistent with this Agreement's cooperative, collective approach to providing for correctional needs, the Parties agree to share
uniformly in the burden of reduced capacity at the jail. The Parties will endeavor to utilize alternatives to booking and alternatives to incarceration and will work to identify for transport those inmates that are best suited for incarceration at another correctional facility, without regard to the charging Party. The Finance and Operations Board will make recommendations to the Sheriff and the Whatcom County Council on these matters and others as identified in this agreement.

6. In 2017, the Whatcom County Council will consider a resolution that will place a proposition before Whatcom County voters that, if passed, would authorize additional sales and use tax at the rate of 0.2% to be used for the construction, maintenance, and operation of jail facilities, and for adult corrections programs including medical and behavioral health facilities and programs, and for other public safety purposes, all pursuant to RCW 82.14.450 (a copy of which is attached hereto as Exhibit B) (hereinafter, the "Sales Tax Measure").

7. The negotiation and execution of this Agreement is intended to yield a definitive, long-term agreement to globally address funding of the New Jail and certain operational matters related to the Jail.

8. The Parties to this Agreement are willing to make a long-term commitment and provide financial contributions in order to obtain and be granted continued access to the Existing and New Jail for the duration of the facilities' existence. Subject to the terms and conditions herein, the County agrees to make the Existing Jail and New Jail and jail-related programs available for participating Cities' inmates, as described further in this Agreement.

9. The Parties also desire to include within this Agreement the procedures for determining the costs associated with housing inmates within the Existing Jail and New Jail, the scope and level of service to be provided by the County, procedures for billing of the cost of services, the methodology for payment by the Cities to the County relating to the Existing Jail and New Jail, as set forth in this Agreement. Should any city not approve and execute this Agreement by June 30th, 2017, the procedures for determining costs of construction and services, the level of service, procedures for billing cost of service and the methodology for payment and other terms as set forth in this Agreement will continue to apply to the other cities which have approved this Agreement.

10. As part of the Existing Jail, the County owns and operates an interim adult correctional facility and behavioral health triage center on Division Street in Bellingham, Whatcom County, WA. The County may sell or transfer the Division Street property when the New Jail is completed and operational. If sold or transferred, the resulting value and proceeds from this transaction will be applied by the County to facilities and programs that support the goals of treating adults with behavioral health problems. The goals of these programs are to reduce incarceration rates of people with behavioral health problems.

11. The Parties recognize and fully support the goals of the Incarceration Prevention and Reduction Task Force (IPRTF) to reduce incarceration and recidivism. The IPRTF will continually review Whatcom County's criminal justice and behavioral health programs and make specific recommendations to safely and effectively reduce incarceration of individuals struggling with mental illness and chemical dependency, and minimize jail utilization by pretrial defendants who can safely be released. The Parties agree to implement the recommendations of the IPRTF upon their final recommendation, where possible. This includes increasing the availability of
Alternative Jail programs, including Electronic Home Detention, Work Release and Work Crew programs, and the establishment of a County pretrial supervision program. To ensure the continued commitment to reducing incarceration and recidivism, the IPRTF will have a task force member on the County and Cities Finance and Operations Advisory Board.

NOW, THEREFORE, in consideration of the foregoing, the Parties agree and contract as follows:

AGREEMENT

1. NEW AGREEMENT. This Agreement shall become effective when the County and one or more of the Cities identified above have duly executed this Agreement and the conditions set forth in paragraph 2, below, have occurred. Until this Agreement becomes effective, the existing jail use Agreements between and among the Parties shall remain in force and effect pursuant to the terms thereof, subject to the stated length of term in each of those Agreements. Once this Agreement becomes effective as described in paragraph 2, it shall entirely replace and supersede any and all previous Agreements between the Parties approving this Agreement regarding use of the Existing Jail.

2. SALES TAX MEASURE AND EFFECTIVE DATE OF AGREEMENT. The County will place the Sales Tax Measure on the General Election Ballot on November 7, 2017. In the event that the Sales Tax Measure fails to pass on this election, this Agreement shall be immediately null and void without further action by the Parties. In the event the Sales Tax Measure passes by approval of the voters at the election, this entire Agreement will become fully effective and immediately binding on the Parties, on the date the election is certified by the Whatcom County Auditor (the "Effective Date"), consistent with its terms, without further action or consent by the Parties hereto.

a. Upon voter approval of the Sales Tax Measure, the Parties agree that all funds derived therefrom shall be distributed to the County and the incorporated cities within the County by DOR according to the distribution formula set forth in state law as of the date this Agreement is executed (60% to the County, and 40% to the cities on a per capita basis of the population within incorporated cities).

b. As described in PART I – JAIL FINANCING, below, the Cities will make 360 monthly payments to the County beginning January 31, 2019 and ending on or before December 31, 2048.

c. Of the two tenths of one percent authorized upon approval of the Sales Tax Measure, one tenth of one percent shall expire as soon as practical after December 31, 2048, or when the Total Capital Cost has been paid by all Parties, whichever occurs earlier. Expiration of the one tenth of one percent will be accomplished through coordination among the Parties of this Agreement and the Washington State Department of Revenue ("DOR"), and any ballot measure placed on the ballot shall so indicate. All parties shall take the steps necessary to terminate one tenth of one percent of the sales tax referenced in this Agreement, consistent with the intent of this Agreement.

d. After December 31, 2048, the County and the Cities shall continue to receive and keep a portion of the one tenth of one percent of Sales Tax Revenue that remains in effect, pursuant to the 60%/40% formula set forth in Exhibit B.
PART I-NEWJAIL CAPITAL FINANCING

1. **TOTAL CAPITAL COST FOR PROJECT.** The County shall build, own and operate the New Jail as soon as practicable. The New Jail will include jail housing, booking and administration facilities, expanded medical and behavioral health facilities and jail alternative programing space as anticipated in Exhibit A. Subject to final determination by the County Council, the New Jail will include 440 beds, with a 3% increase (453) or decrease (427) allowance based on design considerations, with an additional 36 medical and behavioral health facility beds. For the purposes of this Agreement, the anticipated floor plan for the New Jail is shown in Exhibit A. The County will also demolish the existing downtown jail and build a holding space for use by the Parties. TOTAL CAPITAL COST shall include only the following elements:
   
a. The soft costs for consulting pre-construction services of the New Jail incurred after January 1, 2012, and which are allocable to the New Jail and not the new Sheriff's office and facilities, in the amount of $1,059,069.84; and
   
b. The land acquisition costs for the Labounty Road property that have been paid from the County's REET and General Fund accounts, in the amount of $3,393,491; and
   
c. The cost of repairs to the Existing Jail prior to completion of the New Jail, anticipated to be approximately $3.5 Million; and
   
d. All future actual soft and hard costs, including projected cost increases and construction period financing costs, that are incurred for construction of the New Jail and which are not allocable to the Sheriff's office and related facilities; and
   
e. The cost to demolish the Existing Jail on Prospect Street and construct a holding space and sally port at the County Courthouse, which is yet to be determined.

Prior to the time when the jail is completed and all cost amounts are known, the TOTAL CAPITAL COST will be preliminarily estimated to be $110,100,000. Included within this preliminary estimate is an anticipated separate capital payment from the Cities to the County for their pro-rata share of the soft costs for consulting pre-construction services and for the property acquisition costs, as specified in a) and b) above. These capital payments will be applied as a credit to the Cities to pay down their portion of the preliminarily estimated TOTAL CAPITAL COST prior to the monthly payments beginning on January 31, 2019. After completion of the project and when all cost amounts are known, the TOTAL CAPITAL COST will be finalized and will serve as the basis for payments from the Cities to the County as described below.

2. **BOND FINANCING.** The County intends to issue limited tax general obligation bonds to finance the New Jail, and may utilize interim financing prior to issuance of such bonds. The Parties acknowledge that the County intends to issue Bonds or enter into agreements for interim financing in reliance upon the commitments and agreements of the Parties reflected in this Agreement.
The County intends to construct and operate new facilities housing the Sheriff’s Office facilities adjacent to the New Jail, to be funded from County revenue and resources. If the County issues a single bond for both the New Jail and Sheriff’s Office facilities the County will ensure that there is a clear delineation of issuance costs and debt service allocable to the New Jail and the Sheriff’s Office facilities separately, including separately calculating the “All-in True Interest Cost” (referred to herein as “AIC”) allocable to each purpose. Such allocations, including calculation of the AIC, will be provided by a registered municipal advisor (financial advisor). All costs, allocable to the Sheriff’s Office facilities shall be funded by the County and not included in the TOTAL CAPITAL COST.

3. CITY PAYMENTS TO THE COUNTY. The Parties agree that the allocation of TOTAL CAPITAL COSTS will be established as 78% County, 22% Cities. The Cities have agreed that the 22% City share will be paid to the County, with interest thereon, in 360 monthly payments, and will be allocated as follows: Bellingham 71.6%, Lynden 8.1%, Ferndale 12.9%, Blaine 3.6%, Everson (on behalf of Nooksack and itself) 2.6%, and Sumas 1.2%; provided, however, if a City does not execute this agreement the percentages will be re-distributed proportionately to the remaining Parties. Unless the County receives a written agreement from the Cities, signed by all Cities, that a different allocation is agreed among the Cities, the Cities hereby agree that they will pay the percentage allocation stated in this section, to ensure that the County receives the full 22% from the Cities each month. Additionally, it is acknowledged that because the cities of Nooksack and Everson have a service agreement in place, Everson will make the full 2.6% share of payment on behalf of both cities. In the event that service agreement is terminated, Nooksack and Everson shall each be responsible for half of the 2.6%, until such time the County receives a written agreement signed by both Nooksack and Everson that a different allocation is agreed between the two cities. Any dispute between the Cities is not cause for non-payment to the County under this Agreement.

a. Starting in calendar year 2019 each City that is a Party to this Agreement shall remit to the County Treasurer, for receipt no later than the last business day of each month (i.e., beginning January 31, 2019), an amount equal to the city’s monthly apportioned share of the 22% of the TOTAL CAPITAL COST plus interest thereon. Such payment shall be made by ACH transaction.

b. The amount of such payment will initially be based on $110,100,000 million, a term of 360 months and a 4.5% annual interest rate, as shown in Exhibit C hereto.

c. After final TOTAL CAPITAL COST has been established, new payment schedules will be calculated, based on the months remaining until the final payment on or before December 31, 2048, and based on the AIC achieved on the County Bonds issued and allocable to the New Jail. All payments made prior to the time final TOTAL CAPITAL COSTS are known will be adjusted and the resulting increase or reduction will be taken into account in development of a new payment schedule, as shown in Exhibit D hereto.

d. The County will use debt structures that provide the opportunity for early repayment of the Bonds no later than 10.5 years after issuance. If the County’s Bonds allocable to the New Jail are refinanced, the Cities will be notified of the result of the refinancing, and the monthly payments from the Cities will be modified to reflect the annual benefits of the refinancing. The total annual payments from the Cities will continue to total 22% of modified TOTAL CAPITAL COST. This is intended to ensure that the Cities benefit from the annual debt service savings resulting from a refinancing of County Bonds issued for the New Jail.
e. The County may, at its discretion, bond as needed for the Jail and other projects, but in no event will the Cities be responsible for payment of more or less than 22% of the final TOTAL CAPITAL COST plus interest thereon.

4. FUNDS RELATING TO THE PROJECT. The County agrees to establish specific capital funds and/or accounts that will allow for accountability of all funds relating to TOTAL CAPITAL COST, including capital project payments received from the Cities, bond revenue, and other capital project financing revenue such as any grant funds received for the project. Any outside source of dedicated capital funds, other than Non-Party capital construction fees, and any interest earned in such capital funds and/or accounts, will remain in the capital funds and/or accounts for the benefit of all of the Parties and will not be used by the County for other county purposes. On an annual basis, the County shall provide a detailed revenue and expense report that accounts for the activity of the Existing and New Jail and all related County jail funds. The capital fund and/or accounts and the County’s jail operational funds will remain separate for the duration of this Agreement.

PART II - JAIL OPERATIONS

1. CONTROL OF JAIL. The Cities acknowledge the County’s statutory responsibility for, ownership of, and operational control over the Existing Jail and New Jail. The County shall administer the jail in accordance with the law, and ordinances, policies, procedures, rules, and regulations of the County (including any emergency security rules imposed by the Sheriff), and in accordance with the rules and regulations of any agency of the State of Washington empowered to make rules governing the administration of county corrections facilities. The Cities hereby consent and agree that inmates committed to the Existing Jail and New Jail by the Cities are subject to all rules and regulations applicable to County inmates incarcerated therein, including but not limited to all terms and conditions of this Agreement. It is further understood by the Parties that the County shall be solely responsible for operational decisions regarding the appropriate level of security, inmate management, and housing of all inmates. The Sheriff will reasonably consult with the Chiefs of Police of the Parties to this Agreement regarding issues concerning city inmates and will reasonably consider any recommendations made to the Sheriff by the County and Cities Finance and Operations Advisory Board. The Sheriff, at least once a year, on or around June 30th to coincide with the Parties’ budget processes, will convene a meeting of the Parties to this Agreement to discuss the operational and financial performance of the Existing Jail and New Jail, including estimated per diem rates, charges and fees. Final per diem rates and fees will be set after the County approves its final budget in November.

2. COUNTY AND CITIES FINANCE AND OPERATIONS ADVISORY BOARD.

a. Establishment of Board and Composition. All Parties to this Agreement shall establish, maintain, and participate in a Finance and Operations Advisory Board ("Board") to meet at least yearly, or as needed, to discuss matters and make recommendations related to Jail finances and operations of the Jail. The Board shall consist of seven (7) members to include: two (2) representatives of Whatcom County, including the Whatcom County Executive and one other elected official to be determined by the County; two (2) representatives of the City of Bellingham, including the Mayor and one other elected official to be determined by the City; two
(2) representatives from the small cities that are party to this Agreement; and one (1) member of the IPRTF to be determined by the IPRTF. Board members may appoint a designee for any specific meeting of the Board.

b. **Board Function.** The Board will serve in an advisory capacity on matters including but not limited to; preliminary budget, allocation of costs and revenue (both capital and operating), establishing fees, operational capacity, uniform reduction of service, party and non-party use, modifications to the New Jail project, design, access and use of the downtown sally port and holding space by all Parties, use of jail alternatives programs to reduce incarceration, jail transport practices, future facility expansion, potential modifications needed to this Agreement, a billing dispute process, and collection and reporting of data. The Board may make recommendations to the Sheriff and to the Whatcom County Council on jail operational and financial matters. At least annually on or around July 31st, to coincide with the Parties' budget processes, the Board will present its recommendations to the County Council and Sheriff.

3. **AVAILABILITY OF JAIL FACILITIES AND SERVICES PROVIDED.** The County agrees to provide inmate housing and other services at the Existing Jail and New Jail, for gross misdemeanor or misdemeanor cases initiated by the Cities that are party to this Agreement for those offenses alleged to have been committed by adults within the Cities. The County agrees to provide jail services to facilitate the needs of inmates for Courts appearances at the Courthouse sally port and holding space for all Parties during the hours that the facility is staffed and operational for the Courts, unless otherwise agreed upon. The types of services and levels of services provided by the County to City Inmates shall be equal to those provided to County Inmates. By way of example only, the County shall provide access to the jail in-house courtroom and the video court system for hearings involving incarcerated City inmates in a manner similar to access provided for County inmates.

The County shall provide inmate services consistent with the standards contained in this Agreement. If circumstances require the County to reduce services to all jurisdictions, including Whatcom County, such reduction in services shall be made uniformly among the County and all Cities for gross misdemeanants and misdemeanants. The County shall provide reasonable notice to the Cities of its intention to reduce service levels in any correction program, unless specific circumstances require more immediate action. The uniform reduction in service provided herein shall not apply to felony cases and inmates, except as expressly provided in this Agreement. The need for reductions shall be at the sole discretion of the Sheriff in light of his assessment of potential overcrowding; challenges in maintaining critical infrastructure, life-safety and security systems; behavioral and security concerns regarding the inmate population; and other factors judged by the Sheriff to be relevant. Each City and the County should contract or provide arrangements for inmate housing services and the transportation of inmates to a jail facility or facilities other than Whatcom County to include a jail facility that will directly accept inmates from officers following arrest.

As part of the effort to control jail population in such a way as to minimize jail utilization and the interruption of regular law enforcement practices, all Parties are encouraged to consider the following methods as alternatives to booking offenders into jail and alternatives to incarceration during pretrial and post-conviction phases, including, but not limited to:
- Issue citations in lieu of physical arrest or refer low-level, non-violent, gross misdemeanor, misdemeanor or felony offences to the appropriate prosecutor’s office in accordance with the law, community safety, and the effective administration of justice; and
- Refer or transport eligible persons to behavioral health or other diversion programs and/or facilities, as permitted by law.

In an effort to not reduce booking and inmate holding services of the Parties’ gross misdemeanor and misdemeanor offenders, the Sheriff will first consider and implement the transfer of Department of Correction’s inmates and review classification status for all appropriate inmates for possible transfer to any other County correctional facility (including alternative programs). If the above described measures do not provide the operational capacity needed to safely operate the Jail, the Sheriff will next consider the transfer or removal of sentenced / post-conviction gross misdemeanor, and misdemeanor inmates (regardless of the charging Party), and may also consider sentenced felony inmates, with the exception of those inmates who may be operating as inmate workers in the facility or participating in one of the Alternative Jail programs. In cooperation with Jail staff, each City will identify City inmates for transport and contracted out-of-county facility. If Whatcom County transfers an inmate who has shared charges of a Whatcom County court and a City Court, the City shall be billed and pay for the proportionate share of the contracted facilities’ per diem for the shared incarceration period, unless the contracted facility requires both jurisdictions to pay full per diem. If agreeable to the contracted facility, bills shall be sent directly to each Party for payment. If the Parties agree to joint outsourcing, the Parties will work cooperatively to identify the most cost-effective and appropriate out-of-county facility for outsourcing.

If circumstances require the County to reduce services further and require the transport of pre-trial inmates, the Sheriff will hold City inmates and County misdemeanor and gross-misdemeanor inmates through the time of the inmate’s first court appearance or first review by a judicial officer. It shall be each Parties’ responsibility to ensure that such hearings or reviews are held within 48 hours of booking. If the inmate is not released on personal recognizance or bail within twenty-four (24) hours of the first court appearance or review by a judicial officer, and cannot be transferred to the Work Center due to capacity or security/classification concerns, the Party will arrange to have the inmate transferred out of the correctional facility within four (4) business days following the first court appearance or judicial review, or at a later time agreed to by the Sheriff. The City will provide the County a point of contact available 24 hours a day for receiving the required notifications. The County agrees to allow Party inmates who have been transferred to another facility to be returned to the jail for trial. Such inmates will be subject to transport back to the contracted facility as soon as reasonable possible, unless agreed upon otherwise. The Parties expressly agree that the requirement to timely remove pre-trial inmates, if it becomes necessary, shall apply equally to all Parties with respect misdemeanor and gross-misdemeanor inmates in the jail.

The Parties will work collaboratively towards, if practicable:
- Ensure that inmates subject to a court ordered DMHP evaluation will receive the evaluation prior to transport; and
- Ensure that inmates who are transported receive Whatcom County based services through the Health Department of other social services, as appropriate;

The Sheriff may also notify the City that specific misdemeanor and gross misdemeanor inmates, regardless of pre or post-conviction status, need to be transferred due to special housing, care
or management needs that cannot be accommodated within the County facilities. In this case, the transfer of the inmate needs to be accomplished as soon as reasonably possible, after notice is given.

If booking restrictions are imposed, arrests for assault, domestic violence charges (including order violations), and DUI or similar impaired driving charges will be given priority for permitted booking. To the extent practicable, the Sheriff’s office will continue to allow exceptions to any booking restrictions imposed, based on criteria developed by the Sheriff’s office in the interest of public safety. If an inmate is booked, the inmate will be booked on all charges, including misdemeanor charges.

4. **CAPACITY OPERATIONS.** The New Jail and Courthouse holding space will be available to Parties to this Agreement, and if capacity is available, to non-participating entities. The County will not accept non-Party inmates at any time the Sheriff has determined the New Jail is at capacity, except as required by law, for the safety of the Whatcom County community or for the effective administration of justice to include those wanted in other jurisdictions. In the event the New Jail reaches capacity, the Parties shall in good faith pursue joint contracting for outsourcing, alternative facilities, and other means of addressing capacity issues; provided, however, that nothing in this Agreement shall be construed to restrict or limit any Party’s ability to independently pursue contracted jail housing or jail alternative services from non-Party entities. The operational cost of any joint undertaking, including contracted services, to address capacity issues will be allocated among the Parties based on each Parties’ usage of the contracted services or other joint undertaking.

5. **DETERMINATION OF CASE STATUS.** The County Prosecuting Attorney shall have the sole authority to determine which felony arrest cases submitted by the Cities shall be charged as felonies and which as gross misdemeanors or misdemeanors; provided, however, that the Cities maintain independent decision-making authority over charging misdemeanor cases. The Cities shall not be responsible for any case charged as a felony, pursuant to determination of case status by the County Prosecuting Attorney, except Cities will be responsible for the cost of non-routine services provided by outside medical providers administered prior to sentencing for felony offenders arrested by City law enforcement officers as provided in RCW 70.48.130, following the efforts by the County to reduce medical costs as set forth in this Agreement. If the determination is made by the Prosecuting Attorney that a case should be referred to a municipality for review and possible charging as a gross misdemeanor or misdemeanor, such cases shall be referred to the appropriate City Attorney for review of filing in the Municipal Court with inmate services charged to the City. Any case originally charged by the Prosecutor as a felony and later adjudicated to a gross misdemeanor or misdemeanor shall not require compensation by the Cities. If a determination is made by the County Prosecuting Attorney that a City case originally charged as a gross misdemeanor or misdemeanor will be charged as a felony, then all inmate services will be charged to the County.

6. **INMATES DEFINED**

   a. **City Inmate.** As used herein, "City Inmate" shall mean those inmates originally charged in a municipal court of a city that is a party to this Agreement; those inmates arrested by a city law enforcement officer while held prior to and for the purpose of being charged with a misdemeanor or gross misdemeanor or to release without
charges; those inmates held by any City court order, warrant, or hold; those inmates who are originally arrested for felony offenses and are referred to the appropriate City Attorney for filing in Municipal Court as described above; and as otherwise provided by law.

b. **County Inmate.** As used herein, "County Inmate" shall mean those inmates originally charged in Whatcom County District Court on gross misdemeanor or misdemeanor offenses; those inmates arrested by the County Sheriff while held prior to and for the purpose of being charged with a misdemeanor or gross misdemeanor to release without charges; persons arrested for, or charged with, any felony offense charged in Whatcom County Superior Court; those inmates held by any County court order, warrant, magistrate warrant, or hold; and as otherwise provided by law. A County Inmate includes those inmates which the Sheriff is legally required to book and hold in custody.

c. **Non-Party Inmates.** For the purposes of this Agreement, County Inmates and City Inmates shall not include those inmates who are committed to the Jail by entities that are not a party to this Agreement, or other inmates arrested by state and federal agencies.

d. **Material Witnesses Held In Jail.** Inmate days arising from a material witness warrant shall be allocated to the jurisdiction issuing the material witness warrant.

7. **ASSIGNMENT.** The County shall provide at least 30 days' prior notice to the parties of its intent to assign or delegate duties under this Agreement, specifying which duties it intends to assign or delegate and the name and address of the party to whom it intends to assign or delegate.

8. **BOOKING OF CITY INMATES.**

a. **Documentation of Legal Basis for Confinement.** Absent proper documentation providing a legal basis for confining the City Inmate, the County will have no obligation to receive the City Inmate into custody. Proper documentation for purposes of this section means an arrest warrant, judicial Order of Commitment, other order of a court of competent jurisdiction, or a properly completed Probable Cause Affidavit, in a format prescribed by the Sheriff.

b. **Administrative Booking.** Upon request by the arresting officer, City Prosecutor, City or County Court, and when not otherwise prohibited by statute, court rule or court order, the County shall administratively book, and as soon as practicable, release the City Inmate. The County further reserves the right to administratively book and release a City Inmate when, in the sole discretion of the Sheriff or designee, the County is unable to accept the City's Inmate for housing and when such action is not otherwise prohibited by statute, court rule or court order, and may include jail population considerations. The County will make a good faith effort to notify the arresting officer prior to booking of the County's decision that it will release an inmate immediately after booking so the arresting officer may maintain the ability to pursue an option other than booking in the County's correctional facility.
c. **Health Care Clearance.** The County shall have the right to refuse to accept any inmate from the City who, in the judgment of the County, has a current medical, mental health or dental condition, which may adversely affect the safety of the individual, the safety of other inmates, the safe operations of the County Jail, or is beyond the operational or physical plant limitations of the Facility. The County may require written clearance from the local hospital prior to booking, the cost of which will not be the responsibility of the County. Additionally, the County will have no obligation to receive into custody or retain custody of a City Inmate when, in the opinion of Corrections or Community Medical or mental health staff the City Inmate is not medically and/or psychiatrically able to be housed in the Jail, and/or needs medical and/or psychiatric attention that would require treatment at a hospital or other type of health care facility. The County will notify the City in these instances so that the City can arrange other housing. At all times, the Sheriff or designee shall have final authority to determine whether a City Inmate is medically and/or psychiatrically fit for the County’s Jail.

9. **TRANSFER OF CUSTODY.** The City shall provide or arrange for transportation and security of its inmates to and from the Jail for initial booking and to all court appearances held in its municipal court. Cities may contract with the County to provide custody and/or transportation services for outside court appearances, except when (a) the County determines, in its sole discretion, that emergency transportation is necessary in order to secure medical or health care and/or psychiatric evaluation or treatment, or (b) the County determines, in its sole discretion, that transportation is required to support the orderly operation of the Jail.

When custody of a City Inmate is transferred to the County, the City Inmate shall be subject to all applicable rules, regulations, and standards governing the operation of the Jail, including any emergency security rules imposed by the Sheriff or his designee, subject to applicable law. For the purposes of this Agreement, “Custody” shall be defined as the point in time at which Jail staff accepts actual physical custody and control of an inmate. Any City law enforcement officer delivering an inmate to the Jail shall comply with all rules and regulations of the County Jail.

10. **CITY ACCESS TO INMATES.** All City law enforcement officers and City defense attorneys shall have the right to interview City Inmates at any time inside the confines of the Jail, subject to Jail security rules and regulations. Interview rooms and appropriate communication technology will be made available to City law enforcement officers and defense attorneys as available.

11. **POSTING OF BAIL.** The County agrees to assist the Cities with respect to processing bail, performance bail, and/or bail bonds posted by inmates. The County will deliver bail bonds or money posted for inmates to the Municipal Court in a timely manner. Performance bonds will not be accepted by the County, but must be posted directly with the Court of Jurisdiction. When an inmate is released from County custody, regardless of court or probation conditions placed on an inmate by the City and regardless of where the inmate is released, transported or housed by the City, the County shall bear no responsibility or liability whatsoever for the inmate, including but not limited to, the inmate’s mental, physical, or health care, the inmate’s conduct or behavior, or the inmate’s court obligations.
12. **JAIL ALTERNATIVE PROGRAMS.** Inmates judged to be eligible for Jail Alternative Programs by the sentencing Judge may be permitted to participate in those programs at the discretion of the Sheriff or designee. Such programs may include but will not be limited to In Custody and Out of Custody Work Crews, Work or School Release and Electronic Home Monitoring/Detention. The County will make jail alternative programs available to City inmates to the same extent they are made available to County Inmates.

A City Inmate may be terminated from a Jail Alternative Program if: (a) the City municipal court or other judicial agency order the City Inmate terminated from the Program or otherwise amends its earlier order; (b) the County determines, in its sole discretion, that the City Inmate is no longer eligible for the Program. Upon termination from a Program, a City Inmate already in the custody of the County shall be confined in the Correctional facility to serve the remainder of his or her term of confinement, however, the inmate’s status remains subject to the other provisions of this Agreement. If the City Inmate is not yet in the County's custody at termination, he or she will be the immediate responsibility of the City for all purposes, including, but not limited to, the duty to apprehend.

13. **RELEASE OF CITY INMATE FROM COUNTY JAIL.** No City Inmate confined in the Jail shall be released therefrom, except by order of the court in those matters in which said courts have jurisdiction. The release of the City Inmate shall be by order of the court which may include completion of sentence, posting bond, placement on or to serve jail alternatives, or otherwise by necessity, agreement of the Parties, reduction of jail population, or transfer to another facility.

The Sheriff may in his or her discretion transfer inmates to another facility as necessary to effectively operate the Jail, so long as this discretion is exercised consistent with this Agreement, including Part II.3 above.

14. **RECORD KEEPING.**

   a. **Informational Project Updates.** Prior to and during the construction of the New Jail, the County and its Project Manager will provide reasonably regular updates to the Cities to this Agreement.

   b. **Form of Records.** The County agrees to maintain a system of record keeping relative to the booking and confinement of each City Inmate in such style and manner as equivalent to County records pertaining to County Inmates.

   c. **City Access to Records.** Records of services provided to City Inmates shall be available for review by the applicable City, unless their release is expressly prohibited by applicable law concerning the confidentiality of medical records (including the federal Health Insurance Portability and Accountability Act, "HIPAA"). The Parties may enter business associate agreements under the HIPAA as necessary to implement the intent of this Agreement.

   d. **Jail Bed-Day Utilization Reporting.** At least quarterly the County shall report to the Parties the actual number of inmate days utilized by each Party and each
other user in the previous quarter, and the total number of actual inmate days. As soon as practicable, the Jail bed-day utilization and usage reporting will be discussed and reviewed by the Board and will consider irrelevant information including but not limited to billing records, multi-jurisdictional charges, and Jail peak usage data.

PART III - COST METHODOLOGIES AND SERVICE STANDARDS

1. CHARGES FOR SERVICES. The Parties to this Agreement shall pay the County the established per diem rates, booking charge and fees for services provided as set forth in this Agreement. Charges for services rendered shall be verified as they accrue, and shall be paid within thirty (30) days of the issuance of each month's final invoice. The per diem rate and booking charge for each correction program shall be established by the County consistent with the adopted budget for each program area during the contract year. All Parties to this Agreement, including the County, will pay the same per diem rates, booking charges and fees. All fees for service charged to the Parties shall ultimately be based on the actual cost of jail services, with subsequent adjustment, if necessary, and limited to the amount necessary to reimburse the County for jail services provided. Adjustments to payments for per diem rates, fees and booking charges shall be made in the first quarter and will adjust for the difference between budgeted amounts and the actual revenue and expenditures. This adjustment does not include any non-routine or extraordinary medical costs. Disputes as to the appropriate fees for service will be subject to the Venue and Dispute Resolution provision set forth in this Agreement.

2. Unless set forth elsewhere in this Agreement, the Parties will be notified by the County by June 30 of each year of the estimated per diem rates, booking charges and fees to be charged in the next year, and of the formula to be used for the calculations.

a. All Parties to this Agreement will pay the same per diem rates, booking charges and fees. The rates, charges and fees will be determined following adoption of the County Budget by the County Council, and will be provided to the Parties with the first monthly statement in each fiscal year.

b. All per diem rates and fees are determined by the allocation of actual costs to the appropriate program area. Once allocated, all appropriate program revenue (such as Non-Party per-diem revenues) will be allocated to each respective program area and deducted from operating cost. The resulting net cost, by program area, will be divided by the estimated daily participation or use of the program to determine the per diem rate. The phrase "per diem rates and fees," as used in this Paragraph 1, includes rates and fees for jail per diem (bed day charges) and all alternative jail programs.

c. The booking fee shall be determined in the same manner as per diem fees, with allocations of all appropriate revenue (such as Non-Party booking fees) prior to determining net cost and the amount of the booking charge. The booking charge shall be the same to the Parties of this Agreement for each person booked into the jail. The booking charge will also apply when other law enforcement agencies arrest and book persons into the jail on the Parties' charges and/or
warrants. The Parties will incur both the booking charge, as permitted by law, and a partial or full day per diem charge for persons who are booked into the jail and held in the facility; provided, however, that no per diem charge will be applied for inmates released within eight (8) hours of booking. If an offender is being booked on charges from multiple local jurisdictions, the booking charge will be split evenly between those jurisdictions, as permitted by law.

d. All rates will include a capital replacement fee to fund the replacement of component systems of the New Jail. (Communications, major maintenance expense, HVAC, computers, jail controls, plumbing fixtures, etc.) These replacement funds will be kept separate and distinct and regularly accounted for in a capital replacement account or subaccount. These funds will be used to acquire, repair or renovate the jail's component systems. Interest on these funds will remain in the account or subaccount and used only for jail capital replacement purposes. The County shall make payments into the fund on the same basis as the Cities.

e. All services provided to entities not a Party to this Agreement will be charged the established per diem rates, booking charges and fees, and a capital replacement fee, as permitted by law. Entities not a Party to the Agreement may be charged an additional capital construction fee, as permitted by law. Non-Party per diem revenue will be used to The revenue resulting from the capital construction fee will be separately accounted for and will be collected by the County and used for County jail related expenses.

f. The County will allocate all operating costs, including maintenance, utility, and other costs of the site and facilities shared between the New Jail and other county divisions, bureaus, or departments on a rational and systematic basis open to audit and public inspection in a manner that recognizes that the City Parties are not responsible for costs associated with non-jail activities, services, maintenance, and operations. The costs of shared facilities allocated to any non-jail divisions, bureaus, or departments will be funded by non-jail revenues.

g. At the same time, annual notice of rates and fees are provided to the Parties to this agreement, the County shall provide to the parties detailed revenue and expense report that accounts for and supports all the rates and fees charged under this Agreement.

3. **Per Diem Rates.** Per diem rates for the Parties to this Agreement will be charged 1/3rd day increments of a full 24 hour period.

4. **Criteria for Assessing Per Diem Charges.** In the event that an inmate is booked on multiple charges, the following procedure will apply to determine all charges assessed the Parties:

Persons incarcerated on felony charges and other County charges will be the responsibility of the County. The intent of these criteria is proportional billing and division and allocation of fees to all Parties when multiple jurisdictions have a hold on an inmate and to ensure that the County collects the correct per diem charge for the appropriate day or portion of day of incarceration or of participation in a jail alternative program:
a. Persons originally incarcerated for a felony level violation that is declined by the County Prosecutor and returned to the City Attorney will be the City's responsibility from the date of booking. Any case originally charged by the Prosecutor as a felony and later plea-bargained or adjudicated to a gross misdemeanor or misdemeanor will be the responsibility of the County and shall not require compensation by the City.

b. If the offender is also being held on City misdemeanor or gross misdemeanor warrants or charges, those warrants or charges will be noted in the inmate's booking record. The per diem charges for inmates held by multiple jurisdictions will be apportioned equally between the jurisdictions for the duration of the holds that are in place by such jurisdictions. A City shall not be responsible for any per diem charge for any period during which the City has no hold on the inmate.

c. If a City charge is concurrent to a Whatcom County Court or another local jurisdiction's gross misdemeanor or misdemeanor charge, the City shall be billed the proportionate share of the per diem for the shared incarceration period.

d. If the City charge is ordered to be consecutive to a Whatcom County Court or another local jurisdiction's charges, the City will pay the full per diem for the length of the sentence.

These procedures for criteria on assessing per diem charges will be discussed and reviewed at the Board.

5. Alternative Jail Programs/Per Diem – In addition to criteria for assessing per diem charges set forth above, the City will be charged for Alternative Jail Programs as follows:

a. If an offender is participating in Whatcom County's Work Release Program the City will be charged a per diem rate per bed day for work release inmates. Billing to the City for these participants will be based on a per diem rate set annually. Any funds collected from the offender will be credited to the cost to the City.

b. If an offender qualifies for Electronic Home Detention, billing to the City for these participating offenders will be based on a per diem rate set annually. Any funds collected from the offender will be credited to the City.

c. If an offender is participating in the Out of Custody Work Crew Program, billing to the City for these participants will be based on a per diem rate set annually. If the County bills the offenders for participating in this program, the funds collected from the offender will be credited to the City.

d. If an offender is participating in the In Custody Work Crew Program, billing to the City for these participants will be based on a per diem rate set annually. If the County bills the offenders for participating in this program, the funds collected from the offender will be credited to the City.

e. All participants must first be authorized by the sentencing judge to apply for alternative jail programs, and the Sheriff or designee must approve the terms and conditions of the program participation.

f. The billing of offenders and collection will occur uniformly with respect to all Party inmates.
6. **BILLING INFORMATION.** The County shall provide each City with an itemized monthly billing report for each service area. The monthly billing report shall include the dates used in computing the fees and the initiation and, if applicable, release date for each corrections program, with adjustments made for any temporary releases that may occur within the time frame of the specific incarceration.

7. **SERVICE STANDARDS.** The County agrees to furnish its facilities and personnel for confinement of City offenders and other services described in this Agreement in the same manner and to the same extent as the County furnishes for the confinement of its own gross misdemeanor or misdemeanor offenders, provided that the County shall meet all legal requirements.

8. **OPERATIONAL CONTROL.** Each City acknowledges the County's operational control of the jail and alternate jail programs, and each agrees that City offenders committed to the Whatcom County Jail and alternative jail programs will be subject to the same lawful rules and regulations required of other offenders incarcerated therein.

9. **EARLY RELEASE CREDIT.** The County will grant early release credits to City Inmates in accordance with Chapter 9.94A RCW and County Sheriff's Office policies and procedures. The earned release credit policy will be discussed and reviewed by the Board.

10. **MEDICAL CARE AND COSTS.** All inmates shall receive medical, mental health, and dental treatment when medically necessary to safeguard their health while in custody as required by law. Medical costs shall be allocated per state law or by agreement between the City and the County. If there is a difference between state law allocation of such costs and an agreement between the City and the County, the Agreement shall control. The County shall be responsible for providing routine health care. Such health care will include those health care services routinely delivered at normal cost by County staff, contracted practitioners, or nursing staff, and delivered within the facility.

a. The County is not responsible for the cost of services delivered to City misdemeanor or gross misdemeanor inmates outside of the facility, or for non-routine services provided by outside medical practitioners within the facility. The City shall be responsible for the costs of any and all emergent or necessary medical or health care, dental and psychiatric treatment provided outside of the County Correctional Facilities or non-routine services or medication provided to the misdemeanor or gross misdemeanor inmate inside the jail. Payment for emergency, exceptional or non-routine necessary medical or health care for City gross misdemeanor or misdemeanor inmates shall be made by the City upon written invoice by the County or upon such other terms as City and the County may agree in writing. The County will additionally bill the City for presentence felony inmates, held on the City's case, who incur emergency, exceptional or non-routine necessary medical or health care costs, as set forth in RCW 70.48.130. The County shall notify the City within a reasonable period of time, when the County becomes aware that an inmate being held on the City's charges or awaiting sentencing on a City felony charge is in need of emergency, exceptional, or non-
routine necessary medical or health care or when the inmate has been transported for emergency care. Any decision to release a pretrial City felon, City pre-trial detainee, or City inmate, will rest with the City, the Prosecuting Attorney and/or City Attorney, and/or the Court. Included in the cost of extraordinary medical costs will be the costs to transport and/or provide a guard detail if the inmate is not released by the Court.

b. The County agrees to utilize all existing agreements with medical practitioners and organizations to mitigate any medical costs, to make its best efforts to negotiate additional favorable agreements, and seek out any and all eligible third party reimbursement for medical costs (including health or auto insurance, DSHS/Medicaid, and/or the State of Washington), in the same manner and to the same extent at the County does for inmates held on its own charges and prior to billing the City. No third party beneficiary contract or contract of insurance is intended by this contract. Non-routine necessary medical or health care shall include all practitioner-ordered health care or medical services delivered to City inmates outside of the facility, specialized care provided by non-contract health care providers in or out of the facility, and emergency treatment, including EMS and the local Hospital Emergency Department.

c. Any failure or error by the County to provide the City with proper notification of extraordinary, non-routine necessary medical or health care, emergency care, dental and/or mental health services described in this Agreement, delivered to a City Inmate shall in no way excuse full, complete and timely payment by the City under this Agreement.

d. **Invoicing for Extraordinary, Non-Routine, Necessary Medical or Health Care, Emergency Care, Mental Health and Dental Services.** The County shall invoice the City for all costs incurred for extraordinary or non-routine necessary medical, health, or emergency care, dental, or mental health services to City Inmates, including, but not limited to, durable medical equipment, ambulance fees, medical, dental, and mental health services provided outside the Correctional facility specialized equipment or extraordinary medications essential to the inmates health such as chemotherapy, anti-viral or biologic medications. Extraordinary Medical Costs do not include routine medical examinations, tests, procedures performed at the Correctional facility by Correctional facility staff or contractors or routine medications. The County will facilitate use of a City inmate’s 3rd party medical insurance whenever possible. If there is coverage, the County will credit amounts received from the City Inmate’s own health insurance and applicable public assistance to the City’s bill. Credit amounts may show up on billings subsequent to the time of service, due to processing timelines by both the provider and the 3rd party payer.

e. **Payment.** The City shall remain responsible for complete and timely payment of all amounts invoiced. Invoices may be sent monthly, quarterly or on any other schedule that is mutually convenient to the parties. Where complete payment is not tendered within thirty (30) days of the invoice date, the County may charge interest on the outstanding balance at a rate equal to the interest rate on the
monthly County investment earnings. Should the City wish to dispute the amount of a particular invoice, i.e. whether the bill accurately reflects the amount of bed-day use or program use, it will (a) make complete and timely payment on the outstanding balance, and (b) strive to deliver written notice of the dispute to the County within ninety (90) days of the invoice date. This provision shall not limit a City’s ability to challenge or dispute any billings that have been paid by the City.

f. **Review and maintenance of records.** Each party may examine the other party’s books and records to verify charges and to audit the amounts charged under this Agreement. If the City elects to conduct an audit, the audit may be conducted under the supervision of the County Administration. The County shall maintain accurate time and accounting records related to the Services for a period of three (3) years following final payment.

**PART IV-GENERAL TERMS**

1. **INDEMNIFICATION.**

   a. **City Held Harmless.** The County shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the County, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any such suit based upon such a claim, action, loss, or damages is brought against the City, the County shall defend the same at its sole cost and expense; provided that the City reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment in said suit be rendered against the City, and its officers, agents, and employees, or any of them, or jointly against the City and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

   b. **County Held Harmless.** The City shall indemnify and hold harmless the County and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the County, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any suit based upon such a claim, action, loss, or damages is brought against the County, the City shall defend the same at its sole cost and expense; provided that the County reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County, and its officers, agents, and employees, or any of them, or jointly against the County and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.

   c. **Parties Obligations.** The Parties’ obligations to indemnify defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent
negligence or willful misconduct of the Parties or of the Parties and a third party other than an officer, agent or employee of the Parties, shall apply only to the extent of the negligence or willful misconduct of each Party.

d. **Waiver under Washington Industrial Insurance Act.** The foregoing indemnity is specifically intended to constitute a waiver of each party’s immunity under Washington’s Industrial Insurance Act, Chapter 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor’s employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

e. **Liability Related to Ordinances, Policies, Rules and Regulations.** In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, policies, rules or regulations. Nor shall the County be liable or responsible for any claims of conduct or actions by the City, City Courts, or law enforcement, including, but not limited to claims of unlawful arrest, excessive force, unlawful imprisonment, unconstitutional deprivation, negligence, errors, omissions or misconduct. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, rule or regulation is at issue, or in which there is an allegation of City Court, City Prosecutor or Law Enforcement action as described above, the City shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney’s fees.

In executing this Agreement, the City does not assume liability or responsibility for or in any way release the County from any liability or responsibility which arises in whole or in part from the existence or effect of County ordinances, policies, rules or regulations. Nor shall the City be liable or responsible for any claims of conduct or actions by the County, County Courts, or law enforcement, including, but not limited to claims of unlawful arrest, excessive force, unlawful imprisonment, unconstitutional deprivation, negligence, errors, omissions or misconduct. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such County ordinance, policy, rule or regulation is at issue, or in which there is an allegation of County Court, County Prosecutor or Law Enforcement action as described above, the County shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the County, the City, or both, the County shall satisfy the same, including all chargeable costs and reasonable attorney’s fees.

f. **Insurance.** Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and/or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying party to the indemnified party(s). Each Party shall provide the other with a certificate of insurance or letter of self-
insurance annually as the case may be. All insurance obligations shall be on a per occurrence basis.

g. The terms of the above Indemnification provisions shall survive the termination or expiration of this Agreement.

h. The term "City" as used in this Section refers to each of the cities that are party to this Agreement.

2. **EXPIRATION OF AGREEMENT.** After December 31, 2048, the provisions in this Agreement regarding payments and financing of the New Jail by the Parties, and as defined as the Total Capital Cost for Project in this Agreement, shall terminate. The provisions of this Agreement relating to financing the New Jail by the Parties are not subject to termination pursuant to RCW 70.48.090. City access to the services at the New Jail, based on a City's pro-rata share, shall remain in effect so long as the New Jail is used as a correctional facility. After December 31, 2048, all other provisions and terms in this Agreement may be amended, modified, revised by the County, or any Party may terminate the Agreement in its entirety only if a new Jail Use Agreement is provided allowing the Cities access to all the services at the New Jail. All termination provisions set forth in RCW 70.48.090 are, to the fullest extent allowed by law, superseded by this Agreement.

3. **EXPANSION OF FACILITIES BEYOND NEW JAIL.** If the County determines at a later date that an expansion or additional Jail facilities are necessary, beyond what is defined as the New Jail in this Agreement, then the costs associated with the additional facilities will be subject to a new or amended Agreement between the County and Cities. If any City is unwilling or unable to financially participate in its pro-rata share of the needed expansion of the facility, the capacity and services available to that City will be limited to its vested pro-rata share of the facility pre-expansion based on the City's percentage capital contribution to the facility pre-expansion.

4. **MODIFICATION.** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all Parties.

5. **SURVIVAL.** Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.

6. **VENUE AND DISPUTE RESOLUTION.** No Party to this Agreement shall have standing to dispute another Party's use of sales tax revenues for Bond Payments, or other financing options, so long as the sales tax revenue is used in a manner consistent with the law and this Agreement. This paragraph establishes the sole and exclusive process for disputes arising under this Agreement, except as otherwise set forth herein. If any dispute arises as to the administration, including duties, rights, defaults, obligations, of this Agreement between any City party to this Agreement and the County, such dispute shall be progressively resolved in the following manner:

   a. Through negotiations between the City and the County's respective contacts.
   b. Through negotiations between the City's Mayor and the County Executive.
In the event that a City and the County do not reach agreement within 90 days of commencing negotiations, the matter will be submitted to binding arbitration. The City and the County may mutually agree to extend the negotiation period. If the City and the County cannot agree upon the selection of an impartial arbitrator within fourteen days of a written request for arbitration by either the City or the County, the arbitrator shall be selected as provided in the Superior Court Mandatory Arbitration Rules by a judge of the Superior Court of Skagit County, unless otherwise agreed by the Parties. The arbitration shall be conducted pursuant to the Superior Court Mandatory Arbitration Rules. Each Party shall pay all their own costs and fees of arbitration regardless of the results of arbitration. The Parties will share equally in the Arbitrator's fee. The Parties agree that all contractual remedies allowed by law are available under this Agreement and may be granted by the Arbitrator, including, but not limited to, actual damages for breach and equitable relief. The Parties hereby stipulate and agree that discovery in an arbitration shall not be subject to mandatory arbitration rules and instead shall be subject to the the Superior Court Civil Rules. In the event that a Party seeks equitable relief, the matter will be subject to the arbitration provisions in this paragraph, but if equitable relief or other remedies cannot be determined or granted by an arbitrator, the Party seeking equitable relief may seek remedies in Superior Court.

The Cities agree that the payments made toward TOTAL CAPITAL COST required under this Agreement will be made as set forth herein, and are not subject to any claims or disputes relating to jail operations or other terms in this Agreement so long as such payments are used as set forth in this Agreement. No payment toward TOTAL CAPITAL COST may be withheld, unless such relief is granted through the dispute resolution process.

7. **NO THIRD PARTY BENEFICIARIES.** This Agreement is not intended to benefit any person, entity or municipality not a party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer, or other representative of either party. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the parties hereto shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other party hereto.

8. **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this extent and purpose the terms and conditions of this Agreement are declared severable.

9. **COMPLIANCE WITH LAWS.** The parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement. The parties shall obtain and comply with any and all necessary permits,
approvals, consents and notice from or to all applicable jurisdictions prior to commencing any work or action related to this Agreement. The parties to this Agreement reserve all rights afforded under RCW 39.34.180, as in effect at any given time, except that all express terms of this Agreement shall supersede contrary provisions in RCW 39.34.180 to the extent permitted by law.

10. **CAPTIONS AND COUNTERPARTS.** The captions in this Agreement are for convenience and reference only, and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute one Agreement.

11. **NO SEPARATE LEGAL ENTITY.** This Agreement establishes a cooperative undertaking, and it is not the intention of the parties to create a new or separate legal entity by this Agreement. This Agreement does not establish or create a joint venture or partnership between the parties, and no party shall be responsible for the liabilities and debts of the other parties hereto.

12. **INTEGRATED AGREEMENT.** This is an integrated Agreement. Neither party has relied on any representation other than those expressly set forth herein in entering this Agreement.

13. **NEUTRAL AUTHORSHIP.** Each of the terms and conditions of this Agreement have been reviewed and negotiated with resort to legal counsel, and represents the combined work product of the parties hereto, and this Agreement shall not be interpreted for or against any Party hereto based upon authorship. The Parties represent that they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement, and have either done so or have voluntarily chosen not to do so. The Parties represent and warrant that they and their authorized representatives executing this Agreement have fully read this Agreement, that they understand its meaning and effect, and that they enter into this Agreement with full knowledge of its terms. This Agreement contains terms and conditions agreed upon by the Parties. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. No change or addition to this Agreement shall be valid or binding upon the Parties unless such change or addition is in writing, executed by all the Parties.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein; provided, however, that the terms of this Agreement do not affect the rights and responsibilities of the County and the Parties under any separate agreements related to non-jail criminal justice matters, such as for probation services. This Agreement may not be modified or amended in any manner except by a written document executed with the same formalities as required for this Agreement and signed by the party against whom such modification is sought to be enforced.

15. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Skagit County, unless agreed otherwise by the Parties.
16. **NO WAIVER.** A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

17. **SAVINGS.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be curtailed and limited only the extent necessary to bring it within legal requirements.

18. **FORCE MAJEURE.** In the event either party's performance of any of the provisions of this Agreement become impossible due to circumstances beyond that party's control, including without limitation, force majeure, strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, war or other strife, that party will be excused from performing such obligations until such time as the Force Majeure event has ended and all facilities and operations have been repaired and/or restored.

19. **PARTIES AGREEMENT.** The Parties agree to aid and assist the other in accomplishing the objectives of this Agreement.

20. **FURTHER ACTS.** The Parties agree to take such further actions and to execute documents as in their reasonable judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this Agreement.

21. **AGREEMENT CONTACT.** The County’s initial contact for this Agreement shall be the County Executive. The Cities’ initial contact shall be the Mayor of each respective city. The Parties to this Agreement may designate new contacts by providing written notice to all the other Parties.

**IN WITNESS WHEREOF,** the County and the Cities of Whatcom County have executed this Inter-local Agreement as of the date and year last written below.

ENTERED INTO this __________ day of ___________________, 2017.
Approved as to form:

County Civil Prosecuting Attorney

Executed this ___ day of ______________, 2017 for WHATCOM COUNTY.

_________________________________________________________
Jack Louws, County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

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 and Cities Jail Facility Use Agreement
CITY OF BELLINGHAM

Kelli Linville, Mayor

Attest:

_________________________________________
Finance Director

Approved as to form:

_________________________________________
Office of the City Attorney
CITY OF BLAINE

David Wilbrecht, City Manager

Attest:

______________________________
Finance Director

Approved as to form:

______________________________
Office of the City Attorney
CITY OF EVERSON

John Perry, Mayor

Attest:

________________________________________
Finance Director

Approved as to form:

________________________________________
Office of the City Attorney
CITY OF FERNDALE

__________________________
Greg Young, City Manager

Attest:

__________________________
Finance Director

Approved as to form:

__________________________
Office of the City Attorney
CITY OF NOOKSACK

James Ackerman, Mayor

Attest:

_____________________________________
Finance Director

Approved as to form:

_____________________________________
Office of the City Attorney
CITY OF SUMAS

____________________________
Bob Bromley, Mayor

Attest:

____________________________
Finance Director

Approved as to form:

____________________________
Office of the City Attorney
EXHIBIT B

RCW 82.14.450
Sales and use tax for counties and cities.

(1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this section may not exceed three-tenths 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.

(2) (a) A city legislative authority may submit an authorizing proposition to the city voters at a primary or general election and; if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this subsection may not exceed 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. A city may not begin imposing a tax approved by the voters under this subsection prior to January 1, 2011.

(b) If a county adopts an ordinance or resolution to submit a ballot proposition to the voters to impose the sales and use tax under subsection (1) of this section prior to a city within the county adopting an ordinance or resolution to submit a ballot proposition to the voters to impose the tax under this subsection, the rate of tax by the city under this subsection may not exceed an amount that would cause the total county and city tax rate under this section to exceed three-tenths of one percent. This subsection (2)(b) also applies if the county and city adopt an ordinance or resolution to impose sales and use taxes under this section on the same date.

(c) If the city adopts an ordinance or resolution to submit a ballot proposition to the voters to impose the sales and use tax under this subsection prior to the county in which the city is located, the county must provide a credit against its tax under subsection (1) of this section for the city tax under this subsection to the extent the total county and city tax rate under this section would exceed three-tenths of one percent.

(3) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

(4) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

(5) One-third of all money received under this section must be used solely for criminal justice purposes, fire protection purposes, or both. For the purposes of this subsection, "criminal justice purposes" has the same meaning as provided in RCW 82.14.340.

(6) Money received by a county under subsection (1) of this section must be shared between the county and the cities as follows: Sixty percent must be retained by the county and forty percent must be distributed on a per capita basis to cities in the county.

(7) Tax proceeds received by a city imposing a tax under this section must be shared between the county and city as follows: Fifteen percent must be distributed to the county and eighty-five percent is retained by the city.

[2010 c 127 § 1; 2009 c 551 § 1; 2007 c 380 § 1; 2003 1st sp.s. c 24 § 2]
Exhibit C
WHATCOM COUNTY
Jail Facilities Use Agreement
New Jail Facilities

<table>
<thead>
<tr>
<th></th>
<th>Monthly</th>
<th>12 Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal</td>
<td>$110,100,000</td>
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<tr>
<td>Interest Rate</td>
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<td></td>
</tr>
<tr>
<td>Term (Years)</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Monthly Payment</td>
<td>$563,267.41</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Monthly</th>
<th>12 Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whatcom County</td>
<td>78.00%</td>
<td>$439,348.58</td>
</tr>
<tr>
<td>Cities</td>
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<td>$123,918.83</td>
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<tr>
<td>Total</td>
<td></td>
<td>$563,267.41</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Monthly</th>
<th>12 Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Bellingham</td>
<td>71.60%</td>
<td>$88,725.88</td>
</tr>
<tr>
<td>Lynden</td>
<td>8.10%</td>
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<tr>
<td>Ferndale</td>
<td>12.90%</td>
<td>$15,985.53</td>
</tr>
<tr>
<td>Blaine</td>
<td>3.60%</td>
<td>$4,461.08</td>
</tr>
<tr>
<td>Everson/Nooksack</td>
<td>2.60%</td>
<td>$3,221.89</td>
</tr>
<tr>
<td>Sumas</td>
<td>1.20%</td>
<td>$1,487.03</td>
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<tr>
<td></td>
<td>100.00%</td>
<td>$123,918.84</td>
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</tbody>
</table>

Whatcom County and Cities Jail Facility Use Agreement
EXHIBIT D
Whatcom County
New Jail Project
Final Total Capital Cost
Adjusted Payment Schedule

Beginning January 31st, 2019, City payments to the County for Total Capital Costs will be credited to an account maintained by the County for each city. Cities will earn interest on a monthly basis computed at the average rate earned on the Whatcom County Investment pool. Cities accounts will accumulate based on payments and interest earned.

Once the Jail is complete and Total Jail Capital Costs are known, the balance of each cities’ account will be deducted from their proportionate share of the Jail Total Capital Cost, the resulting balance remaining will be amortized over the months remaining until December 31st, 2048, at the All In True Interest Cost rate of bonds used to finance the new Jail. Example of adjusted payment schedule attached to this Exhibit below;
Current Payment Structure

<table>
<thead>
<tr>
<th>Date</th>
<th>Monthly Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/2019</td>
<td>$563,267</td>
</tr>
<tr>
<td>2/1/2019</td>
<td>$563,267</td>
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<td>1/1/2020</td>
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<td>11/1/2020</td>
<td>$563,267</td>
</tr>
<tr>
<td>12/1/2020</td>
<td>$563,267</td>
</tr>
</tbody>
</table>

The chart above represents the current payment structure based on $110,100,000 at 4.50% for 30 years. The monthly payment is 1/12 of an annual payment. Payments commence 01/01/2019 and proceed through 12/1/2048.

Initial Assumption

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Project Size</td>
<td>$110,100,000</td>
</tr>
<tr>
<td>Interest Rate</td>
<td>4.50%</td>
</tr>
<tr>
<td>Payments Commence</td>
<td>1/1/2019</td>
</tr>
<tr>
<td>Monthly Payment (PMT)</td>
<td>$563,267</td>
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<tr>
<td>Payments Cease</td>
<td>12/1/2048</td>
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</table>

Total P&I through 2049 $202,776,266.23

Total: $202,776,266
## Sample if Total Costs and Total Interest Cost Decrease

### Sample Payment Structure: If Total Costs are Known Today

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Project Size</td>
<td>$109,700,000</td>
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<tr>
<td>Interest Rate</td>
<td>4.00%</td>
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<tr>
<td>Payments Commence</td>
<td>1/1/2019</td>
</tr>
<tr>
<td>Monthly Payment</td>
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<tr>
<td><strong>Total P&amp;I</strong></td>
<td><strong>$190,318,856</strong></td>
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</table>

The chart above displays a monthly payment if the total cost of the project was known at 1/1/2019, and those payments were made through 12/1/2048. The chart below shows the current payment structure until the true-up date, at which time a new payment is calculated to match the total Principal and Interest payments that would have been required if costs were originally known.

### Sample: True-Up of Payments

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Project Size</td>
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<tr>
<td>Interest Rate</td>
<td>4.00%</td>
</tr>
<tr>
<td>Payments Commence</td>
<td>1/1/2019</td>
</tr>
<tr>
<td>Initial Monthly Payments Through True-Up Date</td>
<td>$63,267</td>
</tr>
<tr>
<td>True Up Date</td>
<td>6/1/2021</td>
</tr>
<tr>
<td>New Payment after Total Cost True-Up</td>
<td>$525,518</td>
</tr>
<tr>
<td>New Payment Cease</td>
<td>12/1/2048</td>
</tr>
<tr>
<td><strong>Total P&amp;I</strong></td>
<td><strong>$190,318,856</strong></td>
</tr>
</tbody>
</table>

The new payment is calculated by subtracting payments already made through the true up date from new Total P&I and dividing by the remaining months.

## Sample if Total Costs and Total Interest Cost Increase

### Sample Payment Structure: If Total Costs are Known Today

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Size</td>
<td>$125,000,000</td>
</tr>
<tr>
<td>Interest Rate</td>
<td>5.00%</td>
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<td>Payments Commence</td>
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</tr>
<tr>
<td>Monthly Payment</td>
<td>$731,829</td>
</tr>
<tr>
<td><strong>Total P&amp;I</strong></td>
<td><strong>$263,458,312</strong></td>
</tr>
</tbody>
</table>

The chart above displays a monthly payment if the total cost of the project was known at 01/01/2019 and those payments were made through 12/1/2048. The chart below shows the current payment structure until the true-up date, at which time a new payment is calculated to match the total Principal and Interest payments that would have been required if costs were originally known.

### Sample: True-Up of Payments

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Size</td>
<td>$125,000,000</td>
</tr>
<tr>
<td>Interest Rate</td>
<td>5.00%</td>
</tr>
<tr>
<td>Payments Commence</td>
<td>1/1/2019</td>
</tr>
<tr>
<td>Initial Monthly Payments Through True-Up Date</td>
<td>$63,267</td>
</tr>
<tr>
<td>True Up Date</td>
<td>6/1/2021</td>
</tr>
<tr>
<td>New Payment after Total Cost True-Up</td>
<td>$547,152</td>
</tr>
<tr>
<td>New Payment Cease</td>
<td>12/1/2048</td>
</tr>
<tr>
<td><strong>Total P&amp;I</strong></td>
<td><strong>$263,458,312</strong></td>
</tr>
</tbody>
</table>

The new payment is calculated by subtracting payments already made through the true up date from new Total P&I and dividing by the remaining months.
Resolution 2017- ________________

RESOLUTION AUTHORIZING AND APPROVING THE INTERLOCAL JAIL FACILITY FINANCING AND USE AGREEMENT BETWEEN WHATCOM COUNTY AND THE CITIES OF BELLINGHAM, BLAINE, EVERSON, FERNDALE, LYNDEN, NOOKSACK, AND SUMAS

This Interlocal Jail Facility Financing and Use Agreement ("Agreement") has been agreed to by and between Whatcom County ("County"); the City of Bellingham ("Bellingham"); the City of Blaine ("Blaine"); the City of Everson ("Everson"); the City of Ferndale ("Ferndale"); the City of Lynden ("Lynden"); the City of Nooksack ("Nooksack"); and the City of Sumas ("Sumas") pursuant to RCW Chapters 70.48 and 39.34, and will be administered by the County Executive, or designee, pursuant to RCW 39.34, and

WHEREAS, the County is charged by State law with the operation and maintenance of the Whatcom County Jail and related correctional facilities ("Jail"), presently located on Prospect and Division Streets in Bellingham, Whatcom County, Washington (hereinafter, the "Existing Jail"); and

WHEREAS, the Existing Jail requires additional capacity and improved infrastructure in order to safely incarcerate the combined volume of city and county inmates currently and in the future. The city governments that have agreed, and are party to this Agreement, (hereinafter, collectively, the "Cities") desire to continue use of the Jail for the detention of Cities’ inmates. The County and Cities may collectively be referred to as “Parties” hereinafter; and

WHEREAS, on June 14, 2016 Council approved Resolution 2016-21 establishing a Jail Stakeholder’s Workgroup to provide a recommendation to the Council for the financial agreements required for the development of a new jail, including cost of the facility, the funding mechanism and the allocation and funding of operating expenses between jurisdictions; and

WHEREAS, on May 5, 2017 the Jail Stakeholder’s Workgroup comprised of designated officials of the county, cities, tribes, and law enforcement reviewed the Agreement and unanimously recommended to the County Council the financial agreements, attendant to development of a new jail, including the estimated cost of the facility, and the funding mechanism for the facility, and the cost sharing allocation for operating expenses among jurisdictions, provided that the size of the facility will be determined by the County Council; and
WHEREAS, the County intends to build, own and operate a new Jail located on LaBounty Road in Ferndale, Whatcom County, Washington, hereinafter the “New Jail.” The New Jail will include jail housing, booking and administration facilities, expanded medical and behavioral health facilities and jail alternative programing space to serve the needs of the community for the foreseeable future (as shown and anticipated, attached hereto as Exhibit A). The size of the New Jail will be 440 beds, with a 3% increase (453) or decrease (427) allowance based on design considerations, with an additional 36 medical and behavioral health facility beds; and

WHEREAS, if any city listed and intended as a party to this Agreement fails to approve and execute this Agreement by June 30th, 2017, the County may reduce the size and scope of the project, including a reduction of jail beds and medical and behavioral health facility beds. This may be commensurate with the non-participating city’s actual and expected share of the annual payment for the New Jail; and

WHEREAS, the Parties agree that the community and its taxpayers are best served by a cooperative, collective approach to public infrastructure, including the New Jail, through joint planning and funding, to maximize efficiency and promote economies of scale; and

WHEREAS, the Parties agree to form the County and Cities Finance and Operations Advisory Board to provide further collaboration and joint problem solving with respect to ongoing jail operational matters and jail finances that will assist with maintaining cost-effective, system-wide correctional services. The Parties seek to avoid, if possible, booking restrictions and the transport of pre-trial inmates to locations outside of Whatcom County. Consistent with this Agreement’s cooperative, collective approach to providing for correctional needs, the Parties agree to share uniformly in the burden of reduced capacity at the jail. The Parties will endeavor to utilize alternatives to booking and alternatives to incarceration and will work to identify for transport those inmates that are best suited for incarceration at another correctional facility, without regard to the charging Party. The Finance and Operations Advisory Board will make recommendations to the Sheriff and the Whatcom County Council on these matters and others as identified in this Agreement; and

WHEREAS, in 2017 the Whatcom County Council will consider this resolution that will place a proposition before Whatcom County voters that, if passed, would authorize additional sales and use tax at the rate of 0.2% to be used for the construction, maintenance, and operation of jail facilities, and for adult corrections programs including medical and behavioral health facilities and programs, and for other public safety purposes, all pursuant to RCW 82.14.450 (hereinafter, the "Sales Tax Measure"); and
WHEREAS, the negotiation and execution of this Agreement is intended to yield a definitive, long-term agreement to comprehensively address funding of the New Jail and certain operational matters related to the Jail; and

WHEREAS, the Parties to this Agreement are willing to make a long-term commitment and provide financial contributions in order to obtain and be granted continued access to the Existing and New Jail for the duration of the facilities' existence. Subject to the terms and conditions herein, the County agrees to make the Existing Jail and New Jail and jail-related programs available for participating Cities' inmates, as described further in this Agreement; and

WHEREAS, the Parties also desire to include within this Agreement the procedures for determining the costs associated with housing inmates within the Existing Jail and New Jail, the scope and level of service to be provided by the County, procedures for billing of the cost of services, the methodology for payment by the Cities to the County relating to the Existing Jail and New Jail, as set forth in this Agreement. Should any city not approve and execute this Agreement by June 30th, 2017, the procedures for determining costs of construction and services, the level of service, procedures for billing cost of service and the methodology for payment and other terms as set forth in this Agreement will continue to apply to the other cities which have approved this Agreement; and

WHEREAS, as part of the Existing Jail, the County owns and operates an interim adult correctional facility and behavioral health triage center on Division Street in Bellingham, Whatcom County, WA. The County may sell or transfer the Division Street property when the New Jail is completed and operational. If sold or transferred, the resulting value and proceeds from this transaction will be applied by the County to facilities and programs that support the goals of treating adults with behavioral health problems. The goals of these programs are to reduce incarceration rates of people with behavioral health problems; and

WHEREAS, the Parties recognize and fully support the goals of the Incarceration Prevention and Reduction Task Force (IPRTF) to reduce incarceration and recidivism. The IPRTF will continually review Whatcom County’s criminal justice and behavioral health programs and make specific recommendations to safely and effectively reduce incarceration of individuals struggling with mental illness and chemical dependency, and minimize jail utilization by pre-trial defendants who can safely be released; and
WHEREAS, the Parties agree to implement the recommendations of the IPRTF upon their final recommendation, where possible. This includes increasing the availability of Alternative Jail programs, including Electronic Home Detention, Work Release and Work Crew programs, and the establishment of a County pretrial supervision program. To ensure the continued commitment to reducing incarceration and recidivism, the IPRTF will have a task force member on the County and Cities Finance and Operations Advisory Board.

NOW THEREFORE BE IT RESOLVED that the Whatcom County Council authorizes and approves the County Executive to enter into an Interlocal Jail Facility Financing and Use Agreement with the cities of Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas for the purposes of construction and long-term operation of the Whatcom County Correctional Facility.

APPROVED this ______ day of ______________________, 2017

ATTEST:

______________________________
Dana Brown-Davis,
Clerk of the Council

______________________________
Barry Buchanan,
Council Chair

APPROVED AS TO FORM:

______________________________
Civil Deputy Prosecutor
<table>
<thead>
<tr>
<th></th>
<th>PROPOSED MODIFICATIONS</th>
<th>2015 JFUA</th>
<th>PROPOSED NEW JFUA</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capital Project Includes (Part I, #1, Pg. 4)</td>
<td>Construction of New Jail and Courthouse Holding Space/Sally Port, Demo of Existing Jail, all including Hard and Soft Costs, $97 Million</td>
<td>Construction of New Jail and Courthouse Holding Space/Sally Port, Demo of Existing Jail, all including Hard and Soft Costs, Construction Period Finance and Projected Cost Increase, $110 Million</td>
<td>Use and design of Courthouse Holding Space/Sally port will be discussed with the Finance and Operations Board</td>
</tr>
<tr>
<td>2</td>
<td>Equitable Contribution to the Capital Project</td>
<td>72% County and 28% Cities, Cities Rolling Average</td>
<td>78% County and 22% Cities, Cities Fixed Average</td>
<td>Equitable contribution for all cities of 22% to the TOTAL construction cost. Ongoing capital contribution based fixed population average of cities share of the 22%. Bellingham 15.6%, Lynden 13.8%, Ferndale 2.6%, Blaine 3.8%, Everson (on behalf of Nooksack and itself) .6%, and Sumas .3%.</td>
</tr>
<tr>
<td>3</td>
<td>Sales Tax Distribution (Recital #6, Pg. 1)</td>
<td>First Three Years Cities Distribute 76% of Tax Revenue To County</td>
<td>As per RCW 82.14.450</td>
<td>Cities Capital Payment Starting in 2019 with option to pre-pay portion in 2018</td>
</tr>
<tr>
<td>4</td>
<td>Operational Funds and Capital Funds need to be Separated (Part I, #4, Pg. 5)</td>
<td>As per previous Agreement</td>
<td>Enhanced Language</td>
<td>Establish funds and accounts to allow accountability of all funds for capital payments and separate funds for jail operations. All interest earned will remain in funds and not be used by the County</td>
</tr>
<tr>
<td>5</td>
<td>Cities Continued Access to the Facility and Programs (Part II, #3, Pg. 6)</td>
<td>Mutual Agreement</td>
<td>Enhanced Language</td>
<td>Equal Access with Uniform Reduction in Services for Misdemeanants</td>
</tr>
<tr>
<td>6</td>
<td>City's ability to meet its public safety needs</td>
<td>Cities keep smaller percentage of Public Safety Tax</td>
<td>Cities keep larger percentage of Public Safety Tax</td>
<td>Cities collect the public safety tax and keep sales tax except for capital contribution</td>
</tr>
<tr>
<td>7</td>
<td>Convene periodic meetings among participating entities (Part II, #2, Pg. 6)</td>
<td>Not Specified</td>
<td>7 members Finance and Operations Board (2 County, 2 Bellingham, 2 Small Cities and 1-IPRTF member)</td>
<td>The Board will serve in an advisory function on matters including but not limited to; preliminary budget, allocation of costs and revenue, establishing fees, operational capacity, party and non-party use, modifications to the New Jail project, use of jail alternatives programs to reduce incarceration, jail transport practices, future facility expansion, and data collection</td>
</tr>
<tr>
<td>8</td>
<td>Jail Size (Recital 3, Pg. 1)</td>
<td>521 in Phase 1 with 128 in Phase 2</td>
<td>440 Beds, +/- 3% based on design criteria, and 36 medical/behavioral health beds</td>
<td>Decision of Whatcom County Council, new JFUA is scalable to all parties regardless of size. Infrastructure and Jail administration is same with a reduced pod construction. Size reduction is a show of commitment to reduce incarceration.</td>
</tr>
<tr>
<td>9</td>
<td>Non-Party Capital Charge (Part III, #2e, Pg. 12)</td>
<td>Revenue used to Reduce Parties Per Diem</td>
<td>Revenue collected by the County will be used for County related jail expenses</td>
<td></td>
</tr>
</tbody>
</table>
## Jail Facility Use Agreement Comparison

<table>
<thead>
<tr>
<th>PROPOSED MODIFICATIONS</th>
<th>2015 JFUA</th>
<th>PROPOSED NEW JFUA</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 Non-Party Per Diem (Part II, #2e, Pg. 12)</td>
<td>General Operating Revenue</td>
<td>General Operating Revenue</td>
<td>Non-party per diem will reduced Parties (County and Cities) per diem.</td>
</tr>
<tr>
<td>11 Per Diem (Part III, #1-2, Pg. 11)</td>
<td></td>
<td>All parties will pay same rates and fees</td>
<td>All fees of service will be based on actual cost of service and reconciled with a subsequent annual adjustment, if necessary.</td>
</tr>
<tr>
<td>12 Expansion of Facility in Future (Part IV, #2, Pg. 17)</td>
<td>Phase 2 included</td>
<td>If Cities are unwilling to participate in expansion, the Cities capacity will be limited to their pro-rata share of facility pre-expansion</td>
<td></td>
</tr>
<tr>
<td>13 Agreement Duration (Part IV, #2, Pg. 17)</td>
<td>30 Years or until bonds repaid</td>
<td>Continued Access, 30 Year term</td>
<td>All provisions of agreement remain in effect. Contract opening after 30 years</td>
</tr>
<tr>
<td>14 Tax Distribution (Recital #5)</td>
<td>As per RCW 82.14.450</td>
<td>As per RCW 82.14.450</td>
<td>Both agreements identify Whatcom County as the sole recipient of the existing 1/10 of 1% for criminal justice purposes as outlined by RCW</td>
</tr>
<tr>
<td>15 Equal treatment In New Jail (Part II, #3, Pg. 6)</td>
<td>Based on Past Contractual Agreement</td>
<td>Equal Access with Uniform Reduction in Services for Misdemeanants</td>
<td>Best interest of all parties to build and operate a county-wide correctional facility.</td>
</tr>
<tr>
<td>16 Prevention and Diversion Programs need to be funded (Recital #9-10, Pg. 2)</td>
<td>Revenue From Sale of Interim Work Center</td>
<td>Revenue From Sale of Interim Work Center and New Sales Tax above Capital Payment</td>
<td>Cities to receive projected $1.45 Million annually with Bellingham receiving approximately $1.1 Million in 2019 after Capital Payment</td>
</tr>
<tr>
<td>17 Incarceration Prevention and Reduction Task Force (Recital #10, Pg. 2)</td>
<td>Not addressed</td>
<td>Member of IPRTF on the Finance and Operations Board</td>
<td>The Parties recognize and fully support the goals of the IPRTF to reduce incarceration and recidivism. Agree to implement IPRTF recommendations, where possible, including increasing the availability of Alternative Jail Programs, including Electronic Home Detention, Work Release and Work Crew programs, and the establishment of a County pretrial supervision program.</td>
</tr>
<tr>
<td>18 Existing Jail Operations Language (Part II, #3, Pg. 6)</td>
<td>Based on Past Contractual Agreement</td>
<td>Uniform reduction of service in Existing Jail for County and Cities misdemeanants</td>
<td>Commitment on language for Equal Access with Uniform Reduction In Services for Misdemeanants in the Existing Jail. Encourage use of alternatives to booking, transferring to work center and first consideration to transferring post conviction misdemeanants, when feasible</td>
</tr>
</tbody>
</table>
# TIMELINE FOR SALES AND USE TAX (RCW 82.14.450)
November 7, 2017 Election

<table>
<thead>
<tr>
<th>Item</th>
<th>ACTION</th>
<th>DEADLINE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resolution for authorization and approval of the Jail Facility Financing and Use Agreement (JFFUA) by County Council</td>
<td>Requested action on <strong>May 30, 2017</strong> County Council Meeting; or as determined by County Council</td>
<td><strong>June 13</strong>&lt;sup&gt;th&lt;/sup&gt; Council Meeting, to allow for City Council action by June 30th</td>
</tr>
<tr>
<td>JFFUA approval by all Cities</td>
<td>Requested action in June, if County Council approval is <strong>May 30, 2017</strong></td>
<td>Prior to <strong>June 30</strong>&lt;sup&gt;th&lt;/sup&gt; as written in JFFUA</td>
</tr>
<tr>
<td>Sales and Use Tax Ballot Measure Resolution</td>
<td>Requested action on <strong>June 13</strong>&lt;sup&gt;th&lt;/sup&gt; County Council Meeting; or as determined by County Council</td>
<td><strong>July 25</strong>&lt;sup&gt;th&lt;/sup&gt; County Council Meeting</td>
</tr>
<tr>
<td>Ballot Resolution to Auditor</td>
<td>After County Council approval</td>
<td><strong>August 1, 2017</strong> (to Auditor)</td>
</tr>
<tr>
<td>General Election</td>
<td><strong>November 7, 2017</strong></td>
<td></td>
</tr>
</tbody>
</table>
2018-2019 Elected Officials Salary 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.)

Proposed changes to Elected Officials Salary Resolution for 2018-2019 to reflect salary placements established by the Whatcom County Commission on Salaries for Elected Officials.
TO: Councilmembers Barbara Brenner, Rud Browne, Barry Buchanan, Todd Donovan, Ken Mann, Satpal Sidhu and Carl Weimer

FROM: Jack Louws, County Executive

DATE: May 19, 2017

SUBJECT: ELECTED OFFICIALS SALARY RESOLUTION

The Elected Officials Salary Resolution for 2018 and 2019 is being brought before you to:

- Implement the salary placement for both Legislative and Executive Branch Elected Officials as established by the Whatcom Commission on Salaries for Elected Officials; and

- Continue eligibility for health and welfare benefits for the Executive Branch Elected Officials available to unrepresented employees.

Should you have any questions on the details of the above changes, please contact Melissa Keeley via email or at extension 5309.

cc: Human Resources
PROPOSED BY: County Executive

INTRODUCTION DATE: May 19, 2017

RESOLUTION NO. 2017 -

A RESOLUTION IN THE MATTER OF IDENTIFYING 2018 AND 2019 SALARIES AND BENEFITS FOR ELECTED OFFICIALS

WHEREAS, beginning January of 2017, the Whatcom County Commission on Salaries for Elected Officials held several meetings to complete the task of setting Whatcom County elected officials salaries for the years 2018 and 2019; and

WHEREAS, on April 20, 2017, the Commission submitted an elected official salary schedule to the county for the years 2018 and 2019 (Exhibit A); and

WHEREAS, it is necessary to provide an historical reference for salaries and benefits for Whatcom County elected officials;

NOW, THEREFORE, BE IT RESOLVED, by the Whatcom County Council that the salaries to be paid to elected officials for the years 2018 and 2019 as established by the Whatcom County Commission on Salaries for Elected Officials are as follows:

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessor</td>
<td>$106,391</td>
<td>$8,866</td>
<td>$108,519</td>
<td>$9,043</td>
</tr>
<tr>
<td>Auditor</td>
<td>$106,391</td>
<td>$8,866</td>
<td>$108,519</td>
<td>$9,043</td>
</tr>
<tr>
<td>Treasurer</td>
<td>$106,391</td>
<td>$8,866</td>
<td>$108,519</td>
<td>$9,043</td>
</tr>
<tr>
<td>Sheriff</td>
<td>$138,452</td>
<td>$11,538</td>
<td>$142,000</td>
<td>$11,833</td>
</tr>
<tr>
<td>Prosecuting Attorney</td>
<td>$169,022</td>
<td>$14,085</td>
<td>$172,042</td>
<td>$14,337</td>
</tr>
<tr>
<td>County Executive</td>
<td>$169,022</td>
<td>$14,085</td>
<td>$172,042</td>
<td>$14,337</td>
</tr>
<tr>
<td>County Council</td>
<td>$31,243</td>
<td>$2,603</td>
<td>$31,867</td>
<td>$2,656</td>
</tr>
</tbody>
</table>

BE IT FURTHER RESOLVED, that for the Executive Branch Elected Officials (County Executive, Prosecuting Attorney, Sheriff, Assessor, Auditor, and Treasurer), who were on the County payroll as of September 14, 2008, 5% of base salary provided will be mandatorily paid by the County to his or her Retirement Health Savings (RHS) account with the remaining 95% of base salary paid through payroll.
BE IT FURTHER RESOLVED that any elected official who meets eligibility criteria will be eligible for Health and Welfare Benefits as outlined in the Unrepresented Resolution for the applicable year.

BE IT FINALLY RESOLVED that changes to elected officials salaries under this resolution shall become effective the first pay periods of January 2018 and January 2019 respectively as noted herein and shall remain in effect until rescinded or amended by the Whatcom County Commission on Salaries for Elected Officials.

BE IT FINALLY RESOLVED that the other terms set forth in this resolution shall become effective as of January 1, 2018. Changes to items other than salary may be made as approved by the County Council.

APPROVED on this 30th day of May, 2017.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST

Barry Buchanan, Council Chairperson

Dana Brown-Davis, Council Clerk

APPROVED as to form:

Daniel Gibson
Chief Civil Deputy Prosecuting Attorney
EXHIBIT A

To: Whatcom County Council
From: Whatcom County Commission on Salaries for Elected Officials
Subject: Elected Official Salary Schedule for 2018 and 2019
Date: April 20, 2017

Starting in January 2017, the Whatcom County Commission on Salaries for Elected Officials met multiple times in order to complete its task of setting the 2018 and 2019 salaries for elected officials.

The Commission has used information from comparable jurisdictions, considered the unique challenges of some of our local offices, and considered written and oral testimony from elected officials and the general public. Members of the Commission have actively participated in the process and shared their unique perspective in the discussions that led to the Commission’s salary placements.

Attached please find the Salary Commission’s salary placements for Whatcom County elected officials for 2018 and 2019.

It has been an honor to be selected and serve on the Salary Commission for Whatcom County.

Brian Lydiard, Commission Chairman
(Business)

Todd Morris – Citizen at Large

Mike Arbiter – Citizen at Large

Jason Russell – Citizen at Large

Kristi Birkenland – Citizen at Large

Diana Schmidt – Citizen at Large

Justin Iverson – Organized Labor

Jon Sitkin – Legal Profession

Steve (George) King – Citizen at Large

Wendy Wefer-Clinton – Personnel Management
Whatcom County Commission on Salaries for Elected Officials

Salary Placements
April 20, 2017

<table>
<thead>
<tr>
<th>Position</th>
<th>Current Salary 2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessor</td>
<td>$104,407</td>
<td>• 1.9% COLA</td>
<td>• 2.0% COLA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Adjustment: $0</td>
<td>• Adjustment: $0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Total: $106,391</td>
<td>• Total: $108,519</td>
</tr>
<tr>
<td>Auditor</td>
<td>$104,407</td>
<td>• 1.9% COLA</td>
<td>• 2.0% COLA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Adjustment: $0</td>
<td>• Adjustment: $0</td>
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<tr>
<td></td>
<td></td>
<td>• Total: $106,391</td>
<td>• Total: $108,519</td>
</tr>
<tr>
<td>Treasurer</td>
<td>$104,407</td>
<td>• 1.9% COLA</td>
<td>• 2.0% COLA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Adjustment: $0</td>
<td>• Adjustment: $0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Total: $106,391</td>
<td>• Total: $108,519</td>
</tr>
<tr>
<td>Sheriff</td>
<td>$134,904</td>
<td>• 1.9% COLA</td>
<td>• 2.0% COLA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Adjustment: $985</td>
<td>• Adjustment: $779</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Total: $138,452</td>
<td>• Total: $142,000</td>
</tr>
<tr>
<td>Prosecuting Attorney</td>
<td>$165,870</td>
<td>• 1.9% COLA</td>
<td>• 2.0% COLA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Adjustment: $0</td>
<td>• Adjustment: $0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• $169,022</td>
<td>• Total: $172,402</td>
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<tr>
<td>County Executive</td>
<td>$158,823</td>
<td>• 1.9% COLA</td>
<td>• 2.0% COLA</td>
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<tr>
<td></td>
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<td>• Adjustment: $7,181</td>
<td>• Adjustment: $0</td>
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<td>• Total: $169,022</td>
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<td>County Council</td>
<td>$30,660</td>
<td>• 1.9% COLA</td>
<td>• 2.0% COLA</td>
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<td></td>
<td>• Total: $31,243</td>
<td>• Total: $31,867</td>
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Cost of Living Adjustment (COLA):

- The Salary Commission used the Consumer Price Index - All Urban Consumers - West Urban to establish the actual and projected rate of inflation. This is the same index used by previous Salary Commissions. See Attachment A.

- For 2018, the Commission establishes a 1.9% percent COLA for all positions. This is based upon the average of the last 10 years, 2007 through 2016.

- For 2019, the Commission establishes a 2.0% COLA. This is based upon the rounded 1.9% COLA from Attachment A, rounded to 2.0% to reflect inflation may increase slightly in future years.
Assessor, Auditor, Treasurer: The Commission researched the compensation for these positions at other Washington State counties, using the following for benchmarks:

- Assessed Value
- Population
- Number of Employees
- Budget

In each benchmark category, the Counties that were four larger and four smaller than Whatcom County were used for comparison. In all cases, Whatcom County positions are currently above market comparables. See Attachment B.

Based on those comparisons, the Commission concludes the compensation for these positions shall increase per the COLAs established by the Commission.

Sheriff: The Commission researched the compensation for this position at other Washington State counties, using the following for benchmarks:

- Assessed Value
- Population
- Number of Employees
- Budget

In each benchmark category, the Counties that were four larger and four smaller than Whatcom County were used for comparison. See Attachment B. In addition, because the City of Bellingham is a large population center within Whatcom County, the Bellingham Police Chief compensation and duties were also considered.

Because duties for sheriffs vary somewhat by county, the specific scope of duties for the Whatcom County Sheriff was then weighed. Considering the Whatcom County Sheriff’s scope of duties, the diverse population served, and the large territory overseen, the Commission concludes salary adjustments in 2018 and 2019 are warranted, in addition to the COLAs established by the Commission. As reflected in the table, these adjustments increase the Sheriff’s salary to $142,000 by 2019.

Prosecuting Attorney: Prior county Salary Commissions matched the Prosecuting Attorney’s compensation to Superior Court Judge compensation. For 2018 the State is increasing Superior Court Judge compensation by 4%, which the Commission feels exceeds what is warranted in Whatcom County. Therefore, for 2018 and 2019, the Commission concludes the Prosecuting Attorney compensation shall increase per the COLAs established by the Commission.

County Executive: Whatcom County’s government structure (County Executive and seven County Council members) is somewhat unique. Therefore, the County Executive position was compared to other governmental executives within Whatcom County. Additionally, three other Washington counties with similar Executive/Council forms of government were considered to see how they compensate their County Executive relative to their Prosecuting Attorney.
Considering the scope of management responsibility of the County Executive, the Commission determines it important to adjust the Executive’s compensation to re-establish its historical placement. Prior to the Prosecuting Attorney’s compensation being tied to Superior Court Judge compensation, the Executive compensation was equal to or above the Prosecuting Attorney’s compensation. Therefore, the Commission concludes the Executive compensation shall match the Prosecuting Attorney’s compensation for 2018, and then adjust per the COLA established by the Commission for 2019.

**County Council:** Whatcom County’s government structure (County Executive and seven County Council members) is somewhat unique. The County Council is the legislative body for Whatcom County. The Council members have broad powers requiring knowledge and research about many facets of County government in order to make impactful decisions affecting all citizens of Whatcom County.

Prior Salary Commissions adjusted compensation for the County Council over the last few years to appropriately reflect the demands of the position. Therefore, the Commission concludes no further adjustment to these positions is currently needed, and that the compensation for these positions shall increase per the COLAs established by the Commission.
TITLE OF DOCUMENT:
Interagency Agreement between State of Washington Department of Health and Whatcom County Flood Control Zone District- Contract # N22509

ATTACHMENTS:
Memo
Contract Information Sheet
Interagency Agreement

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

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

This grant agreement provides funds to support implementation of the Whatcom County Pollution Identification and Correction (PIC) Program. Tasks include project management and reporting; data management; non-dairy agriculture landowner contacts, technical assistance, and compliance; and community education, outreach and incentive programs.

COMMITTEE ACTION:  

COUNCIL ACTION:

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

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

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

THROUGH: Jon Hutchings, Public Works Director

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

DATE: May 12, 2017

RE: Grant Agreement between Washington State Department of Health and Whatcom County Flood Control Zone District for Pollution Identification and Correction (PIC) Program

Please find enclosed for your review and signature two (2) originals of grant agreement #N22509 between the State of Washington Department of Health and Whatcom County Flood Control Zone District to support implementation of the Pollution Identification and Correction (PIC) Program.

Requested Action
Public Works respectfully requests that the Flood Control Zone District Board of Supervisors authorize the County Executive to sign the interagency agreement to support the PIC Program.

Background and Purpose
This grant agreement provides funds to support implementation of the Whatcom County PIC Program. Tasks include project management and reporting; data management; non-dairy agriculture landowner contacts, technical assistance, and compliance; and community education, outreach and incentive programs.

Funding Amount and Source
This grant agreement with the Washington State Department of Health provides $715,000 to complete tasks as outlined in the scope of work. Please contact Gary Stoyka at extension 6218 or Erika Douglas at 6294 if you have any questions or concerns regarding the terms of this agreement.

Encl.
**Whatcom County Contract Information Sheet**

**Originating Department:** Public Works  
**Division/Program:** Natural Resources  
**Contract or Grant Administrator:** Erika Douglas  
**Contractor’s / Agency Name:** Washington State Department of Health

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
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<tr>
<td>If amendment or renewal, (per WCC 3.08.100 (a)) Original Contract #:</td>
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<td></td>
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<tr>
<td>Does contract require Council Approval?</td>
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<td>No ☐</td>
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<tr>
<td>If no, include WCC:</td>
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(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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<tr>
<th>Question</th>
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<td>If yes, grantor agency contract number(s):</td>
<td>N22509</td>
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<tr>
<th>Question</th>
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<tr>
<td>Is this contract grant funded?</td>
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<td>If yes, Whatcom County grant contract number(s):</td>
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<thead>
<tr>
<th>Question</th>
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<tbody>
<tr>
<td>Is this contract the result of a RFP or Bid process?</td>
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<td>Cost Center: 813002</td>
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<tr>
<th>Question</th>
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<th>No</th>
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<tbody>
<tr>
<td>Is this agreement excluded from E-Verify?</td>
<td>Yes ☑️</td>
<td>No ☐</td>
</tr>
</tbody>
</table>

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional.  
- Contract work is for less than $100,000.  
- Contract work is for less than 120 days.  
- Interlocal Agreement (between Governments).  
- Contract for Commercial off the shelf items (COTS).  
- 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):  
$715,000

| Amendment Amount: | $ | Total Amended Amount: | $715,000 |

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

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

**Summary of Scope:** This grant agreement provides funds to support implementation of the Whatcom County Pollution Identification and Correction (PIC) Program. Tasks include project management and reporting; data management; non-dairy agriculture landowner contacts, technical assistance, and compliance; and community education, outreach and incentive programs.

**Term of Contract:** 4/1/17-3/31/19  
**Expiration Date:** 03/31/19  
**Date:** 5/11/17  
**Date:** 05/12/17  
**Date:** 5/12/17  
**Date:** 5/19/17  
**Date:**
INTERAGENCY AGREEMENT
Between
STATE OF WASHINGTON
DEPARTMENT OF HEALTH
And
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

THIS AGREEMENT is made by and between the State of Washington Department of Health, hereinafter referred to as DOH, and Whatcom County Public Works, hereinafter referred to as Contractor pursuant to the authority granted by Chapter 39.34 RCW.

PURPOSE: The purpose of this contract is to prioritize the implementation of water quality Closure Response Plans (CRP) associated with established Shellfish Protection Districts (SPD) and Clean Water Districts (CWD) in order to prevent, identify, and correct sources of bacterial pollution for the purpose of re-opening or upgrading of previously downgraded shellfish growing areas.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK AND BUDGET: The Contractor shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit A, attached hereto and incorporated herein.

PERIOD OF PERFORMANCE: Subject to its other provisions, the period of performance of this Agreement shall commence on April 01, 2017 and be completed on March 31, 2019, unless terminated sooner as provided herein. Any work done outside of the period of performance shall be provided at no cost to DOH.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA): If checked above, this Agreement is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this Agreement, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Information about your organization and this Agreement will be made available on www.USASpending.gov by DOH as required by P.L. 109-282. DOH’s form, Federal Funding Accountability and Transparency Act Data Collection Form, is considered part of this Agreement and must be completed and returned along with the Agreement.

PAYMENT: Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have estimated that the cost of accomplishing the work herein will not exceed $715,000 in accordance with Exhibit A, attached hereto and incorporated herein.
Consideration includes but is not limited to all taxes, fees, surcharges, etc. Payment will not exceed this amount without a prior written amendment. DOH will authorize payment only upon satisfactory completion and acceptance of deliverables and for allowable costs as outlined in the statement of work and/or budget.

Source of Funds:

Federal: $715,000  State: $0  Other: $0  TOTAL: $715,000

Contractor agrees to comply with applicable rules and regulations associated with the federal funds.

BILLING PROCEDURE: Payment to the Contractor for approved and completed work will be made by warrant or account transfer by DOH within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 60 days after the expiration date or the end of the fiscal year, whichever is earlier.

AGREEMENT ALTERATIONS AND AMENDMENTS: This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

ALLOWABLE COST: Shall mean an expenditure which meets the test of the Uniform Guidance (2CFR 200) (see “I. Federal Compliance”). The most significant factors affecting allowability of cost are; 1) they must be necessary and reasonable, 2) they must be allocable, 3) they must be authorized or not prohibited under state or local laws and regulations, and 4) they must be adequately documented. For more specifics see Selected Items of Cost 2 CFR 200.420).

ASSIGNMENT: The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION: The use or disclosure by any party of any information concerning a client obtained in providing service under this Agreement shall be subject to Chapter 42.56 RCW and Chapter 70.02 RCW, as well as any other applicable federal and state statutes and regulations.

Any unauthorized access or use of confidential information must be reported to the DOH IT Security Officer at (360) 236-4432. The notification must be made in the most expedient time possible (usually within 24 hours of discovery) and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

CONTRACT MANAGEMENT: The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this agreement.

The Contract Manager for DOH is:

Name  Megan Schell  Title  Senior Planner
Office  Office of Environmental Health and Safety  Company  Whatcom County Flood Control Zone District
Department of Health  Address  322 N Commercial Ste 110
PO Box 47824  City State Zip  Bellingham, WA 98225
Olympia, WA 98504-7824  Phone  (360) 778-6294

The Contract Manager for the Contractor is:

Name  Erika Douglas  Title  Senior Planner
Office  Office of Environmental Health and Safety  Company  Whatcom County Flood Control Zone District
Department of Health  Address  322 N Commercial Ste 110
PO Box 47824  City State Zip  Bellingham, WA 98225
Olympia, WA 98504-7824  Phone  (360) 778-6294
CONTRACT: Shall mean the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the Contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a Contractor are when the non-Federal entity receiving the Federal funds:

A. Provides the goods and services within normal business operations;
B. Provides similar goods or services to many different purchasers;
C. Normally operates in a competitive environment;
D. Provides goods or services that are ancillary to the operation of the Federal program; and
E. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

CONTRACTOR: Shall mean that agency, firm, provider, organization, individual or other entity performing services under this contract. It shall include any subcontractor retained by the prime contractor as permitted under the terms of this contract.

DISPUTES: In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE: This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

A. Federal statutes and regulations
B. State statutes and regulations
C. Agreement amendments
D. The Agreement (in this order)
   1. Special Terms and Conditions (Exhibit C if used)
   2. Federal compliance and Standard Federal Certifications and Assurances
      (Attachment 1)
   3. Primary document (document that includes the signature page)
   4. Statement of Work (Exhibit A)

INDEPENDENT CAPACITY: The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

NONCOMPLIANCE: Shall mean if a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:
A. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
B. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
C. Wholly or partly suspend or terminate the Federal award.
D. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
E. Withhold further Federal awards for the project or program.
F. Take other remedies that may be legally available.

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

DOH reserves the right to monitor, audit or investigate the use of personal information collected, used or acquired by the Contractor through this Agreement. The monitoring, auditing, or investigating may include but is not limited to "salting" by DOH. Contractor shall certify the return or destruction of all personal information upon expiration of this Agreement. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The contractor agrees to indemnify and hold harmless DOH for any damages related to the Contractor’s unauthorized use of personal information.

RECORDS MAINTENANCE: The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA: Unless otherwise provided, data, which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by DOH. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

RISK ASSESSMENT: Shall mean (2 CFR 200.331(b)) DOH is required to evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

DOH Contract N22509
A. The subrecipient's prior experience with the same or similar subawards;
B. The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
C. Whether the subrecipient has new personnel or new or substantially changed systems; and
D. The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

SEVERABILITY: If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

SPECIFIC CONDITIONS:

A. The Federal awarding agency or pass-through entity may impose additional specific award conditions as needed, in accordance with (2 CFR 200.207) paragraphs (b) and (c) of this section, under the following circumstances:
1. Based on the criteria set forth in §200.205 Federal awarding agency review of risk posed by applicants;
2. When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;
3. When an applicant or recipient fails to meet expected performance goals as described in §200.210 Information contained in a Federal award; or
4. When an applicant or recipient is not otherwise responsible.

B. These additional Federal award conditions may include items such as the following:

1. Requiring payments as reimbursements rather than advance payments;
2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
3. Requiring additional, more detailed financial reports;
4. Requiring additional project monitoring;
5. Requiring the non-Federal entity to obtain technical or management assistance; or
6. Establishing additional prior approvals.

C. The Federal awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:

1. The nature of the additional requirements;
2. The reason why the additional requirements are being imposed;
3. The nature of the action needed to remove the additional requirement, if applicable;
4. The time allowed for completing the actions if applicable, and
5. The method for requesting reconsideration of the additional requirements imposed.

D. Any specific conditions must be promptly removed once the conditions that prompted them have been corrected

SUBCONTRACTING: Neither the Contractor, nor any subcontractors, shall enter into subcontracts for any of the work contemplated under this agreement without prior written approval of DOH. In no event shall the existence of the sub operate to release or reduce the liability of the Contractor to DOH for any
breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this Agreement.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of DOH or as provided by law.

If, at any time during the progress of the work, DOH determines in its sole judgment that any subcontractor is incompetent, DOH shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by DOH of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Agreement, nor be the basis for additional charges to DOH.

**SUBRECIPIENT:** Shall mean a non-Federal entity that received a subaward from a pass-through entity to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. (2 CFR 200.93)

Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

A. Determines who is eligible to receive what Federal assistance;
B. Has its performance measured in relation to whether objectives of a Federal program were met;
C. Has responsibility for programmatic decision making;
D. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
E. In accordance with its contract, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of a pass-through entity.

**SUSPENSION OF PERFORMANCE AND RESUMPTION OF PERFORMANCE:** In the event contract funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, DOH may give notice to Contractor to suspend performance as an alternative to termination. DOH may elect to give written notice to Contractor to suspend performance when DOH determines that there is a reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow performance to be resumed prior to the end date of this Agreement. Notice may include notice by facsimile or email to Contractor's representative. Contractor shall suspend performance on the date stated in the written notice to suspend. During the period of suspension of performance each party may inform the other of any conditions that may reasonably affect the potential for resumption of performance.

When DOH determines that the funding insufficiency is resolved, DOH may give Contractor written notice to resume performance and a proposed date to resume performance. Upon receipt of written notice to resume performance, Contractor will give written notice to DOH as to whether it can resume performance, and, if so, the date upon which it agrees to resume performance. If Contractor gives notice to DOH that it cannot resume performance, the parties agree that the Agreement will be terminated retroactive to the original date of termination. If the date Contractor gives notice it can resume performance is not acceptable to DOH, the parties agree to discuss an alternative acceptable date. If an alternative date is not acceptable to DOH, the parties agree that the Agreement will be terminated retroactive to the original date of termination.
TERMINATION: Either party may terminate this Agreement upon 30 days prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE: If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

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

ALL WRITINGS CONTAINED HEREIN: This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

<table>
<thead>
<tr>
<th>CONTRACTOR SIGNATURE</th>
<th>DATE</th>
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<tbody>
<tr>
<td>see attached signature page 7b</td>
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<th>PRINT OR TYPE NAME AND TITLE</th>
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</table>

<table>
<thead>
<tr>
<th>DOH CONTRACTING OFFICER SIGNATURE</th>
<th>DATE</th>
</tr>
</thead>
</table>

This Agreement has been approved as to form by the Attorney General.

NOTE: The Contractor’s signature is also required on Attachment 1, Federal Certifications and Assurances (pages 41 and 44).
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 5/16/17
Jon Hutchings, Public Works Director Date

Approved as to form:

[Signature] 05/19/17
Daniel L. Gibson Date
Whatcom County Chief Civil
Deputy Prosecuting Attorney

Approved:
Accepted for Whatcom County:

By: 
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this ______ day of ________, 20 ___, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at ___________________. My commission expires ____________________.
# Federal Grant Information Sheet

<table>
<thead>
<tr>
<th>Subrecipient/Contractor (Title)</th>
<th>WHATCOM COUNTY</th>
<th>DOH Contract Manager</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract #</td>
<td>N22509</td>
<td>Megan Schell</td>
<td><a href="mailto:dohcon.mgmt@doh.wa.gov">dohcon.mgmt@doh.wa.gov</a></td>
</tr>
<tr>
<td>DUNS #</td>
<td>06-004-9641</td>
<td>360.236.3307</td>
<td>Approved Indirect Rate</td>
</tr>
<tr>
<td>Period of Performance</td>
<td>April 1, 2017 – March 31, 2019</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Project Description</td>
<td>NTA # 0054</td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal Award Identification Number</th>
<th>Federal Award Date</th>
<th>Federal Agency Name</th>
<th>Total Amount off the Federal Award to DOH</th>
<th>CFDA #</th>
<th>CFDA Program Title</th>
<th>Name of Pass Through Agency</th>
<th>Amount of Federal Funds Obligated for This Action</th>
<th>Total Amount of Federal Funds Obligated for This Funding Source</th>
<th>Research and Development</th>
<th>Limiting Indirect Cost Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>PC01/18001-0</td>
<td>8/2/2016</td>
<td>United States Environmental Protection Agency</td>
<td>$5,000,000</td>
<td>66.123</td>
<td>Puget Sound Action Agenda: Technical Investigations and Implementation Assistance Program</td>
<td>WA Dept. of Health</td>
<td>$715,000</td>
<td>$715,000</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>
OVERVIEW
This project comprises Whatcom County's component of the Whatcom Clean Water Program (WCWP). The WCWP is a partnership of local, state, and federal agencies and tribes working together to reduce bacteria pollution affecting shellfish growing areas in Whatcom County. Through the "Whatcom County Enhanced Pollution Identification and Correction (PIC) Program" Near Term Action (NTA), Whatcom County Public Works (WCPW) will expand the scope of the PIC program's geographic coverage, improve data management and coordination, further interagency coordination, expand partnerships, and address emerging issues. The goal of this enhanced program is to meet water quality standards for fecal coliform in the focus area creeks, protect recently upgraded shellfish acreage in Drayton Harbor, upgrade 128 acres of shellfish growing areas in Birch Bay by 2018, and reduce bacteria levels in Portage Bay to support a shellfish area upgrade of 500 acres by 2020.

PIC program coordination and the coordinator's community engagement and landowner contact work, in addition to water quality monitoring components of the PIC program, receive local Whatcom County Flood Control Zone District Fund support and are not included as tasks in this agreement. Similarly, Whatcom County Health Department (WCHD) is funded through a local fee to implement an on-site sewage system (OSS) program of regulatory oversight and homeowner education and notification regarding proper OSS operation and maintenance. Local funding also supports tasks for WCHD staff to respond to referrals/complaints and conduct investigations regarding potential OSS pollution sources. This agreement describes and includes only the components of the PIC program that will be supported through National Estuary Program (NEP) funds.

The project builds upon the current PIC program strategy to engage community members for long-term stewardship practices rather than quick, temporary fixes. WCPW initiated the successful current PIC program strategy in late 2014 in the Drayton Harbor watershed. Proposed enhancements include expanding the geographic coverage area in the Nooksack River watershed, enhancing the community outreach program throughout Whatcom County coastal drainages, and increasing the measurable outcomes.

WCPW and the Whatcom Conservation District (WCD) will coordinate data management, analyze data and prioritize focus areas for bacterial reduction efforts. WCPW will determine expansion into new geographic areas based on staff capacity to provide technical assistance to landowners, operators, and/or residents. Source tracking work will continue in existing focus areas until bacterial reduction goals are met. With Whatcom Clean Water Program partners, WCPW and WCD will conduct field surveys in focus areas to identify potential bacteria sources and will pursue contacts with landowners, operators and/or residents through established processes dependent on the potential bacteria sources. WCPW will track PIC program landowner/operator/resident contacts and parcel status. Regular field staff meetings will be held with local and state agency representatives to increase effectiveness and coordination of contacts and follow up actions throughout Whatcom County. Barriers
that cannot be addressed at the field staff level will be forwarded to the PIC Managers Team that will meet on a regular basis. The PIC Managers will review barriers and provide solutions through policy guidance to the field staff, assisting with the development of new policies where feasible, or forwarding to the WCWP Core Group.

GOALS & MEASURABLE OBJECTIVES
This simply summarizes key deliverables and measures called out in the tasks below. This table is a component of the FEATS report.

<table>
<thead>
<tr>
<th>Description</th>
<th>Units</th>
<th>Targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain Drayton Harbor Upgrade of 810 acres</td>
<td>Acres</td>
<td>810</td>
</tr>
<tr>
<td>Upgrade 128 acres from Prohibited to Approved in Birch Bay</td>
<td>Acres</td>
<td>128</td>
</tr>
<tr>
<td>Move status of 5 stations from failing to “threatened” or “of concern” in Portage Bay shellfish growing areas</td>
<td>stations</td>
<td>5</td>
</tr>
<tr>
<td>Improve water quality in at least four focus areas to meet FC standards in 30% of routine stations by December 2018</td>
<td>% stations</td>
<td>30%</td>
</tr>
<tr>
<td>Weekly/biweekly field staff meetings to coordinate property contacts and tracking potential sources</td>
<td>Meetings</td>
<td>26</td>
</tr>
<tr>
<td>Recon studies of four focus areas per year. Information will be summarized through tables and maps</td>
<td>Studies</td>
<td>6</td>
</tr>
<tr>
<td>Number of direct landowner contacts in Drayton Harbor watershed (fecal coliform bacteria related)</td>
<td>contacts</td>
<td>150/year</td>
</tr>
<tr>
<td>Description</td>
<td>Unit</td>
<td>Value</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>-------------</td>
<td>--------</td>
</tr>
<tr>
<td>Number of direct landowner contacts in Nooksack watershed (fecal coliform</td>
<td>contacts</td>
<td>150/year</td>
</tr>
<tr>
<td>bacteria related)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of incentives provided (rebates, workshop incentives)</td>
<td>incentive</td>
<td>300</td>
</tr>
<tr>
<td>Number of landowner/operator/residents with potential non-dairy agriculture</td>
<td>Potential non-dairy agriculture contacts</td>
<td>75/yr.</td>
</tr>
<tr>
<td>in the Drayton Harbor watershed directly contacted each year.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of landowner/operator/residents with potential non-dairy agriculture</td>
<td>Potential non-dairy agriculture contacts</td>
<td>75/yr.</td>
</tr>
<tr>
<td>in the Lower Nooksack River watershed directly contacted each year.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent of parcels with potential non-dairy agricultural activities in the</td>
<td>Percent parcels with bacteria pollution risk reduced</td>
<td>50%</td>
</tr>
<tr>
<td>Drayton Harbor watershed with level of risk reduced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent of parcels with potential non-dairy agricultural activities in the</td>
<td>Percent parcels with bacteria pollution risk reduced</td>
<td>50%</td>
</tr>
<tr>
<td>Nooksack River watershed with level of risk reduced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of referrals to regulatory agency</td>
<td>referrals</td>
<td></td>
</tr>
<tr>
<td>Percentage of referrals (to PDS, ECY, WSDA, or WC Health) with level of risk</td>
<td>Percent parcels with bacteria pollution risk reduced</td>
<td>100</td>
</tr>
<tr>
<td>reduced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of community events participated in by Whatcom County</td>
<td>events</td>
<td>5</td>
</tr>
<tr>
<td>Number of newsletters distributed</td>
<td>newsletters</td>
<td>3000</td>
</tr>
</tbody>
</table>
Number of seasonal newspaper ads published | ads | 2

**TASKS & DELIVERABLES**

The following are the tasks, deliverables, and deadlines associated with this subaward:

(a) **TASK 0. Project development**

This task must be completed before initiating any other work under this subaward. Work completed prior to the completion of Task 0 will be ineligible for reimbursement under this subaward.

0.1 Project Spatial Data and Climate Change assessment

In the tasks below subrecipients will create a detailed project outline and timeline to describe project expectations and outcomes. The detailed project plan will also identify how the objectives of the project will be evaluated, including quantifiable performance measures and targets. DOH will review project to see if actions may have climate change intersections. If there is a strong climate change interconnection, DOH will work with the subrecipient on how the project may be developed to be climate resilient. DOH will work with the subrecipient on the plan and establish mutual expectations.

Projects should provide relevant spatial data for their project and this should be identified in the detailed project plan. Projects should consult with technical staff and spatial analysts where appropriate to determine the spatial data, associated metadata, and data storage location that are relevant for the project. All projects should submit project coordinates (latitude, longitude) in decimal degrees.

0.2 Quality Assurance Project Plan (QAPP) Development

Subrecipient will submit a Quality Assurance Project Plan (QAPP) or QAPP waiver using EPA’s NEP guidance for QAPPs. If a QAPP is required, subrecipients will work with the Washington State Department of Ecology’s QA Officer to develop and approve the QAPP. Work related to collecting environmental data may not begin until the QAPP or waivers are completed and approved. See EPA Programmatic Condition #5 in this agreement for more information.

0.3 Effectiveness Consultation (if necessary)
Consult via telephone call with PSP effectiveness team regarding data you are gathering (30 mins). PSP effectiveness team will provide an analysis approach for the NTAs, about a paragraph per project. PSP effectiveness team will analyze NTA effectiveness and will present results to the SIAT.

<table>
<thead>
<tr>
<th>Number</th>
<th>Deliverable</th>
<th>Reimbursement</th>
<th>Completion date</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.1</td>
<td>Project Spatial Data and Climate Assessment</td>
<td>Reimbursement up to $0</td>
<td>July 15, 2017</td>
</tr>
<tr>
<td>0.2</td>
<td>QAPP or QAPP Waiver</td>
<td>$0</td>
<td>Within 30 days of agreement start date</td>
</tr>
<tr>
<td>0.3</td>
<td>Effectiveness consultation (if necessary)</td>
<td>Based on actual costs.</td>
<td>March 31, 2019</td>
</tr>
</tbody>
</table>

TASK 1. Project Management and Reporting
This task describes the data collection and reporting requirements associated with this subaward. Maintenance of project records, submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project and submittal of required performance items. Carry out project in accordance with any completion dates outlined in the agreement.

Refer to and comply with all underlying federal terms and conditions.

1.0 Interlocal agreements
Complete interlocal agreement with Whatcom Conservation District.

1.1 Project Factsheet
Create a project factsheet (using included template) and submit it in MS Word with the first quarterly progress report.

1.2 Quarterly Invoicing and Progress Summary
The sub-recipient will email quarterly progress summary and invoicing related to project tasks and deliverables to the contract manager. The summary period is synced to inform the Grant Program’s EPA reporting schedule; therefore it is critical that the Project Sponsor submit these summaries to the Grant Program according to the following schedule. Progress Summaries shall include, at a minimum:
• A description of the work completed in the last quarter, including total spending by the project sponsor and any partners and any completed deliverables.

• The status and completion date for the project activities and near-term deliverables.

• Description of any problem or circumstances affecting the completion date, scope of work, or costs.

• Evidence that you have satisfactorily completed all the reporting requirements (see below).

<table>
<thead>
<tr>
<th>Period</th>
<th>Dates</th>
<th>Summary Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Quarter Period</td>
<td>January 1 – March 31</td>
<td>Feats will serve as project summary (see Task 1.2.1)</td>
</tr>
<tr>
<td>Second Quarter Period</td>
<td>April 1 – June 30</td>
<td>Summary due by July 15</td>
</tr>
<tr>
<td>Third Quarter Period</td>
<td>July 1 – September 30</td>
<td>Feats will serve as project summary (see Task 1.2.1)</td>
</tr>
<tr>
<td>Fourth Quarter Period</td>
<td>October 1 – December 31</td>
<td>Summary due by January 15</td>
</tr>
</tbody>
</table>

**Reporting requirements:**

**1.2.1 FEATS**

Complete bi-annual FEATS (*Financial and Ecosystem Accounting Tracking System*) progress reports, as well as a final FEATS report. The final FEATS report, reflecting the final project billing, will be provided during project closeout, after the end of the grant, and will describe the entire project, highlighting project outcomes and discussing lessons learned.

FEATS Reporting must be completed by:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1</td>
<td>October 1</td>
</tr>
</tbody>
</table>

Final FEATS report completed by:

Upon contract completion

**1.2.2 Puget Sound Partnership Required NTA Reporting**

NTA owners are required to report on the following:

• Implementation status of their actions on a semiannual basis

• Financial status of their actions on an annual basis

NTA reporting completed between:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31, 2017 - April 28, 2017</td>
<td>November 1, 2017 - November 30, 2017</td>
</tr>
</tbody>
</table>
EXHIBIT A

May 1, 2018 - May 31, 2018
Upon contract/NTA project completion or November 2018

NTA financial reporting completed between:
June 30, 2017 - August 15, 2017
June 29, 2018 - August 13, 2018
Upon contract/NTA project completion or August 2019

1.2.3 STOriage and RETrieval and Water Quality eXchange (STORET) Data Reporting
STORET refers to an electronic data system for water quality monitoring data developed by EPA. If sub-recipients collect any physical, chemical or environmental data (e.g. dissolved oxygen, water temperature, salinity, turbidity, pH, phosphorous, total nitrogen, E. coli or Enterococci, and other biological and habitat data) than STORET reporting will be required. Data for an entire calendar year (Jan 1 – Dec. 31) should be submitted annually. To assist in tracking in STORET, name your project as follows: NEP_2016_(insert organization name); the unique project ID needs to be 35 characters or less. Include the STORET ID in the quarterly progress reports.

STORET reporting completed by:
Quarterly, if applicable

Final STORET entry completed by:
Upon contract completion

1.2.4 Women/Minority-Owned Business (MBE/WBE) Reports
MBE/WBE reporting is required annually. This federal reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category that exceed the threshold amount of $150,000, including amendments and/or modifications.

MBE/WBE reporting completed by:
October 15, annually, and
Upon contract completion

1.3 Final Project Report
The subrecipient will write a final report that describes the methods, results, lessons learned and recommendations for future work. The final report will evaluate the success of achieving the performance measures identified in the detailed project plan. Included with the final project report will be an updated Project Factsheet (see 1.1).
<table>
<thead>
<tr>
<th>Number</th>
<th>Deliverable</th>
<th>Reimbursement</th>
<th>Completion date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>Complete Interlocal agreement with Whatcom Conservation District</td>
<td>Reimbursement up to $0 based on actual costs</td>
<td>May 30, 2017</td>
</tr>
<tr>
<td>1.1</td>
<td>Project Fact Sheet</td>
<td></td>
<td>July 15, 2017</td>
</tr>
<tr>
<td>1.2</td>
<td>Quarterly invoice and Project Summaries</td>
<td></td>
<td>July and January 15, annually</td>
</tr>
<tr>
<td>1.2.1</td>
<td>Semi-annual FEATS reports</td>
<td></td>
<td>April and October 1 (annually), and upon contract completion</td>
</tr>
</tbody>
</table>
| 1.2.2  | PSP Required NTA Reporting |  | March 31 - April 28, 2017  
November 1 - 30, 2017  
May 1 - 31, 2018  
Upon contract/NTA project completion or November 2018 |
|        | Implementation Status |  | June 30 - August 15, 2017  
June 29 - August 13, 2018  
Upon contract/NTA project completion or August 2019 |
| 1.2.3  | STORET (if required) |  | Per FEATS schedule 1.2.1 |
| 1.2.4  | MBE/WBE Reporting |  | October 15, annually and upon contract completion |
| 1.3    | Final report and updated Fact Sheet |  | Upon contract completion |
TASK 2. Pollution Identification and Correction (Bacterial Monitoring and Reduction)
Whatcom County Public Works (WCPW) coordinates with state agencies, tribal and local partners (WCD, Watershed Improvement Districts (WIDs), Tenmile Clean Water project, etc.) through the Whatcom Clean Water Program (WCWP) and shellfish protection districts to implement a program to reduce bacteria levels in creeks, the Nooksack River, and marine waters. The program is data-driven and involves coordination of water quality monitoring; data management and analysis; identification of focus areas; landowner contacts within focus areas to offer technical assistance for site evaluation and structural and management improvements; and a regulatory backstop for egregious violations. This process is described more fully under Task 3. Activities and staff associated with PIC program coordination and water quality monitoring are funded locally and will be reported through the WCWP and NTA.

2.1 Data Management
WCPW will coordinate and manage county-wide water quality data through coordinated sampling dates, participation in existing monitoring workgroups and through support of a water quality data coordinator located at the WCD office. Water quality data from WCWP local, state, and tribal partners will be entered and stored in a comprehensive water quality database. The improved data management scope builds upon the previous PIC grant agreement that established a data coordinator position to identify, develop, and implement a preferred option to create an effective and efficient database to house all water quality data collected by WCWP partners. Quarterly progress reports will be provided to summarize progress on the water quality database, data entered, and how data queries and reports are being used for community outreach and source tracking.

2.2 Strategic Planning/Sustainable Funding Efforts
Through the WCWP structure, the County and partner agencies review and adapt collective bacteria reduction efforts on a regular basis. Currently, Whatcom County funding supports county water quality monitoring and community outreach materials, 2.5 FTE in Public Works and Planning and Development Services, and a 0.5FTE for community outreach at the WCD. A local fee fully supports Whatcom County Health Department staff to implement an OSS O&M Program and to respond to referrals regarding potential OSS pollution sources identified through the PIC program. NEP support will supplement local funds to enable the PIC program to cover a broader geographic area in a more rapid timeframe. Whatcom County will work with the WCD to identify sustainable funding for WCW farm planners.

<table>
<thead>
<tr>
<th>Number</th>
<th>Deliverable</th>
<th>Reimbursement</th>
<th>Completion date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Water quality data collected to support the WCWP entered and stored in a comprehensive</td>
<td>Reimbursement up to $142,766</td>
<td>Quarterly reports, March 2019</td>
</tr>
</tbody>
</table>
TASK 3. Property Contact to Correct Fecal Coliform Bacteria Pollution Sources

Through locally funded activities, WCPW will use an annual water quality review of routine sampling sites to identify focus areas for water quality improvement activities. Annual review criteria were previously established and are used to evaluate the status of current and new potential focus areas. Areas are evaluated for number of potential landowner contacts and staff resources available to determine the number of focus areas that can be covered each year.

As the PIC Program moves into new focus areas, WCPW with partners will conduct a reconnaissance survey to identify drainage boundaries and patterns, parcels within the boundaries, general land use, and parcels with potential non-dairy agriculture activities. Within the focus areas WCPW and WCD will contact landowners/operators/residents with potential non-dairy agricultural activities to offer technical assistance to identify and address potential pollution sources and reduce the level of risk to water quality. If voluntary corrective action is not achieved, WCPW will follow its regulatory enforcement referral process. WCPW will refer parcels with identified pollution sources that have not participated in the incentive-based program to the appropriate regulatory backstop agency (PDS, ECY or WSDA) as needed, depending on facility type.

Non-dairy agricultural property contacts will involve a strong partnership between WCPW and the WCD to implement a voluntary and incentive-based approach to providing technical assistance and implementing improvements to correct identified bacteria pollution sources.

3.1 Non-dairy agricultural operations landowner contact

Conduct reconnaissance surveys of focus areas, initiate landowner/operator/resident contacts, offer education and technical and financial assistance, and ensure site conditions improve to reduce risk level for bacteria pollution sources. Landowner contacts are accomplished through a series of up to four letters with outreach materials from WCPW and a phone call from the WCD (where a number can be identified) to encourage participation in the voluntary, incentive-based opportunity. WCPW will refer properties with identified pollution sources that choose not to participate in voluntary compliance opportunities to the appropriate regulatory agency to ensure compliance with Critical Areas Ordinance (Whatcom County Planning & Development Services (PDS) and/or state Water Pollution Control Act (ECY).
WCPW and WCD will continue to improve upon the current work with the North Lynden Watershed Improvement District (WID) to engage landowners in identifying and correcting pollution sources. In expanded focus areas (with or without WIDs), landowner contact will follow the process established in the Drayton Harbor watershed with a series of letters and one-on-one contacts. Expanded PIC program work in WID areas will seek partnership with the WID leadership to support monitoring coordination, community outreach, and contact with landowners not responding to county/WCD requests to engage in the incentive-based program. In WID areas where landowner contact will occur through a joint WCPW/WCD/WID process, clear expectations will be developed from the outset with WID leadership regarding property contact, timelines, feedback about source id and correction, and course of action if agreed to expectations are not adhered to. An agreement between the County, WCD and WID will be developed and provided to DOH for review.

3.2 Non-dairy agricultural operations- Critical Areas Ordinance (CAO) Compliance

PDS staff will respond to referrals from WCPW for landowners with non-dairy agricultural operations out of compliance with the Critical Areas Ordinance. Referrals will follow the process described in Task 3.1. PDS staff will respond to Environmental Report Tracking System (ERTS) complaints in Whatcom County coastal drainages relating to applicable non-dairy agricultural operations with a potential impact to water quality. Additionally, PDS will educate landowners applying for land use permits about requirements to protect critical areas and minimize potential water quality impacts. PDS will require permit seekers to complete and file farm plans where needed, and to implement BMPs identified in the farm plans. Progress and water quality risk reduction for referrals and ERTS will be tracked in coordination with WCPW.

<table>
<thead>
<tr>
<th>Number</th>
<th>Deliverable</th>
<th>Reimbursement</th>
<th>Completion date</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1.0</td>
<td>WID process for landowner contacts</td>
<td>Reimbursement up to $228,600</td>
<td>As needed</td>
</tr>
<tr>
<td>3.1.1</td>
<td>Windshield surveys of four focus areas per year identifying parcels with potential non-dairy agricultural operations.</td>
<td>based on actual costs</td>
<td>March 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>March 2019</td>
</tr>
<tr>
<td>3.1.2</td>
<td>Contact 75 landowners with potential livestock or manure use in the Drayton Harbor focus area each year of the two-year project (150 total)</td>
<td></td>
<td>March 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>March 2019</td>
</tr>
</tbody>
</table>
| 3.1.3  | Contact 75 landowners with potential livestock or manure use in the Portage Bay focus area each year of the two-year project (150 total) | March 2018  
March 2019 |
|--------|---------------------------------------------------------------------------------------------------------------------------------|-------------|
| 3.1.4  | 50% of contacted landowners will receive site risk assessments and technical assistance to evaluate site conditions and initiate actions to reduce risk level within 6 months (implement BMPS).                                                | March 2018  
March 2019 |
| 3.2    | Refer parcels to PDS and ECY for regulatory backstop. 100% of PDS referrals will complete a farm plan or implement standard buffers and reduce risk level within six months. All qualifying land use permits (CAO) will complete and file a farm plan or use standard buffers and implement actions to protect water quality or reduce risk level. | Reimbursement up to $158,034 based on actual costs  
March 2018  
March 2019 |

**TASK 4. Education, Outreach, and Incentives**

To address fecal coliform bacteria concentrations exceeding water quality standards throughout the county and shellfish harvest restrictions in three SPDs, this task will expand community outreach efforts. The previous PIC grant agreement partially funded a FTE for community outreach activities. This agreement provides funding for a full FTE at WCPW to expand comprehensive community outreach and engagement efforts throughout Whatcom County coastal drainages (including Birch Bay) and assist with landowner contacts and engagement in PIC focus areas. WCWP will develop a long-term education and outreach plan and begin implementation. Topics will include basic watershed and water quality definitions and characterizations, the diverse sources of bacterial pollution, and the diverse array of community solutions to improve and protect water quality. Through this task, educational materials will be created to include with landowner contacts, at community events, and on a WCWP website; displays will be created and shared at community events; newsletters will be distributed to landowners in focus areas; and
seasonal newspaper ads will be published. Partnerships with the WIDs provide critical connections with the agricultural community. New partnerships and community outreach tools will be pursued to adapt to emerging issues (e.g., Canadian sources, manure solid applications, berry field management, etc.). Incentives will be used to encourage community participation in workshop and other technical assistance programs. These incentives will include but not be limited to OSS O&M rebates, tarps for covering manure piles, and dog waste pick up kits.

4.1 2-Year Community Outreach Plan
Whatcom County Public Works will develop and implement a 2-Year community outreach plan that will include outreach materials, website, community events, newsletters, and newspaper seasonal ads. Outreach staff will participate in at least one class to further enhance community outreach skill sets.

4.2 Non-dairy Incentives (OSS, Ag, and Urban Sources)
Provide financial incentives for on-site sewage system (OSS) operation and maintenance (O&M) activities through a successful rebate program. Landowners will complete an online or in-person workshop on OSS to be eligible for the rebate program. Provide incentives such as tarps (to cover manure storage) and dog waste pick up kits for landowners participating in workshops, community events, and seasonal technical assistance programs to encourage practices to reduce bacterial pollution sources. Incentives included in this program have been successful in engaging community members and have been developed through landowner surveys, work with community groups, and review and adaptations of the current program.

<table>
<thead>
<tr>
<th>Number</th>
<th>Deliverable</th>
<th>Reimbursement</th>
<th>Completion date</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Develop and implement 2-year community outreach plan. Participate in trainings for enhancement of community outreach skills. The plan will include:  - Develop outreach materials for letters  - Develop outreach materials for field staff  - Maintain WCPW website  - Participate in 5 community events.</td>
<td>Reimbursement up to $166,600 based on actual costs</td>
<td>Plan completed June 1, 2017  March 2018  March 2019</td>
</tr>
</tbody>
</table>
### Objectives

- Distribute 3,000 newsletters.
- Run 2 sets of seasonal newspaper ads.
Draft outreach materials will be provided to DOH for a 1 week review period.

### 4.1.1 Participate in 5 community events annually

<table>
<thead>
<tr>
<th>Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2018</td>
</tr>
<tr>
<td>March 2019</td>
</tr>
</tbody>
</table>

### 4.1.2 Distribute 3,000 newsletters

<table>
<thead>
<tr>
<th>Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2018</td>
</tr>
</tbody>
</table>

### 4.1.3 Run 2 newspaper ads per year (seasonal)

<table>
<thead>
<tr>
<th>Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2018</td>
</tr>
<tr>
<td>March 2019</td>
</tr>
</tbody>
</table>

### 4.2.1 Incentives: Provide rebates to landowners

- OSS O&M Rebates – Online Training eligible for:
  - $50-evaluation or installation of O&M equipment
  - $100- pumping
- OSS O&M Rebates- In-Person Workshop eligible for:
  - $100-evaluation or installation of O&M equipment
  - $200- pumping

<table>
<thead>
<tr>
<th>Reimbursement up to $17,000 based on actual costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Month</td>
</tr>
<tr>
<td>March 2018</td>
</tr>
<tr>
<td>March 2019</td>
</tr>
</tbody>
</table>

### 4.2.2 Incentives: Provide 200 incentives to landowners/residents

- Workshop/ Technical Assistance/ Community Event Incentives (e.g. tarps)

<table>
<thead>
<tr>
<th>Reimbursement up to $2,000 based on actual costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Month</td>
</tr>
<tr>
<td>March 2018</td>
</tr>
<tr>
<td>March 2019</td>
</tr>
</tbody>
</table>
## TASK 5. Broader Impacts and Communication

Whatcom County and Whatcom Conservation District Staff will provide a presentation on the Whatcom County PIC Program at a regional conference or workshop.

### 5.1 Presentation of Whatcom County PIC Program

- Participate in and present project outcomes at a knowledge exchange event relevant to the project topic (PIC Regional Workshop and Annual Whatcom County Council Meeting)
- Submit high-quality project photos or video clips of the project (process, progress, etc.). Ensure anyone in the photos or video has signed a release in case photos or videos are used for future publications.

<table>
<thead>
<tr>
<th>Number</th>
<th>Deliverable</th>
<th>Reimbursement</th>
<th>Completion date</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>Whatcom County PIC Program Presentation</td>
<td>Reimbursement up to $0</td>
<td>March 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>based on actual costs</td>
<td>March 2019</td>
</tr>
<tr>
<td>5.2</td>
<td>Photos</td>
<td></td>
<td>March 2019</td>
</tr>
</tbody>
</table>

### BUDGET

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel/Salaries</td>
<td>$194,273</td>
</tr>
<tr>
<td>Fringe Benefits</td>
<td>$143,761</td>
</tr>
<tr>
<td>Travel</td>
<td></td>
</tr>
<tr>
<td>Equipment (federal definition)</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Supplies</td>
<td>$2,000</td>
</tr>
<tr>
<td>Contracts</td>
<td></td>
</tr>
<tr>
<td>Name and amount ea.</td>
<td></td>
</tr>
<tr>
<td>Subawards</td>
<td></td>
</tr>
<tr>
<td>Whatcom Conservation District</td>
<td>$353,366</td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td>(anything that doesn’t fit in the other categories, e.g. training)</td>
<td></td>
</tr>
<tr>
<td>Describe:</td>
<td></td>
</tr>
<tr>
<td>• Printing and Mailing</td>
<td>$3,000</td>
</tr>
<tr>
<td>• Newspaper Ads</td>
<td>$1,600</td>
</tr>
<tr>
<td>• OSS O&amp;M Rebates</td>
<td>17,000</td>
</tr>
<tr>
<td>Total Direct Charges</td>
<td>$715,000</td>
</tr>
<tr>
<td>Indirect Charges</td>
<td></td>
</tr>
<tr>
<td>(federally approved rate)</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>$715,000</td>
</tr>
</tbody>
</table>
Administrative Conditions

1. General Terms and Conditions - Effective 03/29/2016

The recipient agrees to comply with the current EPA general terms and conditions available at: https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-march-29-2016-or-later. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions cited below.

The EPA repository for the general terms and conditions by year can be found at: http://www2.epa.gov/grants/grant-terms-and-conditions.

2. General Terms and Conditions - Consultant Cap - Additional Information

In addition to the General Terms and Conditions #6 "Consultant Cap", as of January 1, 2016, the limit is $614.48 per day $76.81 per hour.

NOTE: For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: http://www.opm.gov/oca. Select "Salary and Wages", and select "Rates of Pay for the Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

3. General Terms and Conditions – Cybersecurity

The recipient agrees to comply with the current EPA general terms and conditions "Cybersecurity". The terms and conditions can be found on the EPA Grants Terms and Conditions Website.


4. General Terms and Conditions - Indirect Costs for States and Tribal

The cost principles of 2 CFR 200 Subpart E are applicable, as appropriate, to this award.
In addition to the General Terms and Conditions "Indirect Cost Rate Agreements", if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

For State Agencies

The recipient must send its proposal to its cognizant federal agency within six (6) months after the close of the governmental unit's fiscal year. If EPA is the cognizant federal agency, the state recipient must send its indirect cost rate proposal within six (6) months after the close of the governmental unit's fiscal year to:

Regular Mail
Financial Analysis and Rate Negotiation Service Center Office of Acquisition Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3802R
Washington, DC 20460

Mail Courier (e.g. FedEx, UPS, etc.)
Financial Analysis and Rate Negotiation Service Center Office of Acquisition Management
US Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 6th floor
Bid and Proposal Room Number 61107
Washington, DC 20004

For Indian Tribe

If the recipient does not have a previously established indirect cost rate, the recipient must submit their indirect cost rate proposals to:

National Business Center
Indirect Cost Services
U.S. Department of the Interior
2180 Harvard Street, Suite 430
Sacramento, CA 95815-3317

The recipient agrees to comply with the audit requirements in accordance with 2 CFR 200 Subpart F.

5. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBE/WBE)
GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

MBE/WBE reporting is required in annual reports. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category that exceed the threshold amount of $150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if the recipient believes this award does not meet these conditions, the recipient must provide a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements to the Region 10 DBE Coordinator.

The recipient agrees to complete and submit a “MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements” report (EPA Form 5700-52A) on an annual basis. All procurement actions are reportable, not just that portion which exceeds $150,000.

When completing the annual report, recipients are instructed to check the box titled “annual” in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the “last report” of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program’s Home Page at http://www.epa.gov/osbp/dbereporting.htm.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(b) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
(c) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(d) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(e) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(f) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(g) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**
The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**
Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

**FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

1. **For Grant Awards $250,000 or Less**

This assistance agreement is a Technical Assistance Grant (TAG); or the award amount is $250,000 or less; or the total dollar amount of all of the recipient's financial assistance agreements from EPA in the current Federal fiscal year is $250,000 or less. Therefore, the recipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate fair share objectives/goals for the utilization of MBE/WBEs in its procurements.

2. **For Recipients Accepting Goals**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.
In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

**Accepting the Fair Share Objectives/Goals of Another Recipient**

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is $250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA. The Region 10 fair share objectives/goals can be found: [http://www.epa.gov/osbp/pdfs/r10fairsharegoals.pdf](http://www.epa.gov/osbp/pdfs/r10fairsharegoals.pdf).

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market.

**Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404**

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is not accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

3. **For Recipients with Established Goals**

The recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

**Current Fair Share Objective/Goal**

The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is $250,000, or more. The Region 10 fair share objectives/goals can be found: [http://www.epa.gov/osbp/pdfs/r10fairsharegoals.pdf](http://www.epa.gov/osbp/pdfs/r10fairsharegoals.pdf).

**Negotiating Fair Share Objectives/Goals**

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.
4. **For DWSRF, CWSRF and BROWNFIELDS RLF Recipients ONLY**

**Objective/Goals of Loan Recipients**

As a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The recipient agrees that if procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

**R10 DBE Coordinator and Where to Send Report**

Andrea Bennett at (206) 553-1789 or email:Bennett.Andrea@epa.gov. The coordinator can answer any MBE/WBE reporting questions you may have. MBE/WBE reports should be sent to the EPA Region 10, Grants and Interagency Agreements Unit, 1200 Sixth Avenue, Suite 900, OMP-173, Seattle, WA 98101 or FAX to (206) 553-4957.

**Programmatic Conditions**

1. **Semi-Annual Performance Reports**

The recipient shall submit performance reports every six (6) months during the life of the project. Reports are due 30 calendar days after the end of each reporting period. Reports shall be submitted to the DOH Contract Manager and may be provided electronically.

In accordance with 2 CFR 200.328, as appropriate, the recipient agrees to submit performance reports that include brief information on each of the following areas:

(a) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;

(b) the reasons why established goals were not met, if appropriate;

(c) additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
In addition to the semi-annual performance reports, the recipient shall immediately notify the DOH Contract Manager of developments that have a significant impact on the award-supported activities. As appropriate, the recipient agrees to inform the DOH Contract Manager as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

The recipient will submit performance reports through EPA’s Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS). Reports are due at least 30 calendar days after the end of each reporting period. Earlier, but not later due dates may be mutually agreed upon by the Contract Manager and subrecipient in the award document. The reporting periods shall end March 31st and September 30th of each calendar year. Reports shall be submitted to the DOH Contract Manager on the FEATS form provided by the Contract Manager and shall be submitted by electronic mail. The recipient agrees to submit performance reports that include brief information on each of the following areas:

(a) A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;

(b) The reasons for slippages if established outputs/outcomes were not met;

(c) Additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

2. Final Performance Report

The recipient shall submit a final performance report through FEATS, which is due 90 calendar days after the expiration or termination of the award. The report shall be submitted to the DOH Contract Manager and must be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period. After completion of the project, the DOH Contract Manager may waive the requirement for a final performance report if the DOH Contract Manager deems such a report is inappropriate or unnecessary.

3. Program Income - Addition

If program income is generated, the recipient is required to account for program income related to this project. Program income earned during the project period shall be retained by the recipient and shall be added to funds committed to the project by EPA and the recipient, and shall be used to further eligible project objectives.

4. Recognition of EPA Funding

Reports, documents, signage, videos, or other media, developed as part of projects funded by this assistance agreement shall contain the following statement:
“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-01J18001-0 to DOH. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

5. Quality Assurance Requirements (2 CFR 1500.11) (if applicable)

Acceptable Quality Assurance documentation must be submitted within 30 days of the acceptance of this agreement or another date as negotiated with the DOH Contract Manager and NEP Quality Assurance Coordinator. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this project until the EPA Project Officer, in concert with the EPA Quality Assurance Manager, has approved the quality assurance document.

Instructions to Submit Quality Assurance Documents for Review

Please refer to The Department of Ecology’s website at: [http://www.ecy.wa.gov/programs/eap/ga/docs/NEPQAPP/index.html](http://www.ecy.wa.gov/programs/eap/ga/docs/NEPQAPP/index.html) for guidance and templates. Submit the Acceptable Quality Assurance documentation to Tom Gries at tgr1461@ecy.wa.gov (NEP Quality Assurance Coordinator) for review with a cc: to megan.scheil@doh.wa.gov and tracy.farrell@doh.wa.gov (DOH NEP Contract Managers).

Additional information on these requirements can be found at the EPA Office of Grants and Debarment website: [http://www.epa.gov/ogd/grants/assurance.htm](http://www.epa.gov/ogd/grants/assurance.htm).

6. Peer Review

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

7. Competency of Organizations Generating and/or Using Environmental Measurement Data

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at [http://www.epa.gov/fem/lab_comp.htm](http://www.epa.gov/fem/lab_comp.htm) or a copy may also be requested by contacting the DOH Contract Manager for this award.

Federal Assistance Agreement Funds Up To $200,000
Recipient agrees that if the total federal funding obligated on this award exceeds $200,000 (resulting from subsequent amendments to this agreement) and will involve the use or generation of environmental data it will (unless it has otherwise done so) demonstrate competency prior to carrying out any activities involving the generation or use of environmental data under this agreement.

**Federal Assistance Agreement Funds Exceed or Expect to Exceed $200,000**
Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable. Recipient agrees to submit documentation and demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data.

Shellfish Strategic Initiative Quality Assurance Coordinator Contact: Tom Gries at tgr1461@ecy.wa.gov

**8. STORET Requirement**
Recipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All water quality data generated in accordance with an EPA approved Quality Assurance Project Plan as a result of this assistance agreement, either directly or by subaward, will be required to be transmitted into the Agency's Storage and Retrieval (STORET) data warehouse using either WQX or WQX web. Water quality data appropriate for STORET include physical, chemical, and biological sample results for water, sediment and fish tissue. The data include toxicity data, microbiological data, and the metrics and indices generated from biological and habitat data. The Water Quality Exchange (WQX) is the water data schema associated with the EPA, State and Tribal Exchange Network. Using the WQX schema partners map their database structure to the WQX/STORET structure. WQX web is a web based tool to convert data into the STORET format for smaller data generators that are not direct partners on the Exchange Network. More information about WQX, WQX web, and the STORET warehouse, including tutorials, can be found at [http://www.epa.gov/storet/wqx/](http://www.epa.gov/storet/wqx/)

If activities submitted as match for this federal assistance agreement involve the generation of water quality data, the resulting information must be publicly accessible (in STORET or some other database). Recipients are encouraged to develop a cross walk between any non-STORET database utilized for the storage of water quality data associated with match activities and EPA's Water Quality Exchange (WQX).

**9. Riparian Buffers**
Riparian buffer restoration projects in agricultural areas shall be consistent with the interim riparian buffer recommendations provided to EPA and the Natural Resource Conservation Service by National Marine Fisheries Service letters of January 30, 2013 (stamp received date - February 4, 2013) and April 9, 2013 (stamp received date – April 16, 2013), or the October 28, 2013 guidance. Grantees shall confirm in writing projects’ consistency with the recommendations referenced above. When developing project proposals, grantees also should consider the extent to which proposals include appropriate riparian buffers or otherwise address pollution sources on other water courses on the properties in the project area to support water quality and salmon recovery. Deviations can only be obtained through an exception approved by EPA. In order for EPA to evaluate a request for an exception, the grantee must submit the scientific rationale demonstrating adequacy of buffers for supporting water quality and salmon recovery. The request must summarize tribal input on the scientific rationale or other relevant issues. The scientific rationale could be developed from sources such as site-specific assessment data, salmon recovery plans, Total Maximum Daily Loads (TMDLs) and the state nonpoint plan. EPA will confer with the National Oceanic and Atmospheric Administration (NOAA) and the Washington Department of Ecology and provide the opportunity for affected tribes to consult with EPA before making a final decision on a deviation request.
10. International Travel (Including Canada)
All International Travel must be approved by the Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your DOH Contract Manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can obtain appropriate approvals from EPA Headquarters. If you have questions, please contact your DOH Contract Manager listed in this award document.

11. Geospatial Data Standards
All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov

12. ULO Stretch Goal
Recipients should manage their programs and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are "unspent" federal funds, not yet drawn down through disbursements.

EPA encourages the reduction of these unliquidated obligations (ULOs) by applying the following programmatic term and condition to these assistance agreements

Assistance agreement recipients are to apply these "stretch" goals throughout the life of the assistance agreement and to confer with your DOH Contract Manager whenever instances arise that make attainment of these stretch goals unlikely.

A stretch goal for utilization of funds is established. All funds should be spent by 2 years.

Stretch Goal
Funds Awarded in FY 2016
(October, 1, 2016-September 30, 2017)
Should all Be Drawn Down by March 2019

END OF EXHIBIT A STATEMENT OF WORK
FEDERAL COMPLIANCE
AND STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES

In the event federal funds are included in this agreement, added by future amendments(s), or redistributed between fund sources resulting in the provision of federal funds, the following sections apply: "I. Federal Compliance" and "II. Standard Federal Assurances and Certifications". In the instance of inclusion of federal funds as a result of an amendment, the contractor may be designate as a “Subrecipient” and the effective date of the amendment shall also be the date at which these requirements go into effect.

I. FEDERAL COMPLIANCE - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. (Refer to Catalog of Domestic Assistance number(s) cited in the “Payment” section of this contract for requirements specific to that fund source.) For clarification regarding any of these elements or details specific to the federal funds in this contract, contact:

Compliance and Internal Control Officer
Office of Financial Services
Department of Health
Post Office Box 47901
Olympia, Washington 98504-7901

1. UNIFORM ADMINISTRATIVE GUIDANCE – The Uniform Administrative Guidance (Supercircular) became effective December 26, 2014 and combines numerous OMB Circulars into one document. This document established requirements which govern expenditure of federal funds. These requirements apply to the Department of Health, as the primary recipient of federal funds, and then follow the funds to the subrecipient. The Uniform Administrative Guidance provides the applicable administrative requirements, cost principles, and audit requirements are identified by subrecipient organization type.

Compliance Matrix

<table>
<thead>
<tr>
<th>ENTITY TYPE</th>
<th>ADMINISTRATIVE REQUIREMENTS</th>
<th>COST PRINCIPLES</th>
<th>AUDIT REQUIREMENTS</th>
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</thead>
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<tr>
<td>State, Local and Indian Tribal Governments &amp; Governmental Hospitals</td>
<td>2 CFR 200 Subpart D</td>
<td>2 CFR 200 Subpart E</td>
<td>2 CFR 200 Subpart F</td>
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<tr>
<td>Non-Profit Organizations</td>
<td>2 CFR 200 Subpart D</td>
<td>2 CFR 200 Subpart E</td>
<td>2 CFR 200 Subpart F</td>
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<tr>
<td>Hospitals</td>
<td>2 CFR 200 Subpart D</td>
<td>45 CFR 74 Appendix E</td>
<td>2 CFR 200 Subpart F</td>
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<tr>
<td>Colleges or Universities &amp; Affiliated Hospitals</td>
<td>2 CFR 200 Subpart D</td>
<td>2 CFR 200 Subpart E</td>
<td>2 CFR 200 Subpart F</td>
</tr>
</tbody>
</table>

2. CITIZENSHIP/ALIEN VERIFICATION/DETERMINATION - The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a “federal public benefit” must make a citizenship/qualified alien determination/verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also
includes specific reporting requirements. Exemptions from the determination/verification requirement is afforded the following programs offered by the Department of Health: Family Planning, Breast & Cervical Health Program (BCHP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), WIC Farmers Market Program, Immunization Programs, and Ryan White CARE Act programs and other communicable disease treatment and diagnostic programs.

3. **CIVIL RIGHTS AND NONDISCRIMINATION** - During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.).

4. **SINGLE AUDIT ACT** - A subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Uniform Administrative Guidance (subpart F) as well as all applicable federal and state statutes and regulations. A subrecipient who expends $750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of 2 CFR 200 Subpart F.

II. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES** - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Department of Health.

**CERTIFICATIONS**

1. **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

   The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

   A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

   B. have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   C. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
D. have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions in all lower tier covered transactions (i.e., transactions with subgrantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The Dangers of drug abuse in the workplace;

2) The contractor's policy of maintaining a drug-free workplace;

3) Any available drug counseling, rehabilitation, and employee assistance programs; and

4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph 1) above;

D. Notifying the employee in the statement required by paragraph 1), above, that, as a condition of employment under the contract, the employee will:

1) Abide by the terms of the statement; and

2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the agency in writing within ten calendar days after receiving notice under paragraph D, 2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
F. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph D. 2) with respect to any employee who is so convicted:

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

For purposes of paragraph (E) regarding agency notification of criminal drug convictions, DOH has designated the following central point for receipt of such notices:

Compliance and Internal Control Officer
Office of Grants Management
WA State Department of Health
PO Box 47905
Olympia, WA 98504-7905

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING $100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying
Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children’s services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children’s services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children’s services and that all subrecipients shall certify accordingly.
The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the prospective contractor is providing the certification set out below.

A. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

B. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

C. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.

E. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DOH.

F. The prospective contractor further agrees by submitting this contract that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction, provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (of excluded parties).
H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, DOH may terminate this transaction for cause or default.

7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

A. The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:

1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2) Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. B. of this certification; and

4) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.

B. Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this contract.

**CONTRACTOR'S SIGNATURE IS REQUIRED**

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<th>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</th>
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<td>ORGANIZATION NAME: (if applicable)</td>
<td>DATE</td>
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FEDERAL ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the contractor, I certify that the contractor:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM’s Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient
records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.


10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).


14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

**CONTRACTOR'S SIGNATURE IS REQUIRED**

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**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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**TITLE OF DOCUMENT:**
Interlocal Agreement between Whatcom County Flood Control Zone District and Public Utility District No. 1 of Whatcom County to provide partial funding for Phase IV of a groundwater flow model of the Lynden-Everson-Nooksack-Sumas area of Whatcom County.

**ATTACHMENTS:**
- Memo
- Interlocal Agreement

**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.)

Interlocal Agreement between Whatcom County Flood Control Zone District and Public Utility District No. 1 of Whatcom County to provide partial funding for Phase IV of a groundwater flow model of the Lynden-Everson-Nooksack-Sumas area of Whatcom County.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: The Honorable Jack Louws, County Executive, and The Honorable Members of the Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: May 4, 2017

RE: Interlocal Agreement with Public Utility District No. 1 of Whatcom County for funding of Groundwater Modeling Project

Requested Action
Enclosed are two (2) originals of an interlocal funding agreement between the Flood Control Zone District (FCZD), and the Public Utility District No. 1 of Whatcom County (PUD) for your review and signature.

Background and Purpose
This interlocal agreement provides funding from the PUD to the FCZD to partially fund a numerical groundwater modeling project for the Lyden-Everson-Nooksack-Sumas area of Whatcom County. The goal of the modeling project is to develop a model which will adequately assess the impacts to surface water flow from groundwater pumping. The model domain includes most of the northern half of Whatcom County, but will be designed so that it can be expanded to include other WRIA 1 areas. The results of the modeling project will be used to inform the development of a water management plan that balances the needs of salmon and other aquatic resources with out-of-stream water needs. The first three phases of the four phase project have been completed. The estimated cost of Phase 4 is $336,526. The total cost of the first three phases was $283,500. A contract between the FCZD and Associated Earth Sciences, Inc. (AESI) will be executed to complete Phase 4.

Funding Amount and Source
The PUD is providing $100,000 in funding for the modeling project.

Please contact Gary Stoyka at extension 6218, if you have any questions or concerns regarding the terms of this agreement.

Encl.
<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Natural Resources</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Gary Stoyka</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Public Utility District No. 1 of Whatcom County</td>
</tr>
</tbody>
</table>

**Is this a New Contract?** Yes [x] No [ ]
If no, is this an Amendment or Renewal to an Existing Contract? [ ]

**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 [x] No [ ]
If yes, Whatcom County contract number(s): Awarded to PUD

**Is this contract the result of a RFP or Bid process?** Yes [ ] No [x]
If yes, RFP or Bid number(s): Contract
Cost Center: 169121

**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.
- [x] Contract work is for less than 120 days.
- [ ] Interlocal Agreement (between Governments).

**Contract Amount:(sum of original contract amount and any prior amendments):**
$ (100,000.00)

**This Amendment Amount:**
$ 

**Total Amended Amount:**
$ 

**Summary of Scope:** Interlocal funding agreement between Flood Control Zone District and the Whatcom PUD to provide partial funding for Phase 4 of a groundwater model of the Lynden-Everson-Nooksack

**Term of Contract:**
1. Prepared by: Gary Stoyka
2. Attorney signoff: Daniel L. Gibson Date: 05/19/17
3. AS Finance reviewed: Bbennett
4. IT reviewed (if IT related):
5. Contractor signed: By PUD #
6. Submitted to Exec.:
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

**Expiration Date:** 12/31/18

**Date:** 4/28/17

**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.
INTERLOCAL AGREEMENT
BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY FOR
IMPLEMENTATION OF A GROUNDWATER MODELING PROJECT IN THE
LYNDEN-EVerson-NOOKSACK-SUMAS AREA

WHEREAS, the Whatcom County Flood Control Zone District (FCZD) is a special
purpose district created pursuant to RCW 86.15, encompassing the entirety of
Whatcom County; and

WHEREAS, Public Utility District No. 1 of Whatcom County (PUD) is a special
purpose district created pursuant to RCW 54.04, encompassing the entirety of
Whatcom County; and

WHEREAS, Whatcom County, the FCZD, and Public Utility District No. 1 of Whatcom
County (PUD) have been involved in cooperative watershed planning activities for
decades, most notably as members of the WRIA 1 Watershed Management Project
Joint Board (Joint Board), along with the City of Bellingham, Nooksack Indian Tribe,
and Lummi Nation beginning in 1999 under RCW 90.82, which included the
development of Watershed Management Plan in 2005, a Detailed Implementation
Plan in 2007, and the Lower Nooksack Strategy in 2010; and

WHEREAS, one of the actions identified in the Lower Nooksack Strategy is the
development of a numerical groundwater model that will provide a better
understanding of the groundwater resources and the interaction of groundwater and
surface water in Whatcom County and provide a necessary tool for water planning;
and

WHEREAS, the City of Bellingham, Public Utility District No. 1 of Whatcom County,
Lummi Nation, the Nooksack Indian Tribe, the Bertrand Watershed Improvement
District, and Whatcom County initiated a groundwater modeling project primarily
focused in the Lynden-Everson-Nooksack-Sumas area of Whatcom County in 2014;
and

WHEREAS, the project was divided into four phases, and Phase 3 was completed in
September 2016; and

WHEREAS, the 2017 FCZD budget includes funding for Phase 4 of the groundwater
modeling project; and

WHEREAS, the FCZD and the PUD have a mutual interest in obtaining a better
understanding of groundwater and surface water interactions in the LENS area for
long-term water planning purposes, which is in the interest of the citizens of the FCZD
and PUD; and

WHEREAS, the FCZD and the PUD each have access to specific funding sources
that can be combined to implement Phase 4 of the groundwater modeling project in
the LENS area;
NOW, THEREFORE, the FCZD and the PUD agree as follows:

1. SCOPE OF WORK

(a) The FCZD and PUD shall cooperate to implement Phase 4 of a groundwater modeling project in the LENS area (referred to as the “LENS Groundwater Modeling Project”). The FCZD will enter into a contract with a qualified consultant to conduct the LENS Groundwater Modeling Project.

(b) The FCZD will manage the LENS Groundwater Modeling Project on behalf of the FCZD and PUD.

(c) The FCZD will invoice the PUD for project activities described in the Scope of Work, provided as Exhibit “A”. The invoices will include a description of charges and amounts paid by the FCZD.

2. TERM

(a) This agreement shall be effective May 16, 2017 and shall continue through December 31, 2018. The Agreement shall only be renewed, in writing, on terms then agreed to by the parties. The term shall be as stated in the Agreement regardless of the date of signature.

(b) This agreement may be terminated for cause by either party after giving the defaulting party thirty (30) days written notice of default and an opportunity to cure.

3. PAYMENT

(a) As compensation for the services specified in the Scope of Work, the PUD shall reimburse the FCZD for eligible costs for actual labor, contractor, equipment, and material expenses incurred for the LENS Groundwater Modeling Project, up to but not in excess of ONE HUNDRED THOUSAND DOLLARS ($100,000). The maximum amount of $100,000 payable under the Agreement may not be exceeded unless agreed to in writing by each party.

(b) Payments to the FCZD will be made quarterly based on invoices submitted to the PUD. Eligible expenses must be incurred no later than July 31, 2018.

(c) The PUD shall promptly review and process invoices in accordance with its usual procedures.

(d) A short project update shall accompany each invoice.

4. PERSONS RESPONSIBLE FOR ADMINISTRATION OF THE AGREEMENT

The persons responsible for administration of this Agreement shall be:
5. LEGAL RELATIONS

In performing the services outlined in this Agreement, neither party is acting as the agent or employee of the other; rather, each party is acting as an independent contractor.

6. LIABILITY

The PUD agrees to release, defend and indemnify the FCZD in its own capacity from any claims, damages or liabilities arising out of the acts or omissions of the PUD, its staff members and its contractors in the performance of this Agreement. Likewise, the FCZD agrees to defend and indemnify the PUD from any claims, damages or liabilities arising out of the acts or omissions of the FCZD, its staff members and its contractors in the performance of this Agreement.

7. MODIFICATIONS

The terms of this Agreement may be changed, modified, amended or waived only by written agreement executed by the Parties hereto. Waiver of breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

8. APPLICABLE LAW

In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance, and the venue of any action arising herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.

9. SEVERABILITY

In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.
10. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

11. RECORDATION

Upon execution of this Agreement, the FCZD shall file a copy of it with the office of the Whatcom County Auditor or alternatively, list it by subject on its web site or other electronically retrievable public source, pursuant to the requirements of RCW 39.34.040.

EXECUTED this ______ day of May 2017 for WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:

_________________________
Jack Louws
County Executive for the
Flood Control Zone District

DEPARTMENTAL APPROVAL:

_________________________
Jon Hutchings
Director, Public Works Department

APPROVED AS TO FORM:

_________________________
Daniel L. Gibson
Prosecuting Attorney’s Office
EXECUTED this 2 day of May 2017 for PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY:

Name: ____________________________

Title: General Manager
### WHATCOM COUNTY COUNCIL AGENDA BILL

**CLEARANCES**  
- **Originator:** GSS  04/28/17  
- **Division Head:** GSS  05/08/17  
- **Dept. Head:** 5/16/17  
- **Prosector:** 05/19/17  
- **Purchasing/Budget:** Bb  5/08/17  
- **Executive:** 5.23.17

**TITLE OF DOCUMENT:**  
Contract for Services with Associated Earth Sciences, Inc. for Phase 4 of the Groundwater Model of the Lynden-Everson-Nooksack-Sumas Area of Whatcom County: Numerical Model Analysis and Documentation

**ATTACHMENTS:**  
Memo  
Contract

**SEPA review completed?**  
- **Yes**  
- **NO**

**SEPA review completed?**  
- **Yes**  
- **NO**

**Should Clerk schedule a hearing?**  
- **Yes**  
- **NO**

**Requested Date:**

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

Contract for Services with Associated Earth Sciences, Inc. for Phase 4 of the Groundwater Model of the Lynden-Everson-Nooksack-Sumas Area of Whatcom County: Numerical Model Analysis and Documentation

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: The Honorable Jack Louws, County Executive
   And Honorable Members of the Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: May 8, 2017

RE: Phase 4 of Groundwater Modeling of Lynden-Everson-Nooksack-Sumas Area

Requested Action
Enclosed are two (2) originals of a contract between the Whatcom County Flood Control Zone District (FCZD) and Associated Earth Sciences, Inc. (AESI) for your review and signature.

Background and Purpose
The work in this contract includes Phase 4 of a groundwater modeling project for the Lynden-Everson-Nooksack-Sumas area of Whatcom County. The goal of the modeling project is to develop a model which will adequately assess the impacts to surface water flow from groundwater pumping. The model will be designed so that it can be expanded to include other WRIA 1 areas. The results of the modeling project will be used to inform the development of a water management plan that balances the needs of salmon and other aquatic resources with out-of-stream water needs. Associated Earth Sciences, Inc. will complete Phase 4 of the Groundwater Modeling project, focusing on the Lynden-Everson-Nooksack-Sumas area, including: (1) constructing the numerical model, (2) coupling the Top-Net surface water model with the groundwater model, (3) model calibration, (4) revising the draft conceptual model report, (5) project meetings, and (6) technical review and information management. The modeling project is a collaboration between the Water Resource Inventory Area (WRIA) 1 Watershed Management Board and the Bertrand Watershed Improvement District and is a continuation of the Water Budget project which is a component of the Lower Nooksack Strategy.

Funding Amount and Source
The estimated budget for this contract is $336,526. The FCZD Board of Supervisors approved funding for this project in the 2017 FCZD Budget approved on November 22, 2016 as supplemented on February 21, 2017 and May 16, 2017. These funds include $100,000 that is being provided through an interlocal agreement with Public Utility District No. 1 of Whatcom County.

Please contact Gary Stoyka at extension 6218, if you have any questions or concerns regarding the terms of this agreement.

Encl.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works</th>
</tr>
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<tbody>
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</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Associated Earth Sciences, Inc.</td>
</tr>
</tbody>
</table>

**Is this a New Contract?** Yes ☑ No ☐

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

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

---

**Does contract require Council Approval?** Yes ☑ No ☐

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

---

**Is this a grant agreement?** Yes ☑ No ☐

**If yes, grantor agency contract number(s):**

---

**Is this contract grant funded?** Yes ☑ No ☐

**If yes, Whatcom County grant contract number(s):** Through ILA with Whatcom PUD

---

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

**If yes, RFP and Bid number(s):** 14-25

---

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

**If no, include Attachment D Contractor Declaration form.**

---

**Contract Amount: (sum of original contract amount and any prior amendments):** $336,526.00

**This Amendment Amount:**

**Total Amended Amount:**

---

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

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

---

**Summary of Scope:** Associated Earth Sciences, Inc. will complete Phase 4 of the Groundwater Modeling project focusing on the Lynden-Everson-Nooksack-Sumas area including: (1) preparing quality assurance project plan, (2) constructing the numerical model, (2) coupling the Top-Net surface water model with the groundwater model, (3) model calibration, (4) revising the draft conceptual model report, (5) project meetings, and (6) technical review and information management.

---

**Term of Contract:** 12/31/18

---

**Contract Routing:**

1. Prepared by: Gary Stoyka Date: 04/25/17
2. Attorney signoff: Daniel L. Gibson 05/19/17
3. AS Finance reviewed: bbennett Date: 05/08/17
4. IT reviewed (if IT related): 5/9/17
5. Contractor signed: 5/9/17
6. Submitted to Exec.: 5/9/17
7. Council approved (if necessary): 5/9/17
8. Executive signed: 5/9/17
9. Original to Council: 5/9/17
CONTRACT FOR SERVICES
Phase 4 of the Groundwater Model for the
Lynden-Everson-Nooksack-Sumas Area of Whatcom County:
Numerical Model Analysis and Documentation

Associated Earth Sciences, Inc., hereinafter called Contractor, and Whatcom County Flood Control Zone District,
hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 1 to 9.
Exhibit A (Scope of Work), pp. 10 to 14.
Exhibit B (Compensation), pp. 15 to 15.
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1st day of June, 2017, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2018.

The general purpose or objective of this Agreement is to develop a numerical groundwater model of the Lynden-Everson-Nooksack-Sumas area, as more fully and definitively described in Exhibit A. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed $336,528.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 9th day of May, 2017.

CONTRACTOR:

ASSOCIATED EARTH SCIENCES, INC.

(Charles S. Lindsey - Senior Principal Hydrogeologist)

STATE OF WASHINGTON

COUNTY OF Snohomish

On this 9th day of May, 2017 before me personally appeared Charles Lindsey to me known to be the Sr. Principal (title) of Associated Earth Sciences (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Erin R. Nishikawa
NOTARY PUBLIC

My commission expires

1-6-20
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT
Recommended for Approval:

Department Director 5/18/17

Approved as to form:

Daniel L. Gibson 05/19/17

Prosecuting Attorney Date

Approved:

Accepted for Flood Control Zone District:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
ss )
COUNTY OF WHATCOM )

On this _____ day of ________, 20__, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

CONTRACTOR INFORMATION:

Associated Earth Sciences, Inc. ____________________________
(Type in Name of Contractor/Firm)

Address:
2911-½ Hewitt Avenue, Suite 2
Everett, WA 98201

Mailing Address:
______________________________

Contact Name: Charles S. Lindsay ____________________________

Contact Phone: __425-269-0522__________________________

Contact FAX: __425-252-3408__________________________

Contact Email: clindsay@aesgeo.com
GENERAL CONDITIONS

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

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

Series 10-19: Provisions Related to Term and Termination

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

10.2 Extension: Not Applicable

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

11.2 Termination for Reduction in Funding: Not Applicable

11.3 Termination for Public Convenience:
The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

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

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

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

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

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

23.1 Labor Standards: Not Applicable

Series 30-39: Provisions Related to Administration of Agreement

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

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

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

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

31.1 Ownership of Items Produced:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.
31.2 **Patent/Copyright Infringement:**
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

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

34.1 **Proof of Insurance:**
The Contractor shall carry for the duration of this Agreement insurance of the types and with the minimum policy limits and conditions noted below:

Commercial General Liability insurance:
- Property Damage - $500,000.00 per occurrence;
- General Liability & Bodily injury- $1,000,000.00 per occurrence.

A certificate of insurance that also identifies the County as an additional insured for the above-noted insurance is attached hereto as Exhibit "C". This CGL insurance shall be considered as primary and non-contributory, and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and if the contractor discontinues coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

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

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.
35.1 Non-Discrimination in Employment:
The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

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

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

35.2 Non-Discrimination in Client Services: Not Applicable

36.1 Waiver of Noncompetition: Not Applicable

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

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

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

Gary S. Stoyka, Whatcom County Public Works Department, 322 N. Commercial St., Ste.110, Bellingham, WA 98225

The Contractor hereby appoints Charles Lindsay as the Consultant Team Lead.

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

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable
38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

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

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at www.SAM.GOV. Contractor shall immediately notify County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov.

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

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

42.1 Disputes:

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

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

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

d. Arbitration: Not Applicable

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

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

Series 50-59: Special Provisions

50.1 Consultant Cap:
Contractor pay and pay to individual sub-consultants shall be limited to the maximum daily rate (excluding overhead) for a Level IV of the Executive Schedule, available at https://www.opm.gov/policy-data-overview/pay-leave/salaries-wages/, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed.

50.2 Access to Data:
In compliance with RCW 39.26.180, the Contractor shall provide access to data generated under this contract to County, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Consultant’s reports, including computer models and methodology for those models.

50.3 Records Maintenance:
The Contractor shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of the County, other personnel duly authorized by the County, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this contract will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the County shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this contract to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each
party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

50.4 Recognition of EPA Funding:
The Contractor will ensure that reports, documents, signage, videos, or other media, developed as part of projects funded by this contract contain the following statement: "This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement through the Washington Department of Fish and Wildlife. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the Washington Department of Fish and Wildlife, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

50.5 Geospatial Data Standards:
All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

50.6 Subcontracting:
Contractor shall not enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Public Utility District No. 1 of Whatcom County (PUD). In no event shall the existence of the subcontract operate to release or reduce the liability of the contract to the Contractor for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this contract are carried forward to any subcontracts. The Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the County or as provided by law.
EXHIBIT "A"
(SCOPE OF WORK)

This Scope of Work is for Phase 4 of the Lynden-Everson-Nooksack-Sumas groundwater modeling project. The general scope of services for this contract is outlined below:

TASK 1 – QUALITY ASSURANCE PROJECT PLAN: A Quality Assurance Project Plan (QAPP) will be developed prior to the start of the development of the numerical model. The QAPP will be developed to build confidence in the model that is developed, by ensuring that the model is scientifically sound, robust, and defensible. The development of a QAPP will follow the U.S. EPA guidance document QA/G-5M (EPA/240/R-02/007).

QAPP Elements

In conformance with the EPA Requirements for Quality Assurance Project Plans (EPA, 2001), the QAPP for the LENS area will include the following elements (the relevant sections in QA/G-5M are indicated in brackets).

A. Project management

The outline for the Group A element presented in the U.S. EPA guidance document is reproduced below.

A1 Title and Approval Sheet [QA/G-5M; Section 4.1.1]
A2 Table of Contents and Document Control Format [Section 4.1.2]
A3 Distribution List [Section 4.1.3]
A4 Project/Task Organization [Section 4.1.4]
A5 Problem Definition/Background [Section 4.1.5]
A6 Project/Task Description [Section 4.1.6]
A7 Quality Objectives and Criteria [Section 4.1.7]
A8 Special Training/Certification [Section 4.1.8]
A9 Documents and Records [Section 4.1.9]

The central part of Element A is A5, the Problem Definition/Background. This is an overview of the work to be performed, products to be produced, and the schedule for implementation. A more detailed description of scope of work that comprise A5 are presented in Tasks 2 through 6 of this Exhibit A - Scope of Work.

B. Data Acquisition

The Group B elements focus on the quality procedures that are implemented when acquiring, generating, and handling data to develop the numerical groundwater flow model. The outline for the Group B element presented in the U.S. EPA guidance document is reproduced below.

B1 Assessment and Response Actions
B2 Reports to Management
B3 Sample handling and custody
B4 Analytical Methods
B5 Quality Control
B6 Model assessment
B7 Model calibration [Section 4.2.1]
B9 Non-direct Measurements [Section 4.2.2]
B10 Data Management [Section 4.2.3]

No new data will be collected during the development of the groundwater model. Therefore, following the guidance in Section 4.2, items B1 through B6 will be labeled as “not relevant”. Section B of the proposed QAPP will therefore be customized to reflect that the groundwater model is being developed to synthesize the data assembled in the Groundwater Conceptual Model Report (Associated Earth Sciences, Inc., September 2016).

C. Assessment and Oversight

Section C of the QAPP will contain descriptions of tasks required to assess the effectiveness of the modeling project implementation and associated QA and QC activities. These activities are needed to detect errors and to help ensure that the use and application of the model addresses the user requirements. The outline for the Group C element presented in the U.S. EPA guidance document is reproduced below. For the purposes of this Scope of Work, the “Reports to Management” are interpreted as regular updates to the WRIA 1 Watershed Management Board (WRIA 1 Board) as described in Tasks 5 and 6 of this Scope of Work.

C1 Assessment and Response Actions [Section 4.3.1]
C2 Reports to Management [Section 4.3.2]
D. Data Validation and Usability

The primary purpose of element D of the QAPP will be to describe the process of assessing model-results usability. The work conducted throughout the development of the groundwater model, its assembly, calibration and testing, will be guided by the objective of useable results. The outline for the Group D element from the U.S. EPA guidance document is reproduced below.

D1 Data Review, Verification, and Validation [Section 4.4.1]
D2 Verification and Validation Methods [Section 4.4.2]
D3 Reconciliation with User Requirements [Section 4.4.3]

The project updates will document that the steps of the modeling process are followed correctly and that the intermediate and final results meet the project objectives. These steps will include the matching of both “hard” and “soft” targets. The hard targets will include average groundwater levels estimated from dedicated observation wells and production wells, and estimates of groundwater discharge to surface water features inferred from changes in baseflows between gaging stations. The soft targets will include regional interpretations of groundwater flow patterns and any one time (spot) measurements of water levels in private wells and stream flows. During the calibration, the hydraulic conductivities assigned for different hydrostratigraphic units and areas of the model will be adjusted systematically and within realistic bounds to match the calibration targets. The goodness of fit of the model to the observations will be assessed through multiple statistical measures. Maps will also be prepared to indicate the magnitudes of the differences between the target and simulated groundwater levels. These maps will serve to demonstrate that there are no areas of the model where the simulation results have a systematic bias and to identify areas where data coverage is limited.

The modeling approaches will be consistent with the available guidance documents, including:

- ASTM (2010);
- ASTM (2013);
- ASTM (2013);
- ASTM (2014);
- ASTM (2008);
- Hill (1998); and

Task 1 Deliverables:

- Completed QAPP.

TASK 2 – SURFACE WATER - GROUNDWATER MODEL EXCHANGES: One of the primary outputs of the existing Topnet-WM surface water model is an estimate of groundwater recharge. The values and distribution of groundwater recharge is a vital input parameter for the MODFLOW UGS numerical groundwater model. The Topnet-WM groundwater recharge information will be specified as input for the initial version of the MODFLOW UGS model. The MODFLOW UGS model in turn will be used to calculate the depth to the regional groundwater table across the model domain. The depth to groundwater is an important input parameter to the Topnet-WM model and the results from the initial MODFLOW UGS model will be used to refine the input to the Topnet-WM model. A comparison of the original and refined inputs/outputs will be instructive regarding the consistency of simulated water budgets. The interaction between the two models that will be completed during this task can be generally summarized in the following seven steps:

Step 1: Use the Topnet-WM model to refine and aggregate estimates of groundwater recharge over the model domain.

Output: Long-term annual average groundwater recharge estimates for each basin in the model domain that will be utilized during the development of the numerical groundwater model as described in Step 2.

Step 2: Run the MODFLOW UGS model using long-term average groundwater recharge values developed in Step 1.

Output: Long-term annual average groundwater levels.

Output: Assessment of the consistency between the calibration targets and the results of the groundwater model obtained with the recharge distribution from Step 1.

Step 3: Run Topnet-WM model with updated depth to groundwater values obtained from the groundwater model in Step 2.

Output: Updated long-term annual average groundwater recharge estimates for each basin in the model domain.

Output: Comparison of the updated average-monthly groundwater recharge values developed in Steps 1 and 3. Identify areas for potential improvement/adjustment within the Topnet-WM and MODFLOW models.

Output: Monthly-average groundwater recharge estimates for each basin in the model domain that will be utilized during the development of the numerical groundwater model as described in Step 4.
Step 4: Refine the calibration of the steady-state MODFLOW model using the updated long-term average groundwater recharge values developed in Step 3. 
Output: Long-term annual average groundwater levels.

Step 5: Run the MODFLOW model using representative monthly-average groundwater recharge values to demonstrate the capability to simulate seasonal fluctuations in groundwater levels and groundwater discharge to surface water features.
Output: Seasonal-average groundwater levels throughout the model domain.

Step 6: Run Topnet-WM model with updated depth to groundwater data developed during Step 3 for the transient period of 1950-2017 for the 50 sub-basins of the Bertrand Creek drainage, as defined during Phase 3 of this project.
Output: Refined monthly-transient groundwater recharge values specifically for the 50 sub-basins of the Bertrand Creek drainage.
Output: Aggregated refined monthly-transient groundwater recharge data to average-monthly groundwater recharge values specifically for the 50 sub-basins of the Bertrand Creek drainage.

Step 7: Compare the updated average-monthly groundwater recharge values developed in Step 4 to the average-monthly groundwater recharge values developed in Step 1 for Bertrand Creek drainage. Identify areas for potential improvement/adjustment within the Topnet-WM and MODFLOW models.

Specifically, the completion of Task 1 will include:
- Process Topnet-WM outputs into MODFLOW UGS inputs by user type and the following data per model element: groundwater pumping, surface water withdrawals, recharge, evapotranspiration, artificial drainage, and return flows. Integrate datasets outside surface model domain, within the Lower Nooksack, and including Bertrand Creek model updates completed during Phase 3 of this project.
- Testing and verification of Topnet-WM/MODFLOW UGS inputs and outputs across the modeling domain during the steady-state model calibration process.
- Water budget comparisons and analysis.
- Updated Topnet-WM code to allow for subsurface storage monthly updates of regional groundwater levels derived from the MODFLOW model.
- Compare updated average-monthly groundwater recharge values to original average-monthly values in Bertrand Creek Basin. Identify areas for potential improvement/adjustment.
- Update of streamflow observation database developed for the Lower Nooksack Water Budget. Extend observations to 2017 and add available groundwater monitoring well time series data. Explore the use of upper fork model time series (based on collaboration with Nooksack Indian Tribe DHSMV glacier modeling) as boundary conditions to the WRIA 1 Topnet-WM model or MODFLOW UGS as a replacement for missing observations.

Task 2 Deliverables:
- Monthly time series estimate or demand/pumping rate for each Public Water System (PWS) well located within the relevant Bertrand Creek drainage south of the USA/Canada border. Geographic files with point location of wells and public water service areas.
- Monthly time series estimate or demand/pumping rate of rural residential and commercial. Geographic files with spatial coverage of residential area outside of PWS areas.
- Monthly time series estimate or demand/pumping rate of dairies. Geographic files with spatial coverage of dairy area.
- Monthly time series estimate or demand/pumping rate of each irrigation user type. Geographic files with spatial coverage of irrigation area.
- Total return flow from all users for each model element. Geographic files with spatial coverage of surface water model elements.
- Surface water modeled extractions and geographic files with surface water demand along the stream network for each model element.
- Recharge time series forcings from Topnet-WM to MODFLOW UGS. Recharge time series for groundwater model extent will include the long-term annual average groundwater recharge and the monthly-average groundwater recharge.
- Artificial drainage (ditch and tile drain) time series forcings from Topnet-WM to MODFLOW. Artificial drainage (ditch and tile drain) time series for MODFLOW UGS model extent will include the long-term annual average groundwater recharge and the monthly-average groundwater recharge.
- Update of Lower Nooksack Water Budget streamflow database to 2017, to include all publicly available or project (Phase 2) observations used in the Topnet-WM/MODFLOW UGS models.
- Bertrand Creek model outputs for groundwater recharge per model element and simulated streamflow generated with annual average and monthly variable groundwater water table levels.

**TASK 3 – DEVELOPMENT AND CALIBRATION OF THE MODFLOW MODEL:** The groundwater model will be constructed based primarily on the data/information developed in Phase 2 and 3 of this project. The MODFLOW model will be calibrated under steady-state conditions to match both “hard” and “soft” targets. The steady-state model calibration hard targets will include average groundwater levels estimated from dedicated observation wells and production wells, and estimates of groundwater discharge to surface water features inferred from changes in any available baseflow estimates between gauging stations. The soft targets will include regional interpretations of groundwater flow patterns and any one-time (spat) measurements of water levels in private wells and stream flows. During the calibration, the hydraulic conductivities assigned for different hydrostratigraphic units and areas of the model will be adjusted systematically and within realistic bounds to match the calibration targets. The calibration will focus on selected areas of the model.

- During calibration, local water budgets will be developed and checked to ensure that the magnitudes of the components of the water budget are physically realistic.
- The goodness-of-fit of the model to the observations will be assessed through multiple statistical measures of the residuals, which represent the difference between the observed and simulated groundwater levels at target locations. The statistics will include the mean residual, mean absolute residual, standard deviations of the residuals and the normalized standard deviations. The goodness-of-fit measures will be compared with model acceptance criteria. Maps will also be prepared to indicate the magnitudes of the differences between the target and simulated groundwater levels. These maps will serve to demonstrate that there are no areas of the model where the simulation results are systematically biased and to identify areas where data coverage is limited.
- The simulated groundwater discharges to streams will be checked against the differences in any available interpreted baseflows between gauging stations. The assessment of goodness-of-fit will include an evaluation of the approximations inherent in the estimation of baseflow.
- Final water budget for the focus areas of the model will be developed.
- After the steady-state groundwater model has been calibrated, the capabilities of the model for transient analyses will be demonstrated. Demonstration simulations of seasonal changes in groundwater levels and the potential spatial and temporal impacts of new pumping centers (wells) on surface water resources in the Bertrand drainage will be developed and applied.
- Maps will be prepared to illustrate the material properties that have been inferred through model calibration. The material properties will be assessed with respect to their consistency with estimates derived from hydraulic testing that are compiled in the conceptual model.

**Task 3 Deliverables:**
- Calibrated numerical (MODFLOW UGS) groundwater flow model for the model domain.
- Maps displaying the magnitudes of the differences between the target and simulated groundwater levels.
- Maps illustrating the material properties that have been inferred through model calibration.

**TASK 4 – CONCEPTUAL AND NUMERICAL MODEL TECHNICAL REPORTS:** Revise the conceptual model report completed under Phases 2 and 3 of this project as appropriate based on feedback from the MODFLOW UGS model regarding model parameters. The revised conceptual model report will be first issued as a draft for review by the WRIA 1 Board. This task also includes providing technical support to the groundwater modelers on an as-needed basis within the limitations of the scope and budget.

A detailed formal report will be prepared documenting the calibration process and model “goodness of fit”, the contents of the calibrated groundwater model and the results obtained with it. The report will include maps that will facilitate application of the scientific results by local water resource managers. The report will also include a discussion regarding the variability of limitations to the accuracy of the numerical model within the model domain. The final technical report will be first issued as a draft for review by the WRIA 1 Board.

The final reports will address/incorporate comments provided by the WRIA 1 Board during the completion of Phase 3 Task 3.2, and technical review comments provided during the completion of Phase 4 – Tasks 5 and 6 (see below).

**Task 4 Deliverables:**
- Draft and final conceptual model technical report.
- Draft and final report describing the MODFLOW UGS model.
TASK 5 – PROJECT MEETINGS AND TEAM INTERACTIONS: During the completion of Phase 4, the Consultant Team Lead (Charles Lindsay) will communicate weekly with Whatcom County Lead (Gary Stoyka) via phone and/or email regarding project status and progress. In addition, the Consultant Team will participate in the following meetings during the completion of Phase 4.

Preliminary Numerical Model Meeting: We will meet with the Whatcom County Lead and others identified by the Lead after steady-state calibration is completed. The purpose of the meeting will be to discuss project progress and the numerical modelling design.

Planning Unit Numerical Model Meeting: We will prepare briefing sheets and presentation slides for the Whatcom County Lead to present to the WRIA 1 Board within three months after the completion of the draft conceptual and numerical model reports. The Consultant Team will participate in the meeting with the WRIA 1 Board to support the Whatcom County Lead in answering questions as needed. The purpose of the meeting will be to brief the WRIA 1 Board on the development of the conceptual and numerical models, their functions and constraints/limitations, and respond to questions/comments regarding the draft technical reports. The Consultant Team will also complete a training seminar regarding the use of the numerical model for an audience selected by the Whatcom County Lead. It is expected that this training seminar will happen on the same day as the Planning Unit Numerical Model meeting.

Task 5 Deliverables:

- PowerPoint presentations and briefing sheets on project purpose, scope, approach, numerical model report, usability objectives, model limitations, and data considerations.
- Consultant Team attendance at two meetings with representatives of the WRIA 1 Board and at one technical training seminar.

Task 6 – Technical Review and Information Management: Draft conceptual and numerical model report outreach for technical review and local knowledge input will be conducted by the Whatcom County Lead using briefing materials and comment compilation tools provided by the Consultant Team and with assistance provided by the Consultant Team. The technical review representatives will be selected by the Whatcom County Lead. Review instructions will be prepared by the Consultant Team and provided to the Whatcom County Lead for distribution to appropriate parties.

All public access materials will be prepared in print and web-ready formats suitable for posting on the existing WRIA 1 public access website for use by technical and local knowledge reviewers as directed by the Whatcom County Lead.

Technical review input will be collected using electronic comment submission, face-to-face conversations, and during the meetings discussed in Task 5. Comments and questions generated during the technical reviews will be used to develop a frequently asked questions briefing sheet about the project in general. These frequently asked questions will be addressed, as appropriate, in the final conceptual and numerical model technical reports as described in Task 3 and 4.

Task 6 Deliverables:

- PowerPoint presentation on project purpose, scope, approach, numerical model report, usability objectives and data considerations.
- Review instructions for technical experts and local knowledge usability reviewers involved in review of the draft and final numerical model report.
- Presentation of project briefings and compilation of questions and comments provided during face-to-face meetings.
- Outreach materials to support the Whatcom County Lead in discussions with the WRIA 1 Board.

Project Schedule
All work in this contract shall be completed by December 31st, 2018.
EXHIBIT "B"
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, "Scope of Work", the County agrees to compensate the contractor according to the hourly rates provided below. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the General Services Administration rate for location services are provided. Reimbursement for air travel will be at coach rates. Other expenditures not specified in the rate sheet below shall be reimbursed at actual cost. All sub-consultant services shall be billed at a rate not to exceed cost plus 15%.

Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Compensation shall not exceed $336,528.00 and shall not exceed the task budgets specified below; however, if necessary, budget capacity may be shifted from one task to another with approval from the County so long as the total compensation is not exceeded. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor's expense.

| Task 1 Budget: | $ 17,850 |
| Task 2 Budget: | $ 49,894 |
| Task 3 Budget: | $199,235 |
| Task 4 Budget: | $ 30,033 |
| Task 5 Budget: | $ 23,792 |
| Task 6 Budget: | $ 15,722 |

Maximum Personnel Charges - Engineers, Hydrogeologists, Geologists, Scientists, and Technicians

<table>
<thead>
<tr>
<th>Title</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sr. Principal</td>
<td>$210.00/hour</td>
</tr>
<tr>
<td>Principal</td>
<td>$180.00/hour</td>
</tr>
<tr>
<td>Sr. Associate</td>
<td>$160.00/hour</td>
</tr>
<tr>
<td>Associate</td>
<td>$150.00/hour</td>
</tr>
<tr>
<td>Senior</td>
<td>$140.00/hour</td>
</tr>
<tr>
<td>Sr. Project</td>
<td>$130.00/hour</td>
</tr>
<tr>
<td>Project</td>
<td>$120.00/hour</td>
</tr>
<tr>
<td>Sr. Staff</td>
<td>$100.00/hour</td>
</tr>
<tr>
<td>Staff</td>
<td>$90.00/hour</td>
</tr>
<tr>
<td>Legal Testimony (4 hour minimum)</td>
<td>$400.00/hour</td>
</tr>
</tbody>
</table>

Other Personnel and Disbursement Charges

<table>
<thead>
<tr>
<th>Title</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAD Operator and Workstation</td>
<td>$95.00/hour</td>
</tr>
<tr>
<td>Geographic Information Services (GIS)</td>
<td>$95.00/hour</td>
</tr>
<tr>
<td>Prints — Sizes A and B</td>
<td>$2.00/each</td>
</tr>
<tr>
<td>Prints — Sizes C, D, E, and F</td>
<td>$5.00/each</td>
</tr>
<tr>
<td>Project Assistant</td>
<td>$75.00/hour</td>
</tr>
<tr>
<td>Laboratory Technician</td>
<td>$90.00/hour</td>
</tr>
<tr>
<td>Clerical, Word processing, etc</td>
<td>$60.00/hour</td>
</tr>
<tr>
<td>Water Level Data Logger</td>
<td>$50.00/month</td>
</tr>
<tr>
<td>Barometer Data Logger</td>
<td>$40.00/month</td>
</tr>
</tbody>
</table>
# Certificate of Liability Insurance

**Client #:** 334935

### ACORD... CERTIFICATE OF LIABILITY INSURANCE

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFRS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**

**USI Kibble & Prentice PR**

601 Union Street, Suite 1000

Seattle, WA 98101

**CONTACT**

**NAME:**

**PHONE:** 206 441-6300

**FAX:** 610-362-8528

**E-MAIL ADDRESS:** PL.CertRequest@usi.com

**INSURED**

**Associated Earth Sciences, Inc.**

911 5th Avenue, Suite 100

Kirkland, WA 98033

**INSURER A:** Navigators Specialty Insurance

**NAC #:** 36056

## Coverages

<table>
<thead>
<tr>
<th>INSUR - LTR</th>
<th>TYPE OF INSURANCE</th>
<th>ADD'L/ SUBR INSR VWD</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF (MM/DD/YYYY)</th>
<th>POLICY EXP (MM/DD/YYYY)</th>
<th>LIMITS</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>CLAIMS-MADE OCCUR</td>
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<td></td>
<td>AUTOMOBILE LIABILITY</td>
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<td>OCCUR CLAIMS-MADE</td>
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<tr>
<td></td>
<td>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</td>
<td>YES NO</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>ANY PROPRIETOR OR KEY EXECUTIVE OFFICER/MEMBER EXCLUDED?</td>
<td>N/A</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>DESCRIPTION OF OPERATIONS below</td>
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</tr>
</tbody>
</table>

**A Professional Liability**

<table>
<thead>
<tr>
<th>POLICY NUMBER</th>
<th>POLICY EFF (MM/DD/YYYY)</th>
<th>POLICY EXP (MM/DD/YYYY)</th>
<th>LIMITS</th>
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</thead>
<tbody>
<tr>
<td>CH16MPL0BD70DNC</td>
<td>07/12/2016</td>
<td>07/12/2017</td>
<td>$2,000,000 per claim</td>
</tr>
</tbody>
</table>

**RE: Project #170169EHA.**

### Certificate Holder

**Whatcom County Health Department**

509 Girard Street

Bellingham, WA 98225

### Cancellation

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

**AUTHORIZED REPRESENTATIVE**

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**ACORD 25 (2014/01)**

S20147315/M18237187

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**SQAZP**

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# Certificate of Liability Insurance

**Certificate Number:** 52SBANW6875

**Type of Insurance:** Commercial General Liability

**Policy Period:** 12/31/2016 to 12/31/2017

**Limits:**
- $1,000,000
- $300,000
- $10,000
- $1,000,000
- $2,000,000

**Description of Operations / Locations / Vehicles:**
- Whatcom County Health Dept
  - 509 Girard St
  - Bellingham, WA 98225

**Cancellation:** AI 115200

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

**Producer:** Niehl Insurance Agency
- 375 118th Ave Se #103
- Bellevue, WA 98005

**Insured:** Associated Earth Sciences Inc
- 911 5th Ave, Suite 100
- Kirkland, WA 98033

**Insurer A:** The Hartford Casualty Insurance Co
**NAIC #:**

**Insurer B:** Sentinel Insurance Co. Ltd.

**Coverages:**
- **Commercial General Liability**
  - Each Occurrence: $1,000,000
  - General Aggregate: $2,000,000

**Description of Operations:**
- Whatcom County Health Department is included as additional insured as required by written contract per SS0008. Insurance is primary and non-contributory. Waiver of subrogation applies.

**Declaration:**
- Workers Compensation and Employers Liability:
  - N/A
  - Mandated in NH? (Y/N): N

**Additional Information:**
- An additional endorsement may be required due to the nature of the operations.

**Notice:**
- Any cancellation or modification of the policy must be in accordance with the terms and conditions stated in the policy.

**Date:** 03/24/2017

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BUSINESS LIABILITY COVERAGE FORM
QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY

BUSINESS LIABILITY COVERAGE FORM

A. COVERAGE
   Business Liability
   Medical Expenses
   Coverage Extension - Supplementary Payments

B. EXCLUSIONS

C. WHO IS AN INSURED

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS
   1. Bankruptcy
   2. Duties In The Event Of Occurrence, Offense, Claim Or Suit
   3. Financial Responsibility Laws
   4. Legal Action Against Us
   5. Separation Of Insureds
   6. Representations
   7. Other Insurance
   8. Transfer Of Rights Of Recovery Against Others To Us

F. OPTIONAL ADDITIONAL INSURED COVERAGE

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

Form SS 00 08 04 05

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGE

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

   Insuring Agreement

   a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

   We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

   (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and

   (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

   No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

   b. This insurance applies:

      (1) To "bodily injury" and "property damage" only if:

      (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

      (b) The "bodily injury" or "property damage" occurs during the policy period; and

      (c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

      (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

   c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

      (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

Form SS 00 08 04 05

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Page 1 of 24
(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

(2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

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

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:

(1) All expenses we incur.

(2) Up to $1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

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

(5) All costs taxed against the insured in the "suit".

(6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

(7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.
b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

(1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

(2) This insurance applies to such liability assumed by the insured;

(3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

(4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;

(5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

(6) The indemnitee:

(a) Agrees in writing to:

(i) Cooperate with us in the investigation, settlement or defense of the "suit";

(ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(iii) Notify any other insurer whose coverage is available to the indemnitee; and

(iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(b) Provides us with written authorization to:

(i) Obtain records and other information related to the "suit"; and

(ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

(1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or

(2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

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

(2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

(1) "Bodily injury" or "property damage"; or

(2) "Personal and advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

(a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or
(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

(i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and

(ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants";

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.
BUSINESS LIABILITY COVERAGE FORM

g. Aircraft, Auto Or Watercraft
"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading". This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:
(1) A watercraft while ashore on premises you own or rent;
(2) A watercraft you do not own that is:
   (a) Less than 51 feet long; and
   (b) Not being used to carry persons for a charge;
(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
(6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment
"Bodily injury" or "property damage" arising out of:
(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
(2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War
"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:
(1) War, including undeclared or civil war;
(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents, or
(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services
"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:
(1) Legal, accounting or advertising services;
(2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
(3) Supervisory, inspection, architectural or engineering activities;
(4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
(5) Any health or therapeutic service treatment, advice or instruction;
(6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
(7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
(8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;

(9) Any:
   (a) Body piercing (not including ear piercing);
   (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
   (c) Similar services;

(10) Services in the practice of pharmacy; and

(11) Computer consulting, design or programming services, including website design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

(1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.
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o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";
(2) "Your work"; or
(3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

(1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;

(2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;

(3) Arising out of a criminal act committed by or at the direction of the insured;

(4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";

(5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";

(6) Arising out of the wrong description of the price of goods, products or services;

(7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

(a) Copyright;
(b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

(9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;

(10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;

(11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

(a) An "advertisement" for others on your web site;

(b) Placing a link to a web site of others on your web site;

(c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or

(d) Computer code, software or programming used to enable:

(i) Your web site; or

(ii) The presentation or functionality of an "advertisement" or other content on your web site;
(13) Arising out of a violation of any anti-trust law;
(14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
(15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data
Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices
"Bodily injury" or "personal and advertising injury" to:

(1) A person arising out of any:
   (a) Refusal to employ that person;
   (b) Termination of that person's employment; or
   (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos
(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".

(2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard";

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E- Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information
"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or

(3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion
Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.
2. Applicable To Medical Expenses Coverage
We will not pay expenses for "bodily injury":

a. Any Insured
   To any insured, except "volunteer workers".

b. Hired Person
   To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises
   To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws
   To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities
   To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard
   Included with the "products-completed operations hazard".

g. Business Liability Exclusions
   Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers
   Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

   However, none of these "employees" or "volunteer workers" are insureds for:

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

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

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

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

   (d) Arising out of his or her providing or failing to provide professional health care services.

   If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

   (2) "Property damage" to property:

   (a) Owned, occupied or used by,
(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager
Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property
Any person or organization having proper temporary custody of your property if you die, but only:
(1) With respect to liability arising out of the maintenance or use of that property; and
(2) Until your legal representative has been appointed.

d. Legal Representative If You Die
Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary
Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization
Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:
(1) "Bodily injury" or "property damage" that occurred; or
(2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment
With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft
With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit
The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written
contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises
(1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or

(b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors
(1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In connection with your premises; or

(b) In the performance of your ongoing operations performed by you or on your behalf.

(2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

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

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

e. Permits Issued By State Or Political Subdivisions
(1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party
(1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products-completed operations hazard", but only if

(i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
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(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

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

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

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

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" as the Products-Completed Operations Aggregate Limit shown in the Declarations.

b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or

b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.
E. LIABILITY AND MEDICAL EXPENSES
   GENERAL CONDITIONS

1. Bankruptcy
   Bankruptcy or insolvency of the insured or of the insured’s estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit
   a. Notice Of Occurrence Or Offense
      You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
      (1) How, when and where the "occurrence" or offense took place;
      (2) The names and addresses of any injured persons and witnesses; and
      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

   b. Notice Of Claim
      If a claim is made or "suit" is brought against any insured, you or any additional insured must:
      (1) Immediately record the specifics of the claim or "suit" and the date received; and
      (2) Notify us as soon as practicable.
      You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

   c. Assistance And Cooperation Of The Insured
      You and any other involved insured must:

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1. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
2. Authorize us to obtain records and other information;
3. Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
4. Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured’s Own Cost
   No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance
   If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.
   However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured’s own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit
   Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:
   (1) You or any additional insured that is an individual;
   (2) Any partner, if you or an additional insured is a partnership;
   (3) Any manager, if you or an additional insured is a limited liability company;
   (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
   (5) Any trustee, if you or an additional insured is a trust; or
   (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.
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This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws
   a. When this policy is certified as proof of financial responsibility for the future under
      the provisions of any motor vehicle financial responsibility law, the insurance
      provided by the policy for "bodily injury" liability and "property damage" liability will
      comply with the provisions of the law to the extent of the coverage and limits of
      insurance required by that law.
   b. With respect to "mobile equipment" to which this insurance applies, we will
      provide any liability, uninsured motorists, underinsured motorists, no-fault or other
      coverage required by any motor vehicle law. We will provide the required limits for
      those coverages.

4. Legal Action Against Us
   No person or organization has a right under this Coverage Form:
   a. To join us as a party or otherwise bring us into a "suit" asking for damages from an
      insured; or
   b. To sue us on this Coverage Form unless all of its terms have been fully complied
      with.

   A person or organization may sue us to recover on an agreed settlement or on a final judgment
   against an insured; but we will not be liable for damages that are not payable under the terms of
   this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of
   liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds
   Except with respect to the Limits of Insurance, and any rights or duties specifically assigned
   in this policy to the first Named Insured, this insurance applies:
   a. As if each Named Insured were the only
      Named Insured; and
   b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations
   a. When You Accept This Policy
      By accepting this policy, you agree:
      (1) The statements in the Declarations are accurate and complete;
      (2) Those statements are based upon representations you made to us; and
      (3) We have issued this policy in reliance upon your representations.
   b. Unintentional Failure To Disclose Hazards
      If unintentionally you should fail to disclose all hazards relating to the conduct of your
      business at the inception date of this Coverage Part, we shall not deny any
      coverage under this Coverage Part because of such failure.

7. Other Insurance
   If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:
   a. Primary Insurance
      This insurance is primary except when b. below applies. If other insurance is also
      primary, we will share with all that other insurance by the method described in c. below.
   b. Excess Insurance
      This insurance is excess over any of the other insurance, whether primary, excess,
      contingent or on any other basis:
      (1) Your Work
          That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
      (2) Premises Rented To You
          That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with
          permission of the owner;
      (3) Tenant Liability
          That is insurance purchased by you to cover your liability as a tenant for
          "property damage" to premises rented to you or temporarily occupied by you with
          permission of the owner;
      (4) Aircraft, Auto Or Watercraft
          If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to
          the extent not subject to Exclusion g. of Section A. – Coverages.
      (5) Property Damage To Borrowed Equipment Or Use Of Elevators
          If the loss arises out of "property damage" to borrowed equipment or
          the use of elevators to the extent not subject to Exclusion k. of Section A. –
          Coverages.
(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

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**BUSINESS LIABILITY COVERAGE FORM**

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.
F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization
   WHO IS AN INSURED under Section C., is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
   a. In the performance of your ongoing operations; or
   b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises
   a. WHO IS AN INSURED under Section C., is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.
   b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
      This insurance does not apply to:
      (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
      (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise
   WHO IS AN INSURED under Section C., is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment
   a. WHO IS AN INSURED under Section C., is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor Of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
   b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased
   a. WHO IS AN INSURED under Section C., is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.
   b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
      This insurance does not apply to:
      (1) Any "occurrence" which takes place after you cease to lease that land; or
      (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits
   a. WHO IS AN INSURED under Section C., is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional
Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

2. "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

a. WHO IS AN INSURED under Section C, is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor’s business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. The insurance afforded to the vendor is subject to the following additional exclusions:

1. This insurance does not apply to:
   a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
   b. Any express warranty unauthorized by you;
   c. Any physical or chemical change in the product made intentionally by the vendor;
   d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C, is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

a. Their financial control of you; or
b. Premises they own, maintain or control while you lease or occupy these premises.
BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization
   a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
   (1) In the performance of your ongoing operations for the additional insured(s); or
   (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
   b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
      (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
      (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises
    WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

   The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.
   How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:
   a. (1) Radio;
      (2) Television;
      (3) Billboard;
      (4) Magazine;
      (5) Newspaper;
   b. The Internet, but only that part of a website that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or
   c. Any other publication that is given widespread public distribution.
   However, "advertisement" does not include:
   a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
   b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:
   a. Injury;
   b. Sickness; or
   c. Disease sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:
a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;

c. All other parts of the world if the injury or damage arises out of:
   (1) Goods or products made or sold by you in the territory described in a. above;
   (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
   (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

7. "Electronic data" means information, facts or programs:
   a. Stored as or on;
   b. Created or used on; or
   c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
   a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;
   if such property can be restored to use by:
   a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
   b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:
   a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
   b. A sidetrack agreement;
   c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
   d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
   e. An elevator maintenance agreement; or
   f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:
BUSINESS LIABILITY COVERAGE FORM

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
   (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
   (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:
   a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
   b. While it is in or on an aircraft, watercraft or "auto"; or
   c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
   but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
   a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
   b. Vehicles maintained for use solely on or next to premises you own or rent;
   c. Vehicles that travel on crawler treads;
   d. Vehicles, whether self-propelled or not, on which are permanently mounted:
   (1) Power cranes, shovels, loaders, diggers or drills; or
   (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
   e. Vehicles not described in a, b, c, or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
   (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
   (2) Cherry pickers and similar devices used to raise or lower workers;
   f. Vehicles not described in a, b, c, or d. above maintained primarily for purposes other than the transportation of persons or cargo.
   However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
   (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
      (a) Snow removal;
      (b) Road maintenance, but not construction or resurfacing; or
      (c) Street cleaning;
   (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
   (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
   a. False arrest, detention or imprisonment;
   b. Malicious prosecution;
c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
e. Oral, written or electronic publication of material that violates a person's right of privacy;
f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement";
h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalies, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

19. "Products-completed operations hazard";
a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
   (1) Products that are still in your physical possession; or
   (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
      (a) When all of the work called for in your contract has been completed.
      (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

   BUSINESS LIABILITY COVERAGE FORM

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

b. Does not include "bodily injury" or "property damage" arising out of:
   (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
   (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:
a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

As used in this definition, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who:
a. Is not your "employee";
BUSINESS LIABILITY COVERAGE FORM

24. "Your product":
   a. Means:
      (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
          (a) You;
          (b) Others trading under your name; or
          (c) A person or organization whose business or assets you have acquired; and
      (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
   b. Includes:
      (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
      (2) The providing of or failure to provide warnings or instructions.

25. "Your work":
   a. Means:
      (1) Work or operations performed by you or on your behalf; and
      (2) Materials, parts or equipment furnished in connection with such work or operations.
   b. Includes:
      (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
      (2) The providing of or failure to provide warnings or instructions.

   c. Does not include vending machines or other property rented to or located for the use of others but not sold.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<tr>
<th>CLEARANCES</th>
<th>Initial</th>
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<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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**TITLE OF DOCUMENT:** Approval to Award Bid #17-09, Rental Rates for Maintenance and Construction Equipment Without Operators

**ATTACHMENTS:** Memo from Finance

**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.)

Administrative Services is requesting approval to award Bid #17-09, Rental Rates for Maintenance and Construction Equipment Without Operators to all bidders. The award for each vendor will not exceed $100,000.00. The intent of this bid is to obtain firm pricing on rental equipment that could be used by Public Works and any other department that may need to rent equipment for regular projects or emergencies. When equipment is needed, the County will select it from the list, based on equipment availability and suitability, with preference to low bidders.

**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: May 19, 2017
TO: Jack Louws, County Executive
FROM: Brad Bennett, Administrative Services Finance Manager
SUBJECT: Award of Bid #17-09, Rental of Equipment Without Operator

• BACKGROUND
The purpose of this bid is to establish prices and identify firms that are interested in providing maintenance and construction equipment for rent to the County on an on-call basis.

Public Works and other departments will select equipment for rent from the list. The selection will be based on equipment availability and suitability, with preference to the low bidder. The following companies submitted bids on Tuesday April 4, 2017. A list of available equipment and labor rates is attached.

- United Rentals
- Herc Rentals (formerly Hertz)
- Zylem Dewatering (dba Godwin Pumps)
- Star Rentals
- Birch Equipment
- NW Heavy Equipment Repair
- Darling Sons, Int’l

Rentals will be made on an as-needed basis. Administrative Services is requesting approval to award to all bidders. The award for each vendor will not exceed $100,000.00.

I concur with the recommendation.

[Signature]
AS Finance Manager

Approved as Recommended:

[Signature]
County Executive

Date of Council Action __________________________
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<tr>
<th>Group 1 - Gravel Dump Trucks</th>
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<tr>
<td><strong>10-Yard 3-Axle Dump Truck</strong></td>
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<tr>
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<tr>
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<td>United Rentals</td>
</tr>
<tr>
<td>Phone</td>
</tr>
<tr>
<td>Location</td>
</tr>
<tr>
<td><strong>12-Yard 4-Axle Dump Truck</strong></td>
</tr>
<tr>
<td><strong>18-Yard 5-Axle Dump Truck &amp; Pony Trailer</strong></td>
</tr>
<tr>
<td><strong>22-Yard 7-Axle Dump Truck &amp; Pony Trailer</strong></td>
</tr>
<tr>
<td><strong>End Dump Tubs (greater than 15 yards)</strong></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Group 2 - Rock Dump Trucks</th>
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<tr>
<td><strong>10-Yard 3-Axle Dump Truck</strong></td>
</tr>
<tr>
<td><strong>12-Yard 4-Axle Dump Truck</strong></td>
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<td><strong>End Dump Tubs (greater than 15 yards)</strong></td>
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</table>

2017-2018 Rental Rates
Page 1 of 23
<table>
<thead>
<tr>
<th>Group 3 - Side Dump Trucks</th>
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<td>10-Yard 3-Axle Dump Truck</td>
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<tr>
<td>12-Yard 4-Axle Dump Truck</td>
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<td>18-Yard 5-Axle Dump Truck &amp; Pony Trailer</td>
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<tr>
<td>22-Yard 7-Axle Dump Truck &amp; Pony Trailer</td>
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<table>
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<td>2-Axle Lowboy Trailer</td>
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<td>3-Axle Lowboy Trailer</td>
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<td>4-Axle Lowboy Trailer</td>
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<td>Pup Trailer</td>
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<td>2-Axle Pup Trailer with Truck</td>
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<td>3-Axle Pup Trailer with Truck</td>
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### Group 5 - Semi-Bottom Dump Truck

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### Group 6 - Off-Road Dump Truck

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<td>35 Ton Articulated w/ auto-tarp</td>
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### Group 7 - Front End Loader

#### 1-cubic yard

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<td>NW Heavy Equipment Repair</td>
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#### 2-cubic yard

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# Group 7 - Front End Loader (continued)

## 4-cubic yard

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<th>Mnthly</th>
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<tr>
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<td>Mobilization</td>
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## 5-cubic yard

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<tr>
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### Group 8 - Road Grader

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<td>Mobilization</td>
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### Group 9 - Dozer

**D-3 Dozer**

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<td>John Deere 450</td>
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<td>6</td>
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<td>Units</td>
<td>Daily</td>
<td>Wkly</td>
<td>Mnthly</td>
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### Group 9 - Dozer (continued)

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### Miscellaneous Dozer

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### Group 10, 11, 12, 13 - Excavator

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<td>Mnthly</td>
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<td>Kubota U17, Zero Tail Swing, Variable Track Width</td>
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<td>$ 612</td>
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<td>360-676-9331</td>
<td>Hitachi ZK70 w/Blade</td>
<td>24,48&quot;,c/o</td>
<td>6,952</td>
<td>Yes</td>
<td>1</td>
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<td>Cat 308E2, Compact Radius, Swing Boom, Rubber Street Pads</td>
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<td>29,000</td>
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<td>Kubota KX121-3 SS</td>
<td>9,435</td>
<td>3,960</td>
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<td>$ 760</td>
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<td>Kubota KX040-4</td>
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<td>4,250</td>
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<td>$ 2,280</td>
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<td>Kubota KX057-4</td>
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<td>3,890</td>
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<td>Takeuchi TB290R &amp; John Deere JDB5G-18</td>
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**Note - Excavator rentals include 1 bucket; additional buckets quoted separately.**

**Note - Don't carry Kubota brand - see previous group for other mini excavators w/angle blade**
## Group 14 - Log Loader with Hydraulic Grapple

No Bid

## Group 15 - Scraper

No Bid

## Group 16 - Shoulder Spreader

No Bid

### Group 17A - Broom, Regenerative Air Sweeper, Vacuum Truck Sweeper, & Self-Propelled Broom

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<th>Description</th>
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<th>Daily</th>
<th>Wkly</th>
<th>Mnthly</th>
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<td>$140</td>
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<td>Laymor SM400/Brace KR350, 4 Wheel &amp; Cab</td>
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## Group 17B - Broom, Side Cast with Cab

No Bid
### Group 18A - Steel Roller

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2017-2018 Rental Rates
Page 12 of 23
### Group 18B - Pneumatic Roller

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### Group 18C - Sheepsfoot Roller

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### Group 19 - Mobile Crane

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### Group 20 - Pile Driver
No Bid

### Group 21 - Dragline or Clam
No Bid

### Group 22 - Layton Box
No Bid

### Group 23 - Pavement Pulverizer
No Bid

### Group 24 - Self-Loading Ditch Cleaner
No Bid

### Group 25 - Hydro-Seeder
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2017-2018 Rental Rates
Page 15 of 23
### Group 27 - Tractor Mounted Mower & Brush Cutter

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## Group 28 - Skid-Steer Mounted Mower & Brush Cutter

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## Group 29 - Roadside Mower
No Bid

## Group 30 - Walking Leg-Type Heavy Duty Brush Cutter
No Bid

## Group 31 - Sewer Jet
No Bid

## Group 32 - Water Truck

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# Whatcom County Bid #17-09
## Rental Rates for Equipment Without Operator

### Group 33 - Dust Retardant Truck

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<th>Bidder Information</th>
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<th>Mnthly</th>
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### Group 34 - Utility Boring Machine

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### Group 35 - Under Bridge Inspection Equipment

No Bid

### Group 36 - Snow Removal Equipment

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*Note - See backhoes, wheel loaders*

2017-2018 Rental Rates
Page 19 of 23
## Group 37 - Man Lift

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Notes: See attached pricing under Aerial-boom lifts & platform

## Group 38 - Gas Powered Breaker-Rock Drill

No Bid

---

2017-2018 Rental Rates
Page 20 of 23
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*Note - many others options available - please call 647-7800 opt. 1*

Notes - See attached pricing under Forklifts: hi reach & industrial
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### Group 41 - Miscellaneous Equipment

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WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES
Originator: Cliff Strong
Division Head: Mark Personius
Dept. Head: Sam Ryan
Prosecutor: Royce Buckingham
Purchasing/Budget:
Executive: Jack Louws

Date
3/28/2017
3/28/2017
3/28/2017

Date Received in Council Office
3/28/2017
4/18/2017
5/2/17
5/16/2017
5/30/2017

Agenda Date
4/4/2017
4/4/2017
5/2/17
5/16/2017
5/30/2017

Assigned to:
COTW
COTW
COTW
COTW
COTW

RECEIVED
MAR 28 2017
WHATCOM COUNTY COUNCIL

NO. 2016-276K

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)
A. Staff memo to Council dated 4/3/17
B. Best Available Science Report 2016 (previously distributed)
C. Chapter 16.16 Draft Critical Areas Ordinance - 2016-06-09, PC adopted (previously distributed)

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

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
This is another workshop (in a series of many) on the proposed ordinance to amend Whatcom County Critical Areas Ordinance (CAO) (WCC 16.16) pursuant to RCW 36.70A.130(1). The Growth Management Act (RCW 360.70A) defines critical areas as wetlands, frequently flooded areas, fish and wildlife habitat conservation areas (including streams), geologically hazardous areas, and critical aquifer recharge areas. The purpose of this periodic update is to ensure that the CAO meets the GMA requirements, including consistency with the Whatcom County Comprehensive Plan, best available science, and state agency guidance updates. Numerous amendments are being proposed, though most of them pertain to correcting grammar, updating references to other documents or laws, clarifying and updating administrative procedures, etc. The County is also required to integrate the CAO provisions with its Shoreline Master Program (SMP). Whatcom County has done so by adopting the CAO by reference within the SMP (WCC 23.10.060(A)). This reference is also proposed to be amended.

COMMITTEE ACTION:
4/4/2017: Discussed and amended
4/18/2017: Discussed and amended
5/2/2017: Amended and discussed
5/16/2017: 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.
Memorandum

TO: The Honorable County Council
    Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner

THROUGH: Mark Personius, Asst. Director

DATE: May 18, 2017

SUBJECT: 2016 Critical Areas Ordinance Update
        County Council Review Workshop 7 on May 30, 2017

On May 30th, 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 Council members related to:
  • Article 5, Critical Aquifer Recharge Areas
  • Article 8, Conservation Program on Agriculture Lands
  • Article 9, Definitions

To prepare for this meeting, please review this memo. Yellow highlighting in the text indicates a Councilperson’s proposed amendments.
Questions, Comments, and Suggestions by Council Members

Overarching Staff Comments on the CPAL/CARA Issues Raised

Review Process Up to This Point
Before we address the Council’s questions below, staff wants to first explain the process for evaluating potential changes to the CAO during the update. Overall, staff took the position that the CAO was Council’s declared policy, that it was basically in good shape, and that we would only update the code where necessary due to changes in law, BAS, and/or practices, and to solve commonly identified problems. As previously explained, we then met with the Technical Advisory Committee and Citizens Advisory Committee for a year and a half. At the beginning of that process we went through an exercise to identify any issues members of the committees might have with the code. None were raised for either CARAs or CPAL during that process. We then reviewed each Article in turn. When the committees reviewed the CARA Article, again, no issues were raised. When we got to the CPAL Article one member of the CAC did raise several issues (coincidentally, some of the same that Councilmembers raise below). These were discussed at length, but ultimately the CAC choose not to act on them as they believed the County was meeting the requirements of the GMA. Nor did they want to add disincentives (additional costs, disclosure of private information, additional permits, etc.) for farmers to participate in the CPAL program.

After the TAC and CAC had finished their review, and while staff was preparing for the Planning Commission, a few members continued to bring forth issues not previously raised (in particular, the CARA issue as it relates to agriculture). Staff felt we did not have the authority to change any of the committees’ recommendations prior to the Planning Commission review, so we urged those members to raise their issues with the Commission. They did so and the Commission discussed them at length. The draft code you have before you is the result of their deliberations.

Why is the CPAL program only used for ongoing agriculture and not all agriculture?
CPAL was developed to protect critical areas in agricultural areas where the critical areas and their buffers had already been impacted by past practices prior to the adoption of such protective laws. At one time, it was acceptable to farm right up to—and even in—wetlands, streams, etc. But in the 1990’s, rules were enacted to protect these resources, which essentially made those farming operations legal nonconforming uses1 (i.e., grandfathered). However, under the GMA the County still had (and has) a legal obligation to protect the critical areas.

Thus, CPAL was developed to allow farmers practicing ongoing agriculture to continue what they were doing, on land they were already doing it on, by using Best Management Practices developed by the NRCS2 to minimize the effects as much as possible. These BMPs are considered state-of-the-art3 in terms

1 In terms of how they were using the critical areas, not that farming itself became nonconforming.
2 BAS Addendum Report, document #72.
3 BAS Addendum Report, document #74.
of protecting water quality in a circumstance with an already altered baseline, and if properly implemented deemed to be as effective in doing so as are the larger, standard buffers.

However, they are not as good as the standard buffers in terms of protecting habitat. The NRCS BMP’s would not preserve a riparian microclimate for example, when compared to a fully forested buffer. Nor would they protect a potential habitat corridor in a similar situation. To best protect the habitat functions and values of the critical areas we have to prevent encroachment from new agriculture, where trees are often felled, wetlands filled, and riparian corridors degraded. Again, on previously farmed areas, this kind of harm has already been done, and since we can’t use the critical areas regulations to require farmers to improve habitat (Swinomish vs. Skagit) all we can do is address the water quality issues. Thus, CPAL helps prevent further degradation. But for new agriculture, we can require that existing habitat be maintained. No farmers should be filling wetlands or clearing riparian corridors or dredging streams that hadn’t already been previously done before these rules were adopted. That doesn’t mean they shouldn’t be using the BMPs to manage their water quality: Yes, we want them to. But we also don’t want them tilling up new critical areas.

To improve habitat where ongoing agriculture is occurring, the Whatcom Conservation District’s CREP program has been very successful. It uses a voluntary and incentive based approach is responsible for the establishment of more riparian buffers on farm land than a regulatory approach would ever have attained\(^4\). A number of CREP enrollees were introduced to the program via CPAL.

Why does existing agriculture lose its nonconforming status after 5 years?
The 5-year limitation on ongoing agriculture comes from the state’s agricultural taxation program (RCW 84.34). If someone’s farming, they’re surely taking advantage of reduced taxation. But if someone stops farming, then they would lose that reduction and be taxed at full value. The state assumes that they’re doing something else with their property, or at least not farming, and the whole system is set up to encourage farming. The 5-year timeframe also coincides with the federal and state wetland rules for when someone is no longer “grandfathered,” (e.g., Prior Converted Cropland) and you lose protection under their rules as well. The practice is similar for any legal nonconforming use: You get to keep doing what was legal under older rules, but once you choose to no longer do that activity, you lose that protection and have to follow the current rules. Essentially, all such nonconforming use laws are intended to protect existing uses, but to encourage people to follow current laws once they choose to stop doing what was at one time allowed. In the case of agriculture, it’s not to get people to stop farming, it’s to bring them into compliance with current critical areas (and other) laws as practices change.

Other agencies/programs addressing agricultural water quality
Planning and Development Services is only one of many agencies, each with their own responsibilities and programs, all of which are designed to assist farmers in protecting natural resources. Table 1 summarizes all the various agencies’ roles in protecting our farmland from environmental degradation.

\(^4\) 476 projects have planted 1.56M seedlings along 241.4 miles of stream buffers, covering 3,390 acres.
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<tr>
<th>Agency</th>
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<td>• Provides funds to the Whatcom Conservation District to:</td>
<td>• Water quality</td>
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<tr>
<td></td>
<td>o Provide technical assistance to farm program enrollees including</td>
<td>• Air quality</td>
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<td></td>
<td>o Develop new BMPs</td>
<td>• Habitat</td>
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<td></td>
<td>o Monitor BMP effectiveness.</td>
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<td>• Funds riparian/wetland restoration (CREP)Funds Research of Ag BMPs</td>
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<td>Natural Resources Conservation Service (NRCS)</td>
<td>• Develops and tests BMPs</td>
<td>• Water quality/quantity</td>
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<td>• Provides technical and significant financial assistance to Whatcom farmers</td>
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<td>• Trans-boundary U.S./Canadian initiatives</td>
<td>• Energy conservation</td>
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<td>• Regulatory Oversight</td>
<td>• National Estuary Program</td>
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<td>• Trans-boundary U.S./Canadian initiatives</td>
<td>• Clean Air Act</td>
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<td>• Regulatory Oversight</td>
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<td>• Funds farmers to install Ag BMPs</td>
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<td>• Prepares farm plans • Assists with conservation practice implementation • Education &amp; Outreach • Conducts research into effectiveness of AG BMPs • Technical assistance to Agencies (including Canadian) • CREP Program</td>
<td>• Surface water quality • Groundwater quality • Air quality • Small farms (hobby farms) • Medium sized farms, such as berry farms and orchards • Dairies, CAFOs, AFOS • Habitat Improvement (riparian/wetland enhancement &amp; fish blockage replacement)</td>
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<td>• Surface water quality • All farms • Septic systems • Habitat • Frequently flooded areas</td>
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Review of the Best Available Science Regarding Nitrates in Groundwater in Whatcom County

In one of the earliest studies of the nitrate issue in Whatcom County, in 1999 Cox and Kahle\(^5\) documented amounts of nitrates and other chemicals, including those found in pesticides, in the Sumas-Blaine Aquifer. They found that chemical quality of most groundwater samples were generally good, though nitrogen concentrations exceeded the maximum contaminant level of 10 mg/L-nitrogen in 15% of 608 wells sampled. They attributed 87% of the nitrate loading to agricultural activities, with the remaining 13% from domestic and natural sources. The majority of the nitrogen from agriculture occurs due to improper farming practices, though offered no recommendations on how to address the issue.

A 2012 Department of Ecology literature review\(^6\) found that a total of 29% of 515 wells sampled had results exceeding the 10 mg/L-nitrogen maximum contaminant level for drinking water\(^7\). Agricultural

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\(^5\) BAS Addendum Report, document #67.

\(^6\) BAS Addendum Report, document #65

\(^7\) George Boggs points out that this statement is of dubious value in characterizing the current situation, as it is a literature review of studies which assigns old data (some from the 1980’s) the same weight as more recent data. Nor is there consistency in the number, frequency, and timing of well samples. This is important to consider before concluding that the current paradigm is insufficiently protective of groundwater and needs to be changed. A better first step would be to support the current “Nooksack-Lower Fraser Transboundary Nitrogen Assessment.” About 40 scientists are working cross-boundary to inventory reactive nitrogen and assess its impacts. There is an
uses were responsible for 97% of the nitrogen loading and 3% were from other sources. This report provided recommendations on solving this issue:

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

Thus, the literature shows that in the past there has been an overabundance of nitrogen in the aquifer, and that it is primarily due to agricultural practices. Most commonly it was the over-application of manure and fertilizers, done at the wrong time of year, or with inadequate cover crop. However, the recommendations were to do additional, ongoing studies, to work cooperatively with the numerous agencies, and to provide more education to farmers and the public.

**Signs of Improvement**

More recently, the Whatcom County Health Department\(^8\) says through their routine monitoring of existing private water supplies they’ve found a significantly lower ratio than what Ecology found. According to their data, since 2000 there have been a total of 634 private water availability applications in the Sumas-Abbotsford Aquifer, of which 22 were contaminated sources, and of those only 7 were contaminated with nitrate (1%).

We have also seen the Drayton Harbor shellfish beds reopened by the Department of Health, and there is a new Portage Bay Partnership between the Lummi Nation and farmers to improve water quality and resource management.

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\(^8\) Email from Mike Kim, Whatcom County Health Department, dated 5/4/16, and testimony to the Planning Commission.
Additionally, there are other factors that may account for improvement:

- Adoption of WCC 26.28, Manure and Agricultural Nutrient Management.
- Implementation of Dairy Nutrient Management Act (RCW 90.64) plans.
- Reduction in county Animal Units from peak in the mid-90s. (There are 20 to 30 thousand fewer AUs today and there is much, much less nitrogen in Whatcom County.)
- Shifting from dairies to berries. (There is considerably less nitrogen being applied to fields over CARAs.)
- It is speculated that much of the legacy nitrate contamination had come from Canada, through the aquifer, and that changes to their laws and practices have greatly reduced the amount of nitrates entering the system. However, since it takes decades for the water to move through the aquifer, we’re just now seeing a decline in the numbers.

Conclusion
Under the GMA the County cannot require applicants to fix existing problems; we can only ensure they don’t make things worse (the “no harm” rule). Best Available Science and current data suggest that groundwater degradation is not getting worse, and in fact, is getting better. The regulatory and non-regulatory habitat and water quality protection programs applied by the combination of federal, state, and local agencies in Whatcom County (and the new trans-boundary U.S./Canadian initiatives) leads PDS to conclude that the existing CAO and CPAL program adequately protect critical areas consistent with the requirements of the GMA.
Article 5. Critical Aquifer Recharge Areas

ISSUE 115. (Donovan)
Are we adequately designating CARAs as per WAC 365-90-100?

Staff Response: Regarding the designation of CARAS, WAC 365-90-100 states:

(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute directly or indirectly to contamination that may degrade groundwater, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade groundwater, and by hydrogeologic conditions that do not facilitate degradation. Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to groundwater;
(ii) Aquifer properties such as hydraulic conductivity, gradients, and size;
(iii) Soil (texture, permeability, and contaminant attenuation properties);
(iv) Characteristics of the vadose zone including permeability and attenuation properties; and
(v) Other relevant factors.

(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:

(i) General land use;
(ii) Waste disposal sites;
(iii) Agriculture activities;
(iv) Well logs and water quality test results;
(v) Proximity to marine shorelines; and
(vi) Other information about the potential for contamination.

Chapter 4 of the 2005 Best Available Science Report⁹ describes how Critical Aquifer Recharge Areas were designated in Whatcom County. It is staff’s opinion that the method used complies with WAC 365-90-100.

ISSUE 116. (Donovan)
Given Hirst, and our GMA obligations, are we adequately assessing the effects of activities that could load nitrates and pesticides into the aquifer?

Staff Response: Yes, staff believes this issue has been adequately assessed.

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ISSUE 117. (Donovan)
Are we ignoring BAS on the state of the aquifer being impacted by high levels of nitrites and chemicals?
(More on this in the CPAL section.)

Staff Response: Staff doesn’t think we’re ignoring it, as there are many efforts afoot to address
groundwater protection (see “Other agencies/programs addressing agricultural water quality,” page 3).
A previous Council had the same BAS and chose how we respond to it, and the TAC, CAC, and Planning
Commission did not recommend policy changes.

ISSUE 118. (Weimer)
Add a new Section 16.16.540 to read:

16.16.540 Activities Subject to Conservation Farm Plans
Agricultural activities covered under 16.16.820 in moderate or high susceptibility critical aquifer
recharge areas shall develop conservation farm plans as specified in 16.16.840 to protect critical aquifer
recharge areas.

Staff Response: Staff does not recommend making Conservation Farm Plans mandatory for all
agricultural activities in CARAs for several reasons.
Currently the CPAL program is a voluntary program for ongoing agriculture only; new agriculture must
meet the standard requirements of the CAO. Half of the county (236,480 of 472,159 acres) is in a
moderate or high susceptibility critical aquifer recharge area; with 92.2% of the Ag zone (76,475 of
82,966 acres) in one or the other. Agriculture is also allowed in other zones (e.g., Rural). Overall, there
are 40,603 parcels with an agricultural use on them in a moderate or high susceptibility critical aquifer
recharge area, and all told we have 1,702 farms. (See map, below.) Adding this section would make farm
plans mandatory for all farms in moderate or high susceptibility CARAs, potentially one for each of the
1,702 farms. To date, all 101 certified dairies and approximately 102 small farms have approved
conservation farm plans, leaving roughly 1,500 currently without farm plans. Neither PDS nor the
Whatcom Conservation District have the resources to process this number of farm plans. In Whatcom
County, we only have 1 qualified consultant, 1 Certified Farm Planner in PDS, and 2/3 Certified Farm
Planner at the Whatcom Conservation District. We estimate that we’d need at least 3-4 more FTEs to
process, monitor, and enforce farm plans on all farms.

Requiring all farms to participate in the CPAL program would also allow new agriculture to modify the
standard critical areas requirements, when the program was intended to apply only to areas with critical
areas that had already, historically been impacted by farming. Allowing new agriculture to modify the
standards in new areas would lead to a loss of functions and values.

Additionally, we already require that farms manage their nutrients via WCC 16.28 (Manure and
Agricultural Nutrient Management), which regulates the amount, location, method, and timing of
nutrient application. There are no additional BMPs that could be applied short of having a staff monitor
at each of the farms during nutrient application or count animal units (including weekends and after
hours).
A different way to achieve Councilmember Weimer’s intent may be to amend the threshold for when a Land Disturbance Permit (LDP) is required for substantial grading (in WCC 20.80.733) to mimic that of our stormwater regulations. The suggestion below would continue to exempt most standard agricultural practices from having to obtain an LDP, but would require anyone substantially altering the topography (+/- 1 foot) to obtain an LDP, which typically occurs for dairy-to-berry conversions. Remember that obtaining a permit is one of the triggers for being subject to the CAO or having to obtain a farm plan. We (or the Whatcom Conservation District) could then work with that new berry farmer to develop a farm plan and educate them on BMPs.

20.80.730 LAND CLEARING.

20.80.733 Exemptions.

Any clearing activity that meets the following criteria shall be exempt from the clearing requirements of this chapter:

(1) The proposed activity does not involve the conversion of forest land, is outside critical areas and associated buffers, and is exclusively related to commercial agriculture practices (as defined in the 2012 Washington State Department of Ecology Stormwater Management Manual for Western Washington, as amended) as defined in this title;
Article 8. Conservation Program on Agriculture Lands

General CPAL Questions

ISSUE 119. (Donovan)
Does this update improve the CAO’s ability to protect the values and functions of critical areas, as required by law?

**Staff Response:** As proposed, overall it does. However, unless Council makes some additional changes to the CPAL program, nothing changes for that, as the Planning Commission-recommended CPAL language doesn’t really change (the amendments only combine various sections to read better). Nonetheless, previous Councils found that our current regulations do protect the functions and values of critical areas, and our CPAL program has been used as a model for other counties.

ISSUE 120. (Donovan)
(a) If a farm does not have critical areas, does it need a farm plan? (Policy PL1-85-004Z, May 6 2010). (b) What if near a critical area? (c) What if a farm has the potential to affect ground or surface water beyond that farm? (d) What if a person works to implement a farm plan to deal with critical areas on their farm, but those areas are affected by a neighboring property that does not have a farm plan?

**Staff Response:** (a) No, the CPAL program is a voluntary program and applies only to ongoing agriculture in critical areas or buffers; new agriculture must adhere to the standard CAO requirements.

(b) Pursuant to 16.16.255(H)(2), a critical areas assessment must provide written description of the critical areas and buffers on or in the vicinity of the site.

(c) If Best Management Practices are implemented so as to not affect ground or surface water on a particular farm, then it shouldn’t affect waters beyond that farm.

(d) As mentioned, the CPAL program is voluntary, and it is triggered when someone applies for a permit (e.g., building, Land Disturbance Permit, etc.) or is referred through the Whatcom County’s Pollution Identification program, the Department of Ecology’s Environmental Report Tracking System (ERTS) program, or a citizen complaint, whereupon we start an enforcement case.

ISSUE 121. (Donovan)
How do we know if these things work, how are they monitored, what enforcement if they don’t work?

**Staff Response:** Pursuant to WCC 16.16.860, PDS inspects BMPs to make sure they are implemented properly per the farm plan. We then monitor the farm plan as appropriate to ensure that the BMPs continue to be implemented. If they don’t work, the plan is adapted or referred to code enforcement. Additionally, the Whatcom Conservation District is currently testing BMPs on 6 sites as to their effectiveness.

ISSUE 122. (Donovan)
Does this Article adequately recognize science (in the 2005 BAS report, and more recent work) showing that manure nutrient loading from Whatcom County? From one abstract: “Only four wells showed a

200
decreasing trend in nitrate and 14 of the 26 wells had medians above the nitrate MCL of 10 mg N/L. Values of \( ^{15}N \) measured from wells validate that the source of the nitrate is a mix of organic manure and inorganic commercial fertilizer; however, the manure component was higher." [I don't know how many wells in BC vs. Whatcom Co.]

Staff Response: Yes, PDS believes the CAO update adequately recognizes the Best Available Science regarding manure nutrient loading. See Review of the Best Available Science, page 5, and Signs of Improvement, page 6, above. A previous Council had the same BAS and chose how we respond to it. (The 2005 BAS report had 5 recommendations for code changes, all of which were made.)

ISSUE 123. (Donovan)

Without baseline data, how do we know if these things are working? By working, I mean not degrading the values and functions of critical areas?

Staff Response: PDS’s position has been that if each individual farmer/property owner is not degrading critical areas on their farms/property (using the BMPs that have been deemed to be adequate to protect critical areas functions and values), then overall critical areas’ functions and values are not being degraded. This is the premise on which all jurisdictions operate for all mitigation strategies.

This has been borne out by the results of Washington Department of Fish and Wildlife's High Resolution Change Detection Project\(^{10}\), which shows that between 2006 and 2011, in the entire County there has only been a 3% decline in vegetative cover within 200 feet of our waterbodies (streams, lakes, and coast), of which only 0.37% was due to development related activities over which the COA has jurisdiction.

Additionally, per WCC 16.16.860, PDS and the Whatcom Conservation District continually monitor the BMPs installed pursuant to a Farm Plan.

ISSUE 124. (Donovan)

Where are BMPs defined? Do the BMPs defined in Article 9 ("control", "minimize") meet GMA legal standards?

Staff Response: “Best Management Practices” are defined in 16.16.900 and are presumed effective. The text of this Article further refers to “NRCS BMPs” or NRCS Conservation Practices.” These have been found to constitute Best Available Science by the Growth Management Hearings Board in WEAN v Island County, Final Decision & Order (BAS document # 68) and further supported by BAS document #69 (Letter to the Island County Planning Commission from Assistant Director Jeff Tate, explaining their review of NRCS Best Management Practices constituting Best Available Science). Further, the NRCS’s Field Office Technical Guide was reviewed and cited in our BAS Addendum (BAS document #72).

\(^{10}\) BAS Addendum Report, document #22.
ISSUE 125. (Donovan)
The 2005 BAS report (Parametrix) stated “We recommend conducting a best available science review specifically targeted on the methods for developing the conservation plans and requirements of the CPAL Program, including monitoring of success and effectiveness. Conversion of agricultural land to other uses should trigger review under the Critical Areas Ordinance. Institute a program to monitor conservation plan implementation once developed.” Sounds like we need to do that.

Staff Response: We did do that. As mentioned for Issue 121, PDS monitors conservation farm plan implementation pursuant to 16.16.290(C) (existing code), the text of which is proposed to be moved to 16.16.860 (proposed code).

ISSUE 126. (Donovan)
Why delete the old 16.16.290 language? The original language, with minor edits, seems a better statement of purpose:

16.16.800. Purpose.
B. Ongoing agricultural activities shall be permitted within critical areas and/or their buffers in accordance with the standards of this Chapter or pursuant to an approved conservation program established by this section Article. Under this program agriculture is afforded more flexibility but only if farmers are good stewards of the land. This is more than growing crops and livestock. It necessarily includes protecting critical areas and their functions and values.

Staff Response: Paragraph A of 16.16.800 was moved from Appendix A (where half of the CPAL regulations were found). Paragraphs B & C were originally in 16.16.290 but were moved here to consolidate all the CPAL regulations into one Article. Paragraph B was modified by the TAC as it read more like a regulation than a purpose statement, and they wanted to be more explicit about its purpose. The stricken sentence beginning with “Under this program...” and the clause “agreement with their community” was stricken by the Planning Commission.

However, staff has no issue with CM Donovan’s suggestion.

ISSUE 127. (Donovan)
The original language seems more appropriate, with minor edits:

16.16.810 Resource concerns.
Keeping horses and other large animals. Keeping horses and other large animals Agricultural operations have the potential to creates potential adverse impacts to critical areas, and to water quality. It is the County’s policy to minimize such impacts.

Staff Response: This sentence was amended because there are a lot more agricultural practices than just keeping horses and other large animals that have the potential to impact critical areas.
ISSUE 128. (Weimer)

16.16.820(D)(1)(a) – Type 1 Operations

This section talks about “animal units” which are defined as 1,000 pounds of livestock live weight. How would this apply to smaller animals like sheep or chickens? How is this integrated with PDS Policy related to “animal thresholds” since that policy is not in the CAO or referenced?

Staff Response: PDS Policy PL-1-85-004Z (CPAL – Animal Threshold, Resource Priority) doesn’t define what an animal unit is. That policy was put in place to prioritize staff time spent on CPAL. It basically says that PDS will not consider a farm in need of a Conservation Farm Plan if the farm (i) has fewer than 1 cow or horse; 2 sheep, alpacas, non-breeding pigs, or goats; 20 ducks or geese; or 30 chickens, (ii) has at least 3 grazable acres, and (iii) manages their animals to avoid direct discharge of sediment or fecal matter into surface waters.

In practice, animal unit equivalents are found in the Farm Plan Planning Workbook: Checklist and Action Plan, which is what an applicant uses to prepare a farm plan.

<table>
<thead>
<tr>
<th>Livestock</th>
<th>AU Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dairy – Holstein cow</td>
<td>1.3</td>
</tr>
<tr>
<td>Dairy – Heifer, bred</td>
<td>1.0</td>
</tr>
<tr>
<td>Dairy – Heifer, prebred</td>
<td>0.4</td>
</tr>
<tr>
<td>Beef (cow &amp; calf)</td>
<td>1.2</td>
</tr>
<tr>
<td>Beef – Feeder</td>
<td>0.7</td>
</tr>
<tr>
<td>Horse – (mature 1,200 lbs.)</td>
<td>1.2</td>
</tr>
<tr>
<td>Horse – other</td>
<td>lb. body weight/1,000</td>
</tr>
<tr>
<td>Swine – Sow</td>
<td>0.5</td>
</tr>
<tr>
<td>Swine – G rower</td>
<td>0.2</td>
</tr>
<tr>
<td>Sheep (ewe &amp; lamb)</td>
<td>0.5</td>
</tr>
<tr>
<td>Llama</td>
<td>0.3</td>
</tr>
<tr>
<td>Duck</td>
<td>0.015</td>
</tr>
<tr>
<td>Layer</td>
<td>0.01</td>
</tr>
<tr>
<td>Fryer</td>
<td>0.007</td>
</tr>
</tbody>
</table>

ISSUE 129. (Weimer)

This section also says “These operations present a low potential risk to critical area degradation including ground/surface water contamination because the animals kept generate fewer nutrients than can be used by the crops grown there.” Is there BAS that supports this? Is there any review of whether actual practices regarding distribution of nutrients is done in such a way to not impact critical areas, especially CARAS?

Staff Response: According to George Boggs, one animal unit/acre does not meet the nutrient requirements of forage crops. In a pasture-based operation the nutrients will be distributed in a dispersed manner because of how animals are grazed, such that there are no excess nutrients remaining to be leached down into groundwater. (The WCE can provide a calculation and supporting references for this proposition.) By following the Prescribed Grazing practice, surface water is protected from runoff. Here is some specific language from that Conservation Practice (528):
Additional Criteria to Improve or Maintain Surface and/or Subsurface Water Quality and Quantity. Minimize concentrated livestock areas to enhance nutrient distribution and improve or maintain ground cover. Plan intensity, frequency, timing and duration of grazing and/or browsing to: Minimize deposition or flow of animal wastes into waterbodies, Minimize animal impacts on stream bank or shoreline stability. Provide adequate ground cover and plant density to maintain or improve infiltration capacity and reduce runoff. Provide adequate ground cover and plant density to maintain or improve filtering capacity of the vegetation. By following the prescriptions, animals are removed towards the end of the growing season to ensure that grass will provide an effective buffer to avoid transport to surface water.


ISSUE 130. (Weimer)

16.16.820(D)(2)(a) – Type 2 Operations

*I don’t see hay production lands included in this. Don’t farmers spread manure or fertilizers and pesticides on those types of land? Wouldn’t that require a plan?*

**Staff Response:** Type 2 includes “all other operations,” i.e. those that don’t specifically fit into Type 1 or Type 3. It doesn’t matter if the crop is apples, berries, potatoes, or hay (forage). Type 2 operations must complete a custom plan that addresses CARAS as well as stream riparian and wetlands. Attached is an example of a Type 2 for a berry operation.

ISSUE 131. (Donovan)

16.16.840 Conservation Farm Plan Requirements

*Need clarification for why deletions in A.1.b.*

**Staff Response:** In subsection A.1.b and A.1.b.i, words were just moved around for grammatical clarity. In subsection A.1.b.ii, the TAC recommended that all streams lacking vegetation be planted to the standard found in that subsection to address temperature impairment. However, the CAC recommended not adopting this, as the cost of installing hedgerows might keep people from participating in the CPAL program. The P/C agreed with the CAC and deleted the proposed TAC addition.

ISSUE 132. (Weimer)

16.16.840 Conservation Farm Plan Requirements

A. Type 1 (Standard) Conservation Farm Plans. Owners of Type 1 operations have limited options to control animal waste because their operations are small. The required conservation farm plan can be prepared by the landowner and include a simple map of the property, a standard checklist designed to assess risk to protect water quality, and the following additional components:
7. Fertilizers. The rate and timing of fertilizer application shall not exceed crop requirements, or cause surface or groundwater quality degradation.

Staff Response: This seems like a better way to do what CM Weimer’s trying to do in Issue 118, though we might want to say “Fertilizers other than manure,” since manure is already addressed in (2).

That said, Natural Resources staff says that though a farm plan might address fertilizer application rates, tracking actual application is not feasible given we only have one staff member who does this, and he’s not in the field all the time. PDS believes helping farmers manage this would best be done through the Whatcom Conservation District’s education & outreach program. Also, the Washington Department of Agricultural has programmed public outreach activities in 2017-2018 to the berry-growing community in Whatcom County specifically addressing BMPs for application of fertilizers, including manure.

ISSUE 133. (Weimer)

16.16.840 Conservation Farm Plan Requirements
Subsection (A)(4): How is this section on Exercise or Barn Lots protective of CARAs?

Staff Response: According to George Boggs, Exercise/Barn Lots are typically found on small operations (hobby/few animals). They are confined in wet season and then turned out to pasture. Solids would be picked up and moved to covered storage. Because surface runoff would be directed to a vegetative area the dissolved nutrients (N and P) would be used by the vegetation that is required to be established.
NOTE: Nitrates are not shed in urine or feces. Mineralization is temperature dependent. If soil is cold there is little/no conversion. When the soil warms, mineralization occurs but the grass is growing to take up the nutrients.

ISSUE 134. (Weimer)

16.16.840 Conservation Farm Plan Requirements
Subsection (B)(2): This section says that “benchmark conditions are to be captured and described in the plan.” How is this done for CARAs?

Staff Response: Benchmark groundwater conditions are not currently assessed through farm plans. One approach to address this would be to coordinate the activities of the Washington State Departments of Ecology and Health and the Whatcom County Health Department, all of whom already test and/or monitor wells in some manner.

ISSUE 135. (Weimer)

16.16.840 Conservation Farm Plan Requirements
Subsection (B)(5): This section says that “Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to prevent same.” Where in the chapter is a “risk assessment” required, and how is that defined?

Staff Response: The risk assessment is part of the farm plan application/workbook one uses to apply for farm plan approval. By definition one cannot develop a farm plan (regardless of the type 1, 2, or 3)
without an inventory and risk assessment. Attached is a checklist (jointly developed by PDS, the Department of Ecology, and the Whatcom County Health Department) on grazing & manure management for developing that component of the plan. For the purposes of CPAL, CARA’s, streams, riparian, and wetlands are the resource concern. Potential impacts are: Nutrients, Pathogens, Sediment, Plant Damage and Bank erosion. These are addressed through the various practices the selection of which is tailored to the specific farming activities. Pesticides applications are regulated by EPA and WSDA.

ISSUE 136. (Weimer)

16.16.860 Monitoring and Compliance
Is all the language in here about the timing related to “reasonable notice” and “receiving confirmation and scheduling” a site visit up to the County or is some of this state law?

Staff Response: All the language in this section was developed by Whatcom County. The non-underlined text is in the existing code. Most of the new, underlined text is from PDS Policy PL1-85-003Z.

ISSUE 137. (Weimer)

16.16.860 Monitoring and Compliance
What about site visits if there are imminent threats to health or the environment?

Staff Response: The same policy, proposed to be incorporated in the code, would apply as written. 16.16.860(C) allows for enforcement pursuant to WCC 16.16.285.

ISSUE 138. (Weimer)

16.16.860 Monitoring and Compliance
What occurs if a landowner does not respond to a request for a site visit?

Staff Response: Then the farm plan would be considered noncompliant and it would become an enforcement issue.

From George Boggs: The Whatcom Conservation District is considering moving to a paradigm that requires a written agreement whereby the farm operator agrees to work in good faith. If not, we terminate our assistance. If the matter had been referred to the District for technical assistance, then that agency would be told that the relationship had ended. See attached draft agreement.

ISSUE 139. (Donovan)

16.16.860 Monitoring and Compliance
Subsection (C): Why delete “If the conservation farm plan is found not to be protective of critical areas in the approved farm plan...” and where is the original language that concluded after this deletion?
Staff Response: The condition of finding a farm plan to not be protective of critical areas, and the original language that concluded after this deletion became subsection (D) because (C) had addressed two different concepts.

ISSUE 140. (Donovan)

16.16.860 Monitoring and Compliance
Subsection (C): What are the consequences of a plan being found to be not protective of critical areas? (Is this covered in PL1-85-003Z, point 7?)

Staff Response: The consequences of a plan being found to be not protective of critical areas are found in subsection (D), into which PL1-85-003Z was incorporated, which requires that a new farm plan be developed to address the changed conditions.

ISSUE 141. (Donovan)

16.16.860 Monitoring and Compliance
Subsection (D): Does “ineffective” mean plan is null and void, and then what?

Staff Response: Any one of the 6 conditions listed under subsection (D), including it becoming ineffective due to substantial changes in agricultural activities, is cause for a new plan to be developed.

ISSUE 142. (Donovan)

16.16.860 Monitoring and Compliance
Related to monitoring and compliance, PL1-85-003Z May 6, 2010 states: “a self-certification is allowed.” Does this present problems similar to the OSS self-certification program?

Staff Response: Self-certification of monitoring and compliance efforts under the CPAL program differs from the OSS self-certification program. Under CPAL, implementation/installation of BMPs is first verified by staff through a site visit; photos showing that the measures are still present are allowed in subsequent years. On the fifth year, staff performs another site visit.

ISSUE 143. (Weimer)

16.16.870 Limited Public Disclosure
Is it our decision regarding disclosure of farm plans or is that state law. If it is state law please describe exactly what the state protects from disclosure.

Staff Response: Under state law (see below) PDS considers very little to be disclosable, as most Conservation Farm Plans are prepared by the Whatcom Conservation District, and all dairies, CAFOs, and AFOs need to apply for a Clean Water permit. The only farm plans we believe are disclosable are those used for the application or issuance of a building permit, which we estimate to be about 10% of all the farm plans we have in the county.

Attached to this memo is PDS Policy PL1-85-002Z, which implements RCW 42.56.270.
The state laws regarding the nondisclosure of farm plans follow:

RCW Chapter 42.56 PUBLIC RECORDS ACT

RCW 42.56.270. Financial, commercial, and proprietary information.

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

RCW 42.56.610. Certain information from dairies and feedlots limited—Rules.

The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding:

(1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

Chapter 90.64 RCW DAIRY NUTRIENT MANAGEMENT

RCW 90.64.190. Information subject to public records disclosure—Rules.

This section applies to dairies, AFOs, and CAFOs, not required to apply for a permit. Information in plans, records, and reports obtained by state and local agencies from livestock producers under chapter 510, Laws of 2005 regarding (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields shall be disclosable in response to a request for public records under chapter 42.56 RCW only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

WAC 16-06-210 Exemptions (to the Public Disclosure rules).

(29) Under RCW 42.56.610 and 90.64.190, information identifying the number of animals; volume of livestock nutrients generated; number of acres covered by the plan or used for land application of livestock nutrients; livestock nutrients transferred to other persons; and crop yields in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations not required to apply for a National Pollutant Discharge Elimination System permit is disclosable in the following ranges:
### (a) Number of animals: Beef cattle
- 1 to 19: 6,000 to 10,999
- 20 to 159: 11,000 to 15,999
- 160 to 299: 16,000 to 20,999
- 300 to 999: 21,000 to 25,999
- 1,000 to 5,999: 26,000 to 31,199
- 6,000 to 10,999: 31,200 to 37,439
- 11,000 to 15,999: 37,440 to 44,999
- 16,000 to 20,999: 45,000 and above

### (b) Number of animals: Mature dairy cattle
- 1 to 37: 1,700 to 2,699
- 38 to 199: 2,700 to 3,699
- 200 to 699: 3,700 to 4,689
- 700 to 1,699: 4,700 to 5,699
- 1,700 to 2,699: 5,700 to 6,839
- 2,700 to 3,699: 6,840 and above

### (c) Number of animals: Dairy heifers
- 1 to 49: 300 to 999
- 50 to 149: 1,000 to 1,999
- 150 to 299: 2,000 to 2,999
- 300 to 999: 3,000 to 3,999
- 1,000 to 1,999: 4,000 and above

### (d) Number of animals: Swine (fifty-five pounds or greater)
- 1 to 19: 400 to 749
- 20 to 159: 750 to 2,499
- 160 to 399: 2,500 to 4,249
- 400 to 749: 4,250 to 5,999
- 750 to 2,499: 6,000 to 7,749
- 2,500 to 4,249: 7,750 and above

### (e) Number of animals: Swine (less than fifty-five pounds)
- 1 to 99: 2,000 to 2,999
- 100 to 499: 3,000 to 9,999
- 500 to 1,099: 10,000 to 16,999
- 1,100 to 1,999: 17,000 to 23,999
- 2,000 to 2,999: 24,000 to 30,999
- 3,000 to 9,999: 31,000 and above

### (f) Number of animals: Layers (all ages)
- 1 to 199: 139,000 to 195,999
- 200 to 999: 196,000 to 252,999
- 1,000 to 10,999: 253,000 to 309,999
- 11,000 to 24,999: 310,000 to 371,999
- 25,000 to 81,999: 372,000 to 446,399
- 82,000 to 138,999: 446,400 to 535,679
- 139,000 to 195,999: 535,680 to 642,815
- 196,000 to 252,999: 642,816 to 771,379
- 253,000 to 309,999: 771,380 to 925,655
- 310,000 to 371,999: 925,656 to 1,110,787
- 372,000 to 446,399: 1,110,788 to 1,332,945
- 446,400 to 535,679: 1,332,946 and above

### (g) Number of animals: Broilers (all ages)
- 1 to 199: 212,500 to 299,999
- 200 to 999: 300,000 and above
- 1,000 to 17,999: 1 to 19
- 18,000 to 37,499: 20 to 79
- 37,500 to 124,999: (h) Number of animals: Horses
- 125,000 to 212,499: (h) Number of animals: Horses
- 212,500 to 299,999: 80 to 149
- 300,000 and above: 150 to 499
- 1 to 19: 500 to 849
- 20 to 79: 850 to 1,199
- 1,200 to 1,549: 1,550 and above

### (h) Livestock nutrients generated or exported by volume (ft³/day)
- 1 to 74: 450 to 749
- 75 to 134: 750 to 1,499
- 135 to 299: 1,500 to 2,499
- 300 to 449: 2,500 to 4,999
- 450 to 749: 5,000 to 8,499
- 750 to 1,499: 8,500 to 11,999
- 1,500 to 2,499: 12,000 to 15,999
- 2,500 to 4,999: 16,000 and above

### (i) Livestock nutrients generated or exported by weight (tons/year)
- 1 to 5,256: 5,257 to 10,512
- 5,257 to 10,512: 10,513 to 21,024

21
| (k) Number of acres covered by the plan or used for land application of livestock nutrients |
|-------------------------------------------|-------------------------------------------|-------------------------------------------|
| • 0 to 25                                 | • 901 to 1,300                           | • 6,001 to 9,000                          |
| • 26 to 65                                | • 1,301 to 1,800                         | • 9,001 to 11,500                         |
| • 66 to 120                               | • 1,801 to 2,500                         | • 11,501 to 14,000                        |
| • 121 to 300                              | • 2,501 to 3,200                         | • 14,001 and above                         |
| • 301 to 550                              | • 3,201 to 4,000                         |                                           |
| • 551 to 900                              | • 4,001 to 6,000                         |                                           |

| (l) Crop yields - tons/acre                |
|-------------------------------------------|-------------------------------------------|
| • 0 to 1                                  | • 7.1 to 9                                |
| • 1.1 to 2                                | • 9.1 to 12                               |
| • 2.1 to 3.5                              | • 12.1 to 14.5                            |
| • 3.6 to 5                                | • 14.6 to 17                              |
| • 5.1 to 7                                | • 17.1 to 19.5                            |

**ISSUE 144. (Weimer)**

**16.16.870 Limited Public Disclosure**

Is the “general summary information” mentioned regarding farm plans available on the county’s website? What does it include?

**Staff Response:** No, PDS has never compiled such information. However, staff has been talking with the Whatcom Conservation District about obtaining general summary information on a watershed level, which could be compiled and posted on our website.

**From George Boggs:** I believe the County has lacked the resources to capture and make this information available. We can work with the County to do this going forward. From the summary info, one could not deduce from exempt information the identity of the operation. It could provide information such as acreage/animal units/types of operations/BMPs recommended/status of the farms without plans/implemented plans. NOTE: The County can disclose all elements of the plans obtained as a condition for obtaining permits. There are a number of these.

**ISSUE 145. (Weimer)**

**16.16.870 Limited Public Disclosure**

*Subsection (A): Reinsert “will” – Conservation farm plans will not be subject to public disclosure unless required by law;*

**Staff Response:** Good catch.
ISSUE 146. (Weimer)

16.16.870 Limited Public Disclosure

Amend subsection (B) to read:

B. Provided, that the County will collect summary information related to the address and parcel numbers, general location of a farming enterprise covered by the farm plan, the nature of the farming activity, and the specific best management practices to be implemented during the conservation farm plan review process, the number of acres included, and the date of the last compliance review. This information, along with a map that shows parcels covered by approved farm plans, will be made easily and publicly available on the county’s website. The summary information shall be provided by the farm operator or his/her designee and shall be used to document the basis for the County’s approval of the plan. Plans shall also be subject to disclosure if required by a court of competent jurisdiction. Upon request, the County may provide a sample conservation farm plan, exclusive of site- or property-specific information, to give general guidance on the development of a conservation farm plan.

Staff Response: Staff strongly recommends against this. If we require this, it would probably end peoples’ participation in CPAL. We can do a summary of CFPs by watershed in the Whatcom Conservation District.

Article 9. Definitions

ISSUE 147. (Weimer)

16.16.900 Definitions.

Amend the definition of “development” to read:

“Development” means any activity that requires federal, state, or local approval for the use or modification of land or its resources. These activities include, but are not limited to: subdivision and short subdivisions; binding site plans; planned unit developments; variances; shoreline substantial development and exemptions; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; and septic approval, and agricultural activities requiring a conservation farm plan.

Staff Response: Staff does not recommend defining agriculture as development. Putting one cow on one acre, plowing, or irrigating a crop would then be considered development for which permits, including SEPA review, would be required.

ISSUE 148. (Weimer)

During the CAO review both the TAC and CAC raised issues regarding the lack of baseline data to allow the County to know whether our CAO is working to protect critical areas. During the CompPlan review the Council built some of this concern into it, and during the Planning Commission review of the CAO they
included a finding of fact where they would not agree that the CAO was GMA compliant because of lack of baseline information:

The proposed regulations for critical areas are sufficient and appropriate to protect the functions and values of those areas consistent with the Whatcom Comprehensive Plan and Growth Management Act.

I am assuming that none of us want a similar finding of fact in what the Council ultimately produces. To avoid that, or at least my case a no vote on the entire CAO, I would request that PDS brings us a plan to address this lack of baseline information. At a minimum the plan should include plans to address obtaining baseline info for wetlands, wildlife, and CARAs, and include an implementation timeline, specifics about what is needed (staffing/consultants/funding), and a proposed funding mechanism/source.

| Staff Response: | There is no requirement in the GMA to do jurisdiction-wide, long-term monitoring of the CAO’s effectiveness, though the Growth Management Hearings Board in several of their decisions have indicated that doing so would be valuable. That said, staff could only find two jurisdictions (King and Snohomish counties) that have performed such a task. Both were done only once, and both received EPA grants to do so. Nonetheless, over the ensuing months after adoption of the CAO, if Council so desires, staff could develop a monitoring plan proposal (see Table 2, below). (This, along with other issues, was actually raised back in September at your first workshop as a potential follow-up issue that the Wildlife Advisory Committee could oversee.)

Just because the P/C struck the referenced words (above) from the proposed finding doesn’t mean the Council can’t reinsert them if they believe the practices contained within the CAO protect critical areas’ functions and values. Staff believes that it does and we urge you to do so, as it would greatly assist in any future appeals. |
<table>
<thead>
<tr>
<th>Tasks</th>
<th>Subtasks</th>
<th>Supports C/P Policies</th>
<th>Est. Add'l FTEs</th>
<th>Est. Cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Permit Mitigation Monitoring Program</td>
<td>• Continuation of our current 5-year mitigation monitoring program for individual development projects</td>
<td>10A-2, 10K-15, 10M-4, 10L-17</td>
<td>0.25</td>
<td></td>
</tr>
<tr>
<td>Development Permit Mitigation Monitoring Program Review (adaptive management, on-going review every 2 years)</td>
<td>• Internal assessment of program consistency (Permit issuance + Mitigation) • Review WDFW High Resolution Change Detection data</td>
<td>10A-2, 10K-15, 10M-4, 10L-17</td>
<td>0.25</td>
<td></td>
</tr>
<tr>
<td>Countywide Ecosystem Functions and Values Study (initial study)</td>
<td>• Hire a consultant to design the baseline analysis, develop data architecture, develop assessment data forms, and train field crew (WC staff). The baseline analysis is an on-the-ground rapid assessment to ground truth GIS data sets for ecosystem health. • Create working relationship with Western University and citizen science community • Use a stratified random sampling analysis for site selection in order to maintain statistical integrity. PDS would recommend 7 sites for each unique ecosystem (nearshore/offshore/sand spit, marine riparian, wetland, fresh water stream/river, fresh water lake, grassland/prairie/AG, upland forest); for a total of 49 sites. The Wildlife Committee has established 5 habitat categories for their report to Council; the study design would use these categories as one of the stratification levels. • Complete Rapid Habitat Assessments for various habitats and wildlife (bird, amphibian, upland vegetation (grassland, forest (secession type), bald), streams, marine riparian, riparian, wetlands, lakes, nearshore • GIS Vegetation Change Analysis (WDFW High Resolution Change Detection) • Water quality conventional sampling at each site as applicable • Wetland Prediction Model (work with Snohomish County and Skagit County) • GIS Analysis • Laboratory Analysis • Citizen Scientist Workshops</td>
<td>10A-2, 10K-15, 10K-16, 10M-4, 10L-17, 10L-18</td>
<td>0.25</td>
<td>$250,000 - $400,000</td>
</tr>
<tr>
<td>Countywide Baseline Ecosystem Functions and Values Monitoring Program (adaptive management, on-going review every 5-years)</td>
<td>• Complete Rapid Habitat Assessments • Laboratory Analysis • Internal assessment of program consistency (Permit issuance + Mitigation) • Wetland Prediction Model Maintenance • Citizen Scientist Workshops</td>
<td>10A-2, 10K-15, 10K-16, 10M-4, 10L-17, 10L-18</td>
<td>0.25</td>
<td>$100,000 (data management and consultant)</td>
</tr>
<tr>
<td>Additional (potential) Programs</td>
<td>• If we start a mitigation bank • If we start/participate in an in-lieu fee program</td>
<td></td>
<td>.75</td>
<td></td>
</tr>
</tbody>
</table>
CRITICAL AREAS ORDINANCE

CONSERVATION PLAN

for

Borderline Blueberry Farm
### DECISIONS

**Planned Conservation Treatments**

Best Management Practices required in this plan (listed below) are fully described in the NRCS Field Office Technical Guide available in any local conservation district field office. The date these practices must be implemented is specified below.

<table>
<thead>
<tr>
<th>Required Practices</th>
<th>Location</th>
<th>Potential Resource Concern Addressed</th>
<th>Practice Plan &amp;/or Specification Job Sheets</th>
<th>Implementation Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation Cover (327)</td>
<td>all fields</td>
<td>Sheet &amp; Rill Erosion; Compaction; Excess Nutrients &amp; Organics in Groundwater</td>
<td>see Section IV</td>
<td>install soon after blueberries are planted</td>
</tr>
<tr>
<td>Irrigation Water Management (449)</td>
<td>irrigated fields</td>
<td>Inefficient water use on irrigated land; Insufficient flows in water courses</td>
<td>see Section IV</td>
<td>on-going; begin 2011 cropping season</td>
</tr>
<tr>
<td>Nutrient Management (590)</td>
<td>all fields where nutrients (fertilizer, manure, irrigation water) are applied</td>
<td>Excessive nutrients and organics in groundwater</td>
<td>see Section IV</td>
<td>on-going; begin 2010 cropping season</td>
</tr>
<tr>
<td>Pest Management</td>
<td>all fields</td>
<td>Harmful levels of pesticides in surface water; Chemical Drift;</td>
<td>see Section IV</td>
<td>on-going; begin 2010 cropping season</td>
</tr>
<tr>
<td>Surface Drainage, Field Ditch Operation &amp; Maintenance Plan</td>
<td>all fields</td>
<td>Excessive Suspended Sediment &amp; Turbidity in Surface Water; Plant productivity, health &amp; vigor</td>
<td>see Section IV</td>
<td>begin 2010 cropping season</td>
</tr>
</tbody>
</table>

Whatcom Conservation District Representative

Bill Borderline

Date

Date
Contents

Section I. Administrative

- Planned Conservation Treatments

Section II. Inventory & Evaluation

- Critical Areas Ordinance Conservation Plan

Section III. Maps

- Location Map & Field topography map
- Resource Management Plan Map
- Description of Soils
- NRCS Wetland Determination Map
- NRCS Highly Erodible Land and Wetland Conservation Determination
- Definition of Wetland Label Codes
- Fish Presence Map

Section IV. Practice Specifications

- Conservation Cover
- Irrigation Water Management
- Nutrient Management (includes record keeping form)
- Pest Management
- Surface Drainage, Field Ditch Operation & Maintenance Plan; Drainage Management
  1. Permitting Factsheet #s 1, 3 & 4
  2. Drainage Management BMP Factsheet #s 6, 9, 10, 14, 16,
  3. Informational Factsheet #s 17, 18, 20, 21

Section V. Assessment Tools & References

Regulations

- Whatcom County Critical Areas Ordinance – Appendix A CONSERVATION PROGRAM ON AGRICULTURAL LANDS
- Whatcom County Manure Ordinance
- Whatcom County Right to Farm Ordinance
- U.S. Environmental Protection Agency; website print out: Court Ordered Buffers Around Pacific Salmon Supporting Water
- Whatcom County Streams Subject to U.S. District Court Ordered Buffers

Nutrient Management Guides

- OSU - Extension Publication – Nutrient Management for Blueberries in Oregon

Section VI. Business
CRITICAL AREAS ORDINANCE
CONSERVATION PLAN
for
Bill Borderline
dba Borderline Blueberry Farm

assisted by
Whatcom Conservation District

Introduction

The resource concerns addressed in this plan will help ensure that Whatcom County’s wetlands, critical aquifer recharge areas and streams are protected. The objective of small fruit growers such as Bill borderline for implementing this plan will be to ensure that their farming activities are in compliance with Whatcom County’s Conservation Program on Agricultural Land (C-PAL). By doing so they will be able to continue conducting farming activities within buffers of critical areas.

Location and Description of Operation

Bill Borderline planted 6.8 acres of blueberries on his farm located at 757 W. Borderline Road (Blaine, WA 98230) in 2012. The farm is located in the northwest quarter of Sections 23 in Township 39 North and Range 2 East. This area is within Muddy Creek Watershed which is tributary to the Nooksack River.
<table>
<thead>
<tr>
<th>Resource</th>
<th>Inventory</th>
<th>Critical Area</th>
<th>Potential Resource Concern</th>
<th>Potential Alternatives to Address Concern</th>
<th>Required Practices for CAO Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOIL - EROSION</td>
<td>Soils on this farm include Hale silt loam and Laxton loam. Descriptions of this soil and a soils map are included in Section 3 (Maps) of this plan.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOIL - CONDITION</td>
<td></td>
<td>Field operations such as spraying, harvesting and cultivation have the potential to cause soil Compaction if they are carried out when soils are wet and Organic Matter Depletion is also a potential concern</td>
<td>Conservation Cover (327) perennial grass planted between rows and in headlands at end of rows</td>
<td>Conservation Cover (327)</td>
<td></td>
</tr>
<tr>
<td>WATER - QUANTITY</td>
<td>The quantity of ground water at this site is unknown.</td>
<td>Critical Aquifer Recharge Area; groundwater in hydrologic continuity with surface waters.</td>
<td>Inefficient Water use on Irrigated Land Insufficient Flows in Water Courses; Aquifer Overdraft</td>
<td>Irrigation Water Management (449)</td>
<td>Irrigation Water Management (449).</td>
</tr>
<tr>
<td>WATER-QUALITY</td>
<td>Field 2 drains into a ditch along W. Borderline Road; spoils from cleaning the ditch form a berm between the field and the ditch and this</td>
<td>W. Borderline Road Ditch drains to Muddy Creek.</td>
<td>Harmful Levels of Pathogens in Surface Water Harmful Levels of Pesticides in Surface Water</td>
<td>Conservation Cover (327) to filter nutrients, sediment and bacteria in surface runoff; Nutrient Management(590) to improve timing and amount of</td>
<td>Conservation Cover (327), Nutrient Management (590); Field Ditch</td>
</tr>
<tr>
<td>Resource</td>
<td>Inventory</td>
<td>Critical Area</td>
<td>Potential Resource Concern</td>
<td>Potential Alternatives to Address Concern</td>
<td>Required Practices for CAO Compliance</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>WATER-QUALITY</td>
<td>The quality of ground water at this site is unknown but ground water within the area has nitrate-nitrogen concentrations &gt; 10 ppm; manure solids delivered to farm in fall 2015 were piled &lt; 100 feet from domestic water source;</td>
<td>Critical Aquifer Recharge Area: High aquifer susceptibility</td>
<td>Excessive Nutrients and Organics in Groundwater</td>
<td>O&amp;M (607) applications; Subsurface Drain (606) to reduce surface runoff; consider draining field 2 to the north instead of road ditch; Surface Drainage, Field Ditch O&amp;M (607) to reduce soil wetness and enhance subsurface drainage — practice includes removing spoils that forms berm along ditch during dry season; Pest Management;</td>
<td>O&amp;M (607) Pest Management¹</td>
</tr>
<tr>
<td>(Ground)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wetlands</td>
<td>Ten Mile Creek riparian area includes willow thickets in wetlands at north end of</td>
<td>no concerns</td>
<td></td>
<td></td>
<td>none</td>
</tr>
<tr>
<td>Resource</td>
<td>Inventory</td>
<td>Critical Area</td>
<td>Potential Resource Concern</td>
<td>Potential Alternatives to Address Concern</td>
<td>Required Practices for CAO Compliance</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>----------------------------</td>
<td>----------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>AIR</td>
<td></td>
<td>Pesticides have potential to adversely affect water quality</td>
<td>Chemical Drift</td>
<td>Hedgerow Planting (340) along Borderline Road, Pest Management,</td>
<td>Pest Management¹</td>
</tr>
<tr>
<td>PLANTS</td>
<td>blueberry plants growing in field 2 – the front 2.2 acres – are not growing as well as plants in field 1; the cause appears to be due to soil wetness due to poor drainage</td>
<td></td>
<td>Plant Productivity, Health and Vigor; Excessive Runoff, Flooding, or Ponding; Excessive Subsurface Water</td>
<td>Subsurface Drain – to lower water table and reduce soil wetness; Surface Drainage, Field Ditch O&amp;M to lower water table; this practice includes removal of berm along Laurel Rd ditch</td>
<td></td>
</tr>
<tr>
<td>ANIMALS - FISH &amp; WILDLIFE</td>
<td>a nearly 2 acre riparian area composed of a mixed stand of native evergreens, hardwood trees and willows occurs in association with Muddy Creek</td>
<td>Ten Mile Creek is an HCA 1a stream (Shoreline)</td>
<td>None – Ten Mile Creek is well buffered from areas agricultural activities take place.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANIMALS - DOMESTIC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ Custom farm conservation plans need not address the application, mixing and/or loading of insecticides, fungicides, rodenticides and pesticides, provided that such activities are carried out in accordance with the Washington State Department of Agriculture and all applicable regulations including, but not limited to: the provisions of Chapter 90.48 RCW, Clean Water Act, Unites States Code (USC) 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act), Chapter 15.58 RCW (Pesticide Control Act), Chapter 17.21 RCW (Pesticide Application Act). See Section 4 for practice specifications.
Whatcom County Farm Plan

Planning Workbook: Checklist and Action Plan

For use with the publication: 
*Tips on Land and Water Management*

For: _____________________________

Land Owner

___________________________

Address

___________________________

Date
Introduction
Conservation planning means different things to different people. Yet at its heart it is providing guidance to landowners to foster a healthy relationship between the environment and people. Our challenge is to help the hundreds of Whatcom County landowners protect certain areas of their community’s critical areas, such as Critical Aquifer Recharge Areas, Wetlands, Frequently Flooded Areas, and Habitat Conservation Areas (e.g. streams, ponds and lakes). This conservation planning guidance empowers the individual by giving them the opportunity to understand the potential negative impacts of their agricultural activities and adopt best management practices that will harmonize their farm with the environment. We thank you for your anticipated responsible stewardship.

Overview of Standard Farm Conservation Plan Process
Ongoing agriculture activities are permitted within critical areas, and/or their buffers upon design and implementation of an approved farm conservation plan in accordance with the Whatcom County Critical Areas Ordinance (CAO). The goal of the Standard Farm Conservation Planning (SFCP) process is to protect certain critical areas and their associated buffers from the potential negative impacts of farming related activities through a simplified planning process.
Regulated critical areas include:
1) Geologically Hazardous Areas
2) Frequently Flooded Areas
3) Critical Aquifer Recharge Areas
4) Wetlands
5) Habitat Conservation Areas (including streams, rivers, ponds and lakes).

The scope of this guidance document is to address the protection of critical areas that contain open water, have saturated soils and/or areas that provide recharge to shallow aquifers. Aquifer recharge areas, streams, ditches, lakes, ponds and wetlands are the relevant regulated critical areas for CPAL. The following regulations are in place for these critical areas. Flexibility from these standards may be afforded through the farm plan process. Standard buffers for regulated critical areas are:

- Wetlands: 25 – 300 ft depending on function, value and use.
- Non-fish bearing streams: 50 ft.
- Fish-bearing streams: 100 ft.
- Shoreline Streams: 150 ft.
- Lakes: 100 ft.
- Ponds: 50 ft.
- Marine Shorelines: 150 ft.

Requirements for Standard Farm Conservation Plans (SFCP) are described in the CAO at WCC 16.16.290 and Appendix A - Conservation Program on Agriculture Lands (CPAL). The plan includes basic information about the agricultural activities on the farm, a map of the property, a standard checklist designed to protect critical areas and water quality, and an action plan describing Best Management Practices (BMPs) to be implemented to protect critical areas. Completing this workbook will create a Farm Plan that meets the requirements of the CAO. Under State and Federal law, you must also protect against untreated water leaving your property, if it has been polluted by your agricultural activities.
Step 1: Determination of Eligibility for Standard Farm Conservation Plan

If you have livestock on property in Whatcom County, Step 1 will help you determine if this workbook is the proper pathway to ensure that your farm meets the requirements of Whatcom County’s CAO (WCC 16.16).

1. Determine if your ongoing agricultural activities are within the boundary of a critical area.
   Maps identifying the general location and distribution of critical areas are available from Whatcom County PDS (360) 676-6907. These maps provide a general idea of if and where critical areas exist on your property. A site inspection by the Technical Administrator may be required to verify the actual presence and location of critical areas on your property. **Standard buffer widths will need to be determined by the technical administrator.** Contact PDS to assist in determining if critical areas occur on your property. You can view the maps online at: http://www.co.whatcom.wa.us/pds/planning/gis/gismaps/cao.jsp.
   - [ ] WCPDS has determined that there are no critical areas or their buffers on my farm and no water polluted by my agricultural activities is discharged to surface or groundwater. **Stop here, you do not need a farm conservation plan.**

2. Determine whether you may use Conservation Program on Agricultural Lands (CPAL). Only “ongoing agricultural” activities may make use of CPAL. Ongoing agricultural activities are typically associated with the production of crops and livestock. They do not include those activities that bring an area into agricultural use or are developed for use other than agriculture. Lands that have lain idle for over five years are not eligible. However, land enrolled in a Federal or State conservation program is considered ongoing agriculture.
   - [ ] Agricultural activities presently occur and have occurred on my farm during the past five years. Continue on with this planning process.

3. Determine if you are a Low-impact Agricultural Operation.
   1) Liquid manure application:
      Utilizing liquid manure as a fertilizer is an agricultural activity that presents greater challenges to management and planning because pollution to surface or groundwater can easily occur. If you are applying liquid manure, the SFCP is not adequate to bring your operation into compliance with the County's CAO. The Custom Farm Conservation Planning process is the proper path for CAO compliance if you want to use liquid manure as fertilizer.
      - [ ] I do not capture, hold and apply liquid manure as a fertilizer on my farm. Continue on with the SFCP planning process.

   2) Number of animal units per acre:
      Low impact operations cannot average more than one animal unit per one grazable acre (AU/Ac). Grazable acres include both pasture and hayland. The following worksheet will help you in determining your AU/Ac.
Question 1: How many Animal Units do I have on my farm?

**TABLE 1 – AU Calculation**

<table>
<thead>
<tr>
<th>Livestock</th>
<th>AU Factor</th>
<th></th>
<th>B</th>
<th>Number of Animals</th>
<th>Total AU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dairy - Holstein cow</td>
<td>1.3</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dairy - Heifer, bred</td>
<td>1</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dairy - Heifer, prebred</td>
<td>.4</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beef (cow &amp; calf)</td>
<td>1.2</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beef - Feeder</td>
<td>.7</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Horse - (mature 1,200 lbs.)</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Horse - other: AU factor = lb. body weight /1000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Swine - Sow</td>
<td>.5</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Swine - Grower</td>
<td>.2</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheep (ewe &amp; lamb)</td>
<td>.2</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Llama</td>
<td>.3</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duck</td>
<td>.015</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Layer</td>
<td>.01</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fryer</td>
<td>.007</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Animal Units (AU) for Farm:**

NOTE: One acre equals 43,560 square feet.

**TABLE 2 - Converting square feet to Acres**

__sq feet ÷ 43,560 sq feet per acre = __ Acres

Question 2: How many grazable acres do I have on my farm?

**TABLE 3 – Grazable Acres Calculation**

<table>
<thead>
<tr>
<th>Total Property Acres</th>
<th>Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>minus Buildings</td>
<td></td>
</tr>
<tr>
<td>minus Roads</td>
<td></td>
</tr>
<tr>
<td>minus Other impervious surfaces</td>
<td></td>
</tr>
<tr>
<td>minus Wetlands</td>
<td></td>
</tr>
<tr>
<td>minus Streams &amp; ditches</td>
<td></td>
</tr>
<tr>
<td>minus Cropland (where no manure applied)</td>
<td></td>
</tr>
<tr>
<td>minus Woodlands</td>
<td></td>
</tr>
</tbody>
</table>

**Total Grazable Acres (Ac):**

Question 3: How many Animal Units per Grazable Acre (AU/Ac) do I have?

**TABLE 4 – AU/Ac Calculation**

<table>
<thead>
<tr>
<th>Total Animal Units (Table 1)</th>
<th>÷</th>
<th>Grazable Acres (Table 2)</th>
<th>=</th>
<th>Animal Units per Grazable Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>÷</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Step 2: Farm Plan Map

A map is an important tool to help you develop an effective farm conservation plan. It starts with inventorying what you have and recording that information. It's your chance to get an overall picture of what is happening on your property and how land uses may affect critical areas on or near your property. You will use this map and knowledge of your farm to work through a series of questions that will help you evaluate your operation, identify potential risks to critical areas, and determine which BMPs are appropriate to ensure that critical areas are protected against the potential negative impacts of your ongoing agricultural activities.

Inventory What You Have
Be sure to identify an approximate scale (map distance to distance on ground, e.g. one inch to 100 feet) and a north arrow. Figure out what the length of your stride is and pace off some distances. Consult online county assessor property maps or property purchase documents to help you determine lot dimensions. In your sketch, note approximate locations of:

- Property boundaries
- Buildings
- Wells (human, stock, and irrigation)
- Septic system and drain field
- Fences and confinement areas
- Filter strips
- Drains
- Bare ground
- Lawn, pasture, or crop land
- Woodlands
- Neighboring land uses
- Flat or sloped ground
- Roads
- Critical areas and associated buffers

Note that critical areas on neighboring parcels and their associated buffers may extend onto your property. These areas should be shown on your map as well. Please contact the WCPDS technical administrator for more information on the occurrence and distribution of critical areas on your property. By locating the components listed above, you will have a base map upon which to record locations of BMPs that you will determine are necessary, based on your Farm Review Worksheets (Step 3).

Step 3: Farm Review Worksheets

Now that you have developed a base map of your farm in Step 2, you can use the map and knowledge of your farm to work through a series of questions that will help you evaluate your operation, identify potential risks to critical areas, and determine which BMPs are appropriate to ensure that critical areas are protected from the potential negative impacts of your agricultural activities.

Questions in the Worksheets are grouped into eight topic areas. The page numbers at the beginning of each topic area refers to the page numbers in the *Tips on Livestock Management for Whatcom County Farms*, available through Whatcom County Planning and Development Services and the Whatcom Conservation District, where more information can be found. You should record an answer to all questions with a yes, no or n/a (not applicable). Check “yes” only if all areas on your farm meet the question; check “no” if all areas do not meet the question; check “n/a” if the question does not apply to your farm. Farm Review Worksheets are only considered complete when you have answered all of the questions with either a “Yes”, “No”, or “N/A” response.
Step 4: Action Plan

Once you have answered the questions, fill out the Action Plan form at the end of the questions for all questions for which you answered "no". Indicate, in the space provided, what BMP you plan to implement and the date by which it will be implemented. Refer to the timeframe indicated for each question. Submission of the worksheets, action plan, site map and submittal form constitutes a complete Farm Plan application which will then be reviewed for approval by the WCPDS Technical Administrator.
Checklist

SYSTEM SITING AND MANAGEMENT

Tips Guide Pages 3-4

FARM BUILDINGS

1) Are all existing barns and impervious surfaces sited to prevent manure, pathogens, sediment and other contaminants from entering all rivers, streams, ditches, ponds, lakes and associated wetlands?  
Yes ☐ No ☐ Not Applicable ☐  
If No, practice(s) to correct on-going pollution discharges should be installed immediately and structural practice(s) should be installed prior to fall rains but no later than October 1st.

2) Is roof runoff managed so that it does not result in ponding and/or channeling in confinement areas, and/or contribute to the discharge of nutrients, sediment, pathogens and other contaminants to streams and ditches?  
Yes ☐ No ☐ Not Applicable ☐  
If No, practice(s) to correct this problem should be installed prior to the next wet season but no later than October 1st.

Tips Guide Pages 5-6

LIVESTOCK CONFINEMENT AREAS

3) Is surface runoff from outside of livestock confinement areas (areas such as fields, hillsides, driveways and roads) managed so that it does not result in ponding and/or channeling and/or contribute to the discharge of nutrients, sediment, pathogens and other contaminants to streams and ditches?  
Yes ☐ No ☐ Not Applicable ☐  
If No, practice(s) to correct this problem should be installed prior to the next wet season but no later than October 1st.

4) Is there an approved BMP or a permanent strip of grass that is at least the width of the livestock confinement area, but not less than 50 feet established between the livestock confinement area and all rivers, streams, ditches, ponds, lakes and associated wetlands?  
Yes ☐ No ☐ Not Applicable ☐  
If no, practices(s) to correct this problem should begin immediately by excluding livestock from the area where the filter strip will be established. The filter strip should be planted, if necessary, as soon as growing conditions are appropriate. All practices should be installed prior to the next wet season and no later than October 1st.

5) Are all catch basins, drains, tiles, pipes and other conveyances of surface and ground water that outlet to streams and ditches installed in a manner that prevents the entry of manure, pathogens, sediment and other contaminants?  
Yes ☐ No ☐ Not Applicable ☐  
If no, practice to correct this problem should be installed immediately.

6) Is the entire livestock confinement area managed to prevent manure, pathogens, sediment and other contaminants from entering any stream or ditch?  
Yes ☐ No ☐ Not Applicable ☐  
If no, practice to correct this problem should be installed immediately.
MANURE COLLECTION, STORAGE & USE

Tips Guide pages 8-9

MANURE STORAGE

7) Is manure storage capacity sufficient to store manure and other wastes until they can be safely spread as fertilizer?
   Yes □ No □ Not Applicable □
   If No, practice(s) to correct this problem should be installed prior to the next wet season but no later than October 1st.

8) Is manure stored at least 100 feet from all wells, rivers, streams, ditches, ponds, lakes and associated wetlands?
   Yes □ No □ Not Applicable □
   If No, practice(s) to correct this problem should be installed prior to the next wet season but no later than October 1st.

9) Are outdoor manure piles completely covered from October 1st to April 1st?
   Yes □ No □ Not Applicable □
   If No, practice(s) to correct this problem should be installed immediately.

10) Is manure handled and stored in a way that prevents nutrients, pathogens, sediment and other contaminants from entering streams and ditches?
    Yes □ No □ Not Applicable □
    If No, practice(s) to correct this problem should be installed immediately.

FIELD APPLICATION OF SOLID MANURE

11) Is manure applied in a manner and is application timed to prevent pollution of streams and ditches and/or groundwater? Are the following practices observed?
    • No applications when soils are saturated.
    • No applications that exceed crop nutrient requirements.
    • No applications when fields are frozen and/or snow covered.
    • No applications October 1st – March 15th on fields subject to flooding.
    • No applications within 100 feet of streams and ditches September 1st through March 15th.
    • No applications within 25 feet of streams and ditches March 15th through September 1st, and then only if a buffer strip is present.
    Yes □ No □ Not Applicable □
    If No, practice(s) to correct this problem should be installed immediately.

12) Is manure applied in a manner and is application timed to prevent pollution of streams and ditches and/or groundwater?
    Yes □ No □ Not Applicable □
    If No, practice(s) to correct this problem should be installed immediately.

PASTURE MANAGEMENT

Tips Guide Pages 10-13

SEASONAL FEEDING AREAS

13) Is all feeding (whether placed on the ground or in feed bunks, hay rings etc.) done at least 100 feet from rivers, streams, ditches, ponds, lakes and associated wetlands?
    Yes □ No □ Not Applicable □
    If No, practice(s) to correct this problem should be installed immediately.

14) Are 100 foot wide buffer strips established and maintained between seasonal feeding areas and streams and ditches from October 1st - March 30th?
    Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should begin immediately by excluding livestock from the area where the filter strip will be established. The filter strip should be planted, if necessary, as soon as growing conditions are appropriate (questions 23-25 describe minimum requirements for plant growth and management in filter strips), and should be established no later than the next wet season or October 1st.

15) Is manure in seasonal feeding areas distributed over the site such that no area receives more manure nutrients than the fertilizer needs of the next year’s crop? Yes □ No □ Not Applicable □

If No, practice(s) to correct this problem should be installed immediately.

PASTURE AND HAYLAND AREAS

16) Are livestock managed in a way that prevents trampling of river, stream, pond and lake banks and bottoms and associated wetlands? Yes □ No □ Not Applicable □

If No, practice(s) to correct this problem should be installed immediately.

17) Are 50 foot wide buffer strips established and maintained along all streams and ditches crossing through and/or adjacent to pastures and haylands? Yes □ No □ Not Applicable □

If No, practice(s) to correct this problem should begin immediately by excluding livestock from the area where the filter strip will be established. The filter strip should be planted, if necessary, as soon as growing conditions are appropriate (questions 18-20 describe minimum requirements for plant growth and management in filter strips), and should be established no later than the next wet season or October 1st.

18) Is the minimum forage height within the 50 foot wide buffer strip at least 3 inches in height from October 1st through March 15th? Yes □ No □ Not Applicable □

If No, practice(s) to correct this problem should begin immediately by excluding livestock from the area where the filter strip will be established. The filter strip should be planted, if necessary, as soon as growing conditions are appropriate (questions 18-20 describe minimum requirements for plant growth and management in filter strips), and should be established no later than the next wet season or October 1st.

19) Are pastures managed so that after most forage has been grazed, they have time to grow to a height of 4 to 6 inches before they are grazed/harvested again? Yes □ No □ Not Applicable □

If No, practice(s) to correct this problem should be applied over the next 2 years.

20) Are pastures and haylands mostly covered (at least 75%) with suitable forages for grazing livestock? Yes □ No □ Not Applicable □

If No, practice(s) to correct this problem should be applied over the next 2 years.

21) Does your property contain grass-lined swales and depressions that lack a defined channel or bed, but that also carry seasonal runoff water to interconnecting ditches and streams? If yes, are livestock only pastured in the swales and depressions from the point in the spring when water no longer runs through them until September 30th? Yes □ No □ Not Applicable □

If No, practice(s) to correct this problem should be applied immediately.
22) In pastures, are all gates, access roads and lanes, watering facilities, supplemental feeding and other heavy use areas located to prevent nutrients, pathogens, sediment and other contaminants from entering streams and ditches?
Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should be applied immediately.

RIPARIAN & WETLAND AREAS

Tips Guide Pages 14 and 15

RIPARIAN AREA MANAGEMENT

23) Are livestock excluded from rivers, streams, ditches, ponds and lakes (except as provided in next question)?
Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should be applied immediately.

24) Are instream crossings for livestock and machinery constructed and managed to prevent and control sediment and manure discharge to the watercourse?
Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should be applied immediately.

25) Is existing native woody vegetation growing within critical area buffers of streams and ditches protected from damage caused by livestock or human related activity?
Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should be applied immediately.

26) Are the banks of watercourse free from damage that results in exposed soil or bank slumping resulting from recreational use, farm equipment, or hoof action of livestock?
Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should be applied immediately.

Tips Guide Pages 16 and 17

WETLANDS MANAGEMENT

27) Are livestock excluded from wetlands that directly connect to rivers, streams, ditches, ponds and lakes, and are nutrients, pathogens, sediment and other contaminants prevented from entering them? (Note: This requirement may be relaxed if an approved SFCP is developed and implemented as described in WCC16.16.290 CPAL and Appendix A)
Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should be applied immediately.

28) Are livestock excluded from wetlands that are isolated from rivers, streams, ditches, ponds and lakes, and are nutrients, pathogens, sediment and other contaminants prevented from entering them? (Note: This requirement may be relaxed if an approved SFCP is developed and implemented as described in WCC16.16.290 CPAL and Appendix A)
Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should be applied immediately.

29) Are the functions of wetlands maintained by not filling, draining, grading or clearing them and by not introducing nutrients, pathogens, sediment and other contaminants?
Yes □ No □ Not Applicable □
If No, practice(s) to correct this problem should be applied immediately.
**Action Plan**
For those questions with a "NO", indicate on the lines below which question is being addressed and how you are addressing it.

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<th>QUESTION # and explanation of problem to be addressed</th>
<th>PROPOSED PRACTICE TO ADDRESS PROBLEM</th>
<th>Due Date for Implementation of Practice</th>
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**Current Management Actions**
For those questions with a "YES", Indicate on the lines below which question is being addressed and how you are addressing it.

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Standard Farm Conservation Plan Checklist
Submittal Form

Ongoing agriculture activities are permitted within critical areas, and/or their buffers upon implementation of an approved farm conservation plan in accordance with WCC 16.16.290. The goal of this Plan is to protect critical areas from the potential negative impacts of livestock where the animal density is less than or equal to one animal unit per acre. (AU/Ac).

Name of Farm: ________________________________

Land Owner: ________________________________

Physical Address: ________________________________

APN#: ________________________________

City/Zip Code: ________________________________

Mailing Address: ________________________________

City/State/Zip Code: ________________________________

Phone: (_____) _____-_______  Fax: (_____) _____-_______

Person Responsible: ________________________________ Title: ________________________________

Total Farm Acreage: ___________ Animal Units per Acre (AU/Ac): ___________

I understand that this application does not grant authorization to begin work and does not imply approval of the submitted Farm Plan. Furthermore, no work will begin until a permit/authorization is issued. The critical areas and management zones depicted on farm plans are approximate and are not appropriate for siting new structures and permanent infrastructure.

The information contained in the Worksheets, Site Map and Submittal Form is true and accurate to the best of my knowledge.

Signature: ________________________________ Date: ________________________________

For agency use:

This plan was developed in cooperation with

☐ Consultant ________________________________ ☐ Conservation District

Signature: ________________________________ Date: ________________________________

This plan was approved by the Planning & Development Services Staff:

Signature: ________________________________ Date: ________________________________

Whatcom County Farm Plan
PL2-85-006A

Page 13 of 13
September 2011
DISTRICT COOPERATIVE AGREEMENT
(Ecology Referral)

THIS AGREEMENT is entered into between the Whatcom Conservation District and,

, and

residing at: __________________________, Whatcom County, Washington.

1) PREFACE. Our mission is to assist land managers with their conservation choices. You requested our assistance to address water quality problems identified on your property by the Washington Dept. of Ecology ("Ecology"). Through this agreement we establish the terms by which we will work together to develop a Conservation Plan that meets the objectives described in Ecology's Warning Letter or Notice of Violation.

2) WE AGREE TO:
   a) Assist you in the development and implementation of your Conservation Plan through the provision of information, technical assistance, and cost share assistance subject to the availability of funding.
   b) Protect the following from disclosure to others without your express written permission so long as the Conservation Plan is not used to obtain any sort of permit:
      i) Development of and prioritization of your conservation objectives;
      ii) Any inventory of soil, water, vegetation, livestock, and wildlife taken by the District or provided by you;
      iii) Implementation of conservation measures, including technical assistance provided by us;
      iv) Development of and implementation of livestock nutrient management measures;
      v) Development of and implementation of plans pursuant to business and financial objectives; and
      vi) Documentation of your records of decisions.
   c) Protect under all circumstances any information received from the Natural Resources Conservation Service or Farm Service Agency.
   d) Advise you of any public disclosure request received by the District for information in your file.

DISTRICT COOPERATIVE AGREEMENT  
(Ecology Referral)

3) YOU AGREE TO:
   a) Use your land within its capabilities.
   b) Work diligently and in good faith with us to develop a Conservation Plan, that at a minimum, 
      meets the requirements Ecology. Good faith means you will be fair, open and honest as we work 
      with you during the development and implementation of your conservation plan; you will be fully 
      engaged in the effort, responding promptly to our requests for information and call out all 
      complaints or concerns so that the we can work to resolve them in a mutually satisfactory manner 
      within the constraints imposed by Ecology.

4) IT IS FURTHER AGREED THAT:
   a) This agreement will become effective on the date of last signature and may be terminated by 
      either party upon notice or modified in writing by mutual agreement of the parties.
   b) From time to time the District may respond to Ecology’s inquiries as to your cooperation and 
      progress in developing the Conservation Plan.
   c) Neither you nor the District shall be liable for damage to the other’s property resulting from 
      actions conducted by this agreement so long as such damage does not result from willful or 
      negligent conduct.

WITNESS THE FOLLOWING SIGNATURES:

__________________________________________________________  __/__/  
  .  (Cooperator)  (Date)

__________________________________________________________  __/__/  
  .  (Cooperator)  (Date)

WHATCOM CONSERVATION DISTRICT:

By ___________________________________  __/__/  
  (Date)

Planning and Development Services
Policy

Subject/Title: Farm Plan Disclosure
Number: PL1-85-002Z
Effective Date: 05/06/10
Submitted By: Peter Gill, Senior Planner
Reviewed By: Natural Resources/Long Range Planning
Approved By: David Stalheim, Director

Statement:

Whatcom County recognizes that Farm Plans prepared by a Conservation District are exempt from disclosure under the Public Records Act. At the same time it needs to ensure that critical areas are being protected by capturing baseline information and progress towards implementation of best management practices. Accordingly, Whatcom County will not disclose Farm Plan information that is prepared by a Conservation District pursuant to the Conservation Program on Agricultural Lands (CPAL), WCC 16.16.290.

As an exception to the above statement, the following farm plans can be disclosed under state law:

a) The landowner has given Whatcom County written permission to disclose; or
b) The plan is to be used for the application or issuance of a permit; or

c) The plan is developed for a dairy, animal feeding operation ("AFO") or concentrated animal feeding operation ("CAFO") and not required to apply for a National Pollution Discharge Elimination Permit. Note: Portions of a farm plan prepared for a dairy are disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information.

These include:

- Number of animals;
- Volume of livestock nutrients generated;
- Number of acres covered by the plan or used for land application of livestock nutrients;
Livestock nutrients transferred to other persons; and
Crop yields.

The Washington State Department of Agriculture rules will be followed in responding to public disclosure requests for dairies.

Rationale:

As of 2007, Farm plans are exempt from the Public Records Act, RCW 42.56.270 (17)(a):

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

Consistent with Whatcom County Critical Areas Ordinance, 16.16.290(C)(5).

Information for high intensity agricultural activities that do not require NPDES permits can be disclosed when business data is aggregated, see WAC 16.06.210.
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:30 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

COMMITTEE DISCUSSION – COUNCIL CONFERENCE ROOM

1. CONSIDERATION OF APPEAL OF THE HEARING EXAMINER’S DECISION ON FILE NO. SHR2015-0003, FILED BY KRISTINE WILLIAMS AND THAD ANDERSON REGARDING DEMING SPEEDWAY ACCESS ROAD (AB2016-367)

Attorney Present: Karen Frakes

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW 42.30.110 (1)(i). Executive session will conclude no later than 2:00 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Browne moved to go into executive session until no later than 2:00 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:

Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)

Nays: None (0)

(Clerk’s Note: The Committee concluded executive session at 1:40 p.m.)

COMMITTEE DISCUSSION – COUNCIL CHAMBERS

1. CONTINUATION OF COUNCIL’S REVIEW OF THE 2016 CRITICAL AREAS ORDINANCE UPDATE (AB2016-276K) REVIEW OF CERTAIN QUESTIONS, COMMENTS, AND SUGGESTIONS BY STAFF AND COUNCILMEMBERS RELATED TO: ARTICLE 3 - GEOLOGICALLY HAZARDOUS AREAS; GLOBAL ISSUES; ARTICLE 2 - ADMINISTRATIVE PROVISIONS; ARTICLE 4 – FREQUENTLY
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.

FLOODED AREAS; ARTICLE 5 – CRITICAL AQUIFER RECHARGE AREAS; ARTICLE 6 – WETLANDS

Weimer moved to accept issue items 48, 49, 59, 62, 66, 71, 73(A), 85, 97, 100, 108, 111, 121, 122, and 124 beginning on Council packet page 212.

The motion was seconded.

The motion carried by the following vote:
Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)
Nays: None (0)

Weimer moved to accept the following issue items beginning on Council packet page 218 with proposed staff modifications: 51, 75, 118, and 120.

The motion was seconded.

The motion carried by the following vote:
Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan, and Weimer (7)
Nays: None (0)

Weimer moved to accept the following issue items beginning on Council packet page 221 with staff and Department of Ecology amendments: 58, 86, 87, 90, 95, 96, 98, 101, 102, 103, 105, 110, 115, 116, 119, and 125.

The motion was seconded.

Cliff Strong, Planning and Development Services Department, referenced Issue 96 and stated there must be a reference to Table 2.

Councilmembers withdrew from the motion the following items: 58, 87, 95, 98, 101, 102, 103, 105, 110, 115, 116, and 119.

The motion to approve issue items 86, 90, 96, and 125 with amendments carried by the following vote:
Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)
Nays: None (0)

The following staff answered questions:
• Cliff Strong, Planning and Development Services Department
• Ryan Ericson, Planning and Development Services Department

Staff answered questions on compensatory mitigation and mitigating adverse impacts to buffers.

Brenner moved to amend 16.16.260(A)(1) “...to mitigate adverse impacts in the following....”

The motion was seconded.
The motion carried by the following vote:

Ayes: Sidhu, Brenner, Browne, Buchanan, and Donovan (5)

Nays: Weimer and Mann (2)

Staff answered questions on identifying species and how to demonstrate that no harm will come to a species. There are standards for consultants to make a determination.

**Browne moved** to approve Issue Item 87 with an amendment, “1. Meet the requirements 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 (inclusive of any mitigation) within frequently flooded areas.”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

Staff answered questions on what they’re asking landowners to do, which is identifying a method for measuring buffers. Staff can include a diagram that demonstrates the measurement in the brochure for applicants.

**Browne moved** to approve Issue Item 95, “16.16.630(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 side as marked in the field. Buffers shall not....”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

Staff answered questions on old and new stream typing.

**Browne moved** to approve issue item 98 with staff changes, “16.16.670(B.7)(b)(ii) Parcel map, with scale showing...and drainages (Type 1S, 2, 3F, 4Np or 5Ns streams),...” and “16.16.670(B.7)(c) Wetland Analysis...can be legally accessed) within 150 feet of the development footprint including...”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

Staff answered questions on changes versus clarification, planting native vegetation, and whether structures have to be removed.
Brenner moved to approve Issue Item 101, to add subsection .630 as another reference and to break this sentence into two subsections, with one amendment, “16.16.680(B)(2) Buffer Alterations. Compensatory mitigation for buffer impacts shall: a. Shall be consistent...b. May include enhancement....”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Staff answered questions on mitigation ratios.

Sidhu moved to approve Issue Item 102 with staff changes, “16.16.680(C)(1) ...at a minimum 1:1 ratio on an area basis.”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)
Absent: Weimer (out of the room) (1)

Staff answered questions about replacement wetlands.

Browne moved to approve Issue Item 103 with staff changes, “16.16.680(D) Reestablished or created Replacement wetlands....”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)
Absent: Weimer (out of the room) (1)

Sidhu moved to approve issue item 105 with staff changes, to change the phrase “compensatory mitigation” to “mitigation” throughout the Article.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)
Absent: Weimer (out of the room) (1)

Staff answered questions on upper limits of shoreline jurisdiction versus the ordinary high water mark, which marine species go beyond the high water mark, and best available science.
Donovan moved to hold in committee Issue Item 110 with staff changes to get maps and information on best available science on the marine nearshore and marine riparian zones.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Staff answered questions on whether a property owner is allowed to deviate from the guideline techniques.

Buchanan moved to approve Issue Item 115 with staff changes, “16.16.720(1) The stabilization...in accordance with the techniques contained within the Washington Department...Guidelines. Deviation from these techniques requires written justification from a qualified professional/engineer.”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Staff answered questions on talking specifically about habitat conservation areas and updating the terminology.

Brenner moved to approve Issue Item 116 with staff changes to sections .720(I5) and (N4), “...Habitat Conservation Areas....”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Staff answered questions on using the term “critical saltwater habitat” instead of a list of specific habitat areas.

Donovan moved to approve Issue Item 119 with staff changes, “16.16.720(N1)...ecological processes; critical saltwater eelgrass beds, shellfish beds, spawning habitat...” and to combine rows in Table 4 to be consistent with the Washington Administrative Code (WAC) and changes in terminology.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)
Weimer moved to reject the following Issue Items for which Councilmember Brenner proposes amendments that the staff opposes: 45, 46, 47, 50, 56, 57, 60, 67, 72, 73(B-F), 76, 77, 80, 81, 83, 91, 92, 93, 94, 104, 107, 113, 117, and 123.

The motion was seconded.

Brenner moved to amend to withdraw from the motion issue items 46, 47, 50, 67, 72, 76, 77, 80, 81, 91, 92, 93, 94, 104, 107, 113, 117, and 123.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Buchanan, and Donovan (5)
Nays: Weimer and Browne (2)

Browne moved to amend to withdraw from the motion item 73(B-F).

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

The motion to reject issue items 45, 56, 57, 60, and 83 carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Councilmembers discussed whether the County’s written findings to applicants and the requirement for written findings should apply to the entire code or certain sections.

Donovan moved to approve the staff’s recommendation for Issue Item 46, to amend 16.16.250(C)(3), “Decision to...on their review, and shall provide a detailed written decision, including findings of fact to support the decision made such determinations shall be provided to the applicant in writing.”

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Councilmembers discussed how far the County should go to protect people.

Brenner moved to approve issue item 47 to amend 16.16.100(B):
1. Protect the public from Reduce harm due to...
2. Ensure there are no adverse impacts to the quality and quantity of water resources Protect against any adverse impacts to water quality and quantity resources.
The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, and Buchanan (4)

**Nays:** Browne, Weimer, and Donovan (3)

Staff answered questions and councilmembers discussed grandfathering landscaping that was already there before they adopted rules.

_Sidhu moved_ to hold Issue Item 50 in committee to get clarification on wording from staff.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)

**Nays:** None (0)

Staff answered questions and councilmembers discussed reasonable use standards in Issue Item 67 and variances in Issue Item 72. Brenner withdrew her proposed amendments.

Staff answered questions and councilmembers discussed Issue Item 73(B-F), quantifying impacts instead of adding “significant” impacts, nonconforming buildings, and whether they should prohibit expansion into critical areas and buffers, how long it could take someone to rebuild after a structure is destroyed, how they define whether a structure is destroyed, and time limits for rebuilding. Brenner withdrew her proposed amendments as shown in Issue Item 73(B-C).

_Browne moved_ to amend Item 73(D), “Nonconforming structures that are completely 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 12 months of the date of such damage; and
2. The reconstruction does not expand...”

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)

**Nays:** None (0)

_Browne moved_ to amend on 73(F) to restore the original language with one change, “...a period of 12 months or more,....”

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Sidhu, Brenner, Browne, Buchanan, Mann, and Donovan (6)
Staff answered questions and councilmembers discussed whether anyone other than a property owner can be liable for violations; appropriate penalty amounts; and minimizing geographic hazards. Brenner withdrew his proposed amendments as shown in Issue Items 76 and 77.

Brenner moved to amend to approve Issue Item 80, “16.16.320(E) Review by Qualified Professional...structural elements to minimize mitigate the hazard....”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, and Browne (4)
Nays: Buchanan and Weimer (2)
Absent: Donovan (out of the room) (1)

Staff answered questions and councilmembers discussed whether the zoning will prevent a great increase in potential population density within a lahar hazard zone. Strong stated he will remove that sentence.

Staff answered questions and councilmembers discussed the state definitions of wetlands, best available science on the importance of small wetlands, and buffers for category IV wetlands.

Brenner moved to approve the correct size of one-tenth of an acre, which is 4,356 square feet and subsection .610(D), “All wetlands shall be regulated regardless of size; provided, that hydrologically isolated Category IV wetlands less than 1,000 square feet one-tenth acre (4,356 square feet in size) may....”

The motion was seconded.

The motion failed by the following vote:

Ayes: Brenner and Sidhu (2)
Nays: Mann, Browne, Weimer, Buchanan, and Donovan (5)

Brenner moved to amend subsection .610(D)(7), “Adverse impacts are mitigated pursuant to WCC 16.16.680 The wetland meets the criteria set forth in the entire section.”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
Nays: Donovan (1)

Brenner moved to approve Issue Item 92. “16.16.620 Wetlands. The following activities...values as documented through an alternative analysis, the amount and degree of alteration are limited...be avoided (category 4 wetlands are exempt from this section);

The motion was seconded.
Staff answered questions and councilmembers discussed exempting Category IV wetlands and how the presence of Category IV wetlands is determined.

**Brenner withdrew** the motion.

**Brenner moved** to approve issue item 93 regarding 16.16.620(E):

1. Construction of an appurtenant structure that is associated with an *primary* agriculture use; or the reconstruction...following specific criteria:
   i. The structure is located within an existing lot of record and is an *existing ongoing* agricultural use.
   ii. *For new construction,* there is no other feasible location with ...
   iii. Clearing...
2. Existing Ongoing Agricultural activities subject to the following:
   i. The activities...
   ii. The agricultural activity...of this chapter. *This requirement is for property owners who have an existing farm plan."

**Browne suggested a friendly amendment:**

1. Construction of an appurtenant structure that is associated with an *primary* agriculture use; or the reconstruction...following specific criteria:
   i. The structure is located within an existing lot of record with a *history of legal* agricultural use and is an *existing ongoing* agricultural use.
   ii. For new construction, there is no other feasible location with ...
   iii. Clearing...
2. Existing Ongoing Agricultural activities subject to the following:
   i. The activities...
   ii. The agricultural activity...of this chapter.”

**Brenner accepted** the friendly amendment.

Staff answered questions and councilmembers discussed the requirement for new agricultural uses to adhere to the critical areas ordinance; preserving agriculture, even if there is a hiatus in agricultural use; the threshold for when an agricultural use is no longer ongoing; and whether all farmers need a farm plan.

**Browne moved** to substitute the motion to amend section 16.16.620(H)(c), “...designed to *minimize* removal of significant trees.”

The motion was seconded.

**Brenner moved** to amend section 16.16.620(H)(c), “...designed to *avoid* removal of significant trees.”

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Sidhu, Browne, Buchanan, Mann, and Donovan (5)

**Nays:** Weimer and Brenner (2)
Staff answered questions and councilmembers discussed avoiding significant trees when doing environmental education, nonmotorized trails, walkways, and other activities and being able to remove fallen trees and hazard trees.

The motion failed by the following vote:

**Ayes:** Brenner and Sidhu (2)

**Nays:** Mann, Browne, Weimer, Buchanan, and Donovan (5)

Staff answered questions and councilmembers discussed the wetland mitigation ratio table, whether or not they should include example scenarios, the ability to do improvements to a structure within a buffer,

Brenner stated she withdraws her proposed amendments as shown in Issue Items 104, 107, 117 and 123.

Brenner moved to approve Issue Item 113 with amendment:

"E. Construction or improvements that are of a structure other than a building that is associated with agriculture use in the outer 25% of the CPAL designated buffer; or the reconstruction...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 the reconstruction, maintenance, and/or remodeling of pre-existing structure.
3. Clearing...”

Browne proposed a friendly amendment to item E.1, “...lot of record and is an existing ongoing with a history of legal agricultural use.”

Brenner accepted the friendly amendment.

The motion carried by the following vote:

**Ayes:** Brenner, Sidhu, Browne, and Buchanan (4)

**Nays:** Donovan and Weimer (2)

**Absent:** Mann (out of the room) (1)

Staff answered questions and councilmembers discussed exempting small projects less than 200 square feet from offsite mitigation standards.

Brenner stated she withdraws her proposed amendment to Issue Items 117 and 124.

Councilmembers stated they need to discuss the reason the Planning Commission doesn’t believe this document complies with state law; best available science, particularly regarding critical aquifer recharge areas (CARAs); lahars; and other issues for moving forward. Councilmembers discussed the timeline and what happens if they miss the deadline.

**OTHER BUSINESS**
There was no other business.

**ADJOURN**

The meeting adjourned at 4:43 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

April 18, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

1. CONSIDERATION OF APPEAL OF THE HEARING EXAMINER’S DECISION ON FILE NO. SHR2015-0003 BY KRISTINE WILLIAMS AND THAD ANDERSON, REGARDING DEMING SPEEDWAY ACCESS ROAD (AB2016-367)

Buchanan reported for the Special Committee of the Whole and stated this item was discussed in executive session.

Mann moved to uphold the Hearing Examiner’s decision.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

MINUTES CONSENT

Brenner moved to approve Minutes Consent items one through seven.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1. SPECIAL COMMITTEE OF THE WHOLE (EXECUTIVE SESSION) FOR MARCH 7, 2017

2. SPECIAL COMMITTEE OF THE WHOLE (OPEN MEETING) FOR MARCH 7, 2017

3. REGULAR COUNTY COUNCIL FOR MARCH 7, 2017

4. SURFACE WATER WORK SESSION FOR MARCH 14, 2017

5. SPECIAL COMMITTEE OF THE WHOLE (EXECUTIVE SESSION) FOR MARCH 14, 2017

6. SPECIAL COMMITTEE OF THE WHOLE (OPEN MEETING) FOR MARCH 14, 2017

7. SPECIAL COMMITTEE OF THE WHOLE (EXECUTIVE SESSION) FOR MARCH 21, 2017

PUBLIC HEARINGS

1. ORDINANCE REPEALING AND REPLACING WHATCOM COUNTY CODE CHAPTER 2.44 AND AMENDING WHATCOM COUNTY CODE 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 (AB2017-124)

Buchanan opened the public hearing, and the following people spoke:

Rachel Lucy, Public Health Advisory Board Chair, stated the Board recommends adoption.

Hearing no one else, Buchanan closed the public hearing.

Browne moved to adopt the ordinance.

The motion was seconded.

Perry Mowry, Health Department, answered questions on the appointment of a councilmember to the committee.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

Nays: None (0)

2. ORDINANCE ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15, BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE, RELATING TO WATER RESOURCES (AB2016-309F)
Mark Personius, Planning and Development Services Department, gave a staff report on two changes enacted by this ordinance. First, the County would be required to pay for third-party reviews. Second, it allows alternatives to financial guarantees that mitigation will remain in place. The State legislature may approve a solution to the Hirst decision. The County has also been responding to the decision. He answered questions on all the things the County is doing on its own and with other jurisdictions, as described in the resolution before the Council later in the meeting, and about Skagit County’s case.

Karen Frakes, Prosecutor’s Office, stated the County has a compliance date in May. They will likely request a continuance to wait for any final solution from the legislature.

Buchanan opened the public hearing, and the following people spoke:

Peter Willing, hydrogeologist, stated the people who have drilled wells need relief. Multiple hydraulic reports will be expensive and difficult. Make sure anything enacted can be enforced. Don’t depend on the legislature to create a solution.

Amy Glasser stated don’t wait for a legislative solution. Develop mitigation plans and water bank programs. Measure current actual water use.

Terry Montonye stated water gages and water witches are better than instream flow and hydrologists. Also, locals and lower taxes are better than federal, state, and local bureaucracies. Lots of money and detailed analysis won’t mean much.

Arthur Preston submitted and read from his testimony (on file). Other water issues are more important, including lead contamination. Engage in testing for lead contamination, especially in schools.

Carol Reed described how she is impacted by the Hirst decision. Consider people who have made plans and can’t continue to build on their land, which has become worthless.

Roger Almskaar, Citizens Alliance for Property Rights, stated people need more relief than the ordinance provides. Expanding public water systems to rural areas will be very expensive.

Patrick Alesse stated make an honest decision.

Natalie McClendon stated she supports the resolution before the Council tonight. The Nooksack Rule ignores rural exempt well withdrawals. They can’t give away a legal water right if they don’t know whether the water is available. She supports the ordinance.

George Jones stated the restrictions on building a well lower his property value, and he should pay fewer taxes. Government shouldn’t take the rights of the people.

Charlie Stores stated he supports resolving the problems with salmon through science. He supports the ordinance.

Hearing no one else, Buchanan closed the public hearing.
1. **Browne moved** to adopt the ordinance.

The motion was seconded.

Councilmembers discussed new wells that impede existing wells, the reasons for fewer salmon, the small portion of exempt wells based on the amount of water overall, the Supreme Court as the source of the problem, allowing individual property owners to decide if they want to risk continued building, how everyone must compromise, whether the State legislature will develop a solution, the length of the interim ordinance, and improvements over the previous moratorium.

The motion carried by the following vote:

- **Ayes:** Sidhu, Browne, Buchanan, Weimer and Donovan (5)
- **Nays:** Mann and Brenner (2)

**OPEN SESSION**

The following people spoke:

- Max Perry spoke about funding any requests, fewer taxes that will be collected, and more pressing needs, including the need for a new jail.
- Robin Dexter spoke about historic water law, asking the State legislature for a solution to problems caused by the *Hirst* decision, and illegal use by the agricultural community.
- Joy Gilfien spoke about the work of the Incarceration Prevention & Reduction Task Force.

**CONSENT AGENDA**

**Browne** reported for the Finance and Administrative Services Committee and **moved** to approve Consent Agenda items one through three.

The motion carried by the following vote:

- **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
- **Nays:** None (0)

1. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A ONE YEAR RESIDENTIAL LEASE AGREEMENT BETWEEN WHATCOM COUNTY AND MICHAEL ATKINS AND MARIA PALILEO FOR LEASE OF 5305 NIELSEN ROAD, LOCATED WITHIN HOVANDER HOMESTEAD PARK, FOR THE MONTHLY AMOUNT OF $950 (AB2017-133)**

2. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE CITY OF SUMAS TO OPERATE A SENIOR ACTIVITY CENTER PROGRAM AT THE SUMAS COMMUNITY CENTER (AB2017-134)**
3. **REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZethe**
   **PURCHASE OF RADIOS AND RELATED ACCESSORIES (AS NEEDED) USING**
   **WASHINGTON STATE CONTRACT #06913 FROM VENDORS HARRIS FRCD,**
   **JVC KENWOOD, AND MOTOROLA SOLUTIONS, IN AN AMOUNT NOT TO**
   **EXCEED $100,000 (AB2017-135)**

**OTHER ITEMS**

1. **RESOLUTION APPROVING THE BIRCH BAY COMMUNITY PARK MASTER PLAN**
   **(AB2016-185B)**

   Donovan reported for the Natural Resources Committee and moved to approve the
   resolution.

   Mike McFarlane, Parks and Recreation Department Director, answered questions
   about the funding plan in the budget and incorporating a funding strategy into the plan.

   Councilmembers discussed the offer of the community to raise money for
   development and operation of the park, which isn’t referenced in the master plan, and the
   source of revenue to fund the park.

   Sidhu moved to hold in Council for six months, pending more discussion with the
   community about funding and fundraising.

   The motion was seconded.

   Councilmembers continued to discuss whether the resolution would be held in
   Council or referred back to the department for more information and concerns about
   shelving the plan indefinitely.

   The motion’s second was withdrawn.

   Browne moved to amend page 3, the last line of the Now Therefore Be It Resolved
   statement, “…authorized to pursue funding and development to develop and implement the
   plan…”

   The motion to amend was seconded.

   The motion to amend carried by the following vote:
   Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
   Nays: Mann (1)

   Brenner moved to amend the resolution, “Be it further resolved the Whatcom
   County Council expects the community to bring forward funding options for this plan.”

   The motion was seconded.

   The motion to amend carried by the following vote:
   Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
2. RESOLUTION 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 (AB2017-129)

Donovan reported for the Natural Resources Committee and moved to approve the substitute resolution.

Mann moved to amend the title, “...clarify when that counties can rely....”

The motion was seconded.

The motion to amend carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, and Buchanan (5)
Nays: Weimer and Donovan (2)

Mann moved to amend page two to add language at line 22, “WHEREAS, residential water withdrawals from permit-exempt wells represent a tiny fraction of total water consumption in Whatcom County; and.”

The motion was seconded.

Councilmembers discussed the impact of the language on the legislature and recognizing that the use is illegal.

The motion to amend carried by the following vote:

Ayes: Weimer, Brenner, Mann, Sidhu, Browne, and Buchanan (6)
Nays: Donovan (1)

Mann moved to amend the last Whereas statement, “...for property owners and remove through mitigation the severe restrictions necessitated....”

The motion was seconded.

Councilmembers discussed the necessity of mitigation when not relying on the Department of Ecology and whether mitigation alone will solve the ultimate problem.

The motion to amend failed by the following vote:

Ayes: Brenner, Mann and Sidhu (3)
Nays: Weimer, Donovan, Browne, and Buchanan (3)

Brenner moved to amend, “...and, if necessary, remove through mitigation....”

The motion was seconded.
Mann suggested a change to end the statement after “property owners.”

**Brenner withdrew** her motion.

**Mann moved** to amend, “WHEREAS, state legislative action is needed so that the County can adopt permanent water availability regulations that restore certainty for property owners and remove through mitigation the severe restrictions necessitated by the Hirst ruling.”

The motion was seconded.

The motion to amend carried by the following vote:

- **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
- **Nays:** None (0)

Councilmembers discussed the length of the resolution and the memo; focusing on settlement talks, not on the legislature; and the legislature’s authority to make changes needed by the County.

The motion to approve as amended carried by the following vote:

- **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Weimer (6)
- **Nays:** Donovan (1)


**Browne** reported for the Finance and Administrative Services Committee and **moved** to adopt the ordinance.

Tyler Schroeder, Executive’s Office, answered questions on why they are adding additional expenditure authority, the project-based budget matching funds the Council approved through the budget process, the higher cost of the fire alarm system that wasn’t anticipated, and the cost of the Americans with Disabilities Act (ADA) lift.

The motion carried by the following vote:

- **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
- **Nays:** None (0)

4. **ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, FOURTH REQUEST, IN THE AMOUNT OF $382,327 (AB2017-126)**

**Browne** reported for the Finance and Administrative Services Committee and **moved** to adopt the ordinance.

The motion carried by the following vote:
5. **ORDINANCE AMENDING ORDINANCE 2014-083 (ESTABLISHMENT OF THE CEDAR HILLS/EUCLID STORM WATER IMPROVEMENTS FUND AND A PROJECT BASED BUDGET FOR THE CEDAR HILLS/EUCLID STORM WATER IMPROVEMENTS) FOR THE FOURTH TIME TO ADD $36,909 OF EXPENDITURE AUTHORITY, FOR A TOTAL AMENDED PROJECT BUDGET IN THE AMOUNT OF $1,792,495 (AB2016-275B)**

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:

| Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7) |
| Nays: None (0) |

6. **ORDINANCE AMENDING ORDINANCE 2012-050 (ESTABLISHMENT OF THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT FUND AND A PROJECT BASED BUDGET FOR THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY) FOR THE THIRD TIME TO ADD $900,000 OF EXPENDITURE AUTHORITY, FOR A TOTAL AMENDED PROJECT BUDGET IN THE AMOUNT OF $3,600,000 (AB2017-079A)**

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:

| Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7) |
| Nays: None (0) |

7. **RESOLUTION SETTING A HEARING TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION, REQ. #TR2017-02 (AB2017-131)**

Browne reported for the Finance and Administrative Services Committee and moved to approve the resolution.

The motion carried by the following vote:

| Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7) |
| Nays: None (0) |

8. **RESOLUTION SETTING A HEARING TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION, REQ. #TR2017-03 (AB2017-132)**

Browne reported for the Finance and Administrative Services Committee and moved to approve the resolution.

The motion carried by the following vote:

| Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7) |
| Nays: None (0) |
9. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S RE-DESIGNATION
OF THE PORT OF BELLINGHAM AS THE COUNTY’S ADO (ASSOCIATE
DEVELOPMENT ORGANIZATION) TO COORDINATE COMMUNITY AND
ECONOMIC DEVELOPMENT SERVICES WITH THE WASHINGTON STATE
DEPARTMENT OF COMMERCE (AB2017-069A)

Browne reported for the Finance and Administrative Services Committee and
moved to approve the request.

Councilmembers discussed ADO long-term funding and scheduling a discussion in the
Finance Committee.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

10. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN
INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND FIRE DISTRICT
#4 TO REIMBURSE THE DISTRICT FOR LOST REVENUE RESULTING FROM
PASSAGE OF THE COUNTYWIDE EMS LEVY (AB2017-136)

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)

11. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN
INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND FIRE DISTRICT
#11 TO REIMBURSE THE DISTRICT FOR LOST REVENUE RESULTING FROM
PASSAGE OF THE COUNTYWIDE EMS LEVY (AB2017-137)

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)

12. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN
INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND FIRE DISTRICT
#16 TO REIMBURSE THE DISTRICT FOR LOST REVENUE RESULTING FROM
PASSAGE OF THE COUNTYWIDE EMS LEVY (AB2017-138)

Browne reported for the Finance and Administrative Services Committee and
moved to approve the request.

The motion carried by the following vote:
13. ORDINANCE AMENDING WHATCOM COUNTY CODE 20.92.645, TIME LIMITS, RELATED TO APPEALS TO COUNTY COUNCIL (AB2017-114)

Mann moved to adopt the ordinance.

The motion was seconded.

Karen Frakes, Prosecutor’s Office, answered questions about whether there has been a problem.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT TO THE WILDLIFE ADVISORY COMMITTEE, APPLICANT: CAANAN COWLES (AB2017-113)

Brenner moved to appoint Caanan Cowles.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. APPOINTMENT TO THE NOXIOUS WEED CONTROL BOARD, APPLICANT: PATRICIA LENSSEN (AB2017-128)

Brenner moved to appoint Patricia Lenssen.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

INTRODUCTION ITEMS

Brenner moved to accept the Introduction Items.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

1. RESOLUTION TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION, REQ. #TR2017-02 (AB2017-131A)
2. RESOLUTION TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION, REQ. #TR2017-03 (AB2017-132A)
3. ORDINANCE ADOPTING WHATCOM COUNTY COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE CHERRY POINT URBAN GROWTH AREA (AB2017-063A)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Council members gave reports and updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 9:10 p.m.

The County Council approved these minutes on ______, 2017.

ATTEST: WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL  
Special Committee Of The Whole

May 2, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 11:50 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 STRATEGY PLANNING DISCUSSION REGARDING COLLECTIVE BARGAINING (AB2017-018)
   Attorney Present: None

   Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.140 (4)(a). Executive session will conclude no later than 1:30 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

   Donovan moved to go into executive session until no later than 1:30 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)

OTHER BUSINESS

ADJOURN

The meeting adjourned at 12:15 p.m.

The Council approved these minutes on ______ 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL
Special Committee of the Whole

May 2, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 3:09 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


Cliff Strong, Planning and Development Services Department, gave a staff report on the timeline for adopting the ordinance, best available science sources, the frequency of updates, creating baseline studies, adding language to the ordinance about continuing to work on baseline studies, and how the Technical Advisory Committee determined best available science.

The following staff also answered questions:
• Ryan Ericson, Planning and Development Services Department
• Andy Wiser, Planning and Development Services Department
• Forrest Longman, Council Legislative Analyst

Councilmembers discussed best available science, tying critical aquifer recharge areas (CARAs) to the Conservation Program on Agricultural Lands (CPAL), the critical areas ordinance review and update every eight years, and the timing of the critical areas ordinance.

**Brenner moved** to amend 16.16.35(C)(2), “...Includes an emergency evacuation plan showing...approach times.”

Staff and councilmembers discussed whether the language is too restrictive and should be deleted.
The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** Weimer (1)

Staff and councilmembers discussed how to exercise emergency management plans.

*Mann moved* to amend 16.16.350(C)(3) on Council packet page 284, “3. Is required to be updated and exercised every three five years.”

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** Weimer (1)

Staff and councilmembers discussed estimated lahar arrival times.

*Browne moved* to amend 16.16.350(B) on Council packet page 284, “B. Subject to WCC...for properties located in an area with an estimated lahar arrival time of more than 60 minutes” with the requirement that the County will maintain travel time projection maps to estimate lahar approach times. Staff can refine the language for inclusion in that section.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

Staff and councilmembers discussed how they determine whether vegetation is lawfully established and the appropriate date for grandfathering landscape vegetation.

*Brenner moved* to amend 16.16.230, “B. Maintenance...and gardens existing on September 30, 2005, within a regulated....”

The motion was seconded.

Donovan moved to amend the motion to amend the date from September 30, 2005 to the original adoption date of the critical areas ordinance (CAO) in 1992. The motion was not seconded.

The motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

*Brenner moved* to amend 16.16.235(B)(9), “drainage ditches.”

The motion was seconded.
Strong stated that amendment is not one of Councilmember Brenner’s proposed amendments in Issue 52.

_Brenner amended_ her motion and _moved_ to amend 16.16.235(B)(9)(a), to strike “ongoing.”

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

_Brenner moved_ to amend 16.16.350(B)(9)(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.”

The motion was seconded.

Staff and councilmembers discussed whether conservation farm plans should be required and whether or not to include the term “lawfully established.”

The motion failed by the following vote:

**Ayes:** Brenner, Sidhu, and Donovan (3)

**Nays:** Mann, Browne, Buchanan, and Weimer (4)

_Brenner moved_ to amend 16.16.240(A)(2), “Authority to grant…their buffers if the permits do not satisfy the applicable regulations.”

The motion was seconded.

Staff and councilmembers discussed whether the language would change the review process and eliminate the appeal process and requirements for notifying neighbors.

The motion failed by the following vote:

**Ayes:** Brenner and Sidhu (2)

**Nays:** Donovan, Browne, Buchanan, and Weimer (4)

**Ayes:** Mann (out of the room) (1)

_Brenner moved_ to amend 16.16.240(C-D) as shown in Issue Item 53 beginning on Council packet page 285:

C.2. Authority to grant...critical areas if permits do not satisfy the applicable regulations.

D. In granting...hearing examiner, to the extent allowed by applicable laws appropriate applicable, may attach such conditions.”

The motion was seconded.

The motion failed by the following vote:
Ayes: Brenner and Sidhu (2)
Nays: Mann, Donovan, Browne, Buchanan, and Weimer (5)

Brenner moved to amend 16.16.245(A), “The interdisciplinary team...in the field if appropriate, and/or....”

The motion was seconded.

Staff and councilmembers discussed how involved tribal representation will be and who decides if it’s appropriate.

The motion failed by the following vote:
Ayes: Brenner and Sidhu (2)
Nays: Mann, Donovan, Browne, Buchanan, and Weimer (5)

Brenner moved to amend 16.16.250(D)(1), “...within the prior 5 years, site conditions have not substantially changed, and the...were issued;”

The motion was seconded.

Staff and councilmembers discussed Army Corps of Engineer requirements for wetland delineations, who determines whether the conditions have changed substantially, and when staff requires another delineation or waives critical areas review.

The motion failed by the following vote:
Ayes: Brenner and Sidhu (2)
Nays: Mann, Donovan, Browne, Buchanan, and Weimer (5)

Brenner moved to amend 16.16.250(D)(2), “All critical areas...in accordance with the most current regulations in effect at the time.”

The motion was seconded.

Staff and councilmembers discussed how to determine the timeframe for best available science and providing certainty to applicants.

The motion failed by the following vote:
Ayes: Brenner (1)
Nays: Mann, Sidhu, Browne, Buchanan, and Donovan (5)
Absent: Weimer (out of the room) (1)

Brenner moved to amend 16.16.250(D)(3), “The activity is in compliance...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;”

The motion was seconded.
Staff and councilmembers discussed the staff recommendation regarding language in subsection D.1 and whether this amendment still works.

Brenner withdrew the motion to amend. She withdrew her proposed amendments as shown in Issue Item 63.

Ericson submitted a handout of how to measure wetland, fish, and wildlife habitat conservation area buffers (on file) as an example of horizontal plane measurement.

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

May 2, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

Buchanan announced there was an update on negotiations and strategy planning discussion regarding collective bargaining (AB2017-018) in executive session during the first Special Committee of the Whole meeting.

PUBLIC HEARINGS

1. RESOLUTION TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION, REQ. #TR2017-02 (AB2017-131A)

Buchanan opened the public hearing and, hearing no one, closed the public hearing.

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)

2. RESOLUTION TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION, REQ. #TR2017-03 (AB2017-132A)

Buchanan opened the public hearing and, hearing no one, closed the public hearing.

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 person spoke:
- Wendy Harris spoke about the critical areas ordinance update.

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through five.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND NORTHWEST YOUTH SERVICES TO PROVIDE FUNDING FOR PERSONNEL COSTS ESSENTIAL TO FACILITY OPERATIONS AT NORTHWEST YOUTH SERVICE’S POSITIVE ADOLESCENT DEVELOPMENT FACILITY, IN THE AMOUNT OF $50,000, FOR A TOTAL AMENDED AMOUNT OF $255,000 (AB2017-143)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM FOR MAINTENANCE AND OPERATION OF THE CRISIS TRIAGE FACILITY, IN THE AMOUNT OF $59,900 (AB2017-144)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES (DSHS) TO SPECIFY THE PROCEDURE BY WHICH DSHS WILL ASSESS AND ADJUST THE LONG-TERM PAYABLE THAT IS PROVIDED TO THE COUNTY (AB2017-145)

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO APPROVE THE COLLECTIVE BARGAINING AGREEMENT BETWEEN WHATCOM COUNTY AND GENERAL TEAMSTERS’ LOCAL UNION NO. 231 FOR THE PERIOD OF MAY 2, 2017, THROUGH DECEMBER 31, 2018 (AB2017-146)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION LLC TO ENSURE THAT REVENUE FROM THE SALE OF MARIJUANA AND CANNABIS PRODUCTS IS USED FOR
SUBSTANCE USE DISORDER TREATMENT AND PREVENTION SERVICES FOR MIDDLE SCHOOL AND HIGH SCHOOL AGED YOUTH, IN THE AMOUNT OF $288,000 (AB2017-147)

OTHER ITEMS

1. RESOLUTION APPROVING THE PURCHASE OF DEVELOPMENT RIGHTS OVERSIGHT COMMITTEE'S CURRENT RANKED LIST OF PROPERTIES AND AUTHORIZING THE APPLICATION FOR MATCHING FUNDS THROUGH WASHINGTON STATE RECREATION AND CONSERVATION OFFICE UNDER THE WASHINGTON WILDLIFE AND RECREATION PROGRAM FORESTLAND CATEGORY FOR QUALIFYING APPLICATIONS (AB2017-141)

   Donovan reported for the Natural Resources Committee and moved to approve the resolution.

   The motion carried by the following vote:
   Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
   Nays: None (0)

2. RESOLUTION AUTHORIZING AN INTERLOCAL COOPERATION AGREEMENT WITH OTHER MUNICIPALITIES IN SKAGIT COUNTY, WHATCOM COUNTY, AND ISLAND COUNTY, AGREEING TO PARTICIPATE AS A MEMBER OF A REGIONAL CONSORTIUM THAT WILL QUALIFY THE AREA FOR ADDITIONAL FUNDING TO ADDRESS HOMELESSNESS AND THE SHORTAGE OF HOMES AFFORDABLE TO LOWER-WAGE WORKERS AND OTHERS (AB2017-142)

   Browne reported for the Finance and Administrative Services Committee and moved to approve the resolution.

   The motion carried by the following vote:
   Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
   Nays: None (0)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM FOR MANAGEMENT AND OPERATION OF THE JOINT CITY-COUNTY AQUATIC INVASIVE SPECIES WATERCRAFT INSPECTION PROGRAM FOR LAKE WHATCOM AND LAKE SAMISH, IN THE AMOUNT OF $246,000 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-148)

   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)
COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT TO THE NOXIOUS WEED CONTROL BOARD, DISTRICT 3, APPLICANT: APRIL BADER (AB2017-140)

Donovan moved to appoint April Bader.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF MELODIE KIRK TO THE WHATCOM COUNTY AGRICULTURAL ADVISORY COMMITTEE (AB2017-149)

Brenner moved to confirm the appointment.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Mann (1)

2. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF GLEN ALEXANDER TO THE WHATCOM COUNTY MARINE RESOURCES COMMITTEE (AB2017-150)

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

Brenner moved to accept the Introduction Items.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
1. RECEIPT OF APPLICATION FOR THE DRAYTON HARBOR SHELLFISH PROTECTION DISTRICT ADVISORY COMMITTEE, APPLICANT: GEORGE KAAS (APPLICATION DEADLINE FOR ANY OTHER APPLICANTS TO THIS VACANCY IS 10 A.M. ON MAY 9, 2017) (AB2017-139)

2. ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 3.02.040 AND REPEALING CHAPTER 3.09, REGARDING AUDITOR DUTIES (AB2017-151)

3. ORDINANCE AMENDING THE COMPREHENSIVE PLAN BY AMENDING THE POINT ROBERTS CHARACTER PLAN, AND AMEND WHATCOM COUNTY CODE 20.72, POINT ROBERTS SPECIAL DISTRICT, TO ADOPT THE POINT ROBERTS DESIGN GUIDELINES (AB2017-152)

4. ORDINANCE AMENDING ORDINANCE 2014-075 (ESTABLISHMENT OF THE COURTHOUSE BUILDING ENVELOPE FUND AND A PROJECT BASED BUDGET FOR THE COURTHOUSE BUILDING ENVELOPE PROJECT) FOR A SECOND TIME, TO INCLUDE FUNDING PROVIDED THROUGH THE EDI FUND IN THE AMOUNT OF $752,621, FOR A TOTAL AMENDED PROJECT BUDGET OF $2,677,809 (AB2017-153)

5. RESOLUTION AMENDING THE 2017 FLOOD CONTROL ZONE DISTRICT AND SUBZONE BUDGETS, SECOND REQUEST, IN THE AMOUNT OF $17,850 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-154)

6. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, FIFTH REQUEST, IN THE AMOUNT OF $251,050 (AB2017-155)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Donovan reported for the Natural Resources Committee.


Weimer reported for the Planning and Development Committee.

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 7:25 p.m.

The County Council approved these minutes on ______, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to:
---|---|---|---|---|---
Originator: | AL | 5/19/17 | | 5/30/17 | Special Presentation
Division Head: | | | | | 
Dept. Head: | | | | | 
Prosecutor: | | | | | 
Purchasing/Budget: | | | | | 
Executive: | | 5/23/17 | | | 

TITLE OF DOCUMENT: Executive Louws to present “State of the County”

ATTACHMENTS: No attachments

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

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

County Executive Jack Louws to present the “State of the County” address

COMMITTEE ACTION:

COUNCIL ACTION:

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

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

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**TITLE OF DOCUMENT:** A Resolution Granting a Quit Claim Deed to the City of Bellingham

**ATTACHMENTS:**
1. Cover Memo
2. Resolution
3. Quitclaim Deed

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

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

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

The attached resolution requests that Whatcom County grant a quit claim deed to City of Bellingham. Whatcom County is purported to be the owner of property within the city limits of Bellingham that is currently being used as city right of way as part of Toledo Street.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

5/16/2017: Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

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

Through: Jon Hutchings, Director

From: Andrew Hester, Real Estate Coordinator

Date: April 28, 2017

Re: A Resolution Granting a Quit Claim Deed to the City of Bellingham

Enclosed is a resolution requesting the approval of a quit claim deed to the City of Bellingham.

Requested Action
Public Works respectfully requests that the Whatcom County Council hold a public hearing and take action on the proposed resolution to approve the quit claim deed.

Background and Purpose
Whatcom County is purported to be the owner of property within the city of limits of the City of Bellingham. Whatcom County has no record of how it obtained this property and is of the belief that it possesses no ownership interest of value in the property as it is within the City of Bellingham and is currently being used as city right of way as part of Toledo Street.

Funding Amount and Source
No County funds are being expended on this agreement.

Please contact me at extension 6216 if you have any questions or concerns regarding this resolution.

Encl.
GRANTING A QUIT CLAIM DEED TO THE CITY OF BELLINGHAM

WHEREAS, Whatcom County is purported to be the owner of property within the city limits of the City of Bellingham, described in Exhibit A and shown on the attached Whatcom County Assessor’s Map; and,

WHEREAS, Whatcom County claims no ownership of the property and has no record of acquiring the property; and,

WHEREAS, the property is currently being used as city right of way as part of Toledo Street; and,

WHEREAS, after due consideration by the Whatcom County Council, it appears to the Council that it will be in the best interest of both the County and the City of Bellingham that the County convey whatever rights it may have in the property to the City of Bellingham by quit claim deed for and in consideration of mutual benefits; and,

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Executive is authorized to execute a quit claim deed to the City of Bellingham for the property described in Exhibit A.

APPROVED this ___ day of ________________, 2017

ATTEST: ____________________________
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________
Dana Brown-Davis, County Clerk

______________________________
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

______________________________
Daniel L. Gibson
Chief Civil Deputy Prosecutor
EXHIBIT A

Legal Description of property to be quitclaimed

The east 30 feet of Lot 7 Block 2, Amended Plat of Canfield's Addition to the City of Whatcom, recorded in Volume 1 of Plats, Page 72, records of Whatcom County, Washington. Also any interest in property depicted by Whatcom County Assessor Maps listed as Whatcom County Tax Parcel Number 3803293650160000. Also any interest in Toledo Street. Situate in Whatcom County, Washington.
After recording return document to:

City of Bellingham
104 West Magnolia Street – Suite 109
Bellingham, WA  98225

Document Title: Quit Claim Deed
Reference Number of Related Documents: NA
Grantor: Whatcom County
Grantees: City of Bellingham
Legal Description: E 30ft Lot 7 Blk 2 Canfield’s Am Add to Whatcom, Sec 29, TWN 38N. R3E, W.M.
Assessor’s Tax Parcel Number: 380329 365016 0000

QUIT CLAIM DEED

The Grantor, WHATCOM COUNTY, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, in recognition and upon the belief that they possess no ownership interest of value in the property described hereinafter, for mutual benefits hereby conveys and quit-claims to CITY OF BELLINGHAM, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, the following described real estate, situated in Whatcom County, in the State of Washington:

The east 30 feet of Lot 7 Block 2, Amended Plat of Canfield’s Addition to the City of Whatcom, recorded in Volume 1 of Plats, Page 72, records of Whatcom County, Washington and the east 30 feet of Lot 7 Block 2, Plat of Canfield’s Addition to the City of Whatcom, recorded in Volume 1 of Plats, Page 38, records of Whatcom County, Washington. Also any interest in property depicted by Whatcom County Assessor Map listed as Whatcom County Tax Parcel Number 3803293650160000 as shown on Exhibit A. Also any interest in Toledo Street.

Situate in Whatcom County, Washington.
QUIT CLAIM DEED

Executed this ______ day of _________________, 2017 for Grantor, WHATCOM COUNTY, by:

________________________________________
Jack Louws, County Executive

Approved as to form:
Prosecuting Attorney's Office

______________________________
Daniel L. Gibson, Chief Civil Deputy Prosecutor

Accepted this ______ day of _________________, 2017 for Grantee, CITY OF BELLINGHAM, by:

________________________________________
Public Works Director

Approved as to form:

________________________________________
Office of the City Attorney
QUIT CLAIM DEED

STATE OF WASHINGTON )
COUNTY OF WHATCOM )

On this _____ day of ____________, 2017, before me personally appeared
Jack Louws, to me known to be the Executive of Whatcom County, a municipal
corporation that executed the within and foregoing instrument, and acknowledged said
instrument to be the free and voluntary act and deed of Whatcom County, for the uses and
purposes herein mentioned, and on oath stated that he was authorized to execute said
instrument on behalf of Whatcom County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year first above written.

________________________________________
Notary Public in and for the State of Washington
Residing at ________________________________
My commission expires ____________________
QUIT CLAIM DEED

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  )

On this ______ day of ______________, 2017, before me personally appeared
________________________________, to me known to be the Public Works Director of the City of
Bellingham, a municipal corporation that executed the within and foregoing instrument,
and acknowledged said instrument to be the free and voluntary act and deed of the City of
Bellingham, for the uses and purposes herein mentioned, and on oath stated that he was
authorized to execute said instrument on behalf of the City of Bellingham.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year first above written.

________________________________
Notary Public in and for the State of Washington
Residing at ________________________
My commission expires ____________________

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WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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TITLE OF DOCUMENT:
Ordinance adopting various minor amendments to Whatcom County Code Title 20 (Zoning), making corrections, updates, and clarifications.

ATTACHMENTS:

- Staff Report
- Draft Ordinance
- Findings of the Planning Commission
- Planning Commission Minutes
- Public Comments

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

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

Ordinance adopting various minor amendments to Whatcom County Code Title 20 Zoning making corrections, updates, and clarifications relating to: a) correcting a lot consolidation reference; b) updating a reference to International Building Code; c) reclassifying uses in the Rural Industrial and Manufacturing (RIM) and General Manufacturing (GM) districts; d) clarifying the definition of park model trailer; e) deleting a reference to Blaine Airport; f) correcting outdated references in surface mining standards; g) clarifying maximum building size; h) clarifying road frontage requirements; i) clarifying kennel definition; j) adding references to mobile home park and recreational vehicle park standards; k) clarifying application of use permit criteria; l) updating notification requirements for conditional use permit expiration; m) updating requirements for wireless communication facility application; n) adding a reference to wireless application requirements; o) clarifying setback standards from a road; p) updating reference to development standards; q) deleting reference to Guide Meridian Improvement Plan; r) clarifying emergency communication facilities and their maximum heights in public utilities chapter; s) adding definition of animal husbandry; t) clarifying lot width and depth in Agriculture district; u) clarifying the definition of "structure"; and v) clarifying roof overhang limits.

COMMITTEE ACTION:

5/16/2017: Introduced 7-0

COUNCIL ACTION:

Related County Contract #: PLN2017-00017
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. ________________

ADOPTING VARIOUS MINOR AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING, MAKING CORRECTIONS, UPDATES, AND CLARIFICATIONS

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Title 20 Zoning; and

WHEREAS, The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to Whatcom County Code (WCC) Title 20 Zoning to make corrections, updates, and clarifications.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 7, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on March 24, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on April 13, 2017.

6. Comprehensive Plan Policy Goal 2D is to "refine the regulatory system to 
ensure accomplishment of desired land use goals in a fair and equitable manner."

7. WCC 20.83.072, which provides the formula for the number of lots permitted by lot consolidation, incorrectly refers to itself rather than the following subsection, which was intended. The proposed amendment would correct the reference.

8. The definition of “building” in WCC 20.97.035 refers to the Uniform Building Code, which has since changed to the International Building Code. The proposed amendments would correct the reference.

9. Permitted, administrative, and conditional uses listed in the Rural Industrial and Manufacturing (RIM) and General Manufacturing (GM) Districts -- WCC Chapters 20.69 and 20.67, respectively, are grouped into categories that do not correspond with the categories in WCC 20.80.100(1), which sets permitted uses and building sizes in each use category in each Rural Community (Type I LAMIRD) area. The proposed amendment would reorganize the lists of uses in categories that are consistent with 20.80.100(1).

10. The definition of “park model trailer” in WCC 20.97.292 sets a maximum gross trailer area of 400 square feet, consistent with state law (RCW 46.04.622). Staff has found there is occasionally confusion of the appropriate permitting of a park model that may be interpreted to be larger than 400 square feet (if it is interpreted to be a “recreational vehicle” it can be permitted in different locations). Washington State Department of Labor and Industries approves trailers including park models with an insignia. The proposed amendment would add clarity to the definition by adding another criterion, that the trailer is approved by the State as a park model trailer.

11. Notification requirements for zoning amendments, WCC 20.90.045, mention the Blaine Airport, which no longer exists. The proposed amendment would delete the outdated wording.

12. WCC 20.36.159(8), 20.40.161(6), and WCC 20.73.702(2), pertaining to surface mining standards contain an incorrect reference to rules related to wellhead protection boundaries. The propose amendment would correct the reference.

13. The size standard for buildings within a Rural Business designations (Type III LAMIRD) in the Rural General Commercial (RGC), Neighborhood Commercial (NC), Tourist Commercial (TC), and Rural Industrial and Manufacturing (RIM) districts (WCC Chapters 20.59, 20.60, 20.63, and 20.69, respectively) set a maximum allowable floor area of 7,000 square feet. Though not specified in code, staff interprets that this standard is for
each building, not for a cumulative total of all buildings. The proposed amendment would clarify that the maximum allowable floor area is 7,000 per building.

14. The minimum lot width and depth table in the Residential Rural (RR), Residential Rural-Island (RRI), and Rural (R) districts set the minimum lot width of 300 feet at the street line. Staff has interpreted this standard to apply to newly created lots and not existing lots being modified through a boundary line adjustment process, many of which are smaller, existing nonconforming lots. The proposed amendment would add a note clarifying that the width at street line standards do not apply to lots being modified through boundary line adjustment.

15. The definition of Kennel in WCC 20.97.191 includes housing, grooming, breeding, boarding, training, or sale of five or more household pets. Because these activities are listed with an "or", a facility with any one of those activities could be considered a kennel under the current definition. The Merriam-Webster Dictionary defines a kennel as "an establishment for the breeding or boarding of dogs or cats." The proposed amendment would clarify the code's definition, limiting the activities to housing, breeding, or boarding, which is more consistent with the traditional function of kennels.

16. Mobile Home Parks or Recreational Vehicle Parks are listed as conditional uses in the Urban Residential Mixed (URMX), Tourist Commercial (TC), and Resort Commercial (RC) districts (WCC Chapters 20.24, 20.63, and 20.64, respectively). The development standards for Mobile Home Parks and Recreational Vehicle Parks are located in a different chapter, WCC 20.80.950, and there is currently no indication to the reader that there are standards, or where they are located. The proposed amendment would add a reference to the standards in WCC 20.80.950.

17. WCC 20.84.220 sets criteria for approving variances, conditional use permits, and administrative approval permits. The current wording implies that the criteria apply only to conditional use permits considered by the Hearing Examiner, when in fact they also apply to administrative approval uses, which are considered by the zoning administrator (County staff). The proposed amendments correct the language to apply the criteria to the other types of permit approval processes in addition to conditional use permits.

18. When the wording in WCC 20.84.260 was adopted, it included time limits for applications submitted prior to the change in code. Those time frames have now passed and those applications are either completed or expired, making the time limits unnecessary. The proposed amendment deletes the outdated deadlines.

19. WCC 20.13.120(8), the application requirements for wireless
communication facilities, requires information on the facilities the applicant anticipates locating in Whatcom County in the next five years. This requirement is no longer appropriate due to a change in Federal Communications Commission regulations. The proposed amendment removes the unneeded requirement.

20. WCC 20.13.040, which describes permitted wireless communication uses, requires the uses to comply with federal, state, and local laws and regulations and the provisions of Chapter 20.13. The chapter contains requirements for application submittals but there have been questions about whether those requirements apply. The proposed amendment would add wording clarifying that a proposed wireless communication use is subject to the application requirements of WCC 20.13.120.

21. WCC 20.80.230 provides standards for determining setback requirements for buildings on a lot. The section refers to “roads” throughout, except for one reference to “streets” in subsection (3), which can cause confusion in interpretation because WCC lacks a definition for “street.” The proposed amendment replaces “streets” with “roads” in WCC 20.80.230(3).

22. The definition of “road classification” in WCC 20.97.353 refers to a “Right of Way Reference Document,” which does not exist. The proposed amendment corrects the definition to refer to the Whatcom County Development Standards.

23. WCC 20.84.100 enables the Hearing Examiner to grant a variance from the provisions of the zoning code and of WCC Title 22, the Guide Meridian Improvement Plan. The latter was repealed with the adoption of the 2016 Whatcom County Comprehensive Plan update, Ordinance 2016-035. The proposed amendment would delete the outdated reference.

24. Whatcom County has received grant funding to install tsunami warning sirens on Lummi Island and in the Birch Bay area. WCC 20.82.020 lists public utility uses that are permitted in all zones, including include electrical and telephone poles, and electrical power line towers and wires, but there is no specific provision for poles or towers that would house a speaker for a tsunami or lahar warning system. In addition, the code is silent on whether these poles are subject to height requirements in the zones where they are located. The proposed amendment would add specific language listing “military and federal, state and local government communications facilities used for emergency and public safety purposes” among the permitted public utility uses. Further, it would clarify that the height of these facilities – along with electrical and telephone poles, and power line towers and wires – are not subject to building height requirements, provided the proposed height is shown to be the minimum necessary.
25. WCC Title 20 Zoning uses the term "animal husbandry" in describing permitted uses in several residential, rural, and resource zoning districts, generally in conjunction with agricultural uses (see WCC 20.20.053, 20.32.054, 20.34.052, 20.36.052, 20.40.051, 20.42.052, 20.51.099, 20.20.65.057, 20.71.219). The code lacks a definition of "animal husbandry," leaving the term open to differing interpretations. The proposed amendment would add a definition of "animal husbandry" that is based on standard dictionary definitions and clarifies the term's application to domestic farm animals that are a component of, or accessory to an agricultural use.

26. WCC 20.40.252, which sets minimum lot width and depth using a ratio of 1 to 5 currently requires a minimum ratio of 1 unit in "length" to 5 units in width, which appears to be the reverse of what was intended. The proposed amendment corrects the ratio requirement and replaces "length" with "depth" (consistent with the rest of the 20.40.252) to require standard to require a minimum ratio of 1 units in width to 5 units in depth.

27. The definition of "structure" in WCC 20.97.432 uses the phrase "an edifice or building of any kind" though, according to dictionary definitions, "edifice" and "building" are largely synonymous. The proposed amendment would eliminate the redundant term "edifice."

28. The minimum setback limits in WCC 20.80.210 allow roof overhangs to extend no further than 18 inches into side or rear yard setbacks, or 6 feet into front setbacks. Previous versions of the code made it clear this provision applied to all zoning districts, but a subsequent revision placed the provision in the notes under the setback tables in subsection (5)(b), where it is not clear that it applies to all zoning districts. The proposed amendment would move the roof overhang provisions to a single place in subsection (5)(a) Setback Requirements of All Districts.
CONCLUSIONS

1. The amendments to the zoning code are the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

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

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown on Exhibits A through V.

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

Civil Deputy Prosecutor

______________________________
Jack Louws, Executive

Date: ________________________

Page 6 of 6
Whatcom County
Planning & Development Services
Staff Report

Zoning Code Amendments

I. BACKGROUND INFORMATION

File # PLN2014-00009

File Name: Zoning Code Amendments

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Amend Whatcom County Code (WCC) Title 20 Zoning to make a series of clarifications, updates and corrections.

Location: County-wide.

Staff Recommendation: Approval. The amendments are necessary to add clarity to development regulations and procedures, and to keep the code up to date.

Background
From time to time, the County adopts a series of small code amendments to improve unclear wording or procedures, or to correct errors or outdated text. The following section contains brief discussions of each of the proposed amendments.

II. CODE AMENDMENTS

Exhibit A (Correcting Lot Consolidation Reference)
WCC 20.83.072, which provides the formula for the number of lots permitted by lot consolidation, incorrectly refers to itself rather than the following subsection, which was intended. The proposed amendment would correct the reference.

Exhibit B (Updating Reference to International Building Code)
The definition of “building” in WCC 20.97.035 refers to the Uniform Building Code, which has since changed to the International Building Code. The proposed amendments would correct the reference.
Exhibit C (Reclassifying Uses in Rural Industrial and Manufacturing (RIM) and General Manufacturing (GM) Districts)
Permitted, administrative, and conditional uses listed in the Rural Industrial and Manufacturing (RIM) and General Manufacturing (GM) Districts -- WCC Chapters 20.69 and 20.67, respectively, are grouped into categories that do not correspond with the categories in WCC 20.80.100(1), which sets permitted uses and building sizes in each use category in each Rural Community (Type I LAMIRD) area. The proposed amendment would reorganize the lists of uses in categories that are consistent with 20.80.100(1).

Exhibit D (Clarifying Definition of Park Models)
The definition of “park model trailer” in WCC 20.97.292 sets a maximum gross trailer area of 400 square feet, consistent with state law (RCW 46.04.622). Staff has found there is occasionally confusion of the appropriate permitting of a park model that may be interpreted to be larger than 400 square feet (if it is interpreted to be a “recreational vehicle” it can be permitted in different locations). Washington State Department of Labor and Industries approves trailers including park models with an insignia. The proposed amendment would add clarity to the definition by adding another criterion, that the trailer is approved by the State as a park model trailer.

Exhibit E (Deleting Reference to Blaine Airport)
Notification requirements for zoning amendments, WCC 20.90.045, mention the Blaine Airport, which no longer exists. The proposed amendment would delete the outdated wording.

Exhibit F (Correcting Outdated References in Surface Mining Standards)
WCC 20.36.159(8), 20.40.161(6), and WCC 20.73.702(2), pertaining to surface mining standards contain an incorrect reference to rules related to wellhead protection boundaries. The propose amendment would correct the reference.

Exhibit G (Clarifying Maximum Building Size)
The size standard for buildings within a Rural Business designations (Type III LAMIRD) in the Rural General Commercial (RGC), Neighborhood Commercial (NC), Tourist Commercial (TC), and Rural Industrial and Manufacturing (RIM) districts (WCC Chapters 20.59, 20.60, 20.63, and 20.69, respectively) set a maximum allowable floor area of 7,000 square feet. Though not specified in code, staff interprets that this standard is for each building, not for a cumulative total of all buildings. The proposed amendment would clarify that the maximum allowable floor area is 7,000 per building.

Exhibit H (Clarifying Road Frontage Requirements)
The minimum lot width and depth table in the Residential Rural (RR), Residential Rural-Island (RRI), and Rural (R) districts set the minimum lot width of 300 feet at the street line. Staff has interpreted this standard to apply to newly created lots and not existing lots being modified through a boundary line adjustment process, many of
which are smaller, existing nonconforming lots. The proposed amendment would add a note clarifying that the width at street line standards do not apply to lots being modified through boundary line adjustment.

**Exhibit I (Clarifying Kennel Definition)**
The definition of Kennel in WCC 20.97.191 includes housing, grooming, breeding, boarding, training, or sale of five or more household pets. Because these activities are listed with an “or”, a facility with any one of those activities could be considered a kennel under the current definition. The Merriam-Webster Dictionary defines a kennel as “an establishment for the breeding or boarding of dogs or cats.” The proposed amendment would clarify the code’s definition, limiting the activities to housing, breeding, or boarding, which is more consistent with the traditional function of kennels.

**Exhibit J (Adding References to Mobile Home Park and Recreational Vehicle Park Standards)**
Mobile Home Parks or Recreational Vehicle Parks are listed as conditional uses in the Urban Residential Mixed (URMX), Tourist Commercial (TC), and Resort Commercial (RC) districts (WCC Chapters 20.24, 20.63, and 20.64, respectively). The development standards for Mobile Home Parks and Recreational Vehicle Parks are located in a different chapter, WCC 20.80.950, and there is currently no indication to the reader that there are standards, or where they are located. The proposed amendment would add a reference to the standards in WCC 20.80.950.

**Exhibit K (Clarifying Application of Use Criteria)**
WCC 20.84.220 sets criteria for approving variances, conditional use permits, and administrative approval permits. The current wording implies that the criteria apply only to conditional use permits considered by the Hearing Examiner, when in fact they also apply to administrative approval uses, which are considered by the zoning administrator (County staff). The proposed amendments correct the language to apply the criteria to the other types of permit approval processes in addition to conditional use permits.

**Exhibit L (Updating Notification Requirements for Conditional Use Permit Expiration)**
When the wording in WCC 20.84.260 was adopted, it included time limits for applications submitted prior to the change in code. Those time frames have now passed and those applications are either completed or expired, making the time limits unnecessary. The proposed amendment deletes the outdated deadlines.

**Exhibit M (Updating Requirement for Wireless Communication Facility Application)**
WCC 20.13.120(8), the application requirements for wireless communication facilities, requires information on the facilities the applicant anticipates locating in Whatcom
County in the next five years. This requirement is no longer appropriate due to a change in Federal Communications Commission regulations. The proposed amendment removes the unneeded requirement.

Exhibit N (Adding a Reference to Wireless Application Requirements)
WCC 20.13.040, which describes permitted wireless communication uses, requires the uses to comply with federal, state, and local laws and regulations and the provisions of Chapter 20.13. The chapter contains requirements for application submittals but there have been questions about whether those requirements apply. The proposed amendment would add wording clarifying that a proposed wireless communication use is subject to the application requirements of WCC 20.13.120.

Exhibit O (Clarifying Setback Standards From a Road)
WCC 20.80.230 provides standards for determining setback requirements for buildings on a lot. The section refers to “roads” throughout, except for one reference to “streets” in subsection (3), which can cause confusion in interpretation because WCC lacks a definition for “street.” The proposed amendment replaces “streets” with “roads” in WCC 20.80.230(3).

Exhibit P (Updating Reference to Development Standards)
The definition of “road classification” in WCC 20.97.353 refers to a “Right of Way Reference Document,” which does not exist. The proposed amendment corrects the definition to refer to the Whatcom County Development Standards.

Exhibit Q (Deleting Reference to Guide Meridian Improvement Plan)
WCC 20.84.100 enables the Hearing Examiner to grant a variance from the provisions of the zoning code and of WCC Title 22, the Guide Meridian Improvement Plan. The latter was repealed with the adoption of the 2016 Whatcom County Comprehensive Plan update, Ordinance 2016-035. The proposed amendment would delete the outdated reference.

Exhibit R (Clarifying Emergency Communications Facilities and Their Maximum Heights in Public Utilities)
Whatcom County has received grant funding to install tsunami warning sirens on Lummi Island and in the Birch Bay area. WCC 20.82.020 lists public utility uses that are permitted in all zones, including include electrical and telephone poles, and electrical power line towers and wires, but there is no specific provision for poles or towers that would house a speaker for a tsunami or lahar warning system. In addition, the code is silent on whether these poles are subject to height requirements in the zones where they are located. The proposed amendment would add specific language listing “military and federal, state and local government communications facilities used for emergency and public safety purposes” among the permitted public utility uses. Further, it would clarify that the height of these facilities – along with electrical and
telephone poles, and power line towers and wires – are not subject to building height requirements, provided the proposed height is shown to be the minimum necessary.

Exhibit S (Adding a Definition of Animal Husbandry)
WCC Title 20 Zoning uses the term “animal husbandry” in describing permitted uses in several residential, rural, and resource zoning districts, generally in conjunction with agricultural uses (see WCC 20.20.053, 20.32.054, 20.34.052, 20.36.052, 20.40.051, 20.42.052, 20.51.099, 20.20.65.057, 20.71.219). The code lacks a definition of “animal husbandry,” leaving the term open to differing interpretations. The proposed amendment would add a definition of “animal husbandry” that is based on standard dictionary definitions and clarifies the term’s application to domestic farm animals that are a component of, or accessory to an agricultural use.

Exhibit T (Clarifying Lot Width and Depth Standards in the Agriculture (AG) District)
WCC 20.40.252, which sets minimum lot width and depth using a ratio of 1 to 5 currently requires a minimum ratio of 1 unit in “length” to 5 units in width, which appears to be the reverse of what was intended. The proposed amendment corrects the ratio requirement and replaces “length” with “depth” (consistent with the rest of the 20.40.252) to require standard to require a minimum ratio of 1 units in width to 5 units in depth.

Exhibit U (Clarifying the Definition of Structure)
The definition of “structure” in WCC 20.97.432 uses the phrase “an edifice or building of any kind” though, according to dictionary definitions, “edifice” and “building” are largely synonymous. The proposed amendment would eliminate the redundant term “edifice.”

Exhibit V (Clarifying Roof Overhang Limits)
The minimum setback limits in WCC 20.80.210 allow roof overhangs to extend no further than 18 inches into side or rear yard setbacks, or 6 feet into front setbacks. Previous versions of the code made it clear this provision applied to all zoning districts, but a subsequent revision placed the provision in the notes under the setback tables in subsection (5)(b), where it is not clear that it applies to all zoning districts. The proposed amendment would move the roof overhang provisions to a single place in subsection (5)(a) Setback Requirements of All Districts.

III. COMPREHENSIVE PLAN EVALUATION
The proposed amendments are consistent with Comprehensive Plan’s Goal 2D to “Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”
IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to Whatcom County Code (WCC) Title 20 Zoning to make corrections, updates, and clarifications.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April __, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on March 24, 2017.


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28. The minimum setback limits in WCC 20.80.210 allow roof overhangs to extend no further than 18 inches into side or rear yard setbacks, or 6 feet into front setbacks. Previous versions of the code made it clear this provision applied to all zoning districts, but a subsequent revision placed the provision in the notes under the setback tables in subsection (5)(b), where it is not clear that it applies to all zoning districts. The proposed amendment would move the roof overhang provisions to a single place in subsection (5)(a) Setback Requirements of All Districts.

V. PROPOSED CONCLUSIONS

1. The amendments are the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VI. RECOMMENDATION

Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

ATTACHMENTS

A. Draft code amendments, Exhibits A through V
EXHIBIT A
(CORRECTING LOT CONSOLIDATION REFERENCE)

Chapter 20.83
NON-CONFORMING USES AND PARCELS

.....

20.83.070 Lot Consolidation

.....

20.83.072
The following formula shall be used to determine the maximum number of lots which shall be permitted by the consolidation of substandard lots. This formula is not applicable to satisfying the requirements of Chapter 20.89 WCC.

The total area of all lots subject to consolidation under this section shall be added together and the sum divided by the minimum noncluster lot size for the zoning district. The whole number quotient shall be the maximum number of lots; provided, that an additional lot shall be allowed if the quotient contains a fraction of 0.5 or more; and provided further, that the number of lots shall not exceed the original number of lots. Parcels recognized as permitted lots under this subsection are not required to obtain administrative approval under WCC 20.83.0732.

.....
EXHIBIT B
(UPDATING REFERENCE TO INTERNATIONAL BUILDING CODE)

Chapter 20.97
DEFINITIONS

20.97.035 Building
"Building" means any structure used or intended for supporting or sheltering any use or occupancy as defined in the Uniform-International Building Code. Mobile homes as defined in this chapter are excluded from this definition.
EXHIBIT C
(RECLASSIFYING USES IN RURAL INDUSTRIAL AND MANUFACTURING (RIM) AND GENERAL MANUFACTURING (GM) DISTRICTS)

Chapter 20.69
RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

20.69.050 Permitted Uses
The following permitted uses shall be allowed subject to an evaluation by the zoning administrator pursuant to the provisions of this chapter and Chapter 20.80 WCC. In a rural community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1). In a rural business designation all uses are permitted.

.051 Manufacturing/fabrication type uses.

(1) Manufacture of miscellaneous textile goods and fabrication of apparel including clothing, hats, caps, millinery fur products; and miscellaneous fabricated textile products.

(2) Fabrication of furniture and fixtures including household, office and public building furniture; and partitions, shelving and lockers.

(3) Fabrication of paper products including paperboard containers, boxes, carryon boxes and paper containers.

(4) Printing and publishing newspapers, periodicals and books; commercial printing; book binding; and manufacture of manifold business forms and greeting cards.

(5) Fabrication of leather products including belting; packing; cut stock and findings for shoes and boots; shoes; footwear; gloves and mittens; luggage; personal leather goods and handbags.

(6) Fabrication of glass products including glass products from prepared materials; stone cutting; and monuments.

(7) Processing and packaging of drug, pharmaceuticals, perfumes, cosmetics, supplements and remedies, when associated with derivatives from local agriculture or other local resources.
(8) Fabrication of electrical equipment including industrial apparatus and household appliances, radio and television sets; communications equipment; electrical components and accessories; and electric lighting equipment and lamps.

(9) Fabrication of instruments, photographic goods, optical goods, watches and clocks, and including engineering, scientific, surgical, medical, dental and ophthalmic products.

(10) Manufacture and fabrication of jewelry, silverware, plated ware, musical instruments and parts, toys, sporting and athletic goods; pens, pencils and other office and artistic supplies; novelties, buttons and notions; and miscellaneous manufacture.

(11) Manufacture, processing, treatment or fabrication of metal products and machinery; provided, that smelters and remelting mills, and the manufacturing of turbines, oil machinery, mining machinery, industrial process ovens, paper, and textile or rolling mill machinery shall be prohibited.

(12) Fabrication of rubber products from finished rubber only and manufacture of miscellaneous plastic products from purchased resins only.

(13) Manufacture of glass, glass products, pottery and related products, and cutting and shaping of stone products.

(14)(2) The processing of agricultural products that originate from the permitted uses in WCC 20.40.050; provided, that the facility is not a mushroom substrate production facility and the facility processes at least 50 percent agricultural goods produced in Whatcom County.

(15)(4) Commercial composting and mulching facilities other than commercial mushroom substrate production facilities as provided for in Chapter 20.15 WCC.

(16)(5) Fabrication, maintenance, repair, storage, service and accessory sales of agricultural implements and farm equipment.

(17)(10) Marijuana production facility.

(18)(11) Marijuana processing facility.

(19)(1) Fabrication, maintenance, repair, service and accessory sales of forestry related items, within the limitations of WCC 20.69.108 and elsewhere as outlined in this chapter.

(20)(4) Log scaling station.

(21)(5) Manufacturing wood products and containers.

(22)(7) Wood waste recycling.
(23)(1) Fabrication, maintenance, service, storage, repair and accessory sales of equipment, vessels, and structures associated with aquatic natural resource industries, within the limitations of WCC 20.69.108 and elsewhere as outlined in this chapter.

(24)(7) Confined feeding operations less than 40 acres.

(25)(2) Aquaculture, including but not limited to management and propagation of fish and wildlife, upland fish farming, seafood and shellfish processing and accessory on-site sales.

(26)(9) Plant nurseries and greenhouses for storage, propagation and culture of plants, including sales as an accessory use.

(27)(6) Operation of sawmills, chippers, shake and shingle mills, scaling stations, log dumps, sorting and storage areas; forest industry equipment maintenance and storage yards, and forest industry residue dumps and other uses involved in the harvesting and primary processing of timber; provided:

(a) The intent of processing is initial reduction in bulk and/or to facilitate transport to secondary processing centers; and

(b) All uses within 1,000 feet of a park, recreation area or zone district other than Rural, Agriculture or Industrial shall be temporary and of less than 12 months’ duration.

.052 Storage/warehouse type uses.

(1) Rail, truck and freight terminals; warehousing and storage; parcel delivery service; freight forwarding; inspection weighing services; and packaging and crating.

(2) Wholesale trade or storage of durable and nondurable goods; provided trade, storage or processing of sulphur shall be prohibited.

(3)(8) Storage and distribution of animal feeds, fertilizers, pesticides and seed.

(4)(2) Forest industry storage and maintenance facility.

.053 Agriculture type uses:

Uses related to agriculture including, but not limited to:

.054 Forestry type uses:

Uses related to forestry including, but not limited to:
.055 Aquatic resources type uses.
Uses related to aquatic resources including, but not limited to, the following:

.056 Construction type uses.

.053 Retail/Office/Restaurant/Lodging type uses. Commercial type uses.

(1) Eating establishments, convenience grocery stores, cafes and gas stations operating primarily for the convenience of employees, clients and customers of the district; providing the following criteria are met:

(a) Maximum floor area of building is 3,000 square feet;

(b) No more than two pump islands for each gas station;

(c) Centrally located within the district to primarily serve the industrial uses of this district and not to primarily serve adjacent nonindustrial uses.

(2) Communications including telephone exchanges, and radio and television stations. Broadcast towers require a conditional use permit pursuant to WCC 20.82.030(5).

(3)(1) Construction contractors' business offices and storage and equipment yards, including the assembly and manufacturing of prefabricated wood building and components.

(4)(1) Commercial operations, except for commercial mushroom substrate production facilities as provided for in Chapter 20.15 WCC, that directly provide agricultural goods or services to farmers. Examples of agricultural commercial operations include, but are not limited to: agricultural parts and implement sales, farm management services, livestock auction facilities, hay sales and storage, sawdust sales and storage, and farm chemical applicator establishments. These operations must abide by the limitations of WCC 20.69.108, and otherwise as outlined in this chapter.

(5)(3) Animal hospital and accessory kennels and stables.

(6)(3) Forestry management services and forest industry support services.

.054 Auto/Equipment Repair type uses.

(1) Reserved
(6) Metal agricultural implement and farm equipment recovery and recycling.

.0558 Public/Community type uses.

(1) Secure community transition facilities for sex offenders, when located outside of the Cherry Point Major Port Industrial Urban Growth Area.

(a) A secure community transition facility shall not be located adjacent to, immediately across the street or parking lot from, or within the line of sight of existing risk potential facilities, which are:

(i) Public schools;

(ii) Private schools;

(iii) School bus stops;

(iv) Licensed day care;

(v) Licensed preschool facilities;

(vi) Public parks;

(vii) Publicly dedicated trails;

(viii) Sports fields;

(ix) Playgrounds;

(x) Recreational and community centers;

(xi) Churches, synagogues, temples or mosques;

(xii) Public libraries;

(xiii) Public and private youth camps; and

(xiv) Other uses identified by the State Department of Social and Health Services pursuant to RCW 71.09.020.

"Within the line of sight" shall mean that it is possible to reasonably visually distinguish and recognize individuals. An unobstructed visual distance of 600 feet shall be considered to be within the line of sight. Line of sight may be considered to be less than 600 feet if the applicant can demonstrate that visual barriers exist or would be created that would visually screen the risk potential facility from the secure community transition facility.

(b) No more than one secure community transition facility, with a maximum of three people (other than staff), shall be located within Whatcom County.
(2) Historic sites open to the public, including natural systems education and/or interpretive areas, and trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

(3) Public community facilities.

20.69.130 Administrative approval uses.
In a rural community designation, uses listed in this section may be administratively permitted pursuant to WCC 20.84.235 if a use of the same type existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1). In a rural business designation, all uses listed in this section may be administratively permitted.

The zoning administrator may administratively permit other uses similar in nature to the permitted uses listed in WCC 20.69.050 or this section that the zoning administrator determines to be consistent with the purpose and intent of the district, have similar effects on surrounding land uses, and can meet the performance standards for this district.

.131 Manufacturing/Fabrication type uses.
(1) Packinghouses and slaughterhouses, provided the following criteria are met:
   (a) Holding pens associated with packinghouses and slaughterhouses shall be limited to those necessary to accommodate animals intended for processing within 24 hours.
   (b) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered by the Whatcom County health department as adopted by reference in Chapter 24.06 WCC.
   (c) If required by the Washington State Department of Ecology, the following permits shall be obtained:
      (i) State waste discharge permit (Chapter 173-216 WAC);
      (ii) Industrial stormwater permit – general permit (Chapter 173-226 WAC);
      (iii) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

.132 Storage/Warehouse type uses.
(1) Temporary storage of moved buildings including manufactured homes, provided storage is:
   (a) Only for periods less than 12 months’ duration; and
(b2) Limited with no work or maintenance done to the structure while in storage; and

(c3) Limited further with no structure used for any other use than to be temporarily stored on site.

(2)-133 Storage or salvage of unlicensed/inoperable vehicles if done in compliance with Chapter 46.80 RCW.

20.69.150 Conditional uses.
Unless otherwise provided herein, conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.84 WCC (Variances, Conditional Uses and Appeals). In a rural community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1). In a rural business designation, all uses may be conditionally permitted.

.151 Manufacturing/fabrication type uses.

(1) Manufacture, batching and recycling of hydraulic cement, concrete gypsum and plaster products, abrasive asbestos, sand, and miscellaneous nonmetallic mineral products.

(2) Petroleum products and gas storage – bulk.

(3) Confined feeding operations greater than 40 acres.

.152 Auto/Equipment RepairCommercial type uses.

(1) Repair, service and accessory sales for motor vehicles provided the use or uses are not expected to generate significantly more traffic than that which would ordinarily be expected by an industrial use of comparable intensity.

.153 Public/Community type uses.

(1) Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

(2) Trailheads with parking areas for more than 30 vehicles.

(3) Athletic fields.

(4) Intermediate passenger intermodal terminals.

(5) State education facilities.
(6) Type I solid waste handling facilities.

(7) Type II solid waste handling facilities.

(8) Type III solid waste handling facilities; provided, that:

(a) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at least three feet in elevation higher than the floodway elevation;

(b) Solid waste handling facilities shall be located at least 1,500 feet from the following:

(i) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

(ii) Public parks, public recreation areas, or publicly owned wildlife areas;

(iii) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

(iv) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(v) Rivers, streams or creeks that contain documented threatened or endangered fish species;

(vi) This 1,500-foot buffer does not apply to:

(A) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(B) Inert landfills;

(c) Inert landfills shall be located at least 500 feet from the following:

(i) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

(ii) Public parks, public recreation areas, or publicly owned wildlife areas;

(iii) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

(iv) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(v) Rivers, streams or creeks that contain documented threatened or endangered fish species;
(vi) This 500-foot buffer does not apply to:

(A) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(d) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;

(e) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;

(f) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites; and

(g) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the closure plan includes:

(i) Reclamation in two- to 10-acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and

(ii) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;

(h) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);

(i) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system’s delineated wellhead protection area;

(j) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property;

(k) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to protect the value and enjoyment of existing adjacent uses.
(9) Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.

Other uses:

... . . . .

Chapter 20.67
GENERAL MANUFACTURING (GM) DISTRICT

20.67.050 Permitted uses.
Unless otherwise provided herein, permitted, accessory and conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC (Supplementary Requirements) and Chapter 20.84 WCC (Variances, Conditional Uses and Appeals), the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program.
In a rural community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1). In a rural business designation all uses are permitted.

.051 Manufacturing/fabrication type uses.

(1) The manufacture and processing of food including meat, dairy, fruit, vegetable, seafood, bakery and beverage products.

(2) Fabrication of apparel including clothing, hats, caps, millinery, fur products; and miscellaneous fabricated textile products.

(3) Fabrication of furniture and fixtures including household, office and public building furniture; and partitions, shelving and lockers.

(4) Fabrication of paper products including paperboard containers, boxes, carryon boxes and paper containers.

(5) Printing and publishing newspapers, periodicals and books; commercial printing; book binding; and manufacture of manifold business forms and greeting cards.

(6) Fabrication of leather products including belting; packing; cut stock and findings for shoes and boots; shoes; footwear; gloves and mittens; luggage; personal leather goods and handbags.

(7) Fabrication of stone, clay and glass products including glassware; glass products from prepared materials; pottery and related products; stone cutting; monuments; and manufacture of fiberglass products.
(8) The manufacture of transportation equipment including boat building; and bicycle and motorcycles, and related parts.

(9) Processing and packaging of drugs, pharmaceuticals, perfumes, cosmetics, supplements, remedies, or similar types of products.

(10) Fabrication of electrical equipment including radio and television sets; communications equipment; electronic components and accessories; and electric lighting equipment and lamps.

(11) Fabrication of instruments, photographic goods, optical goods, watches and clocks, and including engineering, scientific, surgical, medical, dental and ophthalmic products.

(12) Manufacture and fabrication of jewelry, silverware, plated ware, musical instruments and parts, toys, sporting and athletic goods; pens, pencils and other office and artistic supplies; novelties, buttons and notions; and miscellaneous manufacture.

(13) Manufacture of office, computing and accounting machines.

(14) Retail automobile wrecking yards where determined by the zoning administrator to be adequately screened from adjacent properties and streets.

(15) The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing fixtures, structural metals, screws and bolts, and stamping.

(16) The manufacture of machinery including engines; turbines, farm machinery and equipment; construction, mining and materials handling equipment; machine tools and dies; and special and general industrial equipment.

(17) The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

(18) Manufacture of millwork and structural wood members; wood containers; wood buildings and mobile homes; resawed cants and lumbers; dressed ceiling lumber; lath; snow fence lath; cut stock; dressed lumber flooring and dressed lumber siding; and sawmill activities including sawmills; and independent planing mills.

| 19) Construction contractors including general building, heavy construction and special trade. |
| 052 Storage/warehousing/transfer-type uses. |
| 20) Rail, truck and freight terminals, warehousing and storage; parcel delivery service, freight forwarding; inspection and weighing service; and packing and crating. |
.053 Construction-type uses.

.054 Wholesaling-type uses.

(21)(t) Wholesale trade of durable and nondurable goods including automotive parts and supplies; tires and tubes; furniture and home furnishings; lumber and other construction materials; sporting goods, toys and hobby goods; metal service centers and offices; electrical goods; hardware, plumbing and heating equipment; machinery, equipment and supplies; jewelry, watches and precious stones; other durable goods; paper and paper products; drugs, proprietaries and sundries; apparel, piece goods and notions; groceries and related products; beer, wine and distilled beverages; and miscellaneous nondurable goods; automotive wrecking scraps; bag reclaiming; waste bottles; waste boxes; fur cuttings and scraps; iron and steel scrap; general line of junk scrap; nonferrous metals scrap; rags; and waste paper.

.0525 Public/Community type uses.

(1) Public uses and community facilities including police and fire stations, libraries, activity centers, community centers, park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar noncommercial uses, excluding state education facilities and correction facilities.

(2) Other uses similar in nature to the uses listed above which are consistent with the purpose and the intent of the district, have similar effects on surrounding land uses, and can meet the performance standards for this district.

(3) Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

.0536 Retail/Office/Restaurant/LodgingCommercial type uses.

(1) Eating establishments, convenience grocery stores, vehicle washes and facilities, and gas stations operating primarily for the convenience of employees, clients and customers of the district; providing the following criteria are met:

(a) Maximum floor area is 2,500 square feet per use;

(b) No more than two pump islands for each gas station;

(c) Centrally located within the district to primarily serve the uses of this district and not to primarily serve the uses in adjacent Residential, Rural, or Commercial Zone Districts.

20.67.100 Accessory uses.

.101 Employee recreation facilities and play areas.

.102 Deleted by Ord. 95-009.
.103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

.104 Testing and experimentation in connection with a principally permitted use.

.105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

.106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.107 Mini-day care centers and day care centers operated by, maintained by or funded by business in the district for the purpose of serving the child care needs of employees whose place of employment lies within this zone district.

.108 Retail trade of merchandise manufactured, assembled or stored on site within the definition of accessory uses as defined in Chapter 20.97 WCC; provided retail facilities do not exceed 15 percent of the total floor area of all buildings located on site.

.109 Electric vehicle rapid charging stations and battery exchange facilities, accessory to gas stations.

.110 One storage building per lot; provided, that the storage building shall not exceed the exempt criteria stated in the current code as adopted and amended per WCC Title 15, Buildings and Construction, and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

20.67.130 Administrative approval uses.
.131 The zoning administrator may administratively permit pursuant to WCC 20.84.235 other uses similar in nature to the permitted uses listed in WCC 20.67.050 that the zoning administrator determines to be consistent with the purpose and intent of the district, have similar effects on surrounding land uses, and can meet the performance standards for this district.

20.67.150 Conditional uses.
In a rural community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1). In a rural business designation all uses listed below may be conditionally permitted.

| .151 Public/CommunityRecreational type uses. |

(1) Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

(2) Trailheads with parking areas for more than 30 vehicles.
(3) Athletic fields.

(4) State education facilities.

(5) Type I solid waste handling facilities.

(6) Type II solid waste handling facilities.

(7) Type III solid waste handling facilities; provided, that:

(a) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at least three feet in elevation higher than the floodway elevation;

(b) Solid waste handling facilities shall be located at least 1,500 feet from the following:

(i) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

(ii) Public parks, public recreation areas, or publicly owned wildlife areas;

(iii) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

(iv) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(v) Rivers, streams or creeks that contain documented threatened or endangered fish species;

(vi) This 1,500-foot buffer does not apply to:

(A) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(B) Inert landfills;

(c) Inert landfills shall be located at least 500 feet from the following:

(i) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

(ii) Public parks, public recreation areas, or publicly owned wildlife areas;

(iii) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
(iv) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(v) Rivers, streams or creeks that contain documented threatened or endangered fish species;

(vi) This 500-foot buffer does not apply to:

(A) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(d) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;

(e) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;

(f) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites;

(g) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the closure plan includes:

(i) Reclamation in two- to 10-acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and

(ii) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;

(h) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);

(i) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system’s delineated wellhead protection area;

(j) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured
from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property; and

(k) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to protect the value and enjoyment of existing adjacent uses.

| .153 Other uses: |

| (g+) Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC. |
EXHIBIT D
(CLARIFYING DEFINITION OF PARK MODELS)

Chapter 20.97
DEFINITIONS

20.97.292 Park model trailer.
"Park model trailer" means a trailer designed to provide seasonal or temporary living quarters which may be used with temporary connections to utilities necessary for operation of installed fixtures and appliances. It has a gross trailer area not exceeding 400 square feet or is approved by the State as a park model trailer.

20.97.335 Recreational vehicle.
"Recreational vehicle" means a motor vehicle, or portable structure capable of being transported on the highways by a motor vehicle, that is designed and intended for casual or short-term human occupancy for travel, recreational and vacation uses without a permanent foundation; identified by a model number (RV), serial number and vehicle registration number; equipped with limited water storage and other self-contained living facilities. For the purposes of these regulations, the term "recreational vehicle" shall include self-contained campers, motor homes and travel trailers and shall not include park model trailers, as they are not self-contained units.
EXHIBIT E
(DELETING REFERENCE TO BLAINE AIRPORT)

Chapter 20.90
AMENDMENTS

20.90.045 Notice for Quasi-Judicial Rezones

Notice of quasi-judicial hearings conducted by the planning commission for zoning map amendments shall be issued in accordance with all of the following provisions:

(1) Notice shall be published once in the official county newspaper at least 10 days prior to the hearing. The county shall prepare the notice and the applicant shall pay for the notice.

(2) Notice shall be mailed to property owners as follows:

(a) For zoning map amendments within existing urban growth areas: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above-referenced property owners.

(b) For zoning map amendments outside existing urban growth areas: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above-referenced property owners.

(c) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above-referenced property owners.

(d) For zoning map amendments that involve rezoning property to a Mineral Resource Land designation: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above referenced property owners.
(3) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 days prior to the hearing.

(4) The county shall send notice to the appropriate city, when the proposed rezone is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed rezone at least 10 days prior to the hearing.

(5) For sites within 4,500 feet of the runway of Blaine Municipal Airport, Lynden Airport or Floathaven Sea Plane Base: At least 10 days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.

(6) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.

(7) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be invited to submit written comments and attend the hearing to provide oral comments.

...
EXHIBIT F
(CORRECTING OUTDATED REFERENCES IN SURFACE MINING STANDARDS)

Chapter 20.36
RURAL (R) DISTRICT

20.36.150 Conditional Uses

20.36.159 Surface mining and accessory washing and sorting outside of urban growth areas; provided, that:

(1) The activity is not subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW).

(2) The activity will not result in excavation or equipment within 50 feet of county road rights-of-way.

(3) The activity will not result in excavation or equipment within 50 feet of the exterior property lines of the site, except in the case of two contiguous operations in which case by mutual consent this setback can be zero.

(4) Reclaimed side slopes shall not be steeper than three feet horizontal to one foot vertical for unconsolidated materials.

(5) At minimum, the operations shall adhere to the development and performance standards of WCC 20.73.650 and 20.73.700.

(6) All topsoil remains on site for use in subsequent reclamation.

(7) No soil erosion or sedimentation will occur beyond the exterior property lines of the site.

(8) No excavation shall occur within the five-year zone of contribution for designated wellhead protection areas. Excavations may occur within the 10-year zone of contribution outside of the five-year zone of contribution if they are not within 10 vertical feet of the seasonal high water table. Wellhead protection boundaries may be adjusted in accordance with -WCC 20.73.153(2)WCC 20.73.131(2).

(9) A cumulative maximum of three acres may be mined within the outer boundary of the parcel as it existed at the time of adoption of the amendment codified in this subsection. The intent of this provision is to prevent multiple conditional use permits for three-acre surface mines on a single parcel and prevent lots that were
divided from a parent parcel after adoption of the amendment codified in this subsection from each having a three-acre surface mine.

(10) Owners and/or operators shall submit a reclamation plan that is consistent with the requirements of RCW 78.44.141.

(11) Performance bonds or other monetary security as approved by the prosecuting attorney equal to the costs of completing the proposed reclamation plan, subsection (10) of this section, are submitted to the county, which shall be released within two years after completion of surface mining; provided, that reclamation has been completed according to the reclamation plan.

Chapter 20.40
AGRICULTURAL (AG) DISTRICT

20.40.150 Conditional Uses

20.40.161 Surface mining for farm enhancement purposes and accessory sorting; provided, that:

(1) The activity is not subject to Washington State's Surface Mining Act (Chapter 78.44 RCW) and conforms to the following criteria and those of WCC 20.84.220.

(2) The activity will not result in excavation or equipment within 50 feet of county road rights-of-way.

(3) The activity will not result in excavation or equipment within 50 feet of the exterior property lines of the site, except in the case of two contiguous surface mining operations in which case by mutual consent this setback can be zero.

(4) The activity will only remove sand or gravel knolls or ridges and will not excavate below the minimum land elevation of the knoll or ridge being removed. In addition, a cumulative maximum of 15 percent of the parcel area, not to exceed six acres in total, may be mined.

(5) No reclaimed side slopes are steeper than eight percent. An exception to this requirement may be approved under the following circumstances:

(a) The knoll or ridge to be removed extends onto an adjacent parcel; and
(b) The neighboring property owner is not removing their portion of the knoll or ridge; and

(c) A steeper side slope is necessary to enhance farm use adjacent to the slope; and

(d) Reclaimed side slopes shall not exceed 33 percent.

(6) No excavation shall occur within the five-year zone of contribution for designated wellhead protection areas. Excavations may occur within the 10-year zone of contribution outside of the five-year zone of contribution if they are not within 10 vertical feet of the seasonal high water table. Wellhead protection boundaries may be adjusted in accordance with WCC 20.73.153(2) and 20.73.131(2).

(7) Excavations will not occur within five feet of the seasonal high water table level.

(8) At minimum, the operations shall adhere to the development and performance standards of WCC 20.73.650 and 20.73.700.

(9) No soil erosion or sedimentation will occur beyond the exterior property lines of the site.

(10) Excavation activity will commence and conclude within four years.

(11) The conditional use permit application includes proposed days-of-the-week operation and hours-of-the-day operations. The hearing examiner may limit any operation as to days and hours of operation.

(12) Owners shall submit a reclamation plan with their application to the county providing for:

(a) Stockpiling all topsoil for subsequent use during reclamation.

(b) Topsoil protection by seeding with a cover-crop immediately after it is stockpiled.

(c) Time limits on topsoil storage not to exceed four years.

(d) Limitations on handling topsoil in wet conditions.

(e) Sequential reclamation in less than three-acre increments per parcel.

(f) Measures for restoring soil texture, structure, and organic matter by sub-soiling, fertilization, crop scheduling, and weed control.

(g) Review and approval by the Whatcom County Conservation District.
(h) Protection of ground water during preparation of the soils for post-agricultural use.

(i) Pertinent use of best management practices or guidelines. As a minimum, this should include "Agriculture and the Aggregate Industry," by Mackintosh, E.E. and E.J. Mozuraitus, from the Ontario Ministry of Natural Resources, 1982.

(13) Performance bonds or other monetary security as approved by the prosecuting attorney equal to the costs of completing the proposed reclamation plan, subsection (12) of this section, are submitted to the county, which shall be released within two years after completion of surface mining; provided, that reclamation has been completed according to the reclamation plan.

(14) When mining operations are proposed within or adjacent to the 100-year floodplain, the applicant must also obtain a flood permit from the county.

*****

Chapter 20.73
MINERAL RESOURCE LANDS SPECIAL DISTRICT (MRL)

*****

20.73.702 Surface mining operations within critical aquifer recharge areas. The purpose of this section is to protect critical aquifer recharge areas as required by RCW 36.70A.060(2). Any surface mining operation within a critical aquifer recharge area (as defined in the Critical Areas Ordinance and to include any designated well head protection area) shall meet the following requirements:

(1) Surface mining operations may not excavate within 300 horizontal feet from any pre-existing well used as a potable water supply.

(2) No new mineral processing or mining support activities or facilities to include parking, storage, maintenance, fueling and washing of mobile equipment, fuel storage, and no newly situated stationary and semimobile equipment shall locate or occur within the five-year zone of contribution for designated well head protection areas. Well head protection boundaries may be adjusted in accordance with WCC 20.73.153(2)WCC-20.73.131(2).

(3) Fencing, or some comparable deterrent, shall be installed to prevent unauthorized dumping of any materials within surface mining operations.

(4) Surface mines shall not use any off-site materials for backfill or reclamation without first acquiring either a grade and fill permit or a landfill permit from the county as deemed appropriate by the administrator. Any fill material must be nonnoxious, nontoxic, nonflammable, and noncombustible.
(5) Parking, storage, maintenance, fueling, and washing of mobile equipment, fuel storage and all newly situated stationary and semimobile equipment shall be located at least 100 feet away from any exposed water table, and

(a) At least 20 feet above the seasonal high ground water level, or

(b) Located upon unexcavated land, or

(c) Located within lines and bermed areas with adequate capacity to accommodate, contain, and allow the removal of chemical spills; provided, that these provisions shall not apply to dredging equipment.

(6) Fuel tanks and oil drums shall be double containment construction or protected by bermed areas having adequate capacity to accommodate, contain, and allow the removal of chemical spills. Fuel nozzles shall not contain locking open devices. Fuel storage shall be above ground.

(7) All operations shall maintain a fuels/hazardous waste management plan maintained by the operator and available on the site at all times.

(8) On-site truck and equipment wash runoff shall be routed to retention facilities equipped with an oil-water separator or equivalent prior to its release to settling ponds.

Noncontaminated process water used for gravel washing shall be routed to settling ponds to minimize off-site discharges.

(9) An approved general permit from the Department of Ecology for process and stormwater discharge may substitute for requirements (5) through (8) above, unless it is determined based on site specific review that the provisions of (5) through (8) are necessary to meet the intent of this section.

......
EXHIBIT G
(CLARIFYING MAXIMUM BUILDING SIZE)

Chapter 20.59
RURAL GENERAL COMMERCIAL (RGC) DISTRICT

20.59.320 Maximum building size.
.321 In a rural community designation, maximum allowable floor area for a
building shall not exceed the floor area of the largest building of a use of the same
type that existed in that same rural community designation on July 1, 1990, per
WCC 20.80.100(1) except as provided in WCC 20.80.100(2).

.322 In a rural business designation, the maximum allowable floor area for a new
use is 7,000 square feet per building except as provided in WCC 20.80.100(3) and
(4).

Chapter 20.60
NEIGHBORHOOD COMMERCIAL (NC) DISTRICT

20.60.300 Maximum building size.
.301 In a rural community designation, maximum allowable floor area for a
building shall not exceed the floor area of the largest building of a use of the same
type that existed in that same rural community designation on July 1, 1990, per
WCC 20.80.100(1) except as provided in WCC 20.80.100(2).

.302 In a rural business designation, the maximum allowable floor area is 7,000
square feet per building except as provided in WCC 20.80.100(3) and (4).

Chapter 20.63
TOURIST COMMERCIAL (TC) DISTRICT

20.63.700 Performance standards.
The following provisions shall apply to all uses within this district:
.701 There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards, except the storage and dispensing of gasoline in service stations.

.702 There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.

.703 There shall be no emission of dust, dirt, odors, smoke, or toxic gases and fumes.

.704 There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.

.705 Proposed development or redevelopment in Tourist Commercial Zone Districts located within a rural community designation will be consistent with the character of the area on July 1, 1990, in terms of building size, scale, use, or intensity, per WCC 20.80.100(1), except as provided in WCC 20.80.100(2). In a rural tourist designation, development or redevelopment shall be consistent with the Comprehensive Plan policies for that designation. In a rural business designation, the maximum allowable floor area is 7,000 square feet per building except as provided in WCC 20.80.100(3) and (4).

Chapter 20.69
RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

20.69.300 Maximum Building Size.

.301 In a rural community designation, maximum allowable floor area of a building shall not exceed the floor area of the largest building of a use of the same type that existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).

.302 In a rural business designation, the maximum allowable floor area per building is 7,000 square feet except as provided in WCC 20.80.100(3) and (4).
EXHIBIT H
(CLARIFYING ROAD FRON TAGE REQUIREMENTS)

Chapter 20.32
RESIDENTIAL RURAL (RR) DISTRICT

20.32.254 Minimum Lot Width and Depth

<table>
<thead>
<tr>
<th>District</th>
<th>Width at Street Line</th>
<th>Minimum Mean Depth</th>
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</thead>
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<tr>
<td>RR: without public water</td>
<td>300’</td>
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<tr>
<td>RR: with public water and stormwater collection and detention facilities</td>
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<td>30’</td>
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The 'Width at Street Line' standards do not apply to lots being modified through boundary line adjustment (BLA) subject to WCC 21.03.060(2)(f).

Chapter 20.34
RESIDENTIAL RURAL (RR-I) DISTRICT

20.34.253 Minimum Lot Width and Depth

<table>
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<tr>
<th>District</th>
<th>Width at Street Line</th>
<th>Minimum Mean Depth</th>
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</thead>
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<td>70’</td>
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The 'Width at Street Line' standards do not apply to lots being modified through boundary line adjustment (BLA) subject to WCC 21.03.060(2)(f).
### Chapter 20.36
RURAL (R) DISTRICT

#### 20.36.254 Minimum Lot Width and Depth

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<th>District</th>
<th>Width at Street Line Conventional</th>
<th>Cluster (^*)</th>
<th>Width at Bldg. Line</th>
<th>Minimum Mean Depth</th>
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</thead>
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<tr>
<td>R-2</td>
<td>200'</td>
<td>70'</td>
<td>80'</td>
<td>100'</td>
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<td>R-5A</td>
<td>300'</td>
<td>70'</td>
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<td>100'</td>
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<tr>
<td>R-10A</td>
<td>300'</td>
<td>70'</td>
<td>80'</td>
<td>100'</td>
</tr>
</tbody>
</table>

*30’ on a cul-de-sac only

The 'Width at Street Line' standards do not apply to lots being modified through boundary line adjustment (BLA) subject to WCC 21.03.060(2)(f).
EXHIBIT I
(CLARIFYING KENNEL DEFINITION)

Chapter 20.97
DEFINITIONS

20.97.191 Kennel.

"Kennel" means a commercial establishment in which five or more dogs, cats, or other household pets are housed, groomed, bred, or boarded, trained or sold for a fee or compensation. A kennel may include grooming and/or training as accessory uses.
EXHIBIT J
(ADDING REFERENCES TO MOBILE HOME PARK AND RECREATIONAL
VEHICLE PARK STANDARDS)

Chapter 20.24
URBAN RESIDENTIAL MIXED (UR-MX)

20.24.150 Conditional Uses

20.24.155 Mobile Home Parks. See 20.80.950 for Mobile Home and Recreational
Vehicle Park Standards.

Chapter 20.63
TOURIST COMMERCIAL (TC)

20.63.150 Conditional Uses

.153 Restaurant/lodging type uses.

(1) Campgrounds and recreational vehicle parks. See 20.80.950 for Mobile Home
and Recreational Vehicle Park Standards.

Chapter 20.64
RESORT COMMERCIAL (RC)

20.64.150 Conditional Uses
.152 Restaurant/lodging type uses.

(1) Hotels and motels totalling more than 16 sleeping units.

(2) Time share condominiums totalling more than 16 sleeping units.

(3) Campgrounds and recreational vehicle parks. See 20.80.950 for Mobile Home and Recreational Vehicle Park Standards.

.153 Residential type uses.

(1) Multifamily dwellings including residential condominiums totalling more than eight sleeping units.

(2) Mobile home parks. See 20.80.950 for Mobile Home and Recreational Vehicle Park Standards.

(3) Rooming and boarding houses totalling more than eight sleeping units.
EXHIBIT K  
(CLARIFYING APPLICATION OF USE CRITERIA)

Chapter 20.84  
VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

20.84.220 Criteria.  
Before approving an application for a conditional-use permit, the hearing examiner or zoning administrator 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:

(1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County’s Comprehensive Plan and zoning regulations.

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.

(3) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.

(4) Will not be hazardous or disturbing to existing or future neighboring uses.

(5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water 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.

(6) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.

(7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.

(8) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
(9) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.
EXHIBIT L
(UPDATING NOTIFICATION REQUIREMENTS FOR CONDITIONAL USE PERMIT EXPIRATION)

Chapter 20.84
VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

* * * * *

20.84.260 Date of Expiration.
Applications for conditional use permits, variances, expansions of nonconforming uses, administrative approvals, and any other permits provided for in this chapter shall expire one year after filing of the application if the applicant does not pursue completion of the appropriate process within that time by failing to take any action on the application.

Such applications that are presently beyond the one-year anniversary of their filing date will be provided official notice by return receipt mail from the county that they have six months from the date of the receipt of said notice to pursue completion of their application. If they do not complete the actions as indicated on the notice within the specified six-month period, the application will expire.

The hearing examiner shall have the authority to fix a date of expiration of any or all approval, or conditions attached thereto, of conditional use permits, variances or expansions of nonconforming uses.

* * * * *
EXHIBIT M
(UPDATING REQUIREMENT FOR WIRELESS COMMUNICATION FACILITY APPLICATION)

Chapter 20.13
WIRELESS COMMUNICATION FACILITIES

20.13.120 Application Requirements and Conditions of Issuance.
Applicants shall submit the following information in addition to standard application materials:

(1) A scaled site plan clearly indicating the location of the proposed facility, all other structures and uses on the site, adjacent roadways, proposed means of access, parking, existing and proposed landscaping and setbacks from property lines. Elevation drawings of the proposed tower, the equipment structure, existing structure with proposed antenna, fencing, buffering/screening, type of architectural treatment, and any other feature necessary to show compliance with the applicable standards.

(2) Photo-simulations of the proposed facility from adjacent residential properties, public properties and public rights-of-way.

(3) Legal description and ownership of the parcel.

(4) A valid agreement for collocation on an existing WCF support structure or on an existing building or structure; or a location evaluation study as described in subsection (5) of this section.

(5) For new freestanding support structures, a location evaluation study shall be provided as follows:

(a) A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a nonresidential zone.

(b) The applicant shall submit a performance bond or other security acceptable to the county, as described in WCC 20.13.130(4), to cover the future costs of removal of the facility.

(c) A report from a licensed professional engineer documenting that:
(a) The support structure is designed for collocation of other antennas (if applicable).

(b) The antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.

(c) The wireless communications facility complies with all applicable standards of the FCC for such facilities including EMF emission standards, if applicable.

| (8) A projection of the wireless communication facilities which the applicant and/or prospective operator of the facility reasonably anticipate will be sited by his company within Whatcom County during the next five years.

| (89) Proof of license by the FCC, if applicable.

| (946) A copy of the findings from the FAA’s Aeronautical Study Determination regarding the proposed wireless communication support structure.

| (1041) A copy of the instrument that establishes the right of the applicant to use the site for the intended purpose as required in WCC 20.13.091(7).

| (1142) If the site is a leased site, a copy of lease agreement which specifies or shows that it does not preclude the site owner from entering into leases on the site with other providers.
EXHIBIT N
(ADDING A REFERENCE TO WIRELESS APPLICATION REQUIREMENTS)

Chapter 20.13
WIRELESS COMMUNICATION FACILITIES

20.13.040 Permitted Uses.
The following uses shall be considered permitted uses and shall comply with federal, state, and local laws and regulations and the provisions of this chapter (including but not limited to WCC 20.13.120); the following uses shall also be subject to environmental review under the State Environmental Policy Act (SEPA), unless categorically exempt:

(1) Replacement construction. In all districts: Replacement of any component of an existing freestanding or attached wireless communication facility, and/or replacement of any component of an existing ancillary equipment facility on existing, approved and conforming sites; provided, that such replacement does not increase the total number of components lawfully existing on the site at the time of application for such replacement construction; and further provided, that such replacement construction does not "substantially change the physical dimensions" of the individual components being replaced as defined in WCC 20.13.020(22).

Determinations made as to whether or not replacement proposals substantially change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that replacement construction proposals do not substantially change the physical dimensions of such facilities as defined in WCC 20.13.020(22). Examples of such documentation may include specification sheets and/or area calculations for both the existing and proposed replacement equipment. Such documentation must be submitted at the time of preapplication interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards (as applicable). Such documentation must be submitted at time of application for the required commercial building permit(s).

(2) New antenna or new antenna array construction. In all districts: New antennas or new antenna arrays may be constructed on or added to existing, attached or freestanding wireless communication facilities on existing, approved and conforming sites; provided, that such new antennas or antenna arrays do not "substantially
change the physical dimensions" of such facilities, as defined in WCC 20.13.020(22).

Determinations made as to whether or not new construction proposals substantially change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant’s agent must submit documentation to the administrator that demonstrates that the proposed new antenna or new antenna array construction does not substantially change the physical dimensions of such facilities. Examples of such documentation may include specification sheets and/or area calculations for both the existing and the proposed new equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant’s agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards (as applicable). Such documentation must be submitted at time of application for the required commercial building permit(s).

* * * *

**20.13.120 Application requirements and conditions of issuance.**

Applicants shall submit the following information in addition to standard application materials:

(1) A scaled site plan clearly indicating the location of the proposed facility, all other structures and uses on the site, adjacent roadways, proposed means of access, parking, existing and proposed landscaping and setbacks from property lines. Elevation drawings of the proposed tower, the equipment structure, existing structure with proposed antenna, fencing, buffering/screening, type of architectural treatment, and any other feature necessary to show compliance with the applicable standards.

(2) Photo-simulations of the proposed facility from adjacent residential properties, public properties and public rights-of-way.

(3) Legal description and ownership of the parcel.

(4) A valid agreement for collocation on an existing WCF support structure or on an existing building or structure; or a location evaluation study as described in subsection (5) of this section.

(5) For new freestanding support structures, a location evaluation study shall be provided as follows:
(a) A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a nonresidential zone.

(6) The applicant shall submit a performance bond or other security acceptable to the county, as described in WCC 20.13.130(4), to cover the future costs of removal of the facility.

(7) A report from a licensed professional engineer documenting that:

(a) The support structure is designed for collocation of other antennas (if applicable).

(b) The antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.

(c) The wireless communications facility complies with all applicable standards of the FCC for such facilities including EMF emission standards, if applicable.

(8) A projection of the wireless communication facilities which the applicant and/or prospective operator of the facility reasonably anticipate will be sited by his company within Whatcom County during the next five years.

(9) Proof of license by the FCC, if applicable,

(10) A copy of the findings from the FAA’s Aeronautical Study Determination regarding the proposed wireless communication support structure.

(11) A copy of the instrument that establishes the right of the applicant to use the site for the intended purpose as required in WCC 20.13.091(7).

(12) If the site is a leased site, a copy of lease agreement which specifies or shows that it does not preclude the site owner from entering into leases on the site with other providers.
EXHIBIT O
(CLARIFYING SETBACK STANDARDS FROM A ROAD)

Chapter 20.80
SUPPLEMENTARY REQUIREMENTS

20.80.230 Measurement of Setbacks.
(1) Front Yard. The requisite minimum front yard setback line shall be measured from the edge of the abutting road right-of-way (front property line). For corner lots, the appropriate abutting road right-of-way shall be determined as provided in subsection (3) of this section. The property owner shall bear the responsibility for correctly locating the edge of the abutting road right-of-way from which the measurement is to be taken.

(2) Shoreline Areas. In situations where the shoreline setback(s) imposed by the Shoreline Management Program exceed the standard rear and/or side yard setbacks imposed by this chapter, the front yard setback(s) shall apply to the waterfront side(s) of the lot or tract and the rear yard setback shall apply to the street side of the lot or tract; provided, however, the zoning administrator may waive the setback reversal requirement of this section upon request of the property owner if he finds that the public interest will not be harmed; provided further, that the minimum setback on the street side of parcels abutting collector and arterial roadways shall be 20 feet.

(3) Corner Lots. For corner lots, the front yard shall be that yard which abuts a collector or arterial road. In the case of two or more roads being designated collectors or arterials, the front yard shall abut the road with the higher classification. If neither of the roads are designated collectors or arterials or if they have equal classifications, the owner/builder shall have the option of selecting the front yard. The zoning administrator may override this decision in special circumstances involving public safety. Yards on the other flanking roads may be considered side yards except that for collectors or arterials the minimum setback shall be no less than one-half of the road setback required for the road type in WCC 20.80.210.

(4) Through Lots. For through lots, the front yard shall be determined the same way as for corner lots per subsection (3) of this section except as provided:

(a) If a plat note, county code, or county development regulation prohibits vehicular access from a through lot onto one of the roads, the front yard setback shall be taken from the road where vehicular access is obtained. The yard on the other flanking non-accessed road shall be considered the rear yard for setback measurements except when the road is a collector or arterial, in which case the minimum setback shall be no less than one-half of the setback required for the road type in WCC 20.80.210. The zoning administrator may reduce the rear yard setback
along a non-accessed collector or arterial to less than one-half the front yard setback distance required for the road type in WCC 20.80.210 if:

(i) The reduced setback is no less than the smallest setback for existing residences on nearby lots along the same frontage,

(ii) The reduced setback is no less than 10 feet, and

(iii) The public interest, safety and health are protected. The zoning administrator shall recognize input provided by other officials, departments, and divisions having appropriate expertise prior to approving a reduced setback.
EXHIBIT P
(UPDATING REFERENCE TO DEVELOPMENT STANDARDS)

Chapter 20.97
DEFINITIONS

20.97.353 Road Classification.
"Road classification" means any specific terms referring to type of road such as arterials, collectors, etc., as defined in the Whatcom County Development Standards, "Right-of-Way Reference Document" that is updated in accordance with federal and state nomenclature by the Whatcom County planning and development services department. Any amendments of road classifications in the right-of-way reference document shall apply to WCC 20.80.210.
EXHIBIT Q
(DELETING REFERENCE TO GUIDE MERIDIAN IMPROVEMENT PLAN)

Chapter 20.84
VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

20.84.100 Variances.
.110 The hearing examiner shall have authority to grant a variance from the provisions of this ordinance and of WCC Title 22, the Guide Meridian Improvement Plan, when, in the opinion of the hearing examiner, the conditions set forth in WCC 20.84.120 herein have been found to exist. In such cases, a variance may be granted which is in harmony with the general purpose and intent of this ordinance so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done; provided, that no variance shall be granted which authorizes a use which is not permitted by the underlying zoning.

......
EXHIBIT R
(CLARIFYING EMERGENCY COMMUNICATION FACILITIES AND THEIR
MAXIMUM HEIGHTS IN PUBLIC UTILITIES)

Chapter 20.82
PUBLIC UTILITIES

20.82.020 Permitted Uses.
.021 Except as provided in WCC 20.82.030, the installation and maintenance,
including but not limited to replacement, of all utility lines including pipes, cables,
electrical and telephone poles, electrical power line towers and wires, military and
federal, state and local government communications facilities used for emergency
preparedness and public safety purposes; and associated structures such as pump
stations and equipment vaults; provided, that above-ground structures shall
conform to the size requirements of WCC 20.82.022. The height of the electrical
telephone poles, power line towers and wires, and government emergency
preparedness communications facilities may exceed the height limit of the
underlying zone; provided that the height is the minimum necessary to accomplish
the facilities' intended purpose. The applicant shall provide technical documentation
that the height proposed is the minimum necessary.

.022 Buildings and structures 200 square feet in floor area or smaller including
pump houses, storage buildings, equipment buildings, and similar structures
necessary for the operation of the utility.

.023 Water storage tanks owned and operated by a public utility for the sole
purpose of providing required fire flow; provided, that the volumes do not exceed
50,000 gallons and height is not in excess of 12 feet above the ground level
measured within 20 feet in all directions of the tank. A privately owned water
storage tank constructed to provide fire flow for a singular use or property and
maintained by the property owner(s) is considered an accessory use to the primary
permitted or conditionally permitted use that is to be protected by fire flow supplied
from the tank and not subject to regulation as a public utility; provided, the height
does not exceed the maximum height allowed in the underlying zone.
EXHIBIT S
(ADDING A DEFINITION OF ANIMAL HUSBANDRY)

Chapter 20.97
DEFINITIONS

20.97.014 Animal Husbandry.
"Animal husbandry" means the or practice of breeding and tending domestic farm animals. For the purpose of this definition, animal husbandry does not include kennels or fur farms.
EXHIBIT T
(CLARIFYING LOT WIDTH AND DEPTH STANDARDS IN
AGRICULTURE (AG) DISTRICT)

Chapter 20.40
AGRICULTURE (AG) DISTRICT

20.40.250 Division or Modification of Parcels.

20.40.252 Minimum lot Width and Depth.
(1) For parcels created consistent with the minimum lot size: The minimum width:length to depth:length ratio is 1/5. The terms "depth:length" and "width" refer to the average depth:length and average width of the parcel.

(2) For lots created or rearranged pursuant to WCC 20.40.254, the following lot width and depth shall apply:

<table>
<thead>
<tr>
<th>Minimum Width at Street Line</th>
<th>Minimum Width at Bldg. Line</th>
<th>Minimum Mean Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>70' [A]</td>
<td>80'</td>
<td>100'</td>
</tr>
</tbody>
</table>

[A] Applies only to land divisions where the parcel(s) does not contain a farmstead home site at the time of the application.

.......

348
EXHIBIT U
(CLARIFYING THE DEFINITION OF STRUCTURE)

Chapter 20.97
DEFINITIONS

......

| 20.97.432 Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

......

May 16, 2017
EXHIBIT V
(CLARIFYING ROOF OVERHANG LIMITS)

Chapter 20.80
SUPPLEMENTARY REQUIREMENTS

20.80.210 Minimum Setbacks.
(1) All structures, including accessory structures, shall be placed on their lots in compliance with the requirements of the setback table (subsection (5)(b) of this section), except as may otherwise be provided in this title.

(2) Waterfront Lots. Waterfront lots shall comply with the building setback requirements set forth in the Whatcom County Shoreline Management Program. (See WCC 20.80.230(2).)

(3) Vision Clearance. Notwithstanding any other setback requirements of this title, and unless specifically provided otherwise, a clear vision area shall be maintained on the corners of all property at the intersection of two streets, a street and an alley, or a street and a railroad.

(a) A clear vision area shall consist of a triangular area, two sides of which are lot lines measured from the corner intersection of the street lot lines for a distance specified in subsection (3)(c) of this section (where the lot has rounded corners, the distance shall be measured from the intersection of those lot lines extended), and the third side of which is a line across the corner of the lot joining the nonintersection ends of the other two sides.

(b) A clear vision area shall contain no planting, fence, wall, obstruction, or temporary or permanent obstruction exceeding two and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street center line grade; except that trees exceeding this height may be located in this area; provided all branches and foliage are removed to a height of 10 feet above the grade.

(c) The following measurements shall establish clear vision areas:

(i) In a residential zone, the minimum distance shall be 30 feet, or at intersections including an alley, 10 feet;

(ii) In all other zones, the minimum distance shall be 15 feet, or at intersections including an alley, 10 feet, except when the angle of intersection between a street other than an alley is less than 30 degrees, the distance shall be 25 feet;
(iii) Structures including buildings may be constructed within the clear vision area; provided, that any portion of the structure within the clear vision area is more than eight feet above the top of the curb or street center line grade and is supported by not more than two columns each of which is no more than eight inches in diameter.

(4) Properties which are generally located on the Guide Meridian between Horton and Kellogg Roads, and specifically identified in the Guide Meridian Improvement Plan, shall be subject to the provisions of said plan. The provisions of said plan shall supersede this chapter where there is inconsistency.

(5) Setbacks. For the purposes of this chapter, the road classification used to determine setback requirements shall be as set forth in this section. In the event a particular road is not listed in this section, the department of public works shall determine the classification, which classification shall be based on the Whatcom County Development Standards or such other local, state or federal roadway standards as the department of public works deems appropriate. Dead-end or loop streets providing access to 16 or fewer lots shall be classified as minor access streets.

(a) Setback Requirements of All Districts.

(i) No manure lagoon or other open pit storage shall be located closer than 150 feet from any property line, or in a manner which creates any likelihood of ground water pollution or other health hazard.

(ii) All manure storage shall be protected from a 25-year flood and shall be located 50 feet from irrigation ditches and waterways, 50 feet from the ordinary high water line of any lake or waterway; provided, that best management practices as determined by the Whatcom County Conservation District are in place. If the best management practices are not in place, 300 feet shall be substituted for 50 feet.

(iii) In all districts where a single-family residence is a primary permitted use, a building permit may be issued for the construction of a replacement dwelling on the same lot; provided, that the owner agrees by filing a statement with the building official that the old dwelling will be demolished, removed or converted to another permitted use upon completion of the new dwelling.

(iv) A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

(v) Roof overhangs or other architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback; except as provided in WCC 20.51.342 and 20.71.402.
(b) Setbacks Table.

## Commercial Setbacks

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</strong></td>
<td><strong>Side Yard</strong></td>
</tr>
<tr>
<td>Collector Arterials or Major Collectors</td>
<td>30'</td>
</tr>
<tr>
<td>Minor Collectors</td>
<td>25'</td>
</tr>
<tr>
<td>Local Access Streets</td>
<td>25'</td>
</tr>
<tr>
<td>Neighborhood Collector</td>
<td>25'</td>
</tr>
<tr>
<td>Minor Access Streets</td>
<td>20'</td>
</tr>
<tr>
<td></td>
<td>0'</td>
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<tr>
<td></td>
<td>10'</td>
</tr>
</tbody>
</table>

1. Setbacks for those parcels situated adjacent to Urban Residential, Rural Cluster Development and Rural Zone Districts shall be administered pursuant to WCC 20.62.550 (Buffer area).

## Rural General Commercial (RGC)

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</strong></td>
<td><strong>Side Yard</strong></td>
</tr>
<tr>
<td>Collector Arterials or Major Collectors</td>
<td>30'</td>
</tr>
<tr>
<td>Minor Collectors</td>
<td>25'</td>
</tr>
<tr>
<td>Local Access Streets</td>
<td>25'</td>
</tr>
<tr>
<td>Neighborhood Collector</td>
<td>25'</td>
</tr>
<tr>
<td>Minor Access Streets</td>
<td>20'</td>
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<tr>
<td></td>
<td>0'</td>
</tr>
<tr>
<td></td>
<td>10'</td>
</tr>
</tbody>
</table>

1. Setbacks for those parcels situated adjacent to Agriculture, Urban Residential, Rural Cluster Development, and Rural Zone Districts shall be administered pursuant to WCC 20.59.800 (Buffer area).

2. Side and rear yard setbacks shall be 10 feet from vacant, adjacent, commercially zoned properties.

## Tourist Commercial (TC)

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</strong></td>
<td><strong>Side Yard</strong></td>
</tr>
<tr>
<td>Collector Arterials or Major Collectors</td>
<td>30'</td>
</tr>
<tr>
<td>Minor Collectors</td>
<td>25'</td>
</tr>
<tr>
<td>Local Access Streets</td>
<td>25'</td>
</tr>
<tr>
<td>Neighborhood Collector</td>
<td>25'</td>
</tr>
<tr>
<td>Minor Access Streets</td>
<td>20'</td>
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<tr>
<td></td>
<td>0'</td>
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<tr>
<td></td>
<td>10'</td>
</tr>
</tbody>
</table>
### Water Resource Protection Overlay

<table>
<thead>
<tr>
<th></th>
<th>30'</th>
<th>30'</th>
<th>20'</th>
<th>20'</th>
<th>20'</th>
<th>20'</th>
<th>0'</th>
<th>5'</th>
</tr>
</thead>
</table>

1. Setbacks for those parcels situated adjacent to Agriculture, Urban Residential, Urban Residential Medium Density, Residential Rural and Rural Zone Districts shall be administered pursuant to WCC 20.63.550 (Buffer area).

2. Setback requirements for recreational vehicle parks shall be 30 feet for side and rear yards.

3. Front yard setback requirements for service islands of service stations shall be 25 feet to the center line of the driveway of the closest service island.

### Small Town Commercial (STC)

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</th>
<th>Collector Arterials or Major Collectors</th>
<th>Minor Collectors</th>
<th>Local Access Streets</th>
<th>Neighborhood Collector</th>
<th>Minor Access Streets</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>30'</td>
<td>25'</td>
<td>25'</td>
<td>25'</td>
<td>20'</td>
<td>Side Yard</td>
</tr>
</tbody>
</table>

1. Commercial uses shall be allowed to reduce front yard setback to 10 feet and the side yard setback to zero feet where the site and landscape plans promote pedestrian access to the building.

2. Side and rear yard setbacks shall be 10 feet from vacant, adjacent, commercially zoned properties.

3. Setbacks for those parcels situated adjacent to Agriculture, Urban Residential, Urban Residential Medium Density, Residential Rural, and Rural Zone Districts shall be administered pursuant to WCC 20.61.600 (Buffer area).

### Resort Commercial (RC)

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</th>
<th>Collector Arterials or Major Collectors</th>
<th>Minor Collectors</th>
<th>Local Access Streets</th>
<th>Neighborhood Collector</th>
<th>Minor Access Streets</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>30'</td>
<td>25'</td>
<td>25'</td>
<td>25'</td>
<td>20'</td>
<td></td>
</tr>
</tbody>
</table>

1. Setbacks for those parcels situated adjacent to Urban Residential, Residential Rural and Rural Zone Districts shall be administered pursuant to WCC 20.64.550 (Buffer area).

2. Setback requirements for multifamily housing, including all condominiums except time share condominiums
and mobile home parks, shall be 20 feet for side and rear yards.

3. Setback requirements for recreational vehicle parks, and resort-oriented hotels and motels including time share condominiums, shall be 45 feet for front yard and 20 feet for side and rear yards.

4. Setback requirements for nonresort-oriented hotels and motels and nonhabitation commercial development shall be zero feet for side yards and 10 feet for rear yards.

5. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

<table>
<thead>
<tr>
<th>Neighborhood Commercial (NC)</th>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</td>
<td>Collector Arterials or Major Collectors</td>
<td>Minor Collectors</td>
</tr>
<tr>
<td>25'</td>
<td>25'</td>
<td>25'</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Water Resource Protection Overlay</th>
</tr>
</thead>
<tbody>
<tr>
<td>30'</td>
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</tbody>
</table>

1. Neighborhood Commercial District. Setbacks for those parcels situated adjacent to Agriculture, Urban Residential, Residential Rural and Rural Zone Districts shall be administered pursuant to WCC 20.60.550 (Buffer area).

1. When located adjacent to I-5 these setbacks may be reduced to 25’ subject to the screening requirements under WCC 20.80.300.

1. Roof overhangs or other architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback.

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**Rural Residential Setbacks**
## Residential Rural (RR)

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collector Arterials or Major Collectors</td>
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<td>Local Access Streets</td>
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<td>Neighborhood Collector</td>
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<tr>
<td>Minor Access Streets</td>
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</tr>
<tr>
<td>Side Yard</td>
<td>Rear Yard</td>
</tr>
<tr>
<td>45'</td>
<td>25'</td>
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<tr>
<td>35'</td>
<td>25'</td>
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<tr>
<td>20'</td>
<td>5''</td>
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</tbody>
</table>

### Water Resource Protection Overlay

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
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</thead>
<tbody>
<tr>
<td>Collector Arterials or Major Collectors</td>
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<tr>
<td>Minor Access Streets</td>
<td></td>
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<tr>
<td>Side Yard</td>
<td>Rear Yard</td>
</tr>
<tr>
<td>30'</td>
<td>20'</td>
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<td>30'</td>
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<tr>
<td>20'</td>
<td>20'</td>
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<tr>
<td>5'</td>
<td>5'</td>
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</tbody>
</table>

1. Setbacks shall be increased to 100 feet for those parcels situated adjacent to the Forestry Zone District, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.32.651 shall be subject to the standard setback in WCC 20.80.210.

2. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

## Rural Residential-Island (RR-I)

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collector Arterials or Major Collectors</td>
<td></td>
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<tr>
<td>Minor Collectors</td>
<td></td>
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<td>Neighborhood Collector</td>
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<tr>
<td>Minor Access Streets</td>
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<tr>
<td>Side Yard</td>
<td>Rear Yard</td>
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<td>—</td>
<td>25'</td>
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<td>—</td>
<td>20'</td>
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<tr>
<td>—</td>
<td>5'</td>
</tr>
</tbody>
</table>

1. Residential Rural-Island District. Setbacks shall be increased to 100 feet for those parcels situated adjacent to the Forestry Zone Districts, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.42.651 shall be subject to the standard setback in WCC 20.80.210.

## Point Roberts Transitional Zone (TZ)

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collector Arterials or Major Collectors</td>
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<tr>
<td>Minor Collectors</td>
<td></td>
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<tr>
<td>Local Access Streets</td>
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<td>Neighborhood Collector</td>
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<tr>
<td>Minor Access Streets</td>
<td></td>
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<tr>
<td>Side Yard</td>
<td>Rear Yard</td>
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</tr>
</tbody>
</table>

55
Hwys, Principal & Minor Arterials | Major Collectors | Streets | Streets
--- | --- | --- | ---
45' | 35' | 25' | 25' | 20' | 5' | 5''

No additional standards.

Roof overhangs or other additional features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback.

Zero lot line side yard setbacks may be approved by the zoning administrator for single-family attached dwelling units along the common property line where the dwellings share a common wall.

---

**Rural Zoning Setbacks**

**Rural (R)**

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</td>
<td>Collector Arterials or Major Collectors</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>45'</td>
<td>45'</td>
</tr>
</tbody>
</table>

**Water Resource Protection Overlay**

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>30'</td>
<td>30'</td>
</tr>
</tbody>
</table>

1. Setbacks shall be increased to 100 feet for those parcels situated adjacent to the Commercial Forestry Zone District, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.36.651 shall be subject to the standard setback in WCC 20.80.210.

2. Lots created after 2001 through the cluster provisions, or lots created through the APO provisions which will be used for human habitation, shall be set back a minimum of 100 feet from the property line of any parcel or portion thereof which is designated or used for agricultural purposes. No structures shall be constructed within 30 feet of
exterior, side and rear property lines, and no structure shall be constructed within 30 feet of an agricultural use. Subject to any further requirements within Chapter 20.38 WCC, Agriculture Protection Overlay.

3. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

4. A marijuana production or processing facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.

5. A marijuana production or processing facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production or processing of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

Roof overhangs or other architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback.

<table>
<thead>
<tr>
<th>Urban Residential Setbacks</th>
</tr>
</thead>
</table>

Urban Residential Mixed Use (UR-MX)

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</th>
<th>Collector Arterials or Major Collectors</th>
<th>Minor Collectors</th>
<th>Local Access Streets</th>
<th>Neighborhood Collector</th>
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<th>Side Yard</th>
<th>Rear Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>45'</td>
<td>35'</td>
<td>25'</td>
<td>10'</td>
<td>10'</td>
<td>10'</td>
<td>5'</td>
<td>5'</td>
</tr>
</tbody>
</table>
Water Resource Protection Overlay

<table>
<thead>
<tr>
<th>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</th>
<th>Collector Arterials or Major Collectors</th>
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<th>Side Yard</th>
<th>Rear Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td>30’</td>
<td>30’</td>
<td>20’</td>
<td>20’</td>
<td>20’</td>
<td>20’</td>
<td>5’</td>
<td>5’</td>
</tr>
</tbody>
</table>

1. No specific setback requirements shall apply to a planned concept submitted for technical committee review. This provision could be used, for example, to allow zero-lot-line development.

Urban Residential Medium (URM)

<table>
<thead>
<tr>
<th>Road Type</th>
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<tbody>
<tr>
<td>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</td>
<td>Collector Arterials or Major Collectors</td>
</tr>
<tr>
<td>45’</td>
<td>35’</td>
</tr>
</tbody>
</table>

Water Resource Protection Overlay

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>30’</td>
<td>30’</td>
</tr>
</tbody>
</table>

1. Setback requirements for mobile home parks shall be 20 feet from the perimeter of the park for side and rear yards and shall be screened from neighboring uses in accordance with WCC 20.80.345.

Urban Residential (UR)

<table>
<thead>
<tr>
<th>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</th>
<th>Collector Arterials or Major Collectors</th>
<th>Minor Collectors</th>
<th>Local Access Streets</th>
<th>Neighborhood Collector</th>
<th>Minor Access Streets</th>
<th>Side Yard</th>
<th>Rear Yard</th>
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<tr>
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<td>25’</td>
<td>25’</td>
<td>25’</td>
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Water Resource Protection Overlay

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<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>30’</td>
<td>30’</td>
</tr>
</tbody>
</table>

1. Setbacks shall be increased to 100 feet for those parcels situated adjacent to the Forestry Zone District, except that such parcels which are less than 20,000 square feet in a subdivision approved prior to January 1, 1987, and whose owners have filed an agreement with the county auditor as specified in WCC 20.20.651, shall be subject to the standard setback in WCC 20.80.210.

2. A 10-foot setback from the international border between Canada and the United States shall be maintained as
an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

Roof overhangs or other architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; in no case will they extend more than one-half the depth of the front yard setback.

Zero lot line side yard setbacks may be approved by the zoning administrator for single-family attached dwelling units along the common property line where the dwellings share a common wall.

. . . .

### Other Zoning Setbacks

<table>
<thead>
<tr>
<th>Recreation Open Space (ROS)</th>
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<th>Minor Collectors</th>
<th>Local Access Streets</th>
<th>Neighborhood Collector</th>
<th>Minor Access Streets</th>
<th>Side Yard</th>
<th>Rear Yard</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>100’</td>
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<td>50’</td>
<td>50’</td>
<td>50’</td>
<td>50’</td>
<td>50’</td>
</tr>
</tbody>
</table>

1. Parcels utilized solely for community centers shall observe the following minimum setback requirements: front yard: 50 feet; side yard: 25 feet; rear yard: 25 feet.

2. Shoreline setbacks shall be administered consistent with the Shoreline Management Program of Whatcom County; provided, that a 25-foot setback is maintained from the ordinary high water mark of all water bodies and a 50-foot setback is maintained from the ordinary high water mark of fish spawn streams.

3. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.
## Water Resource Protection Overlay (WRPO)

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<td>Commercial Arterials or Major Collectors</td>
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<td>Minor Collectors</td>
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<td>Local Access Streets</td>
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<td>Neighborhood Collector</td>
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<td>Minor Access Streets</td>
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<tr>
<td>Side Yard</td>
<td>See underlying zoning&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>See underlying zoning&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

1. No additional standards.

<sup>1</sup>Roof overhangs or other architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhang may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback.

<sup>2</sup>Refer to additional provisions of WCC 20.64.250 or 20.65.400.
WHATCOM COUNTY
PLANNING COMMISSION

Amendments to Whatcom County Code Title 20 Zoning

FINDINGS OF FACT AND REASONS FOR ACTION

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to Whatcom County Code (WCC) Title 20 Zoning to make corrections, updates, and clarifications.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 7, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on March 24, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on April 13, 2017.

6. Comprehensive Plan Policy Goal 2D is to "refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner."

7. WCC 20.83.072, which provides the formula for the number of lots permitted by lot consolidation, incorrectly refers to itself rather than the following subsection, which was intended. The proposed amendment would correct the reference.

8. The definition of "building" in WCC 20.97.035 refers to the Uniform Building Code, which has since changed to the International Building Code. The proposed amendments would correct the reference.

9. Permitted, administrative, and conditional uses listed in the Rural Industrial and Manufacturing (RIM) and General Manufacturing (GM) Districts -- WCC Chapters 20.69 and 20.67, respectively, are grouped into categories that do not correspond with the categories in WCC 20.80.100(1), which sets permitted uses and building sizes in each use category in each Rural Community (Type I LAMIRD) area. The proposed amendment would reorganize the lists of uses in categories that are consistent with 20.80.100(1).
10. The definition of “park model trailer” in WCC 20.97.292 sets a maximum gross trailer area of 400 square feet, consistent with state law (RCW 46.04.622). Staff has found there is occasionally confusion of the appropriate permitting of a park model that may be interpreted to be larger than 400 square feet (if it is interpreted to be a “recreational vehicle” it can be permitted in different locations). Washington State Department of Labor and Industries approves trailers including park models with an insignia. The proposed amendment would add clarity to the definition by adding another criterion, that the trailer is approved by the State as a park model trailer.

11. Notification requirements for zoning amendments, WCC 20.90.045, mention the Blaine Airport, which no longer exists. The proposed amendment would delete the outdated wording.

12. WCC 20.36.159(8), 20.40.161(6), and WCC 20.73.702(2), pertaining to surface mining standards contain an incorrect reference to rules related to wellhead protection boundaries. The propose amendment would correct the reference.

13. The size standard for buildings within a Rural Business designations (Type III LAMIRD) in the Rural General Commercial (RGC), Neighborhood Commercial (NC), Tourist Commercial (TC), and Rural Industrial and Manufacturing (RIM) districts (WCC Chapters 20.59, 20.60, 20.63, and 20.69, respectively) set a maximum allowable floor area of 7,000 square feet. Though not specified in code, staff interprets that this standard is for each building, not for a cumulative total of all buildings. The proposed amendment would clarify that the maximum allowable floor area is 7,000 per building.

14. The minimum lot width and depth table in the Residential Rural (RR), Residential Rural-Island (RRI), and Rural (R) districts set the minimum lot width of 300 feet at the street line. Staff has interpreted this standard to apply to newly created lots and not existing lots being modified through a boundary line adjustment process, many of which are smaller, existing nonconforming lots. The proposed amendment would add a note clarifying that the width at street line standards do not apply to lots being modified through boundary line adjustment.

15. The definition of Kennel in WCC 20.97.191 includes housing, grooming, breeding, boarding, training, or sale of five or more household pets. Because these activities are listed with an “or”, a facility with any one of those activities could be considered a kennel under the current definition. The Merriam-Webster Dictionary defines a kennel as “an establishment for the breeding or boarding of dogs or cats.” The proposed amendment would clarify the code’s definition, limiting the activities to housing, breeding, or
boarding, which is more consistent with the traditional function of kennels.

16. Mobile Home Parks or Recreational Vehicle Parks are listed as conditional uses in the Urban Residential Mixed (URMX), Tourist Commercial (TC), and Resort Commercial (RC) districts (WCC Chapters 20.24, 20.63, and 20.64, respectively). The development standards for Mobile Home Parks and Recreational Vehicle Parks are located in a different chapter, WCC 20.80.950, and there is currently no indication to the reader that there are standards, or where they are located. The proposed amendment would add a reference to the standards in WCC 20.80.950.

17. WCC 20.84.220 sets criteria for approving variances, conditional use permits, and administrative approval permits. The current wording implies that the criteria apply only to conditional use permits considered by the Hearing Examiner, when in fact they also apply to administrative approval uses, which are considered by the zoning administrator (County staff). The proposed amendments correct the language to apply the criteria to the other types of permit approval processes in addition to conditional use permits.

18. When the wording in WCC 20.84.260 was adopted, it included time limits for applications submitted prior to the change in code. Those time frames have now passed and those applications are either completed or expired, making the time limits unnecessary. The proposed amendment deletes the outdated deadlines.

19. WCC 20.13.120(8), the application requirements for wireless communication facilities, requires information on the facilities the applicant anticipates locating in Whatcom County in the next five years. This requirement is no longer appropriate due to a change in Federal Communications Commission regulations. The proposed amendment removes the unneeded requirement.

20. WCC 20.13.040, which describes permitted wireless communication uses, requires the uses to comply with federal, state, and local laws and regulations and the provisions of Chapter 20.13. The chapter contains requirements for application submittals but there have been questions about whether those requirements apply. The proposed amendment would add wording clarifying that a proposed wireless communication use is subject to the application requirements of WCC 20.13.120.

21. WCC 20.80.230 provides standards for determining setback requirements for buildings on a lot. The section refers to "roads" throughout, except for one reference to "streets" in subsection (3), which can cause confusion in interpretation because WCC lacks a definition for "street." The proposed amendment replaces "streets" with "roads" in WCC 20.80.230(3).
22. The definition of "road classification" in WCC 20.97.353 refers to a "Right of Way Reference Document," which does not exist. The proposed amendment corrects the definition to refer to the Whatcom County Development Standards.

23. WCC 20.84.100 enables the Hearing Examiner to grant a variance from the provisions of the zoning code and of WCC Title 22, the Guide Meridian Improvement Plan. The latter was repealed with the adoption of the 2016 Whatcom County Comprehensive Plan update, Ordinance 2016-035. The proposed amendment would delete the outdated reference.

24. Whatcom County has received grant funding to install tsunami warning sirens on Lummi Island and in the Birch Bay area. WCC 20.82.020 lists public utility uses that are permitted in all zones, including include electrical and telephone poles, and electrical power line towers and wires, but there is no specific provision for poles or towers that would house a speaker for a tsunami or lahar warning system. In addition, the code is silent on whether these poles are subject to height requirements in the zones where they are located. The proposed amendment would add specific language listing "military and federal, state and local government communications facilities used for emergency and public safety purposes" among the permitted public utility uses. Further, it would clarify that the height of these facilities – along with electrical and telephone poles, and power line towers and wires – are not subject to building height requirements, provided the proposed height is shown to be the minimum necessary.

25. WCC Title 20 Zoning uses the term "animal husbandry" in describing permitted uses in several residential, rural, and resource zoning districts, generally in conjunction with agricultural uses (see WCC 20.20.053, 20.32.054, 20.34.052, 20.36.052, 20.40.051, 20.42.052, 20.51.099, 20.20.65.057, 20.71.219). The code lacks a definition of "animal husbandry," leaving the term open to differing interpretations. The proposed amendment would add a definition of "animal husbandry" that is based on standard dictionary definitions and clarifies the term's application to domestic farm animals that are a component of, or accessory to an agricultural use.

26. WCC 20.40.252, which sets minimum lot width and depth using a ratio of 1 to 5 currently requires a minimum ratio of 1 unit in "length" to 5 units in width, which appears to be the reverse of what was intended. The proposed amendment corrects the ratio requirement and replaces "length" with "depth" (consistent with the rest of the 20.40.252) to require standard to require a minimum ratio of 1 units in width to 5 units in depth.

27. The definition of "structure" in WCC 20.97.432 uses the phrase "an edifice or building of any kind" though, according to dictionary definitions,
"edifice" and "building" are largely synonymous. The proposed amendment would eliminate the redundant term "edifice."

28. The minimum setback limits in WCC 20.80.210 allow roof overhangs to extend no further than 18 inches into side or rear yard setbacks, or 6 feet into front setbacks. Previous versions of the code made it clear this provision applied to all zoning districts, but a subsequent revision placed the provision in the notes under the setback tables in subsection (5)(b), where it is not clear that it applies to all zoning districts. The proposed amendment would move the roof overhang provisions to a single place in subsection (5)(a) Setback Requirements of All Districts.

CONCLUSIONS

1. The amendments to the zoning code are the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

RECOMMENDATION

Based upon the above findings and conclusion, the Whatcom County Planning Commission recommends approval of the proposed amendments as shown on Exhibits A-V.

WHATCOM COUNTY PLANNING COMMISSION

Nicole Oliver, Chair

Becky Boxx, Secretary

Date 4-26-17

Date 4-28-17

Commissioners present at the April 13, 2017 meeting when the vote was taken: Kelvin Barton, Kate Blystone, Atul Deshmane, David Hunter, Natalie McClendon, and Andy Rowison.

Vote: Ayes: 6, Nays: 0, Abstain: 0, Absent: 3. Motion carried to adopt the above amendment.
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Vice-Chair, Kelvin Barton, in the Whatcom County Northwest Annex at 6:40 p.m.

Roll Call
Present: Natalie McClendon, David Hunter, Kelvin Barton, Andy Rowlson, Atul Deshmene
Kate Blystone in attendance at 6:42
Absent: Nicole Oliver, Gary Honcoop, Michael Knapp

Staff Present: Mark Personius, Gary Davis, Cliff Strong, Amy Keenan, Nick Smith, Becky Boxx

Department Update
Mark Personius updated the commission on the County Council schedule.

Open Session for Public Comment
There was no public comment.

Commissioner Comments
There were no commissioner comments.

Approval of Minutes
March 9, 2017: Commissioner Rowlson moved to approve as written. Commissioner Blystone seconded. The motion carried.

March 23, 2017: Commissioner Rowlson moved to approve as written. Commissioner McClendon seconded. The motion carried.

Public Hearing
File #PLN2017-00007: Proposed amendments to Whatcom County Code Title 20 (Zoning). These amendments are “housekeeping” items that correct errors and outdated references or clarify wording.

Gary Davis updated the commission on suggested revisions to the proposed amendments to parts of the code based on comments from the public.

Exhibit I proposed to read:

20.97.191 Kennel
"Kennel" means a commercial establishment in which five or more dogs, cats, or other household pets are housed, groomed, bred, or boarded, trained or sold for a fee or compensation. A kennel may include grooming and/or training as accessory uses.

Exhibit S proposed to read:

20.97.014 Animal Husbandry

"Animal husbandry" means the scientific study or practice of breeding and tending domestic farm animals. For the purpose of this definition, domestic farm animals are a component of or accessory to an agricultural use. Animal husbandry does not include kennels or fur farms.

The hearing was opened to the public.

There was no public comment.

The hearing was closed.

Commissioner Hunter moved to recommend approval of the proposal as amended.

Commissioner Rowlson seconded.

Roll Call Vote: Ayes-Barton, Blystone, Deshmane, Hunter, McClendon, Rowlson; Nays-0; Abstain-0; Absent-Honcoop, Knapp, Oliver. The motion carried.

Public Hearing

File #2015-00004: Proposed amendment to the Whatcom County Comprehensive Plan by amending the Point Roberts Subarea Plan to remove the Point Roberts Character Plan, and amending WCC 20.72 Point Roberts Special District.

Cliff Strong presented the staff report.

This proposal was requested by the Point Roberts Community Advisory Committee. The proposal does three things. One is to remove all of the references to the Point Roberts Character Plan from the Point Roberts Subarea Plan and transfer all of the standards found there into Whatcom County Code 20.72, which is the Point Roberts Special District. Many of the standards in the character plan are already found in that section, but there are a few that were not, so those are carried over. The proposal takes the architectural design guidelines out of the character plan and adopts those as design guidelines, by reference, in 20.72. Because the character plan is referenced in the subarea plan, which is considered a part of the County Comprehensive Plan, amending the subarea plan to delete the character plan references is considered a Comprehensive Plan amendment. Council has to consider all of the Comprehensive Plan amendments in one docket only once a year. A revised packet was recently sent.
I could see an argument made by an attorney at some point in the future arguing that the conditional use applies only to rural forestry, but not to the rural zone. Why can't we revise the definition in a way that specifically excludes fur farms so there is clarity and certainty?

Wendy

Hi, Wendy
Fur farms would not be included in this definition of animal husbandry. Because that use is specifically allowed as a conditional use in Rural Forestry (WCC 20.42.157) it would be allowed nowhere else unless specifically permitted, as they are in RF.

On the status of the case you referenced, I’m copying Amy Keenan, who will have the details.

Gary Davis, AICP
Senior Planner

Whatcom County Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226
P. 360.778.5931

Disclaimer: The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act (RCW 42.56).
Hi Gary, I have read your proposal regarding the new definition for animal husbandry and believe it is still ambiguous because the term "domestic farm animal" is open to interpretation without further definition.

My primary concern is with fur farms. In 2015, the county took the position that fur farms are not permitted as an agricultural use in the rural zone, which was upheld by the HE, but as you know, the Mars retained Belcher, Swanson and I am sure they, or someone else will attempt to push this issue in the future if your new definition is enacted.

Is it your intention to include or exclude fur farms?

If you intend to exclude fur farms, it might make more sense to reference animals used for food and fiber, and remaining byproducts.

I think it would not be wise to allow fur farms in areas where there are also rural residential areas, such as currently happens with hobby farms, or even commercial farms, particularly given the stench and the long standing water quality issues created by the Mars mink farm. Additionally, many people, myself included, very strongly oppose mink farms, which serve a completely different purpose than other forms of agriculture. This could create a backlash against agricultural zoning and create problems for conventional farmers.

I would appreciate knowing what the county's position is with regard to the inclusion of fur farms under the definition of animal husbandry. I am also curious about the outcome of the Mars fur farm case, I assume the county allowed the expansion as a nonconforming use? Was there evidence the fur farm was legally established under the zoning in place at the time?

Thank you.
Wendy Harris
Dear Planning Commission Members and Whatcom County Staff-

I would like to comment on the proposed change to the definition of “Kennel” found in WCC 20.97.191. I have concern over the proposed change for a couple of reasons: One, removing “groomed” “trained or sold” from the definition of Kennel is problematic as these terms are not defined by themselves in the code. If they are to be removed from this definition, they should be independently defined. Secondly, they are not listed as Permitted, Administrative or Conditional Uses by themselves anywhere else in the code. By removing these uses from the definition of Kennel without defining them separately and listing them as allowable uses in respective zoning districts, this will create more problems and confusion than it solves.

Further, if an operation obtains a permit for a “Kennel”, “grooming” and “training” are associated and accompanying uses. Removing these uses from the definition leaves it ambiguous as to whether they can be permitted along with a Kennel operation.

My suggestion is that household pet “grooming” “training or sale” should be defined and specifically listed in the zoning code if they are to be removed from the “Kennel” definition. Additionally, the definition of “Kennel” should also be revised to indicate that “grooming, training or sale” of household pets may be considered accessory to a Kennel use. Applicants that apply for a Conditional Use Permit (or otherwise) for a Kennel should clearly be allowed these accessory and compatible uses as it is less-impactive than the overall use of the boarding of animals.

Feel free to contact me with any questions or comments.
Best Regards,

Jaime White

Whatcom Land Use Consulting, LLC
222 Grand Avenue, Suite E
Bellingham, WA 98225
Office: (360) 543-5855
Cell: (360) 961-2489
### WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
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<th>Agenda Date</th>
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**TITLE OF DOCUMENT:** Adopt a resolution to sell surplus property

**ATTACHMENTS:** Resolutions & list of property to be declared surplus

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

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

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

**Requested Date:**

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

The attached list of equipment has been determined to be surplus and available for disposal by public auction. The Council may find by resolution, following a public hearing that it is in the public interest to sell the property.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

5/16/2017: Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

*Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.*
A RESOLUTION AUTHORIZING
THE SALE OF WHATCOM COUNTY SURPLUS PROPERTY
PURSUANT TO WCC 1.10

WHEREAS, a public hearing was held on _____________, 2017 to discuss the sale of Whatcom County property; and

WHEREAS, it was determined to be in the best interest of Whatcom County to sell the property listed in Exhibit “A” and such property shall be sold by public auction after June 2017, subsequent to compliance with the notice requirements of WCC 1.10.200; and

NOW THEREFORE BE IT RESOLVED that the property listed in Exhibit "A" be sold at public auction after June 2017 pursuant to the notice requirements of WCC 1.10.200.

APPROVED this ____________ day of ____________, 2017

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Council Chair

ATTEST:

Dana Brown-Davis, Council Clerk

APPROVED AS TO FORM:

Daniel L. Gibson
Civil Deputy Prosecuting Attorney
### Public Works - Equipment Services

#### May 2017

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<th>Year</th>
<th>Make</th>
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<td>Reader Board</td>
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<td>Tractor mounted post hole digger</td>
<td>M&amp;O</td>
<td>Serial #12160</td>
<td>N/A</td>
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### Description

- Miscellaneous buckets for equipment the county no longer owns
- Miscellaneous broken and unusable tools, parts, and supplies
- Obsolete plow mounts
- Used & unsalvageable bridge decks
- Old Fifth wheel Hitch
- Miscellaneous inventory items (culvert, timbers, etc.)
<table>
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<th>UNIT</th>
<th>YEAR</th>
<th>MAKE</th>
<th>MODEL / DESCRIPTION</th>
<th>DEPT</th>
<th>PROPERTY TAG #</th>
<th>COMMENTS</th>
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**DESCRIPTION**

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Miscellaneous worn or broken office equipment and furniture</td>
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</tr>
<tr>
<td>Miscellaneous worn or broken computer components</td>
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**WHATCOM COUNTY COUNCIL AGENDA BILL**

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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>JL</td>
<td>05/15/17</td>
<td></td>
<td>05/30/17</td>
<td>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>Executive:</td>
<td>@5.23.17</td>
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**TITLE OF DOCUMENT:**
Lodging Tax Advisory Committee Member appointment

**ATTACHMENTS:**
Lodging Tax Advisory Committee member application

<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>
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<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.)

County Executive Jack Louws requests confirmation of Ms. Sandra Ward’s nomination to the Whatcom County Lodging Tax Advisory Committee. On May 11, 2017 the Advisory Committee unanimously approved of Ms. Sandra Ward’s membership on the Committee in the position of Lodging Tax recipient.

**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.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Sandra Ward
Street Address: 904 Potter Street
City: Bellingham
Mailing Address (if different from street address):
Day Telephone: 360 671-3990
Evening Telephone:
Cell Phone: 425 345-2494
E-mail address: sandy@bellingham.org

Name of board or committee - please see reverse:
Whatcom County Lodging Tax Advisory Committee

1. Name of board or committee - please see reverse:
   Whatcom County Lodging Tax Advisory Committee

2. You must specify which position you are applying for. Please refer to vacancy list.
   Authorized recipient of the funds

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: Bellingham Whatcom County Tourism

9. Have you declared candidacy (as defined by RCW 42.17A.055, see instructions) for a paid elected office in any jurisdiction within the county? ( ) Yes ( ) No

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

10. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
    Please see attached

11. Please describe why you’re interested in serving on this board or commission:
    I have served on a variety of tourism boards and commissions at state, city and county levels in Olympia and Snohomish County. I would love an opportunity to serve Whatcom County.

References (please include daytime telephone number): Lisa Karlberg, K&L Media, 360 483-4572, Rene’ Morris, Bellis Fair Mall, 360 671-5895 x 7867

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.

2/2017
Bio Sandy Ward, President and CEO, Bellingham Whatcom County Tourism

Sandy Ward, a 30+ year veteran of the travel, tourism and hospitality industry is President and CEO of Bellingham Whatcom County Tourism. Prior to joining Visit Bellingham, Sandy was the sales and marketing director for the Future of Flight Aviation Center & Boeing Tour one of Washington State's premier visitor attractions, where she served for 12 years. During her tenure, the attraction grew from 120,000 visitors per year to 320,000 in 2016. She was appointed by Washington’s Governor Christine Gregoire to serve as a member of the Washington State Tourism Commission, served as a director on the executive board of the Puget Sound Attractions Council, is a former director on the board for the Experience Network (formerly known as National Council of Attractions), part of the US Travel Association, and is a founder of the Washington Tourism Alliance (WTA).

Prior to joining the Future of Flight, Sandy served as the Snohomish County Tourism Bureau’s founding executive director, a position she held for nine years. During her tenure at the Snohomish County Tourism Bureau, her agency was honored on two separate occasions by Washington State Tourism for the Best Tour Planner’s Guide in Washington State. Additionally, the state gave the Bureau two awards in 2000 for Best Niche Marketing Campaign and Best of the Best Industry Award for direct mail marketing campaigns and online reservations programs.

Previously, Sandy was vice president of the Bellingham Whatcom County Convention and Visitor Bureau and executive director of the Kitsap Peninsula Visitor and Convention Bureau. She was also the founding executive director of the Ogden, Utah Convention and Visitor Bureau and the four-county Golden Spike Empire Travel Region in Utah.

During her career in the travel and tourism industry, Ms. Ward also has developed and delivered customer service training programs to thousands of front-line staff, volunteers and supervisors in the hospitality industry throughout Utah and Washington State. She is a certified hospitality and customer service master trainer.

Sandy has been recognized as Woman of the Year by Utah Business Magazine, named Professional Manager of the Year by the YWCA of Northern Utah, and was named Tourism Professional of the Year by Washington State Tourism.

Sandy is a graduate of UCLA’s Institutes for Organization Management, a master's level leadership development program.
TITLE OF DOCUMENT: Reappointments to the Bellingham-Whatcom Public Facilities District.

ATTACHMENTS: Memorandum

<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.)

County Executive Jack Louws recommends the confirmation of the reappointment of David Warren and Daniel Larner to the Bellingham-Whatcom Public Facilities District.

The City of Bellingham is concurrently confirming these reappointments.
MEMORANDUM

TO: Members of the Whatcom County Council

FROM: Jack Louws, County Executive

DATE: May 22, 2017

SUBJECT: Public Facilities District Reappointments

David Warren and Daniel Larner are serving terms on the Bellingham-Whatcom Public Facilities District board which will expire on July 30th, 2017. I and Mayor Linville wish to reappoint both gentlemen for another term, and respectfully request your confirmation.

Both Mr. Warren and Mr. Larner have been valuable assets and we believe their continued involvement will be beneficial to the PFD Board.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**TITLE OF DOCUMENT:** A Resolution Approving the Sale of a Conservation Easement

**ATTACHMENTS:**
1. Cover Memo
2. Resolution
3. Conservation Easement
4. Map of Site

<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>( ) 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.)

Randy Doucet and Elizabeth Doucet, owners of property adjacent to a Whatcom County-owned former gravel pit known as Clark Pit, have requested a conservation easement over the County-owned property to provide a greenbelt along the west boundary of their property. Whatcom County Public Works recommends selling the conservation easement to them.

**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.
MEMORANDUM

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

Through: Jon Hutchings, Director

From: Andrew Hester, Real Estate Coordinator

Date: May 16, 2017

Re: A Resolution Approving the Sale of a Conservation Easement

Enclosed is a resolution requesting the approval of the sale conservation easement over Whatcom County property.

Requested Action
Public Works respectfully requests that the Whatcom County Council hold a public hearing and take action on the proposed resolution to approve a conservation easement over Whatcom County property.

Background and Purpose
Randy Doucet and Elizabeth Doucet own property adjacent to a Whatcom County-owned former gravel pit known as “Clark Pit”. They have requested a conservation easement over the County-owned property to provide a greenbelt along the west boundary of their property. Public Works has no plans to develop or mine that portion of the property. Public Works is supportive of granting the conservation easement to them.

Funding Amount and Source
The property owners are responsible for paying all costs associated with the conservation easement including compensating Whatcom County $15,000.00 for the conservation easement as valued by Public Works. No County funds have been expended to secure this easement.

Please contact me at extension 6216 if you have any questions or concerns regarding this resolution.

Encl.
RESOLUTION NO. __________

APPROVING THE SALE OF A CONSERVATION EASEMENT

WHEREAS, Whatcom County owns a former gravel pit known as “Clark Pit”, tax parcel number 400102 156300 0000; and

WHEREAS, Randy A. Doucet and Elizabeth B. Doucet (“Grantees”), own property identified as tax parcel number 400102 306202 0000, that is adjacent to “Clark Pit”; and

WHEREAS, the Grantees wish to have an undeveloped greenbelt adjacent to the west boundary of their property; and

WHEREAS, while the County Code does not specifically address the procedure for conveying a limited interest in County property, this matter has been reviewed by the Property Management Committee; and

WHEREAS, Public Works is supportive of granting a Conservation Easement to the Grantees to provide them with a greenbelt along the west boundary of their property; and

WHEREAS, as compensation for the Conservation Easement the Grantees will be required to pay Whatcom County $15,000.00 as valued by Public Works; and

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Executive is authorized to conclude the sale of the Conservation Easement as set forth in Exhibit A to the Grantees subject to full payment and to the terms and conditions of the Conservation Easement.

APPROVED this ____ day of ____________, 2017

ATTEST:  

Dana Brown-Davis, County Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Daniel L. Gibson

Chief Civil Deputy Prosecutor
After recording return document to:

Whatcom County Public Works
322 N. Commercial, Suite 210
Bellingham, WA 98225

Document Title: CONSERVATION EASEMENT
Reference Number of Related Documents: None
Grantor: Whatcom County
Grantee: Randy A. Doucet and Elizabeth B. Doucet
Legal Description: PTN SW NW, SE NW, NE SW, Sec. 11, TWN 39N, R1E, W.M.
Additional Legal Description is on Pages 6-9 of Document.
Assessor’s Tax Parcel Numbers: 400102 156300 0000 and 400102 306202 0000

CONSERVATION EASEMENT

This grant of a Conservation Easement is made by and between WHATCOM COUNTY, A WASHINGTON MUNICIPAL CORPORATION, referred to hereafter as “Grantor,” and RANDY A. DOUCET AND ELIZABETH B. DOUCET, HUSBAND AND WIFE, referred to hereafter as “Grantees.”. The Grantor owns real property in Whatcom County, the legal description of which is attached hereto as Exhibit A (hereinafter the “Property”). The intent of the Grantor and Grantees, through this Conservation Easement, is to preserve, protect, maintain and limit use of a portion of Grantor’s undeveloped Property for the benefit of the Grantees’ real property, the legal description of which is attached hereto as Exhibit B.

Grantor hereby convey to Grantees and their successors, heirs, and assigns, an easement for conservation purposes. The Conservation Easement is depicted as “Conservation Easement” on Exhibit C and is described on Exhibit D attached hereto (hereinafter the “Conservation Easement”).

This Conservation Easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below.

1. Rights, Obligations and Reservations. All benefits, burdens, rights, obligations and reservations in this Conservation Easement shall operate as covenants running
CONSERVATION EASEMENT

with the land on title to both the Property and Grantees’ real property.

2. **Permitted Uses and Rights Reserved by Grantor.** Grantor reserves the following rights:

   a. To include the acreage of the Conservation Easement within any development permit application or any project proposal that may be located on the Property for the purposes of calculating residential density or designating required open space;
   
   b. To maintain fish and wildlife habitat;
   
   c. Upon written agreement of the Grantee(s) and recommendation of a certified arborist or certified forester, selectively remove hazard trees to reduce safety hazards; however, this reservation of rights creates no additional duty to engage in such tree removal. In the event of an emergency, if prior written consent is not feasible, Grantor shall be subject to the provisions of WCC 16.16.235A;

   d. Enhance or restore degraded fish or wildlife habitat, wetlands or wild land forest characteristics on an ecologically managed basis; and

   e. Construction of unpaved foot trails which do not alter, damage, or compromise the intent of this Conservation Easement.

3. **Restrictions on Use.** Except as provided above, and as may be necessary to carry out those rights reserved, the Grantor shall not conduct the following activities within the Conservation Easement area:

   a. Remove trees or native vegetation.

   b. Permit grazing of livestock.

   c. Excavate, dredge, fill, dike or otherwise alter the landscape or topography.

   d. Store derelict vehicles, hazardous substances, or waste of any kind.

   e. Explore for or extract minerals, hydrocarbons, soils, gravel or other materials.

   f. Construct, erect or place any buildings, structures, or improvements, either of a temporary or permanent nature.

   g. Grant or allow road or utility construction and easements.

   h. Alter the surface or subsurface hydrology entering or exiting the Conservation Easement area.

   i. Otherwise use the Conservation Easement area in a manner that is inconsistent with the reservation of rights and the purposes of this Conservation Easement.
CONSERVATION EASEMENT


   a. Any forbearance by Grantees to exercise any rights under this Conservation Easement, in the event of a breach by Grantor, shall not be deemed to be a waiver of Grantees’ rights under this Conservation Easement.

   b. Access by Grantees to the Conservation Easement, without any further permission from Grantor, for the limited purpose of monitoring this Conservation Easement, shall be and is hereby authorized by Grantor. Access for any other reason to the Conservation Easement shall require permission from Grantor, which permission may be requested in writing from Andrew Hester at 360-778-6200, during normal operating hours.

5. General Conditions.

   a. This Conservation Easement does not grant or permit public access to any portion of the Conservation Easement.

   b. This Conservation Easement shall run with the Property and shall be binding on successors, assigns, and heirs of Grantor and Grantees.

   c. In the event that any of the provisions contained in this Conservation Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.

   It is understood and agreed that delivery of this Conservation Easement is hereby tendered and that the terms and obligations hereof shall not become binding upon Whatcom County unless and until accepted and approved hereon in writing for the County, by the County Executive.
CONSERVATION EASEMENT

Grantor: WHATCOM COUNTY

Jack Louws, County Executive

Approved as to form:
Prosecuting Attorney’s Office

Daniel L. Gibson, Chief Civil Deputy Prosecutor

Grantees:

Randy A. Doucet

Elizabeth B. Doucet

Date: 05/19/17
CONSERVATION EASEMENT

STATE OF WASHINGTON

COUNTY OF WHATCOM

: ss

__

On this ______ day of ____________________, 2017, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, a municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of Whatcom County, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of Whatcom County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

__________________________________
Notary Public in and for the State of Washington

Residing at _________________________

My commission expires ________________

Page 5 of 8
CONSERVATION EASEMENT

STATE OF WASHINGTON  

: ss

County of ________________  

On this ____________________ day of _______________ 2017, before me personally appeared Randy A. Doucet and Elizabeth B. Doucet, to me known to be the individuals described herein and who executed the foregoing instrument, and acknowledged 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 the day and year last above written.

Printed Name: __________________________
Notary Public in and for the State of Washington,
residing at __________________________
My commission expires __________________
CONSERVATION EASEMENT

EXHIBIT A

Grantor's Property

The Southwest Quarter of the Northwest Quarter; the Southeast Quarter of the Northwest Quarter; and the Northeast Quarter of the Southwest Quarter, excepting therefrom the Southwest Quarter of the Northeast Quarter of the Southwest Quarter

All in Section 2, Township 40 North, Range 1 East, W.M., Whatcom County, Washington.
CONSERVATION EASEMENT

EXHIBIT B

Grantees’ Property

The West half of the West half of the North half of the Southeast Quarter of Section 2, Township 40 North, Range 1 East of W.M.

Situate in County of Whatcom, State of Washington.
BASIS OF CALCULATIONS:
A.F.N. 2110500711

PARCEL NO.
400102 156300

AREA:
5.00 ACRES

Conservation Easement
BLAINE  WASHINGTON
Within the NE 1/4, SW 1/4, Sec. 2, Twp. 40 N., Rge. 1 E., W.M.
EXHIBIT D

LEGAL DESCRIPTION—CONSERVATION EASEMENT

AFFECTING TAX PARCEL ID NO. 400102 156300

AN EASEMENT, OVER AND ACROSS A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:


THENCE SOUTH 00° 58’ 45” WEST, ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION, 1325.03 FEET, TO THE CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION;

THENCE NORTH 87° 51’ 26” WEST, ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, 164.43 FEET, MORE OR LESS, TO A POINT AT THE INTERSECTION OF SAME WITH AN OFFSET LINE PARALLEL WITH, AND NOMINALLY 164.40 FEET WEST OF THE AFOREMENTIONED NORTH-SOUTH SECTION CENTERLINE, SAID OFFSET LINE BEING COINCIDENT WITH THE WEST MARGIN OF THE EAST 5.00 ACRES OF SAID QUARTER-QUARTER SECTION;

THENCE NORTH 00° 58’ 45” EAST, ALONG SAID OFFSET LINE AND WEST MARGIN, 1324.64 FEET, TO A POINT AT THE INTERSECTION OF SAME WITH THE EAST-WEST CENTERLINE OF THE AFOREMENTIONED SECTION 2;

THENCE SOUTH 87° 59’ 29” EAST, ALONG SAID CENTERLINE, 164.42 FEET, MORE OR LESS, TO THE AFOREMENTIONED REBAR AND CAP MONUMENT MARKING THE CENTER OF SAID SECTION 2, SAID MONUMENT BEING THE TRUE POINT OF BEGINNING AND TERMINUS OF THIS DESCRIBED EASEMENT.

THIS DESCRIBED EASEMENT IS INTENDED TO CONTAIN 5.00 ACRES, EXACTLY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.
## TITLE OF DOCUMENT:
An Ordinance Regarding Establishment of Speed Limits on portions of Marine Drive

## ATTACHMENTS:
1. Memo to County Executive and County Council
2. Speed Limit Ordinance
3. Vicinity Map

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

Should Clerk schedule a hearing? (X) Yes ( ) NO
Requested Date: 6/13/2017

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

To comply with RCW 46.61.415, at the direction of the County Council, it is found necessary and expedient to modify speed limits on portions of Marine Drive

## COMMITTEE ACTION:

## COUNCIL ACTION:

Rooted 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, County Executive, and Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Director

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director

Date: May, 2017

Re: Ordinance Regarding Change of Speed Limits for Marine Drive

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**Requested Action:**
Adoption of an ordinance to lower the speed limit on portions of Marine Drive in the Marietta Area.

---

**Background and Purpose:**
Marietta area residents have submitted a petition to lower the speed limit on Marine Drive between Bancroft Road and Hoff Road from the existing 40MPH to 30MPH (see attached).

The Public Works Department supports this proposed speed limit reduction and would like to discuss with the Council the potential of changing speed limits on all roads in the Marietta area north of Marine Drive and South of County Lane to 30MPH in order to have more consistent speed limits in this area. This would alter the speed limit on Bayon Rd, Hoff Rd, Jones Rd and Griffith Rd North of Marine Drive. The Public Works also recommends that the 25MPH section of Marine Drive from Hoff Road to Country Lane remain unchanged.
Petition to Lower the Speed Limit on Marine Dr. between Bancroft and Hoff Rds.

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Michelle Banks</td>
<td>1504 Marine Drive</td>
<td>30</td>
</tr>
<tr>
<td>Carol Arelle</td>
<td>1489 Marine Drive</td>
<td>30</td>
</tr>
<tr>
<td>Richard Williams</td>
<td>1531 Marine Dr.</td>
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<tr>
<td>Murphy Evans</td>
<td>1545 Marine Drive</td>
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<tr>
<td>Aruna Evans</td>
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<tr>
<td>Lucy Evans</td>
<td>1545 Marine Drive</td>
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</tr>
<tr>
<td>Ava Imhoff</td>
<td>3934 Griffith Ave</td>
<td>30</td>
</tr>
<tr>
<td>Kevin Allen</td>
<td>3934 Griffith Ave</td>
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</tr>
<tr>
<td>Nathaniel Landon</td>
<td>3450 Grove Rd.</td>
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<tr>
<td>Whitty Mahurie</td>
<td>3443 Hoff Rd.</td>
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</tr>
<tr>
<td>Dan Coffen</td>
<td>1540 Marine Dr.</td>
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<tr>
<td>Hayden Coffen</td>
<td>1540 Marine Dr.</td>
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</tr>
<tr>
<td>Madela Demityne</td>
<td>1540 Marine Dr.</td>
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<tr>
<td>Devin Ling</td>
<td>3910 Griffith Ave</td>
<td>35</td>
</tr>
<tr>
<td>Tracei Ling</td>
<td>3910 Griffith Ave</td>
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ORDINANCE NO.
TO ESTABLISH SPEED LIMITS ON CERTAIN COUNTY ROADS

WHEREAS, the Whatcom County Council is authorized under RCW 46.61.415 to establish speed limits on certain County roads; and

WHEREAS, it is found possible to reduce the speed limit on Marine Drive; and

NOW, THEREFORE, BE IT ORDAINED that speed limits be established as follows:

30 MPH on Marine Drive from Bancroft Road west to Hoff Road

BE IT FURTHER ORDAINED that the County Engineer is hereby directed to post the appropriate signs and that the Whatcom County Sheriff and the Washington State Patrol be notified by a copy of this ordinance.

Provisions of this ordinance are hereby added to Whatcom County Code, Section 10.04.030.

ADOPTED this ___ day of ____, 2017.

ATTEST:  WHATCOM COUNTY COUNCIL
Dana Brown-Davis, Council Clerk WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:  ( ) Approved ( ) Denied
Daniel L. Gibson
Civil Deputy Prosecutor

Jack Louws, Executive
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
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<tr>
<th>CLEARANCES</th>
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<th>Date</th>
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<th>Agenda Date</th>
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**EXECUTIVE:**

**TITLE OF DOCUMENT:**

An Ordinance Regarding Establishment of Speed Limits on portions of Slater Road

**ATTACHMENTS:**

1. Memo to County Executive and County Council
2. Speed Limit Ordinance
3. Vicinity Map

**SEPA review required?**

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

<table>
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<tr>
<th>( ) Yes</th>
<th>( X ) NO</th>
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**Should Clerk schedule a hearing?**

| ( X ) Yes | ( ) NO |

**Requested Date:** 6/13/2017

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

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

To comply with RCW 46.61.415, at the direction of the County Council, it is found necessary and expedient to modify speed limits on a portion of Slater Road

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

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

Through: Jon Hutchings, Director

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director

Date: May 17, 2017

Re: Ordinance Regarding Change of Speed Limits for Slater Road

Requested Action:
Adoption of an ordinance to lower the speed limit on a portion of Slater Road.

The Public Works Department requests a reduction of the speed limit on Slater Road from 700 feet east of Beach Way to the end to 25MPH.

Background and Purpose:
The curve at the intersection of Slater Road and Beach Way has had an increase in run off the road collisions. This request is to lower the speed limit on Slater Road from 45 mph to 25mph for 700 feet prior to the curve for westbound vehicles.
ORDINANCE NO.
AN ORDINANCE REGARDING ESTABLISHMENT OF SPEED LIMIT
ON A PORTION OF Slater ROAD

WHEREAS, the Whatcom County Council is authorized under RCW 46.61.415 to establish speed limits on certain County roads; and

WHEREAS, an increase in the number of collisions at the corner of Slater Road and Beach Way caused by high speeds; and

WHEREAS, the County Road Engineer has agreed that it is necessary to formally reduce the speed limit prior to the curve; and

NOW, THEREFORE, BE IT ORDAINED that a speed limit be set and posted at 25 miles per hour at the following locations:

On Slater Road from 700 feet east of Beach Way to west end.

BE IT FURTHER ORDAINED that the County Engineer is hereby directed to post the appropriate signs and that the Whatcom County Sheriff and the Washington State Patrol be notified by a copy of this ordinance.

Provisions of this ordinance are hereby added to Whatcom County Code, Section 10.04. ADOPTED this ____ day of ______, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Jack Louws, Executive

Date:
# WHATCOM COUNTY COUNCIL AGENDA BILL

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<td>Executive:</td>
<td>JC</td>
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**TITLE OF DOCUMENT:**
ORDINANCE REPEALING AND REPLACING WHATCOM COUNTY CODE CHAPTER 1.18

**ATTACHMENTS:**
Memo to Whatcom County Executive and Whatcom County Council

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

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

Proposal to repeal and replace existing Whatcom County Code Chapter 1.18

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
DATE: 05-08-2017

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

FROM: Sheriff Bill Elfo

RE: Ordinance Repealing and Replacing County Code 1.18.010 and 1.18.020 and
adding Code section 1.18.030

Attached is a proposed Ordinance to repeal the existing County Code sections 1.18.010 and 1.18.020, replace them with updated versions and add a new Code section (1.18.030) to this chapter, to allow other local Courts of Limited Jurisdictions to utilize them if they so choose. This Code concern the ability of offenders to receive credit for work done for the County, to be credited against fines and/or court costs for Whatcom County District Court.

The current County Code provides that offenders will be ordered into full custody to sit out unpaid fines and/or court costs. Further, the Code sets the dollar amount of credit at $40.00 a day if the offender simply stays in jail and $60.00 a day if they perform labor for the County.

The replacement Code reflects the actual practice, in place since approximately 1992. District Court does not order people into custody for failing to pay fines and/or costs, but will allow offenders to remain out of full custody and work off fines/costs via the Out of Custody Work Crew. District Court may also elect to send unpaid fines/costs to collection.

The new Code sections clarify the means of having fines/costs satisfied by offenders, increases the amount of credit they can receive, and makes the provisions of this ordinance available to the other local Courts of Limited Jurisdiction.

Please direct any questions to Chief Wendy Jones at 6505.
ORDINANCE NO. ________

REPEALING AND REPLACING WHATCOM COUNTY CODE CHAPTER 1.18

WHEREAS, Whatcom County Code Chapter 1.18 provides that defendants who are incarcerated by District Court may perform labor as provided for in RCW 10.82.040 in lieu of paying fines and/or costs; and

WHEREAS, this chapter of the Code was passed in 1991 when defendants were incarcerated for failing to pay fines assessed by District Court; and

WHEREAS, since approximately 1992 the jail has not held defendants in custody who sole offense was failure to pay District Court fines and costs; and

WHEREAS, the District Court has permitted defendants to work off their fines and/or costs by participating in the Whatcom County Corrections Out of Custody Work Crew; and

WHEREAS, the working off of fines should also be extended to other local Courts of Limited Jurisdiction; and

WHEREAS, Whatcom County Code Section 1.18.020 set the value of a day’s labor at $60.00 per day; and

WHEREAS, the value of a day’s labor has increased significantly since 1991; and

WHEREAS, allowing defendants to work off their fines and/or costs for District Court at a rate more representative of the current value of a day’s labor will be a benefit to the community; and

WHEREAS, these code sections are no longer representative of best practices within the Criminal Justice System;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the current Whatcom County Codes Chapter 1.18 (Exhibit A) is hereby repealed and replaced as set forth in Exhibit B, attached hereto.

ADOPTED this _____ day of __________, 2017.

ATTEST:

__________________________  __________________________
Dana Brown-Davis           Barry Buchanan, Council Chair
Clerk of the Council

WHATCOM COUNTY EXECUTIVE
APPROVED AS TO FORM:

__________________________  __________________________
Elizabeth Gallery, Civil Deputy Prosecutor  Jack Louws, County Executive

(  ) Approved       (  ) Denied
Date Signed: ____________________________
Exhibit “A”

Current County Code

Chapter 1.18
COURT FINES AND COSTS

Sections:
1.18.010 Imprisonment for nonpayment.

1.18.010 Imprisonment for nonpayment.
If any person ordered into custody, until the fine and costs adjudged against him by
district court are paid, does not, within five days, pay, or cause the payment of the same
to be made, the clerk of the court shall issue a warrant to the sheriff commanding him to
imprison such defendant in the county jail until the amount of such fine and costs owing
are paid. Execution may at any time issue against the property of the defendant for that
portion of such fine and costs not reduced by the application of this chapter. (Ord. 91-088 (part)).

1.18.020 Reduction by serving time and/or performing labor.
The amount of such fine and costs owing to district court shall be the whole of such fine
and costs reduced by the amount of any portion thereof paid, and $60.00 for every day
the defendant performs labor as provided in RCW 10.82.040, and $40.00 for every day
the defendant does not perform such labor while imprisoned. This chapter shall not
apply to those fines and costs owed to superior court. (Ord. 91-088 (part)).
Exhibit “B”

Chapter 1.18

COURT FINES AND COSTS

Sections:

1.18.010 Reduction of Fines and/or Costs
1.18.020 Determination of value of labor
1.18.030 Permission to utilize Ordinance for other Courts of Limited Jurisdiction

1.18.010 Reduction of Fines and/or Court Costs.

A District Court Judge or Commissioner may permit a defendant to reduce the amount of fines and court costs by performing labor for the County as provided in RCW 10.82.040. This labor will be performed under the supervision of the Whatcom County Sheriff in work programs that benefit the greater community. Alternatively, execution may, at any time, issue against the property of the defendant or sent to collections for that portion of such fine and costs not reduced or satisfied by the application of this chapter. The defendant must meet the Jail work program eligibility criteria.

1.18.020 Determination of value of labor.

The amount of such fine and costs owing to district court shall be the whole of such fines and costs, reduced by the amount of any portion thereof paid, and the value of every day’s labor calculated at the cost of an average of the following wage rates for the current year:

- Washington State Minimum Wage
- Washington State Prevailing wage for Landscape Construction Workers
- Whatcom County Parks Department wage for Temporary Groundskeepers

For the year 2017, that average is $12.70 per hour or $102.00 per day worked. This wage will be reset at the beginning of each calendar year to reflect the current year’s average.

1.18.030 Reductions for fines/court costs for other Courts of Limited Jurisdiction

Corrections Offender Work Programs utilized to satisfy court fines and/or costs will be extended to other local Courts of Limited Jurisdiction at the request of those courts and with the permission of the appropriate Judicial Officer. Standards and practices of the work crews and labor credit will be as specified within this ordinance.