2016 Critical Areas Ordinance Update
Review of certain questions, comments, and
suggestions by Council members

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<tbody>
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<td>6/27/2017</td>
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**COMMITTEE ACTION:**
6/27/2017: Discussed and Amended

**COUNCIL ACTION:**
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**CLEARANCES**

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<th>Originator:</th>
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**TITLE OF DOCUMENT:**

2016 Critical Areas Ordinance Update

- 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

**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 June 20, 2017

B. Best Available Science Report 2016 (previously distributed)

C. Chapter 16.16 Draft Critical Areas Ordinance - 2016-06-09, PC adopted (previously distributed)

**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
5/30/2017: Presented, discussed and amended
6/13/2017: Discussed, amended, and approved a motion to request staff to identify and engage all relevant stakeholders to come up with a recommendation for a feedback loop in CARAs

**COUNCIL ACTION:**

AGENDA BILL CONTINUED ON NEXT PAGE

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: July 3, 2017
SUBJECT: 2016 Critical Areas Ordinance Update
          County Council Review Workshop on July 11, 2017

On June 27th, 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 8, Conservation Program on Agriculture Lands
  - Article 9, Definitions
  - Article 5, Critical Aquifer Recharge Areas

To prepare for this meeting, please review this memo. In it have retained the original Issue numbers in order to keep track of them but assigned them consecutive item numbers to address CM Brenner’s concern. Yellow highlighting in the text indicates a Councilperson’s proposed amendments.
Questions, Comments, and Suggestions by Council Members

Article 8. Conservation Program on Agriculture Lands

ITEM 1 (Originally Issues 152 & 153)

Staff Response: Though Council had a lengthy discussion of these two (related) issues, both were tabled. Based on your discussion, staff has developed new language that we hope meets your intent. To better see the new proposed amendments we’ve removed all the previous insertions/deletions and embedded comments that you didn’t discuss (and therefore surmise it’s acceptable). We’ve:

- Reverted the language to “shall not/except” from the “may/only” P/C recommended grammar
- Combined B & C, since both intro paragraphs said the same thing
- Added CM Browne’s language of “history of legal ag use”
- added Ryan Ericson’s suggestion about “recommend” and a new (c) to make it clear that permits are required for those activities
- added a new C per CM Sidhu’s request

16.16.830 Conservation Farm Plans – General Standards.

A. All conservation farm plans shall include all practicable measures, including Best Management Practices, to maintain existing critical area functions and values.

B. A conservation farm plan shall not recommend nor authorize:

1. Filling, draining, grading, or clearing activities within critical areas or buffers:
   a. Except on agricultural land with a history of legal agricultural use and where such activities are a demonstrated essential part of an ongoing agricultural use or part of routine maintenance; and,
   b. When it does not expand the boundaries of an ongoing agricultural use; and,
   c. The appropriate permits for doing so have been obtained.

2. The construction of new structures. New structures shall be constructed in compliance with the applicable standard requirements of this chapter and the Whatcom County Code.

3. New or expanded drainage systems. However, the routine maintenance of existing drainage systems may be allowed, but only in compliance with the Washington State hydraulic code (WAC 220-660) and the Best Management Practices found in the “Drainage Management Guide for Whatcom County Drainage Improvement Districts.”

4. The conversion of land to agricultural use.

C. Other plans prepared for compliance with state or federal regulations (e.g., nutrient management plans), or to obtain an accredited private third-party certification (e.g., GLOBALG.A.P.), or similar plans may be used as part of or in lieu of a Conservation Farm Plan if the Technical Administrator determines they adequately address the requirements of this Title.

CM Browne also asked that we point out all remaining instances of the term “ongoing agriculture.” That term is still used in: 16.16.800(B), 16.16.830(B)(1)(a) & (b), and 16.16.800 (definitions of ag activities and ongoing ag).
CM Browne also asked that we provide the state and federal definitions surrounding this issue of “legal” or “grandfathered” agriculture. Those are attached at the end of this memo.

ITEM 2 (Originally Issue 161) (Brenner)

16.16.860 Monitoring and Compliance.
A. The technical administrator and/or the farm operator shall periodically monitor plan implementation and compliance beginning one year after plan approval and every two years thereafter, through the life of the plan, or more frequently at the Technical Administrator’s discretion. The monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions. For a time period of up to every 5 years, self-certification is allowed for Type 1 conservation farm plans, or if the for any plan that is prepared by the Whatcom Conservation District or Planning Advisor and approved by the department. If a sufficient self-certification monitoring report (must include photos and implemented Best Management Practices) is not submitted within 30 days of request, County staff may make a site visit. Site visits will be coordinated with the landowner/farm operator. Prior to carrying out a site inspection, the technical administrator shall provide reasonable notice to the owner or manager of the property as to the purpose or need for the entry, receive confirmation, and afford at least two weeks in selecting a date and time for the visit. At the landowner’s/farm operator’s discretion, staff may be accompanied by the planning advisor or Whatcom Conservation District planner.

Staff Response: Staff does not recommend this change. Changing the language to “any plan prepared by the WCD or PA” would allow all Type 2 and 3 farm plans to be self-certified. Allowing self-certification of Type 1 farm plans was intended to assist the small farm operators. However, allowing larger operations to self-certify would go against the standard practices of the WCD, the Department of Ecology, and other regulatory agencies. The language was incorporated from PDS Policy PL1-85-003Z.

ITEM 3 (Originally Issue 162) (Brenner)

Define "imminent threat."

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

Staff Response: Staff does not recommend this change. We feel that there are too many types of potential imminent threats and too many agencies potentially involved (health, agriculture, ecology, etc.) to classify. We feel it would be better for the various departments’ directors to have the discretion to determine what constitutes an “imminent threat.”
ITEM 4 (Originally 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.

ITEM 5 (Originally 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.

ITEM 6 (Originally 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.

ITEM 7 (Originally 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.

ITEM 8 (Originally Issue 163) (Brenner)

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

3. When substantial changes in the agricultural activities of the farm or livestock operation have occurred that render the current conservation farm plan ineffective. Substantial changes that render a conservation farm plan ineffective are those that:
   a. Degrade baseline critical area conditions for riparian and wetland areas that existed when the plan was approved; or,
b. Result either in an increased direct discharge or substantial potential discharge of pollution to surface or ground water; or,
c. The type of agricultural practices change from Type 1 to Type 2, Type 2 to Type 3, or Type 1 to Type 3 operations.

Staff Response: Staff does not recommend adding “with detailed written findings” as Council has declined this suggestion in other areas. Staff also doesn’t recommend adding “an increased” as direct discharges of pollution are never “grandfathered;” each discharge is a separate and illegal activity under the federal Clean Water Act.

ITEM 9 (Originally Issue 164) (Brenner)

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

Staff Response: Staff does not recommend adding “with detailed written findings” as Council has declined this suggestion in other areas.

ITEM 10 (Originally 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:

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<th>Type of Cattle</th>
<th>Number of Animals</th>
<th>Volume of Nutrients</th>
<th>Number of Acres</th>
<th>Crop Yields</th>
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<th>(b) Mature dairy cattle</th>
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<td>3,000 to 3,999</td>
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<td>4,000 and above</td>
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<td>150 to 299</td>
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<th>(d) Swine (fifty-five pounds or greater)</th>
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<th>Number of Acres</th>
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<td>• 3,000 to 9,999</td>
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<td>• 31,000 and above</td>
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<table>
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<tr>
<th>(f) Number of animals: Layers (all ages)</th>
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<td>• 200 to 999</td>
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<td>• 1,000 to 10,999</td>
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<td>• 11,000 to 24,999</td>
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<td>• 25,000 to 81,999</td>
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<td>• 446,400 to 535,679</td>
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<td>• 535,680 to 642,815</td>
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<td>• 642,816 to 771,379</td>
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<td>• 771,380 to 925,655</td>
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<td>• 925,656 to 1,110,787</td>
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<tr>
<td>• 1,110,788 to 1,332,945</td>
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<td>• 1,332,946 and above</td>
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<th>(g) Number of animals: Broilers (all ages)</th>
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<tr>
<td>• 1,200 to 1,549</td>
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<tr>
<td>• 1,550 and above</td>
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<table>
<thead>
<tr>
<th>(i) Livestock nutrients generated or exported by volume (ft³/day)</th>
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<tr>
<td>• 1 to 74</td>
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<td>• 75 to 134</td>
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<td>• 135 to 299</td>
</tr>
<tr>
<td>• 300 to 449</td>
</tr>
<tr>
<td>• 450 to 749</td>
</tr>
<tr>
<td>• 750 to 1,499</td>
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<tr>
<td>• 1,500 to 2,499</td>
</tr>
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<td>• 2,500 to 4,999</td>
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<td>• 5,000 to 8,499</td>
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<tr>
<td>• 8,500 to 11,999</td>
</tr>
<tr>
<td>• 12,000 to 15,999</td>
</tr>
<tr>
<td>• 16,000 and above</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(j) Livestock nutrients generated or exported by weight (tons/year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 1 to 5,256</td>
</tr>
<tr>
<td>• 5,257 to 10,512</td>
</tr>
<tr>
<td>• 10,513 to 21,024</td>
</tr>
<tr>
<td>• 21,025 to 42,048</td>
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<tr>
<td>• 42,049 to 84,096</td>
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<tr>
<td>• 84,097 to 164,184</td>
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<td>• 164,185 to 262,734</td>
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<tr>
<td>• 262,735 to 394,200</td>
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<tr>
<td>• 394,201 to 558,384</td>
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<tr>
<td>• 558,385 to 722,634</td>
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<tr>
<td>• 722,635 to 919,734</td>
</tr>
<tr>
<td>• 919,735 to 1,051,134</td>
</tr>
<tr>
<td>• 1,051,135 and above</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(k) Number of acres covered by the plan or used for land application of livestock nutrients</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 0 to 25</td>
</tr>
<tr>
<td>• 25 to 65</td>
</tr>
<tr>
<td>• 66 to 120                                    • 901 to 1,300</td>
</tr>
<tr>
<td>• 121 to 300                                   • 1,301 to 1,800</td>
</tr>
<tr>
<td>• 301 to 550                                   • 1,801 to 2,500</td>
</tr>
<tr>
<td>• 551 to 900                                   • 2,501 to 3,200</td>
</tr>
<tr>
<td>• 7.1 to 9                                     • 3,201 to 4,000</td>
</tr>
<tr>
<td>• 9.1 to 12                                    • 4,001 to 6,000</td>
</tr>
<tr>
<td>• 19.6 to 22                                   • 6,001 to 9,000</td>
</tr>
<tr>
<td>• 22.1 to 26                                   • 9,001 to 11,500</td>
</tr>
<tr>
<td>• 26.1 and above                               • 11,501 to 14,000</td>
</tr>
<tr>
<td>• 14,001 and above                             • 14,001 and above</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(l) Crop yields - tons/acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 0 to 1</td>
</tr>
<tr>
<td>• 1.1 to 2</td>
</tr>
<tr>
<td>• 2.1 to 3.5</td>
</tr>
<tr>
<td>• 3.6 to 5</td>
</tr>
<tr>
<td>• 5.1 to 7</td>
</tr>
<tr>
<td>• 7.1 to 9</td>
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<tr>
<td>• 9.1 to 12</td>
</tr>
<tr>
<td>• 12.1 to 14.5</td>
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<tr>
<td>• 14.6 to 17</td>
</tr>
<tr>
<td>• 17.1 to 19.5</td>
</tr>
<tr>
<td>• 19.6 to 22</td>
</tr>
<tr>
<td>• 22.1 to 26</td>
</tr>
<tr>
<td>• 26.1 and above</td>
</tr>
</tbody>
</table>
ITEM 11 (Originally 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/ have 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.

ITEM 12 (Originally 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.

ITEM 13 (Originally 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

ITEM 14 (Originally Issue 165) (Brenner)

16.16.900 Definitions.
“Actively farmed” means land that has an documented history of ongoing agricultural use and that is currently used primarily for the production of crops and/or raising or keeping livestock.

Staff Response: Staff recommends deleting this entire definition, as we find now that the term isn’t used anywhere in the CAO.

ITEM 15 (Originally Issue 166) (Brenner)

16.16.900 Definitions.
“Agricultural activities” means those activities directly pertaining to the production of crops or livestock including, but not limited to: cultivation; harvest; grazing; animal waste storage and disposal; fertilization; the operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, and canals; and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Neither the construction of new structures nor Aactivities that bring an a new, non-ongoing agricultural area into agricultural use are not considered agricultural activities.

Staff Response: Staff does not recommend this change. Where this term is used in the code it is in reference to exempting standard farming practices from some of the rules. However, both constructing new buildings and bringing new areas into agricultural use are supposed to always fall under the standard rules.

ITEM 16 (Originally Issue 167) (Brenner)

Change, “Aquifer susceptibility” and "Aquifer vulnerability" to one definition that uses both terms since they are really the same. (p.86, ln 3-8)

16.16.900 Definitions.
“Aquifer susceptibility” means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

“Aquifer vulnerability” is the combined effect of susceptibility to contamination and the presence of potential contaminants.

Staff Response: Staff does not recommend this change. Though related, these words are not the same. Susceptibility how easily a particular aquifer may be contaminated. Its vulnerability is a measure of both its susceptibility and its likelihood of being contaminated given what types of uses are located above it.

ITEM 17 (Originally Issue 168) (Brenner)

16.16.900 Definitions.
“Cumulative Impact” means effects on the environment that are caused by the combined results of past, current and reasonably foreseeable future activities. Evaluation of such cumulative impacts should consider: (i) current circumstances affecting the critical area and relevant natural processes; (ii)
reasonably foreseeable future development that may affect the critical area; and (iii) beneficial effects of any established regulatory programs under other local, state, and federal laws.

Staff Response: Staff does not recommend this change. The term “cumulative impact” is used in 6 instances in the code and it would be best to define it. This definition is paraphrased from WAC 173-26-186(8)(d) of the Shoreline Management Act.

ITEM 18 (Originally Issue 169) (Brenner)

16.16.900 Definitions.

“Debris flow,” also called “lahar,” means a moving mass of rock fragments, soil, and mud, more than half of the particles being larger than sand size; a general term that describes a mass movement of sediment mixed with water and air that flows readily on low slopes.

Staff Response: Staff does not recommend this change. Though all lahars are a type of debris flow, not all debris flows are lahars. Some can be non-volcanic in nature.

ITEM 19 (Originally 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.

ITEM 20 (Originally Issue 170) (Brenner)

16.16.900 Definitions.

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

Staff Response: Staff does not recommend this change. This definition is straight out of RCW 36.70A.030(9).

ITEM 21 (Originally Issue 171) (Brenner)

16.16.900 Definitions.

“Ongoing agriculture” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and
facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

**Staff Response:** Staff does not recommend this change. We realize that several amendments have been proposed that would open up the CPAL program to all farming (both new and existing, or ongoing), but that was never the intent of this program. To do so may make us vulnerable to appeals, since treating new ag as old and allowing new impacts could be construed as violating the GMA.

**ITEM 22 (Originally Issue 172) (Brenner)**

*Under "Reasonable Use" Change "2,500 square feet" to "3,000 square feet"*

**16.16.900 Definitions.**

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

**Staff Response:** The section of this definition that refers to the square feet is already proposed for deletion so changing the number wouldn’t do any good. And Council has already changed this number to 4,000 in 16.16.270.

**ITEM 23 (Originally 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 in 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 (staff/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 1, 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, succession 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>
Article 5. Critical Aquifer Recharge Areas

ITEM 24

Is Having High Concentrations of Nitrates in Groundwater a Significant Health Issue? According to the literature, having high concentrations of nitrates in drinking water (primarily from groundwater and wells in rural areas) may cause methemoglobinemia\(^1\), generally in infants under 6 months old. We say "may" because more current studies call into question whether it is caused by high nitrate concentrations or bacteria:

"The link between nitrate and the occurrence of methaemoglobinaemia was based on studies conducted in the 1940s in the midwest of the USA. In part, these studies related the incidence of methaemoglobinaemia in babies to nitrate concentrations in rural well water used for making up formula milk replacement. Comly (1945), who first investigated what he called "well-water methaemoglobinaemia," found that the wells that provided water for bottle feeding infants contained bacteria as well as nitrate. He also noted that 'in every one of the instances in which cyanosis (the clinical symptom of methaemoglobinaemia) developed in infants, the wells were situated near barnyards and pit privies.' There was an absence of methaemoglobinaemia when formula milk replacements were made with tap water. Re-evaluation of these original studies indicate that cases of methaemoglobinaemia always occurred when wells were contaminated with human or animal excrement and that the well water contained appreciable numbers of bacteria and high concentrations of nitrate (Avery, 1999). This strongly suggests that methaemoglobinaemia, induced by well water, resulted from the presence of bacteria in the water rather than nitrate per se. A recent interpretation of these early studies is that gastroenteritis resulting from bacteria in the well water stimulated nitric oxide production in the gut and that this reacted with oxyhaemoglobin in blood, converting it into methaemoglobin (Addiscott, 2005)."

Regardless of whether methemoglobinemia is caused by bacteria or nitrates, treatment of infant cyanosis is simple once the condition has been recognized. If the patient is mildly affected, then he/she must simply refrain from drinking from the contaminated well for a few days and the body will replenish the hemoglobin by itself in a few days. However, if the patient is severely cyanotic, methylene blue must be administered intravenously in a dosage of 1-2 mg/kg of body weight for a ten-minute period and improvement should be prompt.

Additionally there are simple methods to prevent this syndrome. Residents of rural areas should have their wells tested\(^2\), especially if pregnant women or infants are consumers of the well water. If the well is contaminated, other water source alternatives are other safe wells, bottled water, a new, deeper well, or a water purification system\(^3\) which is capable of removing the nitrates. It’s also suggested that because cyanotic babies usually contract methemoglobinemia from the water used to prepare their formulas, formulas which use diluted whole

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\(^1\) AKA "blue baby syndrome," a condition wherein nitrates alter a blood protein, which prevents the blood cells from absorbing oxygen and can lead to slow suffocation and death. Since 1945, there have been over 2,000 cases of infant methemoglobinemia reported in Europe and North America with 7 to 8 percent of the afflicted infants dying. The WC Health Department is unaware of any known cases of methemoglobinemia in Whatcom County.

\(^2\) Always recommended by the WCHD

\(^3\) Also recommended by the WCHD
milk are less risky than those prepared from powdered or evaporated milk which require large amounts of water in preparation. Breast feeding or the use of bottled water in formula preparation offers the safest solution, especially if the groundwater quality is unknown.

Response to Council’s Motion of June 13, 2017

At your direction, PDS staff met with John Wolpers (WCHD) and George Boggs (WCD) to address your request for additional information and methods of protecting groundwater from nitrate contamination. In your last workshop we heard broad support, if not unanimity, for an approach that incorporated the following elements:

- Raising awareness and recruiting adoption of groundwater protective measures through education and outreach,
- Afford the opportunity for landowners to take initiative in identifying and implementing protective measures,
- Should be some sort of a self-administered pollution prevention checklist and self-reporting with a feedback loop similar to how the WC Health Dept. addresses failing septic systems,
- Incorporate community and stakeholder in identifying additional measures, and
- Focus efforts, at least initially, to obtain the greatest benefit in the shortest possible time.

Current Efforts

In thinking about next steps, we should look at current efforts to protect groundwater in order to identify potential gaps that could be filled by early actions. In your memo for your 5/30/17 workshop we provided you Table 1, Agencies with Roles in Minimizing Agricultural Impacts on the Environment, which outlined everything all the agencies are doing. Specifically in regard to protecting the aquifer against nitrates, we offer the following details of our local agencies’ efforts.

Whatcom Conservation District

While there are some qualified professionals that can develop farm plans, the majority are produced by the WCD.

Conservation Farm Plans

**Type 1 (small/low intensity farms)** Groundwater is protected in these types of operations because this relatively simple plan is limited to less than 1 animal unit/acre) and the operation may not collect and apply liquid manure. In a low productivity pasture, one horse would meet from 30 to 61% of the nitrogen needed by the crop. One beef cow would meet from 35% to 84% of nitrogen needed by the crop. So, if the animals are grazed and the solid manure spread evenly across the field the grass is sure to consume all available nitrogen. None remains to be converted to nitrate and lost to the aquifer with fall and winter rains. Liquid manure requires special management in terms of capturing, storing and applying in order to avoid environmental impacts to surface and ground water. If the operator desires to do this for his/her operation then they must obtain a Type 2 custom plan.

**Type 3 (Dairies/Other livestock operations put under a National Pollution Discharge Elimination System Permit).** The appropriate capture, storage, and application of manure are central to these types of plans. In the case of dairies, the WA State Dept. of Agriculture (WSDA) inspects the dairy at least every other year. It monitors
nutrient management records to ensure that they reflect that the manure applications have been applied at "agronomic" rates. This means that the amount and timing of the applications are to meet reasonably attained crop yields. It is estimated that as much of 70% of the dairies/large livestock operations (>200 animal units) are subject to the new Confined Animal Feeding Operation (CAFO) Permit. There are mandatory provisions of the CAFO Permit that impose additional manure management including monitoring, storage, and application. These plans can be very detailed and complex given the nature of the respective operations. There are annual reporting requirements. The WA Dept. of Ecology provides oversight along with WSDA.

**Type 2 (All other farming operations not either a Type 1 or 3).** It is the policy of the WCD to write all plans in a manner to protect critical areas. Nutrient management to protect groundwater is necessarily included in every plan, and the most current applicable guidance relative to fertilization is included. This is often drawn from Oregon and Washington Extension and the Agriculture Canada experiment station in Agassiz, BC.

**Education & Outreach**
With the funding made available through its Pollution Identification and Control (PIC) and Birch Bay Interlocal agreements with the County, the WCD developed and is maintain a robust education and outreach program for livestock operations of all sizes and berry growers.

Please see the attached WCD 2016 report of accomplishments (Attachment A). It describes the breadth of activities taken to protect surface and groundwater.

**Whatcom County Health Department**
The Whatcom County Health department provides review of water availability for those seeking to develop property. When an individual well is drilled, they require testing to assure that the property will be served with safe and reliable potable water. If a contaminant level is detected above the MCL (nitrate), they require mitigation. If a maximum contaminant level is detected (nitrate for instance), they require technology mitigation. The Health department also provides education to property owners on proper operation and maintenance of the technology.

The Group B regulations (those public water systems serving less than 15 connections) now require all proposed new systems developed to not exceed primary contaminant levels or they cannot be developed for use and must find an alternate source for potable water. Systems already in existence with high levels of nitrates require mitigation that can either be at the source or point of use.

The Washington State Department of Health requires Group A public water systems (greater than 15 connections) to submit sampling on a scheduled basis. If a maximum contaminant is found, there are options to address through blending sources or technology treatment.

**Additional Background Information**
There is a multitude of potential sources of nitrate in addition to agriculture. These include onsite septic systems, residential lawn fertilizers, and the natural environment. A onsite septic system (OSS) can generate between 6 and 17 grams of total nitrogen per person per day. (2002 EPA study). The calculated loss of N for residences in the Yakima Ground Water Management Area ranged from 195 to 225 lbs. of nitrogen per year. Soils greatly affect the rate of nitrogen loss. There is an estimated 27,000 OSS in rural Whatcom County. In a 2010 study EPA identified Red Alder as a significant source of nitrate in two Oregon coastal river systems. (See
According to the EPA report (https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=230765), these findings are mentioned to perhaps temper the expectation that we can be successful in achieving the desired quality of groundwater in a piecemeal manner.

Additionally, it is important to note that the overall trend well data from 2010 (31 wells) to 2016 (20 wells) monitored by Ecology has dropped and remained below 10ppm, though some individual wells are still of concern. Of the 2016 data, 5 of 20 wells are above 10 ppm and trending up. Four additional wells are barely below 10 ppm. (See Attachment B)

Two conclusions flow from this. First, the current program of education, outreach, and technical assistance must have some palpable efficacy to see this kind of improvement. Second, there is opportunity for improvement but over a smaller geographic area than the entire County. Accordingly, a focused response as appears contemplated by the Council rather than one of general application (like requiring all farms to have a farm plan) is justified.

**Options for the Future**

**Near Term**
The County could:

- **Conduct a targeted education and outreach program.** The twenty wells that Ecology has and continues to monitor could serve as a basis for identifying affected landowners. Messaging could be tailored to generators of nitrogen and consumers of private wells. The WCD, WC Health Dept., and WSU Extension could coordinate and collaborate on messaging. Goals would be to reduce nitrogen contribution to groundwater and ensure that those whose source of potable water is from private wells regularly test their water to avoid potential adverse health impacts.

- **Improve coordination of groundwater quality monitoring** and remediation strategies among the Department of Ecology, Department of Health, Whatcom Conservation District, WC Health Department, and WC Planning and Development Services.

**Intermediate Term**
The County could:

- **Support the Nooksack-Abbotsford-Sumas Transboundary Study.** Nearly 30 organizations are collaborating on a nitrogen assessment for the Lower Fraser River Valley and Whatcom County. This is one of six multi-national pilots in the World that is looking at managing nitrogen more effectively to avoid environmental impacts such as too much nitrate in groundwater. Ostensibly, the assessment and solution development will include the community, stakeholders, and agencies. (See Attachment C). One recommendation could be to evaluate whether or not the County should form a Ground Water Management Area (GWMA) and/or Aquifer Protection Area (APA) as provided under State law.

- **Conduct/seek an assessment of potable water wells** that could inform the delineation of boundaries for a future groundwater management area.
Longer Term
The County could:

- **Create a Ground Water Management Area** pursuant RCW 90.44.400 and WAC 173-100\(^4\). This statue lays out a process for publicly delineating boundaries then studying the aquifer using an advisory committee made up of stakeholders, the County, and the Department of Ecology. From this would be the development of a groundwater management plan that could identify solutions and funding sources, which can then be used by agencies with jurisdiction (i.e., the County) to develop the appropriate remedies and regulations. For information on the Yakima GWMA see [http://www.yakimacounty.us/541/Groundwater-Management-Area](http://www.yakimacounty.us/541/Groundwater-Management-Area).

- **Create an Aquifer Protection Area** pursuant to RCW Chapter 36.36. This statue allows for the creation of aquifer protection areas to finance the protection, preservation, and rehabilitation of subterranean water and to reduce special assessments imposed upon households to finance facilities for such purposes. Revenue is collected from fees assessed for withdrawals from the aquifer.

Using either or both of these mechanisms seems to address the key components of a desired program that Council addressed in their motion.

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\(^4\) See Attachment D – *State Mechanisms for Groundwater Protection*
State & Federal Definitions of Agricultural Land

RCW Chapter 84.34 Open Space, Agricultural, Timberlands—Current Use—Conservation Futures

84.34.020 Definitions.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:
   (i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;
   (ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or
   (iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:
   (A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and
   (B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;
   (ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:
   (i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and
   (ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Parcels of land described in (b)(i)(A) and (c)(i) of this subsection will, upon any transfer of the property excluding a transfer to a surviving spouse or surviving state registered domestic partner, be subject to the limits of (b)(i)(B) and (c)(ii) of this subsection;

(d) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which meet one of the following criteria:
   (i) Has produced a gross income from agricultural uses equivalent to two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;
(ii) Has standing crops with an expectation of harvest within seven years, except as provided in (d)(iii) of this subsection, and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year. For the purposes of this subsection (2)(d)(ii), "standing crop" means Christmas trees, vineyards, fruit trees, or other perennial crops that: (A) Are planted using agricultural methods normally used in the commercial production of that particular crop; and (B) typically do not produce harvestable quantities in the initial years after planting; or

(iii) Has a standing crop of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year;

(e) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands";

(f) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes;

(g) Any land that is used primarily for equestrian related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meet the requirements of (a), (b), or (c) of this subsection; or

(h) Any land primarily used for commercial horticultural purposes, including growing seedlings, trees, shrubs, vines, fruits, vegetables, flowers, herbs, and other plants in containers, whether under a structure or not, subject to the following:

(i) The land is not primarily used for the storage, care, or selling of plants purchased from other growers for retail sale;

(ii) If the land is less than five acres and used primarily to grow plants in containers, such land does not qualify as "farm and agricultural land" if more than twenty-five percent of the land used primarily to grow plants in containers is open to the general public for on-site retail sales;

(iii) If more than twenty percent of the land used for growing plants in containers qualifying under this subsection (2)(h) is covered by pavement, none of the paved area is eligible for classification as "farm and agricultural land" under this subsection (2)(h). The eligibility limitations described in this subsection (2)(h)(iii) do not affect the land's eligibility to qualify under (e) of this subsection; and

(iv) If the land classified under this subsection (2)(h), in addition to any contiguous land classified under this subsection, is less than twenty acres, it must meet the applicable income or investment requirements in (b), (c), or (d) of this subsection.
WAC Chapter 458-30 Open Space Taxation Act Rules

WAC 458-30-200 Definitions.

(w) "Farm and agricultural land" means:

(i) Any parcel of land twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size when the lands are:

(A) Primarily used to produce agricultural products for commercial agricultural purposes;
(B) Enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or
(C) Primarily used for other commercial agricultural purposes as established by rule.

(ii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

(A) One hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or
(B) Two hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

For the purposes of meeting the minimum gross income requirements as described in (w)(ii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(iii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres in size that are primarily used for commercial agricultural purposes and that have:

(A) Standing crops with an expectation of harvest within seven years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year; or
(B) Standing crops of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year.

For the purposes of meeting the minimum investment requirements as described in (w)(iii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income invested by the lessee in the production of the standing crop on the owner's classified farm and agricultural land.

(iv) Any parcel of land or contiguous parcels of land less than five acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

(A) One thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or
(B) One thousand five hundred dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.
For the purposes of meeting the minimum gross income requirements as described in (w)(iv)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(v) Farm and agricultural land also includes:

(A) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified farm and agricultural land parcel of twenty acres or more or multiple parcels that are contiguous and total twenty acres or more, and the use of the housing or residence is integral to the use of the classified farm and agricultural land for commercial agricultural purposes;

(B) Land on which appurtenances necessary for the production, preparation, or sale of the agricultural products are situated when the appurtenances are used in conjunction with the land(s) producing agricultural products, such as a machinery maintenance shed or a shipping facility located on farm and agricultural land that produces the products to be shipped;

(C) Land incidentally used for an activity or enterprise that is compatible with commercial agricultural purposes as long as the incidental use does not exceed twenty percent of the classified land. An incidental use of classified farm and agricultural land may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand;

(D) A noncontiguous parcel of land from one to five acres in size that constitutes an integral part of the commercial agricultural operation being conducted on land qualifying as "farm and agricultural land." As used in this paragraph, noncontiguous means not adjoining or touching but held by the same ownership as defined in RCW 84.34.020;

(E) Land used primarily for equestrian related activities for which a charge is made including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meets the requirements in (w)(i), (ii), or (iv) of this subsection; or

(F) Land used primarily for horticultural purposes including growing plants in the ground or in a container, regardless of whether under a structure, such as a greenhouse, subject to the following:

(i) The land is not primarily used for the storage, care, or selling of plants purchased from other growers for retail sale;

(ii) If the land is less than five acres and used primarily to grow plants in containers, such land does not qualify as "farm and agricultural land" if more than twenty-five percent of the land used primarily to grow plants in containers is open to the general public for on-site retail sales;

(iii) If more than twenty percent of the land used for growing plants in containers is covered by pavement, none of the paved area is eligible for classification as "farm and agricultural land." However, this limitation does not prevent up to twenty percent of the paved area from qualifying as "incidental use" as described in (bb) of this subsection; and

(iv) If the land classified under (w)(v)(F) of this subsection, in addition to any contiguous land classified under (w) of this subsection, is less than twenty acres, it must meet the applicable income or investment requirements described in (w)(ii), (iii), or (iv) of this subsection.
U.S. Food Security Act

Subpart D - Labels: Wetlands Converted to Agricultural Use Before December 23, 1985

514.30 Prior Converted Cropland (PC)

A. Definition

(1) Prior converted cropland (PC) is a converted wetland where the conversion occurred before December 23, 1985; an agricultural commodity had been produced at least once before December 23, 1985; and as of December 23, 1985, the area was capable of producing an agricultural commodity (i.e., did not support woody vegetation and was sufficiently drained to support production of an agricultural commodity). The conversion could include draining, dredging, filling, leveling, or otherwise manipulating (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) the wetland area. In addition, PC meets the following hydrologic criteria:

(i) If the area is not a pothole, playa, or pocosin, inundation is less than 15 consecutive days during the growing season or 10 percent of the growing season, whichever is less, in most years (50 percent chance or more).

(ii) If the area is a pothole, playa, or pocosin, inundation is less than 7 consecutive days and saturation is less than 14 consecutive days during the growing season in most years (50 percent chance or more).

(2) The presence and extent of pothole, playa, and pocosin wetlands in each State will be determined by the State Conservationist with advice from the State Technical Committee.

B. Supporting Documentation

(1) The NRCS Engineering Field Handbook (EFH), Chapter 19, “Hydrology Tools for Wetland Determination;” the 1987 COE Manual; and the approved State mapping conventions are used to determine if the area is inundated for the requisite time. Site conditions must be thoroughly documented, using information such as:

(i) Aerial photographs and FSA slides.

(ii) Flood frequency studies.

(iii) Interviews with the person and other knowledgeable residents of the area.

(iv) Field indicators of surface water such as water marks, drift lines, and drowned or stressed crops.

(v) Stream gauge data.

(2) FSA records may be used to determine current or prior cropping history. In the absence of FSA records, any determination of cropping history should be based on aerial photography, crop expense or receipt records, grain elevator records specific to tract and field, or other suitable documentation that can be tied to the specific field and/or tract under review.

C. Drainage Maintenance and Improvement

(1) Drainage systems or other hydrologic manipulations on PCs may be maintained or improved after December 23, 1985, without loss of eligibility for USDA program benefits. USDA program participants should exercise caution when maintaining drainage systems so that neighboring wetlands are not inadvertently drained.
D. Procedures for Identifying PCs
   (1) Aerial photographs, crop records, and other resources are consulted to determine if the area—
   
   (i) Has hydric soils.
   (iii) Was capable of producing an agricultural commodity (i.e., did not support woody vegetation and was sufficiently drained to support production of an agricultural commodity) as of December 23, 1985.
   (iv) Fails to meet hydrologic criterion of Farmed Wetland (FW).

USDA Prior Converted Cropland Exemption
Areas that qualify as Prior Converted Cropland (PC) are exempt from the Swampbuster provision of the Farm Bill. These areas can be further drained, cropped or manipulated without loss of eligibility for USDA program benefits. Prior converted croplands that are certified by NRCS are also exempt from wetland regulations administered by the Army Corps of Engineers and EPA (Section 404 of the Clean Water Act). However, if the land changes to a non-agricultural use, or is abandoned, according to the criteria established by the Corps and EPA, it may be regulated under the CWA.

What it Takes for Farmland to Qualify as Prior Converted Cropland
Farmland must meet all of the following criteria for it to be designated as Prior Converted Cropland:
   • Cropped prior to December 23, 1985 with an agricultural commodity (an annually tilled crop such as corn);
   • The land was cleared, drained or otherwise manipulated to make it possible to plant a crop;
   • The land has continued to be used for agricultural purposes (cropping, haying or grazing)
   • The land does not flood or pond for more than 14 days during the growing season

Woodland, pasture and hayland without a history of annual tillage and cropping do not qualify as Prior Converted Cropland.

Department of Ecology Prior Converted Croplands/Wetlands Information
What are prior converted croplands?
Prior converted croplands (PCCs) are identified for the purpose of implementing the Food Security Act (FSA), and refers to wetlands that were converted from a non-agricultural use to production of a commodity crop prior to December 23, 1985. In other words, PCCs are wetlands that were drained, dredged, filled, leveled, or otherwise manipulated, including the removal of woody vegetation, to enable production of an agricultural commodity. To be considered a PCC, the area must have had an agricultural commodity planted or produced at least once prior to December 23, 1985. After 1985 these sites must continue to be in active agricultural use. This means a commodity crop that requires annual tilling must be produced at least once every five years.

In addition, PCCs must not have standing water present for more than 14 consecutive days during the growing season. If an agricultural site has standing water for greater than 14 consecutive days it would be considered a "farmed wetland." Many farmed areas in valleys flood throughout the winter and would not be considered PCC.
Therefore, it is important to document surface water levels throughout the year (i.e., determining the hydroperiod during the dry season alone is not adequate).

**Conversion of a PCC to a non-agricultural use may be subject to local, state, and federal regulations**

While many PCC areas have been extensively manipulated and drained, and some may no longer be wetlands, a PCC area may meet the federal and state wetland hydrology criterion (refer to the federal delineation manual and regional supplements). If the land changes to non-agricultural use, or is abandoned, a PCC area may be regulated under federal, state or local laws. Landowners, who intend to develop their land or conduct an activity that precludes use of the land for continued agricultural production, should contact the Corps, Ecology and the local government (city/town or county) to determine if the land meets the criteria for jurisdictional wetlands under applicable laws.

Even if not abandoned, PCC wetlands, like isolated wetlands, that meet the state’s wetland delineation criteria (Chapter 173-22-035 WAC) are still regulated under the state’s Water Pollution Control Act (Chapter 90.48 RCW), the Shoreline Management Act, and the Growth Management Act. **Conversion of a PCC wetland to non-agricultural use requires state and local approval.**

**Why regulate PCC wetlands?**

In the past, PCC wetlands were often exempt from federal regulation under the Clean Water Act, based on the belief that these wetlands had been so altered they no longer provided important wetland functions. However, PCC wetlands in Washington perform many of the same important environmental functions as other wetlands, including recharging streams and aquifers, storing flood waters, filtering pollutants from water and providing wildlife habitat. In some cases, PCC wetlands have been significantly altered so they provide only minimal functions. However, in many cases, PCC wetlands provide important hydrologic functions and may provide significant wildlife habitat.

**Guidance on delineating wetlands on agricultural lands**

In 1994, the Departments of Agriculture, Interior, and Army and the EPA entered into a Memorandum of Agreement (MOA), Guidance on Conducting Wetland Determinations for the Food Security Act (FSA) and Section 404 of the Clean Water Act (CWA). The MOA was developed to streamline the wetland delineation process on agricultural lands, to promote consistency between the CWA and the FSA, and to provide predictability and simplification for U.S. Department of Agriculture program participants.

In January 2005, both the Natural Resources Conservation Service (NRCS) and Department of the Army withdrew from the MOA. The MOA was replaced with the Corps and NRCS Joint Guidance on Conducting Wetland Delineations for the Food Security Act of 1985 and Section 404 of the Clean Water Act (PDF, February 25, 2005). This guidance addresses the responsibility of NRCS for performing wetland delineations for the FSA and the Corps for delineations for CWA Section 404 purposes. Also see Key Points - February 28, 2005 (PDF) for the rationale for withdrawal from the 1994 MOA.

The 2005 MOA also states that the identification of prior converted croplands (PCC) made by NRCS remains valid as long as the area is devoted to an agricultural use. If the land changes to a non-agricultural use, the PCC determination is no longer applicable and a new wetland determination is required for Clean Water Act purposes. Specific guidance will be provided by the Corps in the future addressing how the Corps will treat PCC designations for land that changes from agricultural to non-agricultural use.
TITLE OF DOCUMENT:
Departmental Updates to Council

ATTACHMENTS:

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

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

Council Reporting Schedule - 2017

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

COMMITTEE ACTION:

COUNCIL ACTION:

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

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

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<th>Initial</th>
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<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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**TITLE OF DOCUMENT:** 2017 Supplemental Budget Request #7

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

<table>
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<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
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<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( X ) NO</td>
<td>Requested Date:</td>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Supplemental #7 requests funding from the General Fund:

1. To appropriate $15,000 in Non Departmental to fund transfer to Public Works – Natural Resources in support of legal services regarding the Hirst decision.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

6/27/2017: Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**
PROPOSED BY: Executive
INTRODUCTION DATE: 6/27/17

ORDINANCE NO.
AMENDMENT NO. 7 OF THE 2017 BUDGET

WHEREAS, the 2017-2018 budget was adopted December 6, 2016; and,
WHEREAS, changing circumstances require modifications to the approved 2017-2018
budget; and,
WHEREAS, the modifications to the budget have been assembled here for deliberation by
the Whatcom County Council.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2017-2018
Whatcom County Budget Ordinance #2016-068 is hereby amended by adding the following
additional amounts to the 2017 budget included therein:

<table>
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<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
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<tr>
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<td>-</td>
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<tr>
<td>Total Supplemental</td>
<td>15,000</td>
<td>-</td>
<td>15,000</td>
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</table>

ADOPTED this ___ day of __________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

( ) Approved  ( ) Denied

Jack Louws, County Executive

Date: ____________________________
<table>
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<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
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<tr>
<td>General Fund - Non Departmental</td>
<td>To fund transfer to Public Works - Natural Resources in support of legal services regarding the Hirst decision.</td>
<td>15,000</td>
<td>-</td>
<td>15,000</td>
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<tr>
<td>Total Supplemental</td>
<td></td>
<td>15,000</td>
<td>-</td>
<td>15,000</td>
</tr>
</tbody>
</table>
Supplemental Budget Request

Non-Departmental

Suppl ID # 2325  Fund 1  Cost Center 4530  Originator: Council

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

Name of Request: Transfer to Fund Legal Services Re: Hirst Decision

X

Department Head Signature (Required on Hard Copy Submission)  Date

<table>
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<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tr>
<td>Request Total</td>
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1a. Description of request:

Per Council direction, the contract amendment for a legal services contract regarding the Hirst decision, which is being managed by Public Works Natural Resources Division, should be funded by the General Fund. This request provides for the transfer to fund the contract amendment. Public Works will resubmit its Natural Resources Division supplemental to present the transfer in as the funding source for its $15,000 expenditure request. The Public Works supplemental will be introduced on July 11th for adoption on July 25th.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:
   General Fund
### Whatcom County Council Agenda Bill

**Title of Document:** Bid #17-41 2017 Drydocking, Repair & Maintenance of the Whatcom Chief Ferry

#### Attachments:
- Memos from Finance and Public Works

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

Public Works Equipment Services Division is requesting approval to award bid 17-41, and approval for the Executive to enter into a contract for the annual drydocking, repair, and maintenance of the Whatcom Chief Ferry. Two bids were received and the recommendation is for award to the low bidder, Foss Maritime Company, for a total cost of $446,251.64.

#### Committee Action:

#### Council Action:

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**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:       June 28, 2017
TO:         Jack Louws, County Executive
FROM:       Brad Bennett, AS Finance Manager
SUBJECT:    Award of Bid 17-41, 2017 Drydocking, Repair & Maintenance of the Whatcom Chief Ferry

BACKGROUND
Bids were advertised for the annual drydocking, repair, and maintenance service for the Whatcom Chief Ferry. Two bids were received on June 27, 2017. The bid totals are as follows:

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>TOTAL BID</th>
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</thead>
<tbody>
<tr>
<td>Foss Maritime</td>
<td>$446,251.64</td>
</tr>
<tr>
<td>Lake Union Drydock</td>
<td>$447,307.00</td>
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</table>

Public Works Equipment Services Division requests approval to award the bid and enter into a contract with the low bidder Foss Maritime, in the amount of $446,251.64.

FUNDING
This is a regularly budgeted project and funds for this purchase were approved in the current budget. I concur with this recommendation.

Approved as Recommended:

______________________________
County Executive

Date of Council Action __________________
MEMORANDUM

To: Brad Bennett, AS Finance Manager
Through: Jon Hutchings, Public Works Director
From: Eric L. Schlehuber, PW Equipment Services Manager
Date: June 28, 2017
Re: Bid #17-41, Drydocking, Repair & Maintenance of the Whatcom Chief (2017)

- Requested Action
Approval requested to award the bid and subsequent contract for the 2017 Annual Drydocking, Repair and Maintenance of the Whatcom Chief to the lowest responsive bidder, Foss Maritime Company in Seattle, Washington in the total amount of $446,251.64.

- Background and Purpose
Bids were duly advertised and submitted for the annual drydocking, repair and maintenance of the Whatcom Chief Ferry. This work is contracted out annually by the Public Works Equipment Services Division. Two bid responses were received Tuesday, June 27, 2017. This year’s drydock is anticipated to take up to nineteen days, from Thursday, September 7, 2017 to Monday, September 25, 2017. Listed below is the detailed bid tabulation for the lowest responsive bid that meets minimum specifications of the two bid responses received. The Engineer’s Estimate was $429,012.00.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foss Maritime Company</td>
<td>$446,251.64</td>
</tr>
</tbody>
</table>

- Funding Amount and Source
Adequate funds exist within the 2017-2018 ER&R fund budget and is within the budgeted expenditure amount for repairs and maintenance as approved during the 2017-2018 budget process.

I am requesting Executive and the Whatcom County Council approval to award this bid and subsequent contract to Foss Maritime Company (Seattle, Washington) for a total of $446,251.64.

- Recommended Action
Please approve this purchase and forward to the Executive and the Whatcom County Council for approval at the July 11, 2017 Whatcom County Council Meeting.

Please contact Eric L. Schlehuber at extension 6405 if you have any questions or concerns.

cc: File
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

| Originator: | JT | 5/4/17 |
| Division Head: | AD | 5/8/17 |
| Dept. Head: | AO | 6/3/17 |
| Prosecutor: | 2D | 6/26/17 |
| Purchasing/Budget: | 6/26/17 |
| Executive: | 6/29/17 |

R E C E I V E D
JUN 30 2017
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
Contract between Whatcom County and Service Alternatives, Inc.

ATTACHMENTS:
1. Contract Information Sheet
2. Memo to Executive
3. 2 Originals of Contract

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.)

The purpose of this contract is to provide “Pathways to Employment” and “Community Access” services to eligible individuals with developmental disabilities. Pathways to Employment services are designed to assist individuals with developmental disabilities to pursue and maintain paid employment in integrated community settings. Community Access Services are designed to increase independence and inclusion in the community.

COMMITTEE ACTION:  

COUNCIL ACTION:  

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

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

TO: Jack Louws, County Executive

FROM: Regina A. Delahunt, Director

RE: Service Alternatives, Inc. - New Contract for Services to Individuals with Developmental Disabilities

DATE: June 20, 2017

Enclosed are two (2) originals of a contract between Whatcom County and Service Alternatives, Inc. for your review and signature.

- **Background and Purpose**
  The purpose of this contract is to provide “Pathways to Employment” and “Community Access” services to eligible individuals with developmental disabilities. Pathways to Employment services are designed to assist individuals with developmental disabilities to pursue and maintain paid employment in integrated community settings. Community Access Services are designed to increase independence and inclusion in the community. Currently, 311 adults in Whatcom County receive employment services (82% of whom are employed and earning wages) and 17 individuals receive community access services. Service Alternatives, Inc. will be one of the community providers offering these services.

- **Funding Amount and Source**
  The source of funding for this contract is the Washington State Department of Social and Health Services, Developmental Disabilities Administration. Funding includes state dollars and federal Medicaid match. Total compensation under this contract will vary depending on the number of clients and the types of services authorized, however, the estimated authorized service level is $448,807. County Council approval is required.

- **Differences from Previous Contract**
  This is a new contract. The Contractor has been monitored and found to meet on-going qualification requirements, originally established through RFQ #13-25.

Please contact Jessica Lee at extension 6047 if you have any questions regarding this agreement.

Encl.
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Human Services</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Jessica Lee</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Service Alternatives, 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 ❑  

- (per WCC 3.08.100 (a)) Original Contract #:  
- (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

#### Does contract require Council Approval?  
- Yes ☐  No ❑  

If No, include WCC:  

#### Is this a grant agreement?  
- Yes ☐  No ❑  

If yes, granter agency contract number(s):  

#### CFDA#:  

TBD (DSHS/DDD Revenue Contract in Process)  

#### Is this contract grant funded?  
- Yes ☐  No ❑  

If yes, Whatcom County grant contract number(s):  

#### Contract Cost  
- Center: 673800  

#### Is this contract the result of a RFP or Bid process?  
- Yes ☐  No ❑  

If yes, RFP and Bid number(s):  

#### RFQ #13-25  

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

If no, include Attachment D Contractor Declaration form.  

#### If YES, indicate exclusion(s) below:  

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

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

- Varies depending on number of clients and types of services authorized.

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

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

#### Summary of Scope:  
The purpose of this contract is to provide "Pathways to Employment" and "Community Access" services to eligible individuals with developmental disabilities. Pathways to Employment services are designed to assist individuals with developmental disabilities to pursue and maintain paid employment in integrated community settings. Community Access Services are designed to increase the individual's independence and inclusion in the community.

#### Term of Contract:  
- 1 Year  

#### Expiration Date:  
- 6/30/2018

#### Contract Routing:  

1. Prepared by: JT  
   - Date: 5/4/17
2. Attorney signoff: rb  
   - Date: 5/17/17
3. AS Finance reviewed: bbenett  
   - Date: 5/9/17
4. IT reviewed (if IT related):  
   - Date: 6-15-17
5. Contractor signed:  
   - Date: 6-27-17
6. Submitted to Exec.:  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  

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CONTRACT FOR SERVICES AGREEMENT
Employment Services

Whatcom County Contract No. 201706035

Service Alternatives, Inc., hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 8,
Exhibit A (Scope of Work), pp. 9 to 14,
Exhibit B (Compensation), pp. 15 to 17,
Exhibit C (Certificate of Insurance) p. 18,
Exhibit D (Assignment of Medicaid Billing Rights) p. 19,
Exhibit E (E-Verify Declaration) p. 20.

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 July, 2017, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2018.

The general purpose or objective of this Agreement is to provide employment or community access services to individuals with developmental disabilities as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term will vary, depending upon the number of clients authorized for service by the Washington State Department of Social and Health Services, Developmental Disabilities Administration (DSHS/DDA). 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, 31.1, 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 15th day of June, 2017.

CONTRACTOR:

Service Alternatives, Inc.
2812 Terrace Heights Drive, Suite 9
Yakima, WA 98901

(Name & Title of Signatory)

DIRECTOR, COMMUNITY AND EMPLOYMENT SERVICES

STATE OF WASHINGTON

COUNTY OF YAKIMA

On this 15th day of June, 2017, before me personally appeared Brandi Schultz, to me known to be the Director (title) of Service Alternatives, Inc. and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

Yakima. My commission expires 8/14/17.
WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager Date

Department Director Date

Approved as to form: Date

Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: ______________________
  Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
  ss
COUNTY OF WHATCOM )

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

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

CONTRACTOR INFORMATION:

Service Alternatives, Inc.
2812 Terrace Heights Drive, Suite 9
Yakima, WA 98901
Contact: Brandy Schutz, Director of Community & Employment Services
Phone: (509) 654-5144
bschutz@servalt-ces.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:
The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

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

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

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

**Series 30-39: Provisions Related to Administration of Agreement**

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

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

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.
30.2 Assignment and Subcontracting:
The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

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

31.2 Patent/Copyright Infringement: Not Applicable

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

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

34.1 Proof of Insurance:
The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:
Property Damage per occurrence - $500,000.00
General Liability & Property Damage for bodily injury- $1,000,000.00

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

a. Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and should the contractor discontinue 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:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: 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:

Jessica Lee, Developmental Disabilities Program Specialist - jlee@whatcomcounty.us
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
(360) 778-6047
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 Whatcom 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 Immigrant 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: Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinafter, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, excluding expenses, costs and attorney fees and shall not have the power to award punitive damages. The parties shall cover their own attorney's fees and costs and shall split the costs and shall split the cost of the arbitration itself. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

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.
EXHIBIT “A”
(SCOPE OF WORK)

I. Background

The purpose of this contract is to provide “Pathways to Employment” and “Community Access” services to eligible individuals with developmental disabilities. Pathways to Employment services assist working age adults to pursue and maintain paid employment in integrated community settings. Community Access services support individuals who are retired or no longer seeking employment to increase their independence and inclusion in the community.

All services are individualized to reflect the individual’s interests, strengths, gifts, talents, and service goals.

This contract reflects the community values and goals of the Whatcom County Developmental Disabilities Advisory Board, the Whatcom County Developmental Disabilities program, the Washington Department of Social and Health Services (DSHS) work order for the current biennium and the County Guidelines published by DSHS and available at https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/c_guidelines.pdf.

II. Service Types

The contractor has applied for and been accepted as a qualified provider for the services indicated, below.

☒ Individual Supported Employment
☐ Group Supported Employment
☒ Community Access

These services are defined in the table below, based on the definitions found in the DSHS/DDA Program Agreement for the current DDA biennium.
<table>
<thead>
<tr>
<th>Service Type</th>
<th>Service Description</th>
<th>Service Goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Supported</td>
<td>These services are part of an individual's pathway to integrated employment in</td>
<td>Establish employment opportunities for participants</td>
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<tr>
<td>Employment</td>
<td>typical community jobs.</td>
<td>within local businesses on a one-person/one-job basis or self-employment in</td>
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<td>These are individualized services necessary to help persons with development</td>
<td>line with the DS/HH/DDA self-employment guidelines.</td>
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<td>al disabilities obtain and continue integrated employment at or above the state's</td>
<td>Develop work opportunities regardless of the level of disability.</td>
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<td>minimum wage in the general workforce.</td>
<td>Develop relationships with and support from coworkers without disabilities</td>
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<td>These services may include intake, discovery, assessment, job preparation, job</td>
<td>(i.e. natural supports).</td>
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<td>marketing, job supports, recordkeeping and on-going support to maintain a job.</td>
<td>Earn sufficient wages to increase self-sufficiency and meet or exceed living</td>
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<td>expenses.</td>
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<tr>
<td>Group Supported</td>
<td>These services are part of an individual's pathway to integrated employment in</td>
<td>Develop skills necessary to increase independence on the job, and decrease</td>
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<tr>
<td>Employment</td>
<td>typical community jobs.</td>
<td>dependence on paid supports.</td>
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<td>These services are intended to be short term and offer ongoing supervised employment</td>
<td>Make measurable progress toward the individual's employment goals.</td>
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<td>for groups of no more than eight (8) workers with disabilities in the same setting.</td>
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<td>Examples include enclaves, mobile crew and other business models employing small</td>
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<td>groups of workers with disabilities in integrated employment in community settings.</td>
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<tr>
<td>Community Access</td>
<td>These individualized services are provided in typical integrated community</td>
<td>Participation in integrated community activities of clients' choice similar to</td>
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<td>settings for individuals in retirement or no longer pursuing employment.</td>
<td>individuals without disabilities of the same age.</td>
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<td>Services will promote individualized skill building which supports the individual to</td>
<td>Membership/leadership in local community clubs and associations based on</td>
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<td>actively and independently engage in their local community.</td>
<td>interest and culture.</td>
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<td>Activities will provide opportunity to develop relationships and to learn, practice</td>
<td>Foster connections between persons with disabilities and persons without</td>
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<td>and apply skills that result in greater independence and community inclusion.</td>
<td>disabilities who are not paid developmental disabilities staff</td>
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<td>These services may be authorized instead of employment support for working age</td>
<td>Enhance or maintain the persons' competence, integration, physical or mental</td>
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<td>individuals (21-62) who have received nine months of employment support and choose to</td>
<td>skill.</td>
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<td>no longer pursue employment.</td>
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### III. Statement of Work

HL_070117_Svc_Al Adult_Svcs
The Contractor will develop an individualized service plan for each client based on his or her interests, skills and abilities. Support will be provided as defined below to make measureable progress toward the client’s service goals as outlined in the plan.

A. Client support

“Support” provided in the implementation of client services, as referenced herein, is defined as staff time spent on behalf of the program client to achieve community employment or access goals. In addition to those activities specifically outlined within the billable activities, below, “support” when used within a definition typically refers to one of the following activities:

- **Monitoring** of client employment or community access activities (e.g., ensuring safety, quality etc.);
- Providing verbal or physical reminders or **prompts** for the client to successfully complete or engage in employment or community access activities; or
- Providing partial or total 1:1 **physical assistance** to allow the client to successfully complete or engage in employment or community access activities.

B. Pathway to Employment Billable Support Activities

Pathway to Employment includes both Individual Employment (IE) and Group Supported Employment (GSE). Billable support activities for Pathway to Employment services are found on the Washington State Department of Social & Health Services Developmental Disabilities Administration (DSHS/DDA) website, and may be amended or updated with prior notification by the County without a contract amendment.  

C. Community Access Billable Support Activities

Billable support activities for Community Access services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County without a contract amendment.  

D. Individualized Plan for Services

The Contractor is required to have a written, individualized service plan for each client, completed within 60 days of County authorization. This individual plan is meant to be the “driver” or basis for support services delivered by the Contractor. The individual plan must be updated and reviewed at least annually by the planning team, as described below.

The individual plan requires the development of a planning team including the client, client’s guardian when applicable, DSHS/DDA Case Resource Manager, and others identified by the client to provide input. At a minimum, the DSHS/DDA Case Resource Manager and the individual/guardian will receive a copy of the completed plan. Other members of the planning team may request a copy with the client’s permission.

Required elements of both Pathways to Employment and Community Access plans are outlined in the County Program Implementation Guide, referenced in Section 7.

E. Progress Updates
For all clients, the Contractor shall document measurable progress toward achieving the individual's service goals every 6 months in a format approved by the County. Six (6) month progress updates must be sent to the DSHS/DDA Case Resource Manager and the client/guardian.

If clients receiving Individual Employment or Group Supported Employment services have not obtained paid employment at minimum wage or better within six (6) months the contractor will:

- Review the progress toward service goals
- Provide evidence of consultation with the family/client
- Develop additional strategies with the family/client, county staff, employment support staff and case manager as appropriate. Strategies may include technical assistance, changing to a new provider and/or additional resources as needed to support employment goals.
- Document the additional/new strategies developed for each client with the client's file.

If after 12 months the client remains unemployed, an additional review will be conducted. The Contractor will address steps outlined in the previous six month progress report in the next 6 month progress report. The client may request to participate in Community Access activities or the client can choose to remain in an employment program. Individuals requesting to participate in Community Access activities will be referred to his/her DSHS/DDA Case Resource Manager.

**IV. Service Requirements**

**A. All Services will:**

1. Be individualized and unique to the client's Individualized Pathway to Employment or Community Access Plan.
2. Ensure continued movement toward inclusive settings, integration and connection with others in the community without disabilities.
3. Provide supports in a variety of settings and in a broad range of activities that will contribute to his/her individual service goals.
4. Provide staff and training interventions at appropriate levels to safely and effectively meet the needs of the client.
5. Promote independence through skill development and training, including the effective use of public transportation.
6. Implement curriculum, work activities, routines, and other materials used to facilitate learning that are relevant to the age and individual needs of each client.
7. Emphasize the development of natural community supports, in conjunction with, but not an over-reliance on, public funds. Natural supports are those provided by individuals in the work or community environment who are not paid to support the client.
8. Demonstrate measurable progress toward achieving the client's individualized service goals.
9. Include at minimum monthly contact by the contractor.
10. Provide support to the client at a service level proposed by the Contractor, approved by the County and authorized by the DSHS/DDA Case Resource Manager. Service levels will be authorized in accordance with:
    - Washington Administrative Code (WAC) 388-828-9325, through 9360 for Employment Services
    - Washington Administrative Code (WAC) WAC 388-828-9300 through 9310 for Community Access Services
    - County Implementation Guide for Employment and Community Access Services
11. Adhere to 42CFR 441 530(a) (1) related to Home and Community Based settings which requires:
   a. The service setting is integrated in and supports full access to the greater community;
   b. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;
   c. Provides opportunities to seek employment and work in competitive integrated settings; and
   d. Identifying settings that isolate people from the broader community or that have the effect of isolating individuals from the broader community of individuals who do not receive Medicaid HCB services. These settings are presumed not to be home and community-based.

B. All Employment Services will:

1. Emphasize maximum integration with co-workers without disabilities. All efforts will be made to promote employer responsibility for workers with disabilities, including exploration of direct employment of clients by the business/industry in Group Supported Employment.
2. Ensure that pay for work performed is commensurate with pay to other employees doing the same type and amount of work.
3. Ensure compensation in accordance with applicable federal and state laws and regulation. This includes, but is not limited to section 14 (C) of the Federal Fair Labor Standards Act (FLSA), RCW 39.12.022, RCW 49.46.060, RCW 49.46.020 and WAC 296-128-050 and Washington State Labor and Industries requirements and procedures for payment of sub-minimum wage.
4. Ensure that all individuals, regardless of their disability, are provided the opportunity to pursue employment. Some participants may need more support than others and may spend time in activities that will prepare the participant for future community employment.

C. Group Supported Employment (GSE) will:

1. Ensure paid work/paid training is available for all clients authorized for these services. In the event that contracted work is no longer available or insufficient to maintain a GSE work site, the provider is expected to notify the County to determine appropriate next steps related to client authorization.
2. Work towards establishing permanent integrated employment at or above minimum wage.

D. Community Access Services will:

1. Focus on activities that are typically experienced by the general public. Support to participate in segregated activities and/or specialized activities will not be reimbursed. Segregated and specialized activities are those which are organized and designed for individuals based on their disability.
2. Not be provided simultaneously with employment services, unless approved by exception by DSHS/DDA.
3. Ensure the health and safety of participating clients.
4. Ensure a positive image and development of relationships, increased competence, individualized skill-building, and other benefits identified in the client’s plan. Services will occur individually or in a group of no more than 2 or 3 individuals. Group services may only occur when based on similar interests and needs.
5. Allow a client to discontinue services in order pursue work and to receive employment support at any time.

V. Program Implementation Requirements
The Developmental Disabilities Program Implementation Guide, Employment and Community Access Services is incorporated by reference into the Scope of Work as presently adopted or subsequently amended and can be located at http://www.whatcomcounty.us/713/Contractors

The purpose of the Program Implementation Guide is to detail implementation requirements including policy and procedure for Pathways to Employment and Community Access services.
EXHIBIT "B"
(COMPENSATION)

The source of funding for this contract is DSHS/DDA and includes state dollars and federal Medicaid match. Total compensation for the contract is variable, depending upon the number of clients and service levels authorized by DSHS/ DDA and the County. This is a vendor agreement and not a sub recipient agreement.

The Whatcom County rate structure employs an hourly fee for services system.

The County will pay the contractor for services delivered to DSHS/DDA authorized clients.

- Service levels are individualized, based on assessed client need
- The service hours authorized for each client is mutually agreed upon by DDA, the County and the contractor.
- Limits to client service authorizations are established in Washington Administrative Code (WAC) 388-828-7020.
- Funding is allocated for services delivered to an individual client. The client's service allocation and funding will follow the client in the event that they choose to receive services through another contractor.
- The billing unit for services is hourly.

1. Billing and Payment

1. Invoices and attached service documentation will be submitted monthly to the Whatcom County Health Department in the format provided by the County. A complete billing includes both an invoice coversheet and attached client service documentation. The Contractor shall send invoices and service documentation to the following address:

Jessica Lee
Whatcom County Health Department
Human Services Division
509 Girard Street
Bellingham, WA 98225
jilee@co.whatcom.wa.us

2. The County must receive all invoices and supporting documentation within ten (10) calendar days following the last day of the month for which reimbursement is claimed. If an invoice or required documentation is incorrect, it will be returned to the Contractor. All invoice corrections or modifications must be submitted no later than forty five (45) days after the last day of the month in which the services were provided.

3. Payment by the County will be considered timely if it is made within thirty (30) days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than thirty (30) days after the expiration of this contract. Invoices and invoice corrections or modifications related to work done prior to December 31 of the contract year will be accepted no later than January 15 following the end of the County fiscal year (i.e. December 31).

4. The Contractor will not be paid for any billings or invoices for services occurring prior to the execution of the Contract or after its termination.

5. The Contractor shall not bill the County for service performed or provided under this contract if the Contractor has been or will be paid for the same service by any other source. Such sources include, but are not limited to, the Division of Vocational Rehabilitation Social Security Work Incentives such as Plans for Achieving Self Support...
(PASS), or Impairment Related Work Expense (IRWE). The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. Invoices must include the following statement, with an authorized signature and date:

   I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

7. A total annual funding authorization for all clients will be communicated to the contractor at the start of the contract year. The funding authorization may be amended, based on use, over the course of the contract year without contract amendment. Expenditures may not exceed the total funding authorization approved by the County and in no case will exceed the total available funding restricted to these services.

II. Reporting

1. Reporting on client services will be made monthly with the invoice for services through the established DSHS/DDA County billing and reporting process in the format provided by the County. Data elements and definitions for each category of service are outlined by DSHS/DDA in the Case Management Information System (CMIS) billing instructions found at: https://www.dshs.wa.gov/dda/county-best-practices.

2. The Contractor will provide other reports as developed and required by DSHS/DDA and the County during the term of the contract.

III. Additional Provisions

1. In determining the service level associated with each individual client, the primary service obligation is to meet the needs of the individual client related to his or her service goals, within the limits and requirements established in Washington Administrative Code (WAC).

2. Service levels proposed by the contractor must be approved by the County and authorized by the DDA Case Resource Manager (CRM).

3. Payment will be made on an hourly basis for all staff support hours provided, up to, but not to exceed the monthly support hours authorized for each client.

4. Authorized service levels documented in the DSHS/Case Management Information System (CMIS) database will take precedence in the event of any inconsistency or conflict. The current maximum authorized service level will be downloaded from the DSHS/CMIS database and provided to the Contractor on the monthly billing report.

5. The Contractor may propose a change in service level through the process established in the County Program Implementation Guide.

6. Funds received from the County shall not be used to provide cash benefit to the supported individual, whether salary, bonuses, or benefits.

7. The Contractor agrees to assign to the County its Medicaid waiver billing rights for services to DDA clients eligible under Title XIX programs. If the Contractor chooses to contract directly with DSHS to provide covered services under Title XIX, those services will not be billed to the County. (See Exhibit D)
IV: Reimbursement Rates for Pathways to Employment and Community Access Services

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Description</th>
<th>Rate</th>
<th>Funding source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Employment</td>
<td>Individualized staff support authorized up to 26 hours a month per client</td>
<td>$68/hour</td>
<td>DSHS/DDA</td>
</tr>
<tr>
<td>Individual Employment</td>
<td>Individualized staff support authorized greater than 26 hours a month per client *</td>
<td>$48/hour</td>
<td>DSHS/DDA</td>
</tr>
<tr>
<td>Group supported employment</td>
<td>Shared staff support within the GSE setting and individualized staff support outside of the GSE setting as authorized</td>
<td>$65/hour</td>
<td>DSHS/DDA</td>
</tr>
<tr>
<td>Community Access</td>
<td>Individualized support in integrated community settings</td>
<td>$32/hour</td>
<td>DSHS/DDA</td>
</tr>
</tbody>
</table>

*i.e. service levels authorized above 26 hours a month will be paid at a lower hourly rate. Both the rate and the service level are attached to the client’s authorization approved by DSHS/DDA. This means that if the actual number of hours provided falls below 26, the lower hourly rate will still apply.*

a. Other Reimbursable Activities

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Reimbursement</th>
<th>Funding source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff Training</td>
<td>Training for Contractor’s staff for the purpose of improving, or enhancing job-related knowledge and skills in the provision of developmental disabilities services.</td>
<td>Reimbursement for actual costs, pre-approved by the County. Travel and accommodation costs will be reimbursed according to Section 8.3 in the County Implementation Guide</td>
<td>DSHS/DDA And local funds</td>
</tr>
<tr>
<td>Partnership Project</td>
<td>Time spent in collaboration with school districts, Division of Vocational Rehabilitation staff, families, employers and other community collaborators to provide employment services to young adults with developmental disabilities during the school year they turn 21.</td>
<td>$68/hour not to exceed funding authorized in writing by the County per eligible student. Billable activities include those listed in Exhibit A, Scope of Work, Section III B.</td>
<td>DSHS/DDA And local funds</td>
</tr>
</tbody>
</table>
EXHIBIT "C"
(CERTIFICATE OF INSURANCE)
**CERTIFICATE OF LIABILITY INSURANCE**

**DATE (MM/DD/YYYY)**: 6/20/2017

**PRODUCER**
The Partners Group Ltd  
11225 SE 6th St.  
Suite 110  
Bellevue, WA 98004

**INSURED**
Service Alternatives, Inc.  
Generation 2, LLC  
Po Box 595  
Coupeville, WA 98239-0595

**CONTACT NAME**: Christina Oakley  
**PHONE**: (877) 455-5640  
**FAX**: (425) 455-6727  
**EMAIL**: coakley@tpgrp.com

**INSURER(S) AFFORDING COVERAGE**:  
- **Hanover American Insurance Company**: 36064  
- **Hanover Insurance Company**: 22292

**CERTIFICATE NUMBER**: 17-18 GL XS

**COVERAGES**

<table>
<thead>
<tr>
<th>INSR. LTR</th>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>LIMITS</th>
</tr>
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<tbody>
<tr>
<td>A</td>
<td>COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR</td>
<td>Z22A93321601</td>
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<td>EACH OCCURRENCE</td>
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<td>DAMAGE TO RENTED PREMISES (Ex occurrence)</td>
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<td>MED EXP (Any one person)</td>
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<td>PERSONAL &amp; ADV INJURY</td>
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<td>COMBINED SINGLE LIMIT (Per occurrence)</td>
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<td>BODILY INJURY (Per person)</td>
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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is included as Additional Insured on General Liability and coverage is Primary Non-Contributory as their interest may appear as respects operations performed by or on behalf of the Named Insured, as required by written contract. Waiver of Subrogation applies. CANCELS AND REPLACES PREVIOUSLY ISSUED CERTIFICATE.

**CERTIFICATE HOLDER**: Whatcom County  
509 Girard St.  
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**: Jordan Stair/PWESTM

© 1988-2014 ACORD CORPORATION. All rights reserved.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

<table>
<thead>
<tr>
<th>SUMMARY OF COVERAGE</th>
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<tr>
<td>1. Additional Insured by Contract, Agreement or Permit</td>
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<td>2. Additional Insured - Primary and Non-Contributory</td>
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<td>3. Blanket Waiver of Subrogation</td>
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<td>4. Bodily Injury Redefined</td>
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<tr>
<td>5. Broad Form Property Damage - Borrowed Equipment, Customers Goods &amp; Use of Elevators</td>
<td>Included</td>
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<td>6. Knowledge of Occurrence</td>
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<td>11. Supplementary Payments Increased Limits</td>
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<td>- Bail Bonds</td>
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<td>- Loss of Earnings</td>
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<td>12. Unintentional Failure to Disclose Hazards</td>
<td>Included</td>
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<tr>
<td>13. Unintentional Failure to Notify</td>
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</table>

This endorsement amends coverages provided under the Commercial General Liability Coverage Part through new coverages, higher limits and broader coverage grants.

1. Additional Insured by Contract, Agreement or Permit

The following is added to SECTION II – WHO IS AN INSURED:

Additional Insured by Contract, Agreement or Permit

a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add an additional insured on your policy is an additional insured 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, but only with respect to:

   (1) “Your work” for the additional insured(s) designated in the contract, agreement or permit;

   (2) Premises you own, rent, lease or occupy; or

   (3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

   (1) Only applies to the extent permitted by law; and

   (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.
(3) Applies on a primary basis if that is required by the written contract, written agreement or permit.

(4) Will not be broader than coverage provided to any other insured.

(5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

(1) This provision does not apply:

(2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.

(3) To any lessor of equipment:

(a) After the equipment lease expires; or

(b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor

(4) To any:

(a) Owners or other interests from whom land has been leased which takes place after the lease for the land expires; or

(b) Managers or lessors of premises if:

(i) The occurrence takes place after you cease to be a tenant in that premises; or

(ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

(5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

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

d. With respect to the insurance afforded to these additional insureds, the following is added to SECTION III – LIMITS OF INSURANCE:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or

2. Available under the applicable Limits of Insurance shown in the Declarations.

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

2. Additional Insured – Primary and Non-Contributory

The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 4. Other insurance:

Additional Insured – Primary and Non-Contributory

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under SECTION II – WHO IS AN INSURED, is primary and non-contributory, the following applies:

If other valid and collectible insurance is available to the Additional Insured for a loss covered under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the

Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

(1) For the sole negligence of the Additional Insured;

(2) When the Additional Insured is an Additional Insured under another primary liability policy; or

(3) when b. below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all other insurance by the method described in c. below.
b. Excess Insurance

(1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for 'your work';

(b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;

(c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or

(d) 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 I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY.

(2) When this insurance is excess, we will have no duty under Coverages A or B 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.

(3) 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:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) 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 of 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.

3. Blanket Waiver of Subrogation

The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS; Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damage under this coverage form. The damage must arise out of your activities under a written contract with that person or organization. This waiver applies only to the extent that subrogation is waived under a written contract executed prior to the "occurrence" or offense giving rise to such payments.

4. Bodily Injury Redefined

SECTION V – DEFINITIONS, Definition 3. "bodily injury" is replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

5. Broad Form Property Damage – Borrowed Equipment, Customers Goods, Use of Elevators

a. SECTION I – COVERAGE, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 2. Exclusions subparagraph j. is amended as follows:

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraphs (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor do they apply to the use of elevators at premises you own, rent, lease or occupy.

b. The following is added to SECTION V – DEFINITIONS:

24. "Customers goods" means property of your customer on your premises for the purpose of being:
a. worked on; or
b. used in your manufacturing process.
c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent

6. Knowledge of Occurrence
The following is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 2, Duties in the Event of Occurrence, Offense, Claim or Suit:
e. Notice of an "occurrence", offense, claim or "suit" will be considered knowledge of the insured if reported to an individual named insured, partner, executive officer or an "employee" designated by you to give us such a notice.

7. Liberalization Clause
The following is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:
Liberalization Clause
If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium, within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

8. Medical Payments – Extended Reporting Period
a. SECTION I – COVERAGE, COVERAGE C – MEDICAL PAYMENTS, Paragraph 1, Insuring Agreement, subparagraph a.(3)(b) is replaced by the following:
   (b) The expenses are incurred and reported to us within three years of the date of the accident; and
b. This coverage does not apply if COVERAGE C – MEDICAL PAYMENTS is excluded either by the provisions of the Coverage Part or by endorsement.

9. Newly Acquired Or Formed Organizations
SECTION II – WHO IS AN INSURED, Paragraph 3.a. is replaced by the following:
a. Coverage under this provision is afforded until the end of the policy period.

10. Non-Owned Watercraft
SECTION I – COVERAGE, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 2, Exclusions, subparagraph g.(2) is replaced by the following:
g. Aircraft, Auto Or Watercraft
   (2) A watercraft you do not own that is:
      (a) Less than 51 feet long; and
      (b) Not being used to carry persons or property for a charge;
      This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

11. Supplementary Payments Increased Limits
SECTION I – SUPPLEMENTARY PAYMENTS COVERAGE A AND B, Paragraphs 1.b. and 1.d. are replaced by the following:
1.b. Up to $2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $1000 a day because of time off from work.

12. Unintentional Failure to Disclose Hazards
The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 6, Representations:
We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

13. Unintentional Failure to Notify
The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 2, Duties in the Event of Occurrence, Offense, Claim or Suit:
Your rights afforded under this policy shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury" or "property damage" is not covered under this policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.
EXHIBIT "D"

(ASSIGNMENT OF MEDICAID BILLING RIGHTS)

The County, through its agreement with the Department of Social and Health Services (DSHS), Developmental Disabilities Administration (DDA), must ensure that all County-contracted providers assign their Medicaid waiver billing rights to the County. DSHS, as the single state Medicaid agency, has administrative authority for Title XIX coverage of services for people with developmental disabilities per 42 CFR 431.10. The County only has responsibility for services covered under its contract with DSHS/DDA. The Contractor agrees, by signing below, to assign to the County its Medicaid waiver billing rights for services to DDA clients eligible under the Title XIX programs. If the Contractor chooses to contract directly with DSHS to provide covered services under Title XIX, those services will not be billed to the County.

Authorized Signature

Date

10/15/17
Firm Name: Service Alternatives

Proposal/Bid/Invitation/Solicitation No. N/A

The undersigned declares, under penalty of perjury under the laws of Washington that:

1. The above named firm is currently enrolled in and using the E-Verify system for all employees hired on or after the contract inception date and will continue to use the E-Verify system for so long as work is being performed on the above named project.

2. I certify that I am duly authorized to sign this declaration on behalf of the above named bidder/proposer.

3. I acknowledge that Whatcom County requires a copy of the Memorandum of Understanding between the contractor listed above and the Department of Homeland Security certifying enrollment in the E-Verify program. Failure to provide the required Memorandum of Understanding could lead to suspension of this contract.

DATE: 6/15/17

SIGNATURE: [Signature]

PRINTED NAME: Brandy Schutz
**CLEARANCES**

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**TITLE OF DOCUMENT:**

Contract between Whatcom County and The Arc of Whatcom County

**ATTACHMENTS:**

1. Contract Information Sheet
2. Memo to Executive
3. 2 Originals of Contract

**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.)

The purpose of this contract is to provide “Information, Education and Family Support” to individuals with developmental disabilities (DD), their family members and the general public.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt, Director
RE: The Arc of Whatcom County – Information, Education and Family Support Contract
DATE: June 20, 2017

Enclosed are two (2) originals of a contract between Whatcom County and the Arc of Whatcom County for your review and signature.

- Background and Purpose

Parents and family members are the primary support for individuals with developmental disabilities (DD) across the lifespan. Organizing and connecting families for mutual support and providing timely and accurate information, assistance and referral are critical to improving outcomes for individuals with DD. The purpose of this contract is to provide “Information, Education and Family Support” to individuals with DD, their family members and the general public.

- Funding Amount and Source

The source of funding for this contract is DSHS/DDA and local funds in the amount of $134,669. Funding is included in the 2017 – 2018 budget. This is a new contract in response to RFP 17-10 and County Council approval is required. The contractor was the sole respondent.

Please contact Jessica Lee at extension 6047 if you have any questions regarding this agreement.

Encl.
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Health
Division/Program: (i.e. Dept. Division and Program) Human Services
Contract or Grant Administrator: Jessica Lee
Contractor’s / Agency Name: The Arc of Whatcom County

Is this a New Contract? Yes ☐ No ☒
If not, is this an Amendment or Renewal to an Existing Contract?
Yes ☒ No ☐
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: __________________________________________
Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: __________________________________________
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes ☐ No ☒
If yes, grantor agency contract number(s): ________________________________________________________________
CFDA#: TBD (DSHS/DDD Revenue Contract in Process)

Is this contract granted funded? Yes ☒ No ☐
If yes, Whatcom County grant contract number(s): _________________________________________________________
Contract Cost Center: 673800

Is this contract the result of a RFP or Bid process? Yes ☒ No ☐
If yes, RFP and Bid number(s): RFQ #17-10

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

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

Contract Amount: (sum of original contract amount and any prior amendments): $134,669
This Amendment Amount: $
Total Amended Amount: $

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

Summary of Scope: The purpose of this contract is to provide "Information, Education and Family Support" to individuals with developmental disabilities, their family members and the general public.

Term of Contract: 1 Year 
Expiration Date: 6/30/2018

Contract Routing:
1. Prepared by: JT 
   Date: 5/18/17
2. Attorney signoff: Rb 
   Date: 6/1/17
3. AS Finance reviewed: Bbennett  
   Date: 5/31/17
4. IT reviewed (if IT related):  
   Date: 6/14/17
5. Contractor signed:  
   Date: 6/27/17
6. Submitted to Exec.:  
   Date: 6/27/17
7. Council approved (if necessary):  
   Date:  
8. Executive signed:  
   Date:  
9. Original to Council:  
   Date: 
CONTRACT FOR SERVICES AGREEMENT
Information, Education and Family Support

The Arc of Whatcom County, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 8.
Exhibit A (Scope of Work), pp. 9 to 13.
Exhibit B (Compensation), pp. 14 to 15.
Exhibit C (Certificate of Insurance) p. 16.
Exhibit E (E-Verify Declaration) p. 17.

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 July, 2017, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2018.

The general purpose or objective of this Agreement is to provide “Information, Education and Family Support” to individuals with Developmental Disabilities, their family members and the general public as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed $134,669. 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 1st day of June, 2017.

CONTRACTOR:

The Arc of Whatcom County
2602 McLeod Road
Bellingham, WA 98225

[Signature]

Beverly Porter, Executive Director

STATE OF WASHINGTON

COUNTY OF Whatcom

On this 1st day of June, 2017, before me personally appeared Beverly Porter to me known to be the Executive Director of The Arc of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

RACHEL M. BOATMAN
NOTARY PUBLIC in and for the State of Washington, residing at

1000 E. Holly St., Bellingham, WA 98225

WHATCOM COUNTY:
Recommended for Approval:

Anne Deacotii, Human Services Manager  4/20/17

Regina Deahunter, Director  6/20/17

Approved as to form:

Prosecuting Attorney  6/20/17

Approved:
Accepted for Whatcom County:

By:
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  
COUNTY OF WHATCOM

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

________________________

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

________________________ My commission expires ________________

CONTRACTOR INFORMATION:

The Arc of Whatcom County
2602 McLeod Road
Bellingham, WA  98225
Contact: Beverly Porter – Executive Director
Phone: (360) 715-0170
beverlyp@arcwhatcom.org
GENERAL CONDITIONS

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

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

Series 10-19: Provisions Related to Term and Termination

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

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

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

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

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

Series 30-39: Provisions Related to Administration of Agreement

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

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

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.
30.2 Assignment and Subcontracting:
The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

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

31.2 Patent/Copyright Infringement: Not Applicable

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

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

34.1 Proof of Insurance:
The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:
Property Damage per occurrence - $500,000.00
General Liability & Property Damage for bodily injury - $1,000,000.00

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

a. Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and should the Contractor discontinue 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:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: 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:

Jessica Lee, Developmental Disabilities Program Specialist - jilee@whatcomcounty.us
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
(360) 778-6047

Jessica Lee, Developmental Disabilities Program Specialist - jilee@whatcomcounty.us
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
(360) 778-6047
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 principals 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 Whatcom 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: Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinafore, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, excluding expenses, costs and attorney fees and shall not have the power to award punitive damages. The parties shall have their own counsel’s fees and costs and shall split the costs of the arbitration itself. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

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 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.
EXHIBIT “A”
(SCOPE OF WORK)

I. **Background**

Parents and family members are the primary support for individuals with developmental disabilities across the lifespan. Organizing and connecting families for mutual support and providing timely and accurate information, assistance and referral are critical to improving outcomes for the DD population.

1. Develop and raise community awareness about the needs, rights and capacities of persons with developmental disabilities (DD);
2. Increase understanding of and access to community resources and the service delivery system
3. Provide organization to individuals with DD and their families.
4. Connect individuals with DD and their families for mutual support.
5. Foster the self-determination and status of individuals with DD

Funding is through the Department of Social and Health Services, Developmental Disabilities Administration (DSHS/DDA) to provide “Community Information” as defined within the DSHS/DDA program agreement for the current biennium, and local Whatcom County millage funds.

II. **Statement of Work**

The contractor will provide information, assistance, referral and support to individuals with developmental disabilities, their families, caregivers, and the community at large in the following ways:

1. **Family Connection and Support**
   
   a. Provide emotional and informational support to families related to parenting a child with developmental disabilities.
      
      i. Schedule and provide logistical support for monthly meetings of a “Parent-to-Parent” support group. Meetings will be facilitated by at least one parent of a child with developmental disabilities. Meeting topics will be driven by the interests and needs of parents. These meetings will provide a venue for parents to share information, discuss challenges and work together to address unmet needs.
   
   b. Provide regular social and networking opportunities for families to meet, share ideas and resources, and offer support and encouragement.
      
      i. Organize and implement six (6) networking and/or social events annually. Organizational duties include securing locations, recruiting and supervising volunteers, event promotion, and all event logistics.

   c. Identify, screen and train “helping parents” so that they can assist, support, and mentor other parents of children with DD based on common needs and interests. Training content will include understanding grief,
active listening and basic communication skills, cultural diversity, DDA Guiding Values, the peer support model, and community resources. The contractor will provide ongoing training to "helping parents" as needed.

i. Maintain a minimum of 25 trained helping parents available to assist families

ii. Facilitate a minimum of 15 parent matches during the contract year.

d. Provide culturally relevant services and outreach to diverse communities within Whatcom County.

i. Assign bi-lingual staff to provide outreach and services to the Spanish-speaking community.

ii. Develop and produce Spanish and other language materials as needed.

iii. Provide "Helping Parent" matches, social/networking activities and family support which consider language and cultural background.

iv. Provide at least one parent support meeting in a rural area outside of Bellingham within the contract year.

2. Information, Education and Referral

a. Provide information, education, and referral to individuals, families, and the community related to accessing and navigating the special education and social service systems. Assistance will include identifying generic, inclusive community resources as well as those specific to DD.

i. Provide 1:1 assistance to a minimum of 475 individuals to develop solutions, navigate the service delivery system and connect to community resources over the contract year.

b. Develop and distribute written information about local services, resources, events and issues relevant to the DD community.

i. Publish and distribute a monthly newsletter at least ten (10) times annually that consists of four or more pages. Efforts will be made to decrease the printed number of newsletters and move to an electronic mailing list. Printed newsletters will be maintained and prioritized for those with limited computer access or skills.

ii. Maintain an electronic calendar of community events, available on the contractor’s website.

iii. Develop and distribute monthly electronic mailings to a minimum of 1600 families and service providers which offer information and analysis of issues relevant to developmental disabilities.

iv. Develop, update, and distribute information related to guardianship, future planning, the hiring of caregivers and other topics related to the support of individuals with disabilities upon request. All information will be made available electronically and priority will be given to electronic distribution.

c. Develop and provide training opportunities on topics prioritized by family and community members.

i. Provide a minimum of eight (8) family centered training events during the contract period. Each training will be at minimum two (2) hours in length.

d. Foster collaboration between schools and families and provide information on best practices and community resources to district staff.
i. Schedule and coordinate presentations, as requested, to each of the (7) school districts. Presentations will be made in collaboration with the County, the Division of Vocational Rehabilitation (DVR) and the Developmental Disabilities Administration (DDA).

ii. Coordinate a Whatcom County Transition Fair, in collaboration with county and state staff, at least once during the contract period.

iii. Assist families to understand the Individual Education Plan (IEP) process, navigate differences and effectively collaborate with the district to meet the child's needs.

iv. Provide 1:1 consultation to district staff, as requested, on inclusion, self-determination and community resources.

3. **Self-advocacy and Inclusion**

Self-determination refers to the process by which individuals with DD make informed choices and decisions, with support as needed, based on their own preferences and priorities. Self-Advocacy is the ability to speak for oneself and one's own needs. Developing the skills and self-awareness needed to identify and communicate preferences, problem-solve, make decisions and advocate for oneself are critical to individuals being active and valued members of their communities.

a. The contractor will support self-advocates to understand their rights and responsibilities as participating members of their community, to learn to assertively communicate their needs, and to practice decision-making and problem solving skills.

i. Coordinate and facilitate a minimum of ten (10) self-advocacy meetings during the contract period. Coordination will include handling meeting logistics and identifying or developing curriculum to address self-advocate needs and priorities. In facilitating the meetings, the Contractor will 1) establish ground rules 2) model effective communication 3) provide a safe environment to address issues and concerns 4) develop solutions and strategies with participants.

ii. Provide support to self-advocates to develop and implement at least one (1) community service project during the contract period.

iii. Provide individualized instruction and assistance to self-advocates to develop leadership and self-advocacy skills, establish personal self-determination goals and to ensure effective participation.

b. Provide outreach and education to schools and the general community regarding the self-determination and inclusion of individuals with developmental disabilities.

i. Provide a minimum of 6 disability awareness presentations within general education classrooms and the community during the contract period.

III. **Anticipated Outcomes**

1. **Family Connection and Support**

a. Decrease the isolation and improve the health and welfare of families and caregivers of individuals with developmental disabilities.
b. Increase the confidence, knowledge and skill of families in parenting a child with special needs.

c. Increase access to culturally and linguistically appropriate information, resources and support.

2. **Information and Education**

   a. Increase the ability of family and caregivers to build a meaningful life in the community for individuals with DD.

   b. Increase the skill and understanding of family and caregivers in navigating the service delivery system, and effectively advocating for their loved one with a disability.

   c. Improve communication and collaboration between school districts, community service partners and families for the benefit of individuals with DD.

3. **Self-Advocacy and Inclusion**

   a. Increase the ability of individuals with disabilities to advocate for themselves, make their own choices, and self-direct the services and supports they receive.

   b. Increase awareness of developmental disabilities issues within the general community and the capacity of the community to include and welcome individuals with DD.

IV. **Program Requirements**

1. The contractor will designate a lead staff responsible for the targeted outcomes of the contract, and to coordinate with the County related to contracted activities.

2. Staff assigned to contract outcomes will be the parent or family member of an individual with developmental disability, unless otherwise approved by the County.

3. The contractor will maintain current job descriptions for all staff assigned to the contract.

4. The Contractor will ensure that staff hired have sufficient training and skill to safely and effectively deliver the services outlined. The Contractor will provide documentation of staff training and orientation as requested by the County.

5. The contractor will develop a plan to evaluate and get feedback annually on program services and priorities. At minimum the plan will include participant surveys and an annual assessment of community priorities, concerns and topics to be addressed.

6. Information, assistance and support will be provided in ways that promote the values of the DDA guiding values and which promotes individual choice and the self-direction of services.

7. Services will assist individuals and families in defining and utilizing available natural supports in the community. "Natural supports" are those personal associations and relationships that enhance the quality of life for individuals with developmental disabilities and are not based on a paid service relationship.
8. The contractor may promote understanding of legislative issues relevant to developmental disabilities and assist individuals in communicating their needs and priorities to elected representatives and government agencies. The Contractor may not, however, endorse or oppose pending legislation, ballot initiatives, or specific candidates running for elected office in any publication or with any resource made available through public funds under this contract.

9. The contractor will make targeted efforts to increase outreach to individuals and their families who come from ethnically and linguistically diverse communities.

10. Staff assigned to this contract are considered mandated reporters under RCW 74.34.020 and must comply with reporting requirements described under RCW 74.34.035, 040 and Chapter 26.44.

11. Staff assigned to this contract will have current CPR/First aid certification.

12. A DSHS background clearance, free of disqualifying convictions will be completed for staff assigned to this contract. If the contractor elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults, then the County shall deny payment for any subsequent service rendered by the disqualified individual. A list of disqualifying convictions may be found at the following. [http://www.dshs.wa.gov/bccu/bccucrimelist.shtml](http://www.dshs.wa.gov/bccu/bccucrimelist.shtml)

13. The agency will participation in a minimum of one monitoring session during the contract period. Monitoring elements will be based on the program requirements and outcomes identified in the contract, as well as a fiscal review of program costs and expenditures. The agency will fix any deficiencies noted, respond to recommendations made during the review and work with the County to ensure contract outcomes are met.

V. **Reporting and Documentation**

1. The Contractor will report on all program activities and outcomes, monthly, in a format approved by the County. The monthly report should accompany the invoice for services. The monthly reporting form is in an excel format, and is incorporated by reference.

2. Attendance and sign-in sheets or logs, handouts and other materials provided to participants as part of the above activities shall not be submitted with the monthly invoice, but shall be on file for review by the County.
I. **Source of Funding**

This contract, in an amount not to exceed $134,669 is funded by a contract with the Washington Department of Social and Health Services, Developmental Disabilities Administration (DSHS/DDA) and local funds.

II. **Contract Budget**

<table>
<thead>
<tr>
<th>Description</th>
<th>Program Area</th>
<th># Unit/ Rate</th>
<th>Documentation</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personnel Costs-Composite Billing rate</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Director and Parent Coalition Coordinator</td>
<td>Info and Ed</td>
<td>1040 hours (.5 FTE) @ $31.76/hour</td>
<td>Time report</td>
<td>$33,030</td>
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<tr>
<td>Parent-Coalition Co-Coordinator</td>
<td>Info and Ed</td>
<td>686 hours (.33 FTE) @ $25.36/hour</td>
<td>Time Report</td>
<td>$17,407</td>
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<td>Parent-to-parent Coordinator</td>
<td>Family Support</td>
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<td>Parent-to-parent Assistant Coordinator</td>
<td>Family Support</td>
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<td>Hispanic Parent Coordinator</td>
<td>Family Support</td>
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<tr>
<td>Self-Advocacy and Outreach Coordinator</td>
<td>Self-Advocacy</td>
<td>686 hours (.3 FTE)</td>
<td>Time Report</td>
<td>$11,288</td>
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<tr>
<td><strong>Subtotal Personnel Costs</strong></td>
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<td></td>
<td></td>
<td>$106,726</td>
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<tr>
<td><strong>Payment Point (Non Personnel Costs)</strong></td>
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<td></td>
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<tr>
<td>Parent Coalition Newsletter</td>
<td>Info and Ed</td>
<td>10 newsletters x $975 per newsletter</td>
<td>Date and description of service delivery</td>
<td>$9,750</td>
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<tr>
<td>Family Workshops</td>
<td>Info and Ed</td>
<td>8 @ $450/ per training</td>
<td>Date and description of service delivery</td>
<td>$3,600</td>
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<td>Self-advocacy support meetings</td>
<td>Self-Advocacy</td>
<td>10 @ 75 per meeting</td>
<td>Date and description of service delivery</td>
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<tr>
<td><strong>Subtotal Payment point</strong></td>
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<td></td>
<td></td>
<td>$14,100</td>
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<tr>
<td><strong>Reimbursement</strong></td>
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<tr>
<td>Interpreter/translation costs</td>
<td>All</td>
<td>Reimbursement of actual costs</td>
<td>General Ledger</td>
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<td><strong>Subtotal</strong></td>
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<td>$122,426</td>
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<tr>
<td>10% Admin</td>
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<td>$12,243</td>
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<tr>
<td><strong>Total Budget</strong></td>
<td></td>
<td></td>
<td></td>
<td>$134,669</td>
</tr>
</tbody>
</table>

Funding may be shifted between line items with written authorization from the county. If there is a change in a staff rate, a new composite rate form will be submitted, and the hourly rate modified without contract amendment. Updated rates will not change or increase the total compensation available under the contract.
III. Invoicing

1. The Contractor shall submit itemized invoices on a monthly basis in a format provided by the County. Monthly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include the items identified in the table above. The contractor shall, upon request of the County, provide additional reports related to the services provided through this contract.

2. The Contractor shall submit invoices to (include contract/PO #):

   Attention: Business Office
   Whatcom County Health Department
   509 Girard Street
   Bellingham, WA 98225

3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

4. Invoices must include the following statement, with an authorized signature and date:

   I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. Dduplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.
EXHIBIT "C"
(CERTIFICATE OF INSURANCE)
This certificate is issued as a matter of information only and confers 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**
Wycoff Insurance Agency Inc.
501 South 2nd Street
P. O. Box 1010
Mount Vernon WA 98273

**Insured**
The Arc of Whatcom County
2602 McLeod Road
Bellingham WA 98225

**Coverages**
Certificate Number: 16-17
Revision Number:

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>LTR</th>
<th>Type of Insurance</th>
<th>Addl/Sub Insured</th>
<th>Policy Number</th>
<th>Policy Eff</th>
<th>Policy Exp</th>
<th>Limits</th>
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<td>PHPX1519265</td>
<td>8/18/2016</td>
<td>8/18/2017</td>
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<td>HIRED AUTOS</td>
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<td></td>
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<td>UMBRELLA LIABILITY</td>
<td>OCCUR</td>
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<td>EXCESS LIABILITY</td>
<td>CLAIMS-MADE</td>
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</table>

**Workers Compensation and Employers' Liability**

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<thead>
<tr>
<th>Y/N</th>
<th>Any Proprietor/Partner/Executive Officer/Member Excluded?</th>
<th>[Mandatory in NH]</th>
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</thead>
<tbody>
<tr>
<td>N/A</td>
<td>If yes, describe under DESCRIPTION OF OPERATIONS below</td>
<td></td>
</tr>
</tbody>
</table>

Whatcom County is listed as additional insured for the Insured Chapter, the Arc of Whatcom County as per the attached form PI-GLD-HS (10/11) Pages 6-10.

**Certificate Holder**

Whatcom County
311 Grand Ave
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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K. Key and Lock Replacement – Janitorial Services Client Coverage

SECTION I – COVERAGE, SUPPLEMENTARY PAYMENTS – COVERAGE A AND B is amended to include the following:

We will pay for the cost to replace keys and locks at the “clients” premises due to theft or other loss to keys entrusted to you by your “client;” up to a $10,000 limit per occurrence and $10,000 policy aggregate.

We will not pay for loss or damage resulting from theft or any other dishonest or criminal act that you or any of your partners, members, officers, “employees”, “managers”, directors, trustees, authorized representatives or any one to whom you entrust the keys of a “client” for any purpose commit, whether acting alone or in collusion with other persons.

The following, when used on this coverage, are defined as follows:

a. “Client” means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.

b. “Employee” means:

(1) Any natural person:

(a) While in your service or for 30 days after termination of service;

(b) Who you compensate directly by salary, wages or commissions; and

(c) Who you have the right to direct and control while performing services for you; or

(2) Any natural person who is furnished temporarily to you:

(a) To substitute for a permanent “employee” as defined in Paragraph (1) above, who is on leave; or

(b) To meet seasonal or short-term workload conditions;

while that person is subject to your direction and control and performing services for you.

(3) “Employee” does not mean:

(a) Any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or

(b) Any “manager,” director or trustee except while performing acts coming within the scope of the usual duties of an “employee.”

c. “Manager” means a person serving in a directorial capacity for a limited liability company.

L. Additional Insureds

SECTION II – WHO IS AN INSURED is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this
Coverage Part, Paragraph 3.a. is deleted in its entirety and replaced by the following:

a. Coverage under this provision is afforded until the end of the policy period.

2. Each of the following is also an insured:

a. **Medical Directors and Administrators** – Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.

b. **Managers and Supervisors** – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your "employees" are also insureds for "bodily injury" to a co-"employee" while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

c. **Broadened Named Insured** – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

d. **Funding Source** – Any person or organization with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

e. **Home Care Providers** – At the first Named Insured's option, any person or organization under your direct supervision and control while providing for you private home respite or foster home care for the developmentally disabled.

f. **Managers, Landlords, or Lessors of Premises** – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

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 that person or organization.

g. **Lessor of Leased Equipment** – **Automatic Status When Required in Lease Agreement With You** – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or
organization is an insured 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 or organization.

A person’s or organization’s status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any “occurrence” which takes place after the equipment lease expires.

h. Grantors of Permits – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:

(1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:

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

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

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

i. Vendors – 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, subject to the following additional exclusions:

(1) The insurance afforded the vendor 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 Sub-paragraphs (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.

j. Franchisor – Any person or organization with respect to their liability as the grantor of a franchise to you.

k. As Required by Contract – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for "bodily injury," "property damage" or "personal and advertising injury" but only for liability arising out of the negligence of the named insured. The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations.

l. Owners, Lessees or Contractors – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

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

(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
m. **State or Political Subdivisions** – Any state or political subdivision as required, subject to the following provisions:

(1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.

(2) 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 "

M. **Duties in the Event of Occurrence, Claim or Suit**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. is amended as follows:

a. is amended to include:

This condition applies only when the "occurrence" or offense is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership; or

(3) An executive officer or insurance manager, if you are a corporation.

b. is amended to include:

This condition will not be considered breached unless the breach occurs after such claim or "suit" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership; or

(3) An executive officer or insurance manager, if you are a corporation.

N. **Unintentional Failure To Disclose Hazards**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, 6. Representations is amended to include the following:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

O. **Transfer of Rights of Recovery Against Others To Us**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, 8. Transfer of Rights of
Firm Name: The Arc of Whatcom County
Proposal/Bid/Invitation/Solicitation No. N/A

The undersigned declares, under **penalty of perjury** under the laws of Washington that:

1. The above named firm is currently enrolled in and using the E-Verify system for all employees hired on or after the contract inception date and will continue to use the E-Verify system for so long as work is being performed on the above named project.

2. I certify that I am duly authorized to sign this declaration on behalf of the above named bidder/proposer.

3. I acknowledge that Whatcom County requires a copy of the Memorandum of Understanding between the contractor listed above and the Department of Homeland Security certifying enrollment in the E-Verify program. Failure to provide the required Memorandum of Understanding could lead to suspension of this contract.

DATE: 06/08/2017

SIGNATURE: [Signature]

PRINTED NAME: Beverly Porter
**TITLE OF DOCUMENT:**
Amendment No. 2 to Whatcom County Contract No. 201612011 between Whatcom County and Van Ness Feldman LLP.

**ATTACHMENTS:**
Memorandum
Contract

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

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
This amendment to Contract 201612011 in the amount of $15,000 is for Van Ness Feldman, LLP, to continue to provide on-call legal services relating to accommodating the Washington Supreme Court’s decision in Whatcom County v. Western Washington Growth Management Hearings Board.

---

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: June 27, 2017

RE: Amendment No. 2 to Contract No. 201612011 for legal representation with Van Ness Feldman, LLP

Requested Action:
Enclosed are two (2) originals of Amendment No. 2 to Contract No. 201612011 between Whatcom County and Van Ness Feldman, LLP, for your review and signature.

Background and Purpose:
This contract amendment is for Van Ness Feldman, LLP, to provide on-call legal services relating to the Growth Management Act and accommodating the Washington Supreme Court’s Decision in Whatcom County v. Western Washington Growth Management Hearings Board. Van Ness Feldman has exhausted their current funding and needs additional funding to continue to provide on-call legal services related to the County’s response to this case.

Funding Amount and Source
The total cost of this amendment is $15,000, bringing the contract total to $50,000. There are currently sufficient funds in the Natural Resources Budget (Fund 169119) for this contract.

Please contact Gary Stoyka at extension 6218, if you have any questions or concerns regarding the terms of this agreement.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works</th>
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</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>Van Ness Feldman, LLP</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**
- Yes [ ] No [x] If not, is this an Amendment or Renewal to an Existing Contract? Yes [ ] No [ ]

**Original Contract #:** 201612011

**Does contract require Council Approval?**
- Yes [x] No [ ]

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

**Is this a grant agreement?**
- Yes [ ] No [x]

If yes, grantor agency contract number(s): ______________ CFDA#: ______________

**Is this contract grant funded?**
- Yes [ ] No [x]

If yes, Whatcom County grant contract number(s): ______________

**Is this contract the result of a RFP or Bid process?**
- Yes [x] No [ ]

If yes, RFP and Bid number(s): ______________ Cost Center: 169119

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

**If YES, indicate exclusion(s) below:**
- x Professional services agreement for certified/licensed professional.
- x 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.

**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 amendment to Contract 201612011 is for Van Ness Feldman, LLP, to continue to provide on-call legal services relating to the Growth Management Act and accommodating the Washington Supreme Court's Decision in Whatcom County v. Western Washington Growth Management Hearings Board.*

**Contract Routing:**
1. Prepared by: Gary Stoyka Date: 6/27/17
2. Attorney signoff: Karen Frakes (via email) Date: 6/27/17
3. AS Finance reviewed: bbennett Date: 6/27/17
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date: 6-29-17
8. Executive signed: Date:
9. Original to Council: Date:
AMENDMENT NO. 2 TO
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN WHATCOM COUNTY AND
VAN NESS FELDMAN LLP
FOR LEGAL SERVICES RELATED TO ACCOMMODATING THE WASHINGTON SUPREME COURT’S DECISION
IN WHATCOM COUNTY V. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

WHEREAS, AN AGREEMENT (Whatcom County Contract No. 201612011) was entered into between the Whatcom County, and Van Ness Feldman LLP on December 13, 2016 to provide on-call legal services relating to the Growth Management Act and accommodating the Washington Supreme Court’s Decision in Whatcom County v. Western Washington Growth Management Hearings Board; and,

WHEREAS, AMMENDMENT NO.1 to Whatcom County Contract No. 201612011 was entered into on March 21, 2017; and,

WHEREAS, additional services are required and modification of the rates are necessary; and,

WHEREAS, the parties are desirous of continuing the work intended under the original scope of work in Contract No. 201612011.

NOW BE IT THEREFORE AGREED that Exhibit “B” of Contract No. 201612011 shall be amended as shown below to provide an additional $15,000.00 in compensation for a total compensation amount not to exceed $50,000.00.
In consideration of the services performed under the terms of this Contract, the Contractor shall be paid a total not to exceed Fifty Thousand Dollars ($50,000.00) to the end of the contract date of December 31, 2017.

Billing Procedures: The Contractor shall submit written claims on a monthly basis in any month where there is activity in this case for reimbursement of services provided unless otherwise approved in writing by the County. It is agreed that the Contractor shall be paid for his services within 30 days of receipt of the monthly claim and upon determination of accuracy. Monthly claims are to be submitted to the Clerk of the Council.

Contractor’s Fee Schedule: Contractor bills for services by the hour. For this matter, the Contractor is offering discounted municipal rates to reflect the public nature of the work. The Contractor will charge the County according to the following rate schedule:

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<tr>
<th>Name</th>
<th>Role</th>
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<tr>
<td>Tadas Kisielius</td>
<td>Partner</td>
<td>$310 per hour for work on this matter</td>
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<td>Partner – Travel Rate</td>
<td>$232.50 per hour</td>
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<tr>
<td>Adam Gravely</td>
<td>Partner</td>
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<tr>
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<tr>
<td>Duncan Greene</td>
<td>Partner</td>
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<tr>
<td>Duncan Greene</td>
<td>Partner – Travel Rate</td>
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</tr>
<tr>
<td>Dale N. Johnson</td>
<td>Partner</td>
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<tr>
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<td>Partner – Travel Rate</td>
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</tr>
<tr>
<td>Ray Liaw</td>
<td>Partner</td>
<td>$225 per hour for work on this matter</td>
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<tr>
<td>Ray Liaw</td>
<td>Partner – Travel Rate</td>
<td>$168.75 per hour</td>
</tr>
<tr>
<td>Marya A. Pirak</td>
<td>Paralegal</td>
<td>$125 per hour for work on this matter</td>
</tr>
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The County will also reimburse the Contractor for all out-of-pocket costs incurred on behalf of the County. These items include such things as: travel expenses including car mileage in excess of 30 miles per trip at the business mileage rate calculated by the IRS (currently, $0.535 per mile); copying expenses at $0.15 per copy ($0.75 per color copy) for in-house copying and at cost, including taxes, for outside copying services; long distance telephone charges; FAX charges; document delivery charges and conference call charges at cost; court or administrative board filing fees and other court- or board-related expenditures including court reporter and transcription fees at cost; and computerized legal research charges.
IN WITNESS WHEREOF, the parties have signed this Amendment No. 2 to Contract No. 201612011 for on-call legal services relating to the Growth Management Act and accommodating the Washington Supreme Court's Decision in Whatcom County v. Western Washington Growth Management Hearings Board, this _____ day of __________, 2017.

CONTRACTOR: Van Ness Feldman, LLP


By: ______________________________
Title: ______________________________

STATE OF WASHINGTON    
COUNTY OF WHATCOM    ) ss.

On this _____ day of __________, 2017, before me personally appeared ____________________, to me known to be the person individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

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 person individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

APPROVED AS TO FORM:

Karen N. Frakes, Civil Deputy Prosecuting Attorney

Contract for Services Agreement
Van Ness Feldman LLP Amendment No. 2

v 1.0
IN WITNESS WHEREOF, the parties have signed this Amendment No. 2 to Contract No. 201612011 for on-call legal services relating to the Growth Management Act and accommodating the Washington Supreme Court’s Decision in Whatcom County v. Western Washington Growth Management Hearings Board, this 28th day of June, 2017.

CONTRACTOR: Van Ness Feldman, LLP

By: [Signature]
Title: [Title]

STATE OF WASHINGTON    )
COUNTY OF WHATCOM    ) ss.

On this 29th day of June, 2017, before me personally appeared [Name] to me known to be the person individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

NOTARY PUBLIC in and for the State of Washington, residing at [Address]
My commission expires: [Date]

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 person individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

___________________________
[Signature]

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

APPROVED AS TO FORM:

___________________________
Karen N. Frakes, Civil Deputy
Prosecuting Attorney

DEPARTMENTAL APPROVAL:

___________________________
Jon Hutchings, Director, Public Works
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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<th>Agenda Date</th>
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**TITLE OF DOCUMENT:**

Presentation: VERA Institute on data analysis and preliminary recommendations

**ATTACHMENTS:**

Preliminary report from VERA Institute

**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.)

Preliminary report from VERA Institute Consultants, working in conjunction with the Incarceration Prevention and Reduction Task Force, on data analysis and preliminary recommendations.

**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.
The VERA Institute of Justice Preliminary Data and Recommendations has not yet been received. As soon as the Council Office receives the report, it will be posted to the website at: http://www.co.whatcom.wa.us/DocumentCenter/View/29246
### Clearances

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<th>Executive:</th>
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### Title of Document:
Presentation Initial Phase 3 Report Incarceration Prevent. & Reduction Task Force

### Attachments:
Initial Phase 3 Report

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

Presentation of the Incarceration Prevention and Reduction Task Force Initial Phase III Report, as required by Ordinances 2015-037 and 2017-004.

### Committee Action:

### Council Action:

<table>
<thead>
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<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
Whatcom County Incarceration Prevention and Reduction Task Force
Phase III Interim Report

7/11/2017
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<td>Behavioral Health Ad Hoc Committee Report</td>
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<tr>
<td>Attachment A – GRACE Program Structure</td>
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### Incarceration Prevention Reduction Task Force Members

Angela Anderson, Senior Deputy, Whatcom County Public Defender  
Jill Bernstein, Co-Chair, Citizen Representative  
John Billeter, Deputy Chief, Lynden Police Department  
Jeff Brubaker, Community Paramedic, City of Bellingham  
Anne Deacon, Human Services Manager, Whatcom County Health Department  
Bill Elfo, Whatcom County Sheriff  
Stephen Gockley, Board Member, Whatcom Alliance for Health Advancement  
Susan Gribbin, Consumer Representative  
Daniel Hammill, Council Member, City of Bellingham  
Alfred Heydrich, Commissioner, Whatcom County Superior Court  
Jack Hovenier, Co-Chair, Consumer Representative  
Betsy Kruse, Deputy Director, North Sound Mental Health Administration  
Nicolaus Lewis, Lummi Indian Business Council Member, Lummi Nation  
Kelli Linville, Mayor, City of Bellingham  
Byron Manering, Executive Director, Brigid Collins  
Ken Mann, Council Member, Whatcom County Council  
Dave McEachran, Whatcom County Prosecuting Attorney  
Moonwater, Executive Director, Whatcom Dispute Resolution Center  
Irene Morgan, Citizen Representative  
Darlene Peterson, Court Administrator, Bellingham Municipal Court  
Chris Phillips, Director for Community Affairs, PeaceHealth St. Joseph Medical Center  
Randy Polidan, Behavioral Health Director, Unity Care NW  
Tyler Schroeder, Whatcom County Deputy Executive  
Greg Winter, Executive Director, Opportunity Council

### Task Force Alternates or Proxies

Vince Foster, for PeaceHealth St. Joseph Medical Center  
Deborah Garrett, Superior Court Judge, for Superior Court  
Leslie Finch, for PeaceHealth St. Joseph Medical Center  
Matt Huffman, Ferndale Police Department, for Small Cities  
Ralph Long, for Lummi Nation  
Peter Ruffatto, Bellingham City Attorney, for City of Bellingham  
Jeff Parks, Whatcom County Undersheriff, for Whatcom County Sheriff  
Kathy Walker, for Whatcom County Prosecuting Attorney  
Sandy Whitcutt, for North Sound Mental Health Administration
AD HOC COMMITTEE MEMBERS

CRISIS TRIAGE AD HOC COMMITTEE
Jeff Brubaker
Jack Hovenier
Betsy Kruse
Kelli Linville
Ken Mann
Chris Phillips, Chair
Tyler Schroeder

BEHAVIORAL HEALTH AD HOC COMMITTEE
Anne Deacon, Chair
Susan Gribbin
Dan Hammill
Nicolaus Lewis
Byron Manering
Randy Polidan
Greg Winter

LEGAL & JUSTICE SYSTEM AD HOC COMMITTEE
Angela Anderson
Jill Bernstein
John Billester
Bill Elfo
Stephen Gockley, Chair
Alfred Heydrich
Dave McEachran
Moonwater
Irene Morgan
Darlene Peterson
EXECUTIVE SUMMARY

This is an initial update preceding the third report requested by the Whatcom County Council when it created the Incarceration Prevention and Reduction Task Force (Task Force). The third and final report is due to the Council December 5, 2017. The Task Force has organized itself into three ad hoc committees to focus on specific areas of interest:

1. Development of an expanded Crisis Triage Facility (Triage Facility Ad Hoc Committee);

2. Identification of current jail diversion programs and opportunities for new or expanded programs within the court process (Legal & Justice System Ad Hoc Committee); and

3. Identification of current behavioral health programs and opportunities for new or expanded programs to reduce jail use by individuals with mental illness or substance abuse disorder (Behavioral Health Ad Hoc Committee).

TRIAGE FACILITY AD HOC COMMITTEE

In the Phase II report The Triage Ad Hoc Committee made the following recommendation:

1. Develop two 16-bed units joined in one building off a common foyer with a common intake space; each unit licensed as a Residential Treatment Facility. One unit will provide mental health crisis stabilization services as a Crisis Triage Facility. The other unit will provide acute substance detoxification services.

2. The 16-bed mental health Crisis Triage Unit will be certified as voluntary with enhanced security. The other unit will be certified as an Acute Detox Facility.

3. Focus efforts on redeveloping the Division Street location.

Additionally, the committee strongly recommended that the County continue to support the development of a continuum of care, and noted that Triage facility success will be limited without sufficient resources to support individuals once they have stabilized and are ready to be discharged.

The Committee, with active and ongoing staff support from the Health Department and the Executive’s Office, has put together preliminary operational and facility plans and has made significant progress on both capital and operational funding. Total capital cost is now projected to be approximately $9 million, of which $5.5 million has been committed. The regional Behavioral Health Organization requested the balance from the State Legislature, which is currently working to complete the biennial budget. Operational funding is projected to be nearly $5 million annually and expected to be funded primarily by the regional Behavioral Health Organization with Medicaid dollars. The committee will continue to provide input on this planning process.
LEGAL & JUSTICE SYSTEM AD HOC COMMITTEE

The Legal & Justice System Ad Hoc Committee has focused on developing an evidence-based, pretrial risk assessment tool and pretrial supervision unit. An analysis by the Prosecutor’s Office, reviewing three days of jail use, found 36-37 percent of the jail population being held pretrial on felony charges. That analysis identified a number of individuals who could be eligible for pretrial release, depending on the criteria. This population could represent a meaningful impact on jail use. However, the committee expects that further analysis and program development will identify a more precise proportion of the jail population, including misdemeanants, which may be eligible for release. The work of the Vera Institute will inform this effort.

For the final Phase III report, the committee intends to develop recommendations concerning the creation and adoption of a risk assessment tool and pretrial supervision unit. Additionally, the committee will continue to review opportunities to improve the legal and justice systems, including ensuring existing programs are using best practices and that treatment programs are evidence-based.

BEHAVIORAL HEALTH AD HOC COMMITTEE

The Behavioral Health Ad Hoc Committee focused most of its preliminary Phase III work on developing and enhancing services that may avert arrest and incarceration. This effort aligned with our priority to develop or improve programs that link to the “front door” of the Crisis Triage facility.

The committee provided ongoing review and feedback on a community initiative to develop a coordinated system of response and engagement with individuals who frequently use crisis and criminal justice systems in ineffective and inappropriate ways. These individuals are the “familiar faces” that our community spends significant time and money on with minimal positive impact.

The initiative, Ground-level Response And Coordinated Engagement, or GRACE, is a community effort encompassing the health care system and criminal justice. The GRACE project is intended in part to prevent and reduce arrest and incarceration for a targeted group of individuals by providing better coordination of interventions that connect them to treatment and support services which serve as alternatives to jail. The program is not another crisis system program to be used by anyone in distress. Instead, it is a specific program of coordinated interventions aimed at preventing unnecessary crisis responses to specific individuals with a history of high utilization of these services.
INTRODUCTION

The Whatcom County Council created the Incarceration Prevention and Reduction Task Force (Task Force) by Ordinance 2015-25. It charged the Task Force with recommending a continuum of new or enhanced programs to divert or prevent incarceration of individuals with mental illness and substance use disorders. Implicit in the charge is to consider both the safety of the public and the most effective tools necessary to deal with such individuals charged with, or at risk of committing, a criminal violation consistent state and tribal laws. Ordinance 2015-37 amended the Task Force charge, to “expand, as soon as reasonably possible, available alternatives to incarceration...” for individuals in general.

The ordinance structured the work of the Task Force into three phases and several objectives.

The Task Force delivered the Phase I report in February of 2016. That report focused on developing goals for a new or enhanced crisis triage center. It presented preliminary recommendations for a crisis triage facility; a description of current justice system and behavioral health programs; and an extensive list of possible changes or additions to the overall justice system and behavioral health system continuums of diversion and treatment alternatives. That and subsequent reports can be found on the Task Force webpage.

The Phase II report was delivered in October of 2016. It included specific recommendations for the development of a new Crisis Triage Facility, recommendations for reducing barriers for electronic home monitoring, a mapping of existing behavioral health programs and a discussion of how to develop effective programs.

The final Phase III report is due to the County Council by December 5, 2017, as set by Ordinance 2017-004. The report will include specific operational plans and budgets for implementing crisis intervention, triage and incarceration prevention and reduction programs. This initial Phase III report provides an update on Crisis Triage Facility specifications and preferred location, and investigations on expanding alternatives to incarceration.

The Task Force is composed of three ad hoc committees which discuss, review and develop proposals. The committees then make recommendations to the larger Task Force which further reviews the recommendations and makes recommendations to the County Council. Such recommendations, with appropriate background information and discussion, will be included in the final Phase III report. The three committees are organized as follows:

TRIAGE FACILITY AD HOC COMMITTEE

The Triage Facility Ad Hoc Committee is tasked with assessing the existing Crisis Triage Facility, developing recommendations for a new or enhanced Crisis Triage Facility, and providing goals and objectives for improvements to current systems. These goals and objectives, if acted upon, may enhance the ability of law enforcement and emergency medical services to divert individuals with mental illness/substance use disorders to appropriate and available treatment modalities, and provide alternatives to incarceration when necessary.
LEGAL & JUSTICE SYSTEM AD HOC COMMITTEE

The Legal & Justice Ad Hoc Committee is reviewing incarceration alternatives and diversion programs as well as developing recommendations for specific, achievable programs and services that would prevent or reduce incarceration, within and parallel to the legal and law enforcement systems for both individuals with mental illness/substance use disorder and the general population. They are keenly focused on short-term "wins" that will make immediate improvements to current programs and services, consistent with the laws of the state and tribal laws.

BEHAVIORAL HEALTH AD HOC COMMITTEE

The Behavioral Heath Ad Hoc Committee is mapping existing programs and services, and developing recommendations for new, or enhancements of existing programs, designed along a continuum that effectively reduce incarceration of individuals struggling with mental illness and chemical dependency. The committee is charged with evaluating current programs, and benchmarking them against recognized best practices.

TRIAGE FACILITY AD HOC COMMITTEE REPORT

INTRODUCTION

In the Phase II report The Triage Ad Hoc Committee made the following recommendation:

1. Develop two 16-bed units joined in one building off a common foyer with a common intake space; each unit licensed as a Residential Treatment Facility. One unit will provide mental health crisis stabilization services as a Crisis Triage Facility. The other unit will provide acute withdrawal stabilization services.

2. The 16-bed mental health Crisis Triage Unit will be certified as voluntary with enhanced security. The other unit will be certified as an Acute Withdrawal Stabilization Facility.

3. Focus efforts on redeveloping the Division Street location.

Additionally, the committee strongly recommended that the County continue to support the development of a continuum of care, and noted that the success of the Crisis Triage Facility will be limited without sufficient resources to support individuals once they have stabilized and are ready to be discharged.

The Committee, with active and ongoing staff support from the Health Department and the Executive’s Office, has put together preliminary operational and facility plans and has made significant progress on both capital and operational funding.
FACILITY PLAN

DESIGN

The Phase II report described the capacity and limitations of the current Triage Facility, and outlined the factors that were considered to estimate the need for additional crisis triage bed and detox bed capacity. While the needs are projected to be somewhat greater than the 32-bed recommendation, 16 beds for each discreet unit are the maximum allowed under Medicaid rules. Accordingly, the design is for two 16-bed units joined in one building off a common foyer. One unit will provide mental health crisis stabilization services. The other unit will provide acute withdrawal stabilization services.

While preliminary architectural drawings have been developed, they cannot be finalized and a contract awarded to a qualified general contractor until a regulatory issue is resolved. A recent interpretation of a building code by the Washington State Department of Health Construction Review Services Division is creating significant challenges to facility design. The interpretation creates a requirement for additional walls for fire suppression and is being challenged by two similar projects elsewhere in the state. The requirement for additional walls compromises line of sight and sound of facility clients, thereby jeopardizing client safety. The Whatcom County Triage expansion may be delayed until this issue is resolved. The committee will continue to monitor the situation and reach out to individuals who may be able to lobby for reinterpretation of this rule.

LOCATION

In the Phase II report the Committee reviewed the alternatives to the current Division Street location, and recommended that the County move forward with redevelopment at Division Street. The next step, assuming that the regulatory issues noted above can be resolved and architectural renderings developed, will be to host an early public process, hopefully in September, to introduce the community to the plan and invite public comment. Subsequent outreach will include:

1. Letters and outreach to the neighbors;
2. Media outreach about the project; and
3. Compliance with City of Bellingham’s requirements for public outreach during the building permit process.

The Phase II report noted three issues surrounding the Division Street Location and the Task Force has taken steps to address these issues.

The first issue was limited public transportation service to the site. The Whatcom Transportation Authority recently expanded service on the bus line serving the location. However, this may not be sufficient; the Task Force will continue to seek further service expansions to mitigate transportation challenges.
The second issue is the assurances given to the City of Bellingham and neighborhood concerning the long-term disposition of the property after the termination of its temporary use as a Work Center. At the time, the County committed to return the property to private ownership when the Work Center was closed. The City, through representatives on the Task Force, has confirmed that the assurances given to the City when the Work Center was built are non-binding. Additionally, the City does not intend to hold the County to those agreements. Assurances to the neighborhood will be addressed during the public outreach process.

The final issue was the potential need to close the triage center during construction. The committee continues to explore this issue as planning continues.

**CAPITAL FUNDING**

The Phase II report quoted an estimate of $6.5 million, but since that time building costs and specifications have changed. The revised estimate for the total project is $9 million. Significant headway has been made in securing the needed capital funds. A regional request was submitted to the legislature, with a specific line item for the triage expansion. The State House of Representatives capital budget proposes fully funding the request. The State Senate capital budget proposes to direct the Department of Commerce to grant funds for such projects through a competitive process. As of June 2017, the committee is awaiting the outcome of the special legislative session; it is unclear what the final negotiated capital budget will provide for the Whatcom County triage expansion project.

The local and regional funding contribution is more secure. The North Sound Behavioral Health Organization (BHO) has provided $2.5 million, and the County’s local behavioral health fund has dedicated $3 million for the project.

**OPERATIONS**

**PROGRAM DESIGN**

The program design recommendations of the proposed 16-bed crisis stabilization and 16-bed withdrawal stabilization facility are outlined in the Phase II report. These include:

- Because of the greater flexibility and lower cost provided by a voluntary facility, the Task Force recommends the facility remain voluntary. (The current state statute [RCW 10.31.110] and administrative codes defining and guiding the operations of an Involuntary Crisis Triage Facility are restrictive. An individual who is admitted to the facility on an involuntary basis may be held up to twelve hours only. Within three hours of arrival, the individual must be evaluated by a Mental Health Professional. If the individual is found to require civil commitment under the Involuntary Treatment Act [RCW 71.05], then s/he must be transferred to an Evaluation & Treatment facility. Two other disposition options include being discharged to the community, or remaining in the facility on a voluntary basis until the mental health crisis is stabilized.)
• The withdrawal stabilization facility should be designed as an Acute Stabilization Center, i.e. there should be medical staff and other supports available on site on a 24/7 basis to treat severe withdrawal.

The operational plan for the two adjacent units has not been finalized. Two options exist: one treatment provider delivers all services at the two adjacent units; or two separate treatment providers operate out of each adjacent unit, one providing mental health crisis stabilization and the other providing acute withdrawal stabilization. This decision will be made based in part on ensuring that all requirements for Medicaid funding are met.

OPERATIONAL COST

The North Sound BHO will administer these funds through contracts with the treatment providers. As noted in the Phase II report, a review of similar facilities suggests that operating costs would be approximately $3 million for the mental health triage unit and $1.9 million for the withdrawal stabilization unit. Under the current funding model for these types of facilities, North Sound BHO will be the primary operational funder, using Medicaid dollars allocated by the state. Local behavioral health dollars may be contributed to cover certain unfunded costs which are not yet identified, but necessary to ensure optimal seamless care and coordination upon discharge to the community.

In the Phase II report a number of issues were identified that contributed to uncertainty regarding behavioral health funding in the state, and by extension the ability of the BHO to “make good” on its intention to support the operational costs of the Triage center. These issues include the state-mandated integration of behavioral health and medical care financing, and ongoing conversations at the federal level to repeal or change the Affordable Care Act.

While the committee recognizes that the County must carefully consider the uncertainties noted above, there is reason to believe that the facility could rely on Medicaid funding despite possible state and federal changes. Programs will still be required to serve populations for whom sub-acute intervention is an important tool for behavioral health. Additionally, these types of facilities will always be less expensive than sending someone in mental health or substance induced crisis to an emergency room.

NEXT STEPS

The Task Force has recommended the Division Street location for two, adjacent 16-bed facilities, one for mental health crisis triage and one for withdrawal stabilization. Outreach to the businesses and residents in the Division Street area should begin as soon as possible. Every effort should be made to secure funding from the current legislative session. Additionally, the governor’s office should be contacted to ensure that the fire code issues can be resolved so that design can proceed.
INTRODUCTION

In the Phase II report, the Legal & Justice Ad Hoc Committee described its preliminary investigation of pretrial release programs. The committee has continued this work, further reviewing the opportunities that may exist for reducing incarceration of individuals held pretrial while mitigating risks this may create. The committee has focused this review on evidence-based risk assessments tools coupled with a pretrial supervision unit.

EVIDENCE-BASED RISK ASSESSMENT TOOL AND PRETRIAL SUPERVISION UNIT

The committee’s review of the county’s legal and justice system led it to identify the population in custody and awaiting trial as the primary target for their work. These individuals are in the jail, but have not been convicted of a crime.

PRETRIAL RELEASE RULES

The Court Rules in Washington direct that individuals who are charged with a non-capital crime be released without bail unless the Court is reasonably assured that this release will:

1. not reasonably assure the accused’s appearance; or
2. result in a likely danger that the accused will commit a violent crime or will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice. (CrR 3.2)

When the Court is concerned about an individual’s appearance in court or public safety, the Court will set bail and conditions of release. In setting the bail amount, the Court considers the likeliness or unlikelihood of the accused appearing for court based on the following (as set by the Court Rules): the accused’s history of response to legal process; employment status; family ties; reputation, character and mental condition; length of residence in the community; criminal record; willingness of responsible members of the community to vouch for the accused and assist in complying with conditions; the nature of the charge; and any other factors indicating ties to the community.

When bail is set, individuals typically enlist outside firms to post a bond for the bail amount for a fee of 10 percent of the bail amount (e.g., $1000 bond would cost $100). Those who have the means will post bail. Those without the means will remain in jail awaiting their trial date. Bail can have the unintended consequence of separating those with financial resources from those who do not and can result in release purely on financial grounds.

WHAT IS PRETRIAL RISK ASSESSMENT?

To reduce jail populations, save money, and serve the interests of justice, other communities are using evidence based-tools to help to identify who should be kept in custody pending trial. Developed and used properly, these tools can save money by reducing dependence on the jail without increasing the
risk to public safety. One such tool is an evidence-based pretrial risk assessment that helps judges to more reliably determine whether an accused individual is:

1. low risk and can be released without bail;
2. moderate risk and can be released from jail with conditions; or
3. high risk and should be held in custody.

Pretrial risk assessment tools consider a number of variables, such as past, current and pending charges; convictions; failures to appear; employment and housing status; and substance abuse and mental health. They allow the Court to consistently and analytically assess the risk someone presents to public safety and propensity for attending court appearances. The best tools are developed specifically for local use. They look at a large sample of cases (at least 2000) and use advanced statistics to determine how the variables involved impact the risk presented by the individual.

When paired with a pretrial supervision unit, the tool can identify defendants who present a moderate risk (of failing to appear or committing new offenses) and the Court can order them released with conditions meant to ameliorate the risk. Compliance with conditions is monitored by a pretrial supervision unit. (Note: District Court Probation Department already provides pretrial supervision for our local courts of limited jurisdiction but Superior Court does not have a similar resource).

WHO COULD THIS IMPACT?

Who is in the jail and why they are in custody was one of the first questions asked by the Task Force. In response, the Prosecutor’s Office provided an analysis of the jail population based on snapshots of three random days. The Prosecutor’s Office found that on those days, the jail population ranged from 337-374 individuals. Of those, 125-134, or approximately 36-37 percent, were being held pretrial for felony offenses. The Prosecutor’s Office estimated the potential for pre-trial release at 17-20 of the total being held pretrial for felony offenses. Their analysis of this potential was determined, using a prosecutorial perspective, by evaluating the criminal history, arrest charge, homelessness, and number of pending charges for the population. These numbers suggest there may be, depending on what if any pretrial supervision criteria are ultimately established, the possibility of further reducing jail population through pretrial supervision.

A more thorough analysis of the Whatcom County jail population, with a larger sample size and time frame, will provide a more accurate estimate of the potential for reducing the jail’s pretrial population. Further, analysis that includes those being held on misdemeanor charges could reveal additional impacts on jail population. The committee has asked the VERA Institute for this analysis and anticipates a completed data review in the summer. This in-depth analysis will be important to identify the opportunities and the challenges that would come with the adoption of an evidence-based risk assessment instrument and the creation of a pretrial supervision unit.
THE YAKIMA EXPERIENCE

To learn more about pretrial risk assessments, the committee reviewed the experiences of Yakima and Spokane. Each of these communities have begun use of evidence-based risk assessment instruments and have created a pretrial supervision units. Yakima is further along this road and had more data to share with the committee.

In Yakima, the cost of holding someone in custody pre-trial is $89.00/day and the cost of releasing them with supervision is $8.00/day. Relative to their experience, VERA has also provided the following information about the 639 cases where defendants were released from jail to pretrial supervision and that have since closed:

- The court appearance rate was 72 percent;
- The public safety rate (no arrest for a new offense while on supervision) was 89 percent – and roughly half of those new arrests were for misdemeanors; and
- 13 percent of cases were dismissed and no charges were filed in 10 percent.

A cost-savings study is underway. However, it is surmised that there will be a savings; the average length of stay between booking and release for pretrial defendants has decreased since the pretrial program’s launch from 12-14 days to 2 days. Also, approximately one quarter of cases were dismissed or not filed—under their previous system, those defendants could have spent an average of up to 2 weeks in jail.

It must be noted that Yakima County’s results are likely more than Whatcom County could anticipate. Yakima County’s system prior to implementation of pretrial options lacked many of the preliminary appearance, arraignment processes, and bail considerations that Whatcom County has had in place for decades.

We have asked for information about Whatcom County's current public safety, appearance and dismissal rate. In response, VERA's researchers are at work organizing and analyzing the data that we have provided and that they hope to be able to answer these questions. Their ability to respond to our questions will depend on the nature and quality of data that are tracked currently.

ELECTRONIC HOME MONITORING AND OTHER DIVERSION TOOLS

The Task Force has been receiving regular updates from the City of Bellingham, the Lummi Nation, the other small cities, and Whatcom County about their diversion efforts.

CITY OF BELLINGHAM PROGRAMS

The City of Bellingham has been providing the Task Force with detailed data describing its Court’s use of diversion and the results that it is experiencing from those efforts. In summary, Bellingham has worked hard to find solutions - other than the Whatcom County Jail- to appropriately monitor and control persons accused of crimes and those convicted of offenses in the Municipal Court. The City has
continued to use the jail in Yakima for individuals who cannot be released into the community. This is an imperfect solution, creating hardships and problems for the justice system, the offenders, and their families.

To reduce the use of the jail, the City has contracted with a private agency, Friendship Diversion Services. Friendship Diversion provides services for persons who are released and are waiting for their trial date or who can safely serve their sentences outside of a secure facility. Individuals are seen almost immediately by staff from Friendship Diversion and are able to use electronic hardware at low or no cost (to the accused). This experience has also reduced the number of failures to appear (to serve sentences) to almost zero. The other small cities will be exploring the possibility of contracting with Friendship Diversion for similar services. Bellingham has repeatedly expressed the hope that they can collaborate with the County for the most effective and efficient use of diversion tools and resources.

| COUNTY PROGRAMS |

The Sheriff's Department provides diversion tools and services for individuals who are sentenced in the County Courts, including work release, school release, work crews, and electronic home detention. They have streamlined their application process; reduced application fees for jail diversion programs; reduced the cost of electronic hardware; and will soon place staff in the courthouse to see some individuals as they leave Court. The Sheriff's Jail Alternatives staff remain committed to a continuing review of policies and procedures with the goal of removing barriers and making their programs as efficient and effective as possible.

In an effort to reduce the number of individuals held in custody pretrial, the District Court uses their probation department to supervise some individuals who are awaiting trial. They are setting regular review in lieu of bail and frequently set cash alternatives to bail (which allow individuals to provide smaller, fully refundable amounts to the Court instead of using a bonding service). They have implemented an informal check-in program in lieu of bail, in which the accused can pay a small fee and check in with probation monthly as an alternative to bail. District Court also participated in the LAW Advocates pilot project which sought to relicense drivers who had their license suspended due to an inability to pay court fines. Additionally, the Court is (with the assistance of volunteers) placing reminder phone calls to individuals in advance of their court dates.

**NEXT STEPS**

This committee is moving forward with an evaluation of current programs to determine if the programs are 1) evidenced-based and 2) operating with best practices. The committee is drawing on the experiences and research of others to ensure that the County's limited resources are being used on programs that have the greatest chance for success.

Additionally, the committee will continue to develop recommendations around pretrial risk assessment and pretrial services.
INTRODUCTION

The Behavioral Health Ad Hoc Committee focused most of its Phase III work on developing and enhancing services that may avert arrest and incarceration. This effort aligned with our priority to develop or improve programs that link to the “front door” of the Crisis Triage facility.

THE GRACE INITIATIVE

The committee provided ongoing review and feedback on a community initiative to develop a coordinated system of response and engagement with individuals who frequently use crisis and criminal justice systems in ineffective and inappropriate ways. These individuals are the “familiar faces” that our community spends significant time and money on with minimal positive impact.

The initiative, known as “GRACE” is an acronym for “Ground-level Response And Coordinated Engagement” is a community effort encompassing the health care system and criminal justice. The GRACE project is intended in part to prevent and reduce arrest and incarceration for a targeted group of individuals by providing better coordination of interventions that connect them to treatment and supportive services which serve as alternatives to jail. The program is not another crisis system program that is used by anyone in distress. Instead, it is a specific program of coordinated interventions aimed at preventing unnecessary crisis response to specific individuals with a history of high utilization of these services.

COMMON ELEMENTS OF SUCCESSFUL COORDINATED CARE PROGRAMS

A review of current pre-arrest diversion programs in other communities as well as research of best practices provided valuable planning information. The following elements were identified as critical to the design of an effective system (as prepared by Bellingham City Council staff):

1. **Multiple pathways to program referral.** Frequent utilizers are often beset by many issues including homelessness, untreated mental health and substance use issues, or chronic health issue that generate multiple encounters with different systems. Coordinated care programs can serve more people and positively impact different care systems via the creation of multiple pathways to program entry.

2. **Meaningful Incentives to participate.** A voluntary program requires incentives to participation. These should include high quality, effective services, including access to housing, respectful treatment of participants, and other individualized rewards and incentives. For some individuals, avoiding negative consequences, such as jail time, may also be needed.
3. **Clear criteria and procedures for entry.** Once program entry pathways are identified, it is important to establish clear criteria for who is in a program. Formal entry initiates a process where program partners work to provide individualized and appropriate treatment and services, and triggers the start of case management.

4. **Database to track services and outcomes.** A database is needed to track client characteristics and services received, and to monitor use of resources post-program entry. This requires software that can capture information from multiple organizations to create a profile of participants. Such a system may also be useful in case management if configured to allow access by end users in the cooperating organizations. Equally important, legal barriers to information-sharing need to be addressed.

5. **Standardized procedures for coordination, communication, and measurement of progress.** A set of agreed-upon procedures facilitate problem-solving and help ensure accountability. Successful programs also develop system performance measures to support program evaluation and identify program refinements.

6. **Pathways for referral, connection, and engagement.** This entails creation of common program pathways and coordination across multiple organizations. Components include outreach, case management, and other services including the following:
   - A crisis system -- e.g. Crisis Prevention and Intervention Teams, Triage Center, DMHPs
   - Behavioral health and medical providers
   - Social service providers including housing
   - Intensive case management capacity for the most complex cases.

7. **Regular meetings/communication of a treatment coordination team.** A number of programs establish regular (e.g. every two weeks) meetings to review the progress of particular individuals and fine-tune services. This allows sharing of information between case management and service providers and adjustment of services to optimize outcomes. This also helps resolve coordination issues between programs as they arise.

8. **Mechanisms to resolve participant legal and health issues.** Many program participants will have legal issues such as fines or warrants, often from multiple jurisdictions. An offer to clear warrants or other charges may act as leverage to program participation and is needed to resolve issues that could result in jail time. Ensuring appropriate health care is also essential. Other supports, such as relicensing, may also be useful.

9. **Ownership of participants by every program provider.** Every participating organization signs a formal agreement for joint accountability for program outcomes. If appropriate services are not
available at that agency, agency staff work with other program partners or a case manager to ensure that appropriate services are located.

**PROGRAM DEVELOPMENT**

To develop the design elements of the GRACE project, stakeholders held two community forums as well as a smaller community feedback event. Task Force representatives participated in all these events. The elements of successful programs were incorporated into a comprehensive first draft of a GRACE program structure design. A graphic facilitator created a “map” of this initial design (Attachment A). This map will be distributed to all community stakeholders as a visual reference for our collaborative initiative.

The proposed program will be organized in a “hub and spoke model” to ensure coordinated connection among all providers and “familiar faces.” The “hub” acts as the program administrator ensuring integrity to the model, system accountability, and timely shared information. The “spokes” are existing service providers, they will commit to their role in the system and will unable to terminate a “familiar face” from care without service plan modifications agreed upon in advance by the two teams:

1. The Leadership Team composed of policy makers, funders, and service system administrators. This team’s responsibilities include approval of “familiar faces” selection criteria, system funding, determination of outcome and performance measures, setting program policies, general program oversight, accountability and following up on systemic recommendations from the Program Team.

2. The Program Team composed of “spoke” providers of service and responsible for case staffing, care and intervention planning, service delivery assignments, recommendations for additional services, and improvements to current programs, continual coordination and information sharing.

GRACE will have an outcome oriented focus with the goal of improving the health and well-being of “familiar faces” in order to reduce crisis situations, disruptive behaviors, arrests, and related costs. Data collection, analysis and reporting will be an integral and critical element of the program, as will continuous quality improvement to create or expand services to meet the needs of the “familiar faces”.

**NEXT STEPS**

During the remainder of the calendar year, planning and design will continue with multiple community stakeholders involved, including Task Force members. Implementation of the program is expected to begin in early 2018. The project is a huge undertaking for the community and will involve continued work to expand and improve over the next few years. It has strong support from stakeholders and the Task Force. It also provides an opportunity for them to work collaboratively to not only reduce criminal justice costs, but also to help improve the lives of individuals with complex needs who find themselves engulfed in a cycle of arrest and incarceration.
ADDITIONAL ACTIVITY – LUMMI OPIATE TREATMENT AND HOUSING SOLUTIONS

The committee also had the fortunate opportunity to take a field trip to the Lummi Nation’s opiate treatment program. The Lummi Tribal Nation has established a clinic-based program for medication assisted treatment. This modality is a best practice for treating individuals who are addicted to opiates. Prescribed medication taken as directed prevents the disruptive “highs” and “lows” of heroin addiction, and creates greater stability in daily life. In turn, this stability allows individuals to seek and retain employment, improve family life, and leads to better overall health.

The Lummi Nation has also pursued a number of housing programs to help their members secure safe and stable homes. The research overwhelming demonstrates that housing not only improves disabling health conditions, but also optimizes opportunities to live crime-free lives. The committee has identified housing as a critical component to ongoing recovery support, which is critical to preventing and reducing criminal behaviors.
### CLEARANCES

| Originator: | 6/29/2017 |
| Division Head: |  |
| Dept. Head: |  |
| Prosecutor: |  |
| Purchasing/Budget: |  |
| Executive: |  |

### TITLE OF DOCUMENT:
Draft memorandum of Agreement with City Of Bellingham regarding Jail

### 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.)
Draft memorandum of Agreement with City Of Bellingham regarding Jail

### 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 of Agreement Between
City of Bellingham and Whatcom County
Regarding their Commitment to Incarceration Reduction and Prevention

This Memorandum of Agreement (hereinafter, Agreement) by and between the City of Bellingham (hereinafter, the City) and Whatcom County (hereinafter, the County) (collectively referred to as "the Parties") is entered into for the purposes of recognizing the commitment of both Parties to commit a portion of the anticipated public safety tax (as per RCW 82.14.450), to incarceration reduction and prevention programs.

WHEREAS, the Whatcom County Council, pursuant to the passage of Resolution 2017-031, has authorized and approved the Whatcom County Executive to enter into a long-term agreement in the form of the Jail Facility Financing and Use Agreement (JFFUA), with the Whatcom County cities to share in the costs of the construction and ongoing operating costs of a new jail and jail-related facilities that serve the future needs of their city and county inmates with the proceeds of a sales and use tax; and

WHEREAS, the Parties of the JFFUA, recognize and fully support the goals of the Incarceration Prevention and Reduction Task Force ("IPRTF"), established through Ordinance 2015-025, to reduce incarceration and recidivism. The IPRTF is charged with continually reviewing Whatcom County's criminal justice and behavioral health programs and making 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. This may include programs such as Alternative Jail programs, Electronic Home Monitoring Detention, Work Release and Work Crew programs, Mental Health Court, Drug Court, the establishment of a County pretrial supervision program, and the expansion of the Crisis Triage Facility, or others as identified by the Parties; and

WHEREAS, prior to the City of Bellingham signing the JFFUA, the City of Bellingham Council sent Whatcom County Council a letter conveying the City Council's areas of concern regarding the County's jail plan. Based on this letter and discussions at the June 27, 2017 County Council meeting, the Whatcom County Council amended and introduced an Ordinance 2017-________ providing for the submission of a ballot measure to the qualified voters of the County a proposition authorizing a public safety sales tax, as authorized by RCW 82.14.450; and

WHEREAS, the amendments to the ballot measure Ordinance included changes reinforcing the Whatcom County Council's financial commitment to public safety and support of the goals of the IPRTF as outlined here;

1. The Whatcom County Council urges the Cities of Whatcom County to continue to fund incarceration prevention programs.

Memorandum of Agreement
City of Bellingham and Whatcom County
Incarceration Prevention and Reduction Commitment
2. The Whatcom County Council requested the City of Bellingham to commit at least 25% annually (projected at $255,632 in 2019) of the City’s net sales tax revenue that is in excess of the City’s obligation for the capital cost of the new jail, to fund these programs.

3. Whatcom County is not projected, in the first few years, to receive net sales tax revenue, in excess of Whatcom County’s portion of the capital cost. The Whatcom County Council commits to use this net sales tax revenue or other legitimate funding sources on a dollar for dollar match of the City of Bellingham’s contribution, up to an annual amount of 25% of the County’s net sales tax revenue or $300,000, whichever is greater.

4. If both jurisdictions commit to this funding, this amount would be projected to be $30,193,628 over 30 years, and shall continue until repayment of the total capital cost of jail facilities, or December 31, 2048, whichever occurs first.

5. This commitment is intended to accomplish the continued implementation of the criminal justice and behavioral health programs recommended by the IPRTF.

6. The net sales tax revenue, as described in this Agreement, refers to revenue in excess of capital cost of the new jail from the public safety sales tax, if and as adopted through Ordinance 2017-______; and

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

As envisioned in Ordinance 2017-________, the Parties agree to recognize and fully support the goals of the Incarceration Prevention and Reduction Task Force, established through Ordinance 2015-025 by committing to the following:

A. City of Bellingham agrees to commit to use at least 25% annually (projected at $255,632 in 2019) of the City’s net sales tax revenue, in excess of the City’s obligation for the capital cost of the new jail, to fund these new or expanded incarceration prevention and reduction programs.

B. Whatcom County Council agrees to commit to use sales tax revenue or other legitimate funding sources on a dollar for dollar match, up to an annual amount of 25% of the County’s net sales tax revenue or $300,000, whichever is greater to fund these new or expanded incarceration and reduction programs.

C. Both Parties commit to this funding, the amount of which is projected to be $30,193,628 over 30 years, and shall continue until repayment of the total capital cost of the jail facilities, or December 31, 2048, whichever occurs first.

D. The Parties hereto agree that each is an independent entity operating pursuant to the terms and conditions of this agreement and shall work collaboratively to develop and define the appropriate oversight model for the timing, distribution and legislative compliance of the financial commitment. The Parties shall also work to update the JFFUA to include language similar to what is contained in this agreement.
EFFECTIVE DATE AND DURATION OF AGREEMENT

This Agreement shall be effective only upon its execution, following an affirmative vote of both the City Council and the County Council approving this Agreement and conditioned upon the approval of the voters of Whatcom County at the General Election in November of 2017 of the Public Safety Tax measure passing, authorized by Ordinance 2017-_______.

This Agreement shall remain in effect until the obligations and terms set forth above are satisfied, unless otherwise mutually agreed upon in writing by both parties.

EXECUTED this ____ day of __________________, 2017 for the CITY OF BELLINGHAM:

By: ____________________________

Kelli Linville, Mayor

Attest:

______________________________
Finance Director

Approved as to form:

______________________________
Office of the City Attorney

EXECUTED this _______day of _________, 2017 for WHATCOM COUNTY:

By: ____________________________

Jack Louws, County Executive

Approved as to Form:

______________________________
Daniel L. Gibson, Chief Civil Deputy
Prosecuting Attorney For Whatcom County
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 2:35 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.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

COMMITTEE DISCUSSION

1. DISCUSSION OF A LETTER RECEIVED FROM THE CITY OF BELLINGHAM REGARDING THE PROPOSED NEW WHATCOM COUNTY JAIL (AB2017-185B)

Scott Korthuis, Lynden Mayor, spoke on behalf of the small city mayors and stated they support the proposed jail facility financial use agreement (JFFUA). Put the jail funding request to the voters.

Mike Lilliquist, Bellingham City Council President, referenced the letter from the City Council beginning on packet page 275 and stated the City Council has many concerns and would like the focus to be on how to reduce incarceration and recidivism. He read through and addressed the concerns described in the letter. Commit to funding jail alternatives recommended by the Incarceration Prevention and Reduction Task Force and the VERA Institute.

Council members and Lilliquist spoke about:
- The Incarceration Prevention & Reduction Task Force Phase 3 report is not due until after the November election.
- Creating an interlocal agreement among the County and small cities to commit to funding the IPRTF and VERA Institute recommendations and other jail reduction efforts.
- Crediting the County for past commitments to prioritize behavioral health and other medical issues, such as the mental health tax.
- The specificity of the JFFUA as a requirement for the bond market.
- Whether the County is doing enough work on jail diversion programs.
- Whether the best location is at the LaBounty Road location or downtown.
Browne submitted and spoke about a substitute ordinance submitting the proposition to the County voters (on file).

Councilmembers continued to discuss:
- Options for funding behavioral health and jail alternative programs.
- All the factors that impact jail population and that over which the County has no control.
- The features they need in a new jail.
- Jail operating costs.
- The appropriate jail site.

Lilliquist spoke about the substitute ordinance submitting the proposition to the County voters from Councilmember Browne.

The following staff answered questions:
- Jack Louws, County Executive
- Tyler Schroeder, Executive’s Office

Councilmembers continued to discuss the timing for adopting the JFFUA and the ordinance approving the ballot proposition, Councilmember Browne’s draft response to the City Council’s letter, the possibility of scheduling a special joint meeting of the Bellingham City Council and County Council.

John Mutchler, Ferndale Mayor, spoke about the City’s challenges with the County jail and his support of the JFFUA and a proposed new jail.

Councilmembers continued to discuss prevention efforts, committing to behavioral health funding in a separate agreement outside of the JFFUA and the County’s annual contribution.

Joy Gilfilen spoke about options if the voters don’t approve the ballot proposition and taking people out of the criminal justice system. Implement alternatives and then evaluate results before building a new jail.

**Browne moved** to introduce the substitute ordinance at the evening meeting, with amendments as discussed.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Sidhu, Browne, Buchanan, and Weimer (5)

**Nays:** Mann and Donovan (2)

Forrest Longman, Council Legislative Analyst, spoke about what to expect from the VERA Institute consultants on July 11. They will not suggest an appropriate jail capacity. They will provide information on jail use and....
OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 4:02 p.m.

The Council approved these minutes on ____________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL
Special Committee of the Whole

May 16, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 3:05 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

COMMITTEE DISCUSSION


Cliff Strong, Planning and Development Services Department, gave a staff report.

Brenner moved to approve all her proposed amendments in which staff has a neutral opinion. The motion was not seconded.

Brenner moved to amend section 16.16.265 Critical areas protective measures, “When an impact to critical area or a buffer has been proposed or a buffer will occur because of a proposed development, a standard buffer width has been altered, or mitigation is required, one or more of the following protective measure shall be applied:”

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Browne, Buchanan, Weimer and Donovan (6)
Nays: None (0)
Absent: Sidhu (out of the room) (1)

Brenner moved to amend section 16.16.265 Critical areas protective measures, “B. Notice on Title. The owner of any property containing any critical area or buffer for which a development permit is about to be issued and for which the proposed development will impact a critical area or buffer shall record a notice with the County Auditor real estate...
The motion was seconded.

Councilmembers discussed whether the County should notify buyers of potential problems.

The motion failed by the following vote:

**Ayes:** Brenner and Mann (2)

**Nays:** Sidhu, Browne, Buchanan, Weimer and Donovan (5)

Councilmembers discussed section 16.16.270(B)(2)(k) and reasonable use standards and allowing a new exemption for 2500 sq. ft. single family houses.

Ryan Ericson, Planning and Development Services Department, answered questions on making an exception for long driveways.

**Brenner moved** to amend subsection 16.16.270(B)(2)(k) Reasonable Use:

k. For single-family residences, the maximum impact area **shall** may be no larger than 2,500 4,000 square feet or 10% of the parcel size, whichever is smaller. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages, decks, driveways, parking, utilities (exclusive of an on-site septic system), and all lawn and landscaping, with the following exceptions:

i. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the 2,500 4,000 square feet or 10% of the parcel size, whichever is smaller, maximum impact area provided that the access road meets the standards of WCC 16.16.620(E) or 16.16.720(C), as applicable.

The motion was seconded.

Councilmembers discussed why they originally chose 2,500 square feet for the smaller lots in the shoreline zones.

The motion carried by the following vote:
Councilmembers and staff discussed subsection 16.16.270(C)(1)(a) and whether this changes what they can do administratively and whether there is an exemption for single family homes. Staff is giving the authority for the single family permit process to the technical administrator, so a homeowner doesn’t have to bear the cost of the Hearing Examiner. Any permits above that would go to the Hearing Examiner. Neighbors who have issues with a project will still be able to appeal to the Hearing Examiner.

Brenner moved to amend subsection 16.16.280 Appeals, “A. Final permit decisions made...for that permit. A request for administrative review shall stay the time within which one must file an appeal until a decision on the review is issued.”

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 subsection 16.16.280 Appeals, to eliminate language “G. Any issue not raised in the original appeal filing is thereafter waived.”

The motion was seconded.

The motion failed by the following vote:

Ayes: Brenner (1)
Nays: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Brenner moved to amend:

- Subsection 16.16.310 Designation, mapping, and classification, “(C)(1) Landslide Hazard Areas. Landslide hazard areas shall include areas potentially susceptible to landslides based on....”
- Subsection 16.16.375 Review and reporting requirements, “A. When County critical area maps ... within an active or potential geologically hazardous area, the technical administrator shall....”

The motion was seconded.

Councilmembers discussed the definition of Potentially Geographically Hazardous area and whether there would be opposite impacts to the homeowner.

Brenner amended her motion and moved to amend subsection (C)(1) only, “(C)(1) Landslide Hazard Areas. Landslide hazard areas shall include areas potentially susceptible to landslides based on....”

The motion failed by the following vote:

Ayes: Brenner, Browne, and Buchanan (3)
Nays: Mann, Sidhu, Weimer, and Donovan (4)
**Weimer moved** to reconsider the previous vote because the vote results sounded unclear.

The motion was seconded.

The motion to reconsider carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

The motion to amend failed by the following vote:

**Ayes:** Brenner, Browne, and Buchanan (3)

**Nays:** Mann, Sidhu, Weimer and Donovan (4)

Councilmembers discussed capitalizing all phrases that are specifically defined.

**The Committee concurred.**

**Brenner moved** to amend subsection 16.16.320 Geologically hazardous areas – General standards, “B. Impact Avoidance. Impact avoidance measures shall include, but not be limited to if possible, locating the use/development outside....”

The motion was seconded.

The motion failed by the following vote:

**Ayes:** Brenner, Sidhu, and Donovan (3)

**Nays:** Mann, Browne, Buchanan, and Weimer (4)

**Brenner moved** to amend subsection 16.16.320 Geologically hazardous areas – General standards, “B. Impact Avoidance. Impact avoidance measures shall include...alternatives analysis. For some geologic hazards, impact avoidance may mean no development will be permitted on a property. Impact avoidance may not be possible. In those instances the applicant will be made aware of risks and will sign a “Hold Harmless” agreement with the county, which will also be attached to title of property.”

The motion was seconded.

Councilmembers discussed how legal it is to tell someone they can’t build on their property, under what circumstances any development would not be permitted, and referencing the Washington Administrative Code (WAC).

**Brenner amended her motion and moved** to amend subsection 16.16.320 Geologically hazardous areas – General standards, “B. Impact Avoidance. Impact avoidance measures shall include...alternatives analysis. For some geologic hazards, impact avoidance may mean no development will be permitted on a property. Impact avoidance may not be possible. Where assessment by a qualified professional has shown that mitigation of the hazard or avoidance cannot fully eliminate the risk to human safety, the technical administrator may require the applicant to enter into a Release and Indemnification Agreement with the county, which will be attached to title of the property along with a Notice on Title for Regulated Critical Areas. The Release and Indemnification Agreement shall not substitute for the implementation of all reasonable mitigation measures
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.

recommended by the qualified professional to minimize the risk to human safety, and shall only be used to allow development in a geologically hazardous area when the risk to human safety has been minimized to as low as reasonably practicable.”

The motion failed by the following vote:

Ayes: Brenner, Sidhu, and Mann (3)
Nays: Donovan, Browne, Buchanan, and Weimer (4)

Donovan moved to amend subsection 16.16.325(A)(1) and (3) Landslide Hazard Areas – Standards:

1. Developments that will have no not increase the threat to the health or safety of people and will not increase potential for landslides on or off the site and meet the reasonable use standards as set forth in WCC 16.16.270.

2. ....

3. Access roads and trails that are engineered and built to standards that avoid minimizing the need for major repair or reconstruction beyond that which would be required in non-hazard areas. Access roads and trails may be permitted only if the applicant demonstrates that no other feasible alternative exists, including through the provisions of Chapter 8.24 RCW. If such access through critical areas is granted, exceptions or deviations from technical standards for width or other dimensions and specific construction standards to minimize impacts, including drainage and drainage maintenance plans, may be required specified.

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:

• 16.16.340(B) Seismic Hazard Areas – Standards, “Public roads, bridges, utilities, and trails shall be allowed when there are no feasible alternative locations and geotechnical analysis and design are provided that ensure the minimize potential damage to roadway, bridge, and utility structures and facilities will not be susceptible to damage from seismically induced ground deformation. Mitigation measures shall be designed in accordance with the most recent version of the American Association of State Highway and Transportation Officials (AASHTO) Manual or other appropriate document.

• 16.16.345(B) Alluvial Fan Hazard Areas – Standards, “Roads, utilities, bridges, and other infrastructure that are located and designed to prevent minimize adverse impacts on critical areas and avoid the need for channel dredging or diking or other maintenance activities that have the potential to substantially degrade river and stream functions.

• 16.16.355(A)(1) Erosion hazard areas – Standards, “Developments that will have no minimize the threat to the health or safety of people, will not increase the risks of alluvial fan erosion hazards on or off the
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.

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 subsection 16.16.430 Review and report requirements, “F. Critical areas assessment report requirements may be waived for single-family developments and structures accessory to agricultural uses when the technical administrator and the public works department determine that no minimal adverse impacts or risks to life, property, or ecological functions will occur.”

The motion was seconded.

The motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Brenner withdrew her proposed amendments to subsection 16.16.520(A) Critical aquifer recharge areas – General standards.

**Brenner moved** to amend subsection 16.16.670(C)(2) Review and reporting requirements, “When the proposed single-family dwelling and associated features are located outside the standard buffer required under WCC 16.16.630 (no encroachment), no assessment report shall be required. When the proposed single-family dwelling and associated features are located outside the standard buffer required under WCC 16.16.630 (no encroachment), no assessment report shall be required.”

The motion was seconded.

The motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

**Brenner moved** to amend subsection 16.16.700(C) Purpose, “Regulate development so that isolated populations of species are not created and habitat degradation and fragmentation are avoided minimized, especially along riparian corridors.”

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Sidhu, Browne, and Buchanan (4)

**Nays:** Weimer, Mann, and Donovan (3)

**Donovan moved** to amend subsection 16.16.720 General standards, “The following activities may be permitted in habitat conservation areas and/or their buffers when
pursuant to WCC 16.16.255 and 16.16.260, all reasonable measures have been taken...subject to WCC 16.16.730:”

The motion was seconded.

Councilmembers and staff discussed the implications of the inserted “When pursuant to Article 2,” to highlight mitigation requirements.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

Brenner withdrew her proposed amendments to subsection 16.16.720(G)(4) Habitat conservation areas – General standards.

Councilmembers and staff discussed getting a clean copy of the ordinance and CAO as amended.

**OTHER BUSINESS**

There was no other business.

**ADJOURN**

The meeting adjourned at 4:01 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 16, 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  

MINUTES CONSENT  

Browne moved to approve the Minutes Consent items.  

Browne withdrew item seven.  

The motion was seconded.  

The motion carried by the following vote:  

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)  

Nays: None (0)  

1. SPECIAL COMMITTEE OF THE WHOLE FOR MARCH 21, 2017  

2. REGULAR COUNTY COUNCIL FOR MARCH 21, 2017  

3. SPECIAL COMMITTEE OF THE WHOLE FOR APRIL 4, 2017  

4. REGULAR COUNTY COUNCIL FOR APRIL 4, 2017  

5. SURFACE WATER WORK SESSION FOR APRIL 11, 2017  

6. SPECIAL COMMITTEE OF THE WHOLE FOR APRIL 11, 2017  

7. BOARD OF HEALTH FOR APRIL 25, 2017  

**Brenner moved** to approve the minutes.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Buchanan, Weimer and Donovan (6)

**Nays:** None (0)

**Abstains:** Browne (1)

**PUBLIC HEARINGS**

1. **ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 3.02.040 AND REPEALING CHAPTER 3.09, REGARDING AUDITOR DUTIES (AB2017-151)**

   Debbie Adelstein, County Auditor, gave a staff report on proposed changes regarding the internal audit system, which the State Auditor’s Office now does.

   Buchanan opened the public hearing, and the following person spoke:

   Joy Gilfilen stated she has concerns with repealing the auditing duty from the County Auditor, due to the imbalance of power between the County Executive and County Council. The State Auditor represents the State, not the County.

   Hearing no one else, Buchanan closed the public hearing.

   **Browne moved** to hold in Council for two weeks to get more information from Auditor Adelstein and Civil Prosecutor Dan Gibson.

   The motion was seconded.

   The motion to hold failed by the following vote:

   **Ayes:** Browne (1)

   **Nays:** Weimer, Brenner, Mann, Sidhu, Buchanan, and Donovan (6)

   **Mann moved** to adopt the ordinance.

   The motion was seconded.

   The motion carried by the following vote:

   **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

   **Nays:** None (0)

2. **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)**

   Buchanan opened the public hearing, and the following people spoke:
John Lesow referenced an email he sent to the Council and suggested changes. He stated prohibit new single family homes in the small town commercial district. Also, reference the most current Point Roberts Character Plan.

Steve Wolff stated require that all text amendments be approved unanimously by the technical committee.

Joel Lantz, Point Roberts Community Advisory Committee Chairman and Point Roberts Registered Voters’ Association President, stated the Advisory Committee asks the Council to adopt the ordinance, remove references to the Character Plan, allow flexibility, and reduce redundancy of having two documents that say the same thing. Add the current Character Plan as an addendum to Whatcom County Code (WCC) 20.72.

Hearing no one else, Buchanan closed the public hearing.

Mann moved to forward for concurrent review.

Mark Personius, Planning and Development Services Department, answered questions about the process for making changes. The proposed changes are procedural, not substantive. Staff will assist the community in updating its Character Plan, which could be incorporated into the code and Comprehensive Plan.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

3. ORDINANCE ADOPTING WHATCOM COUNTY COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE CHERRY POINT URBAN GROWTH AREA (AB2017-063A)

Mark Personius, Planning and Development Services Department, gave a staff report on the most significant policy changes:

- Policy 2CC-2 encourages developments in Cherry Point urban growth area (UGA) to operate under plans consistent with the State’s aquatic reserve management plan.
- Policy 2CC-3 encourages clean or reduced carbon emission technology, avoidance of wetlands, inclusion of archeological review, inclusion of water, inclusion of water recycling, and enhancing existing and future industries in the Cherry Point UGA.
- Policy 2CC-11 limits the number of industrial piers at Cherry Point, while honoring vested rights and legally-enforceable agreements for an additional pier.
- Policy 2CC-15 encourages federal agencies to enforce the Magnuson Amendment.
- Policy 2CC-16 recommends a study of legal ways the County could limit negative impacts from fossil fuel exports.
- Policy 2CC-17 states that nothing in the new policies shall limit the existing operations or maintenance of existing facilities in the Cherry Point UGA.

Buchanan opened the public hearing, and the following people spoke:
Brian Estes stated he supports the proposed amendments in the ordinance. Balance economic development with finite resources.

Dena Jensen stated she supports the proposed amendments in the ordinance. Promote a healthy ecosystem, preserve jobs, and save farms.

Sandy Robson stated the Land Use chapter does not adequately reference the Lummi treaty rights. She supports the Cherry Point amendments.

Warren Sheay stated he supports the Cherry Point amendments. The planet’s environment is endangered. They are obligated to protect the environment for future generations.

Steve Garey stated he supports the effort to prohibit the export of crude oil at Cherry Point and the proposed amendments regarding Cherry Point.

Bob Allendorfer, Cherry Point/BP Refinery Manager, stated they oppose the proposed changes because they will damage the company’s ability to flourish and target the energy sector. No one does this work safer and more efficiently. The language about liquefied petroleum gas and natural gas should be removed from the ordinance. The company provides millions of dollars in tax revenue and living wages to the local community.

Ronna Loerch stated she supports the proposed amendments in the ordinance, which builds on current law, creates jobs, and honors the rights of diversity and nature.

Peter Willing stated don’t follow in the footsteps of the State of Wyoming. He supports treaty rights, the Magnuson Amendment, and the proposed amendments in the ordinance.

Peter Holcomb stated he supports the amendments, which are a compromise with economic development. As elected officials, the councilmembers are trustees of the common property, including land and water, and must protect its value.

Virginia Malmquist stated she supports the proposed amendments in the ordinance.

Patrick Austin Freeland, Lummi Nation, stated he supports amendments that recognize cultural and economic growth. The Cherry Point area is sacred to the Lummi Nation. He supports the proposed amendments in the ordinance.

Michael Wolf, Aegion Energy Services Senior Vice-Present, described his company and background. Allow the local refineries to operate most efficiently, which will protect their freedom and independence.

Pete Romero, J.H. Kelley, described his company and stated many projects at Cherry Point are clean projects. The refineries work very cleanly and provide living-wage jobs. Jobs will be lost if the ordinance passes.
Mike Kaufman stated he supports the proposed amendments in the ordinance. People throughout the nation support strong environmental regulations for future generations.

Joe Murphy stated he works at the Phillips 66 refinery and is opposed to the proposed ordinance. Trust the existing agencies that require rigorous, extensive permitting processes. Don’t restrict the industries from being able to compete in a global market.

Fred Kennedy stated he does not support the proposed amendments in the ordinance. Don’t restrict the businesses in the county.

Jean Carmea, League of Women Voters Advocacy Chair, stated they support the proposed changes to the Comprehensive Plan regarding Cherry Point to protect the Salish Sea from oil spills and destroying the ecosystem. Train accidents will be minimized. Protect treaty rights.

Derek Gremborn stated the Cherry Point refineries make positive impacts on the environment. They are the cleanest and best in the world. Don’t spend tax dollars on a legal study. The restriction will put the businesses at a competitive disadvantage. Work to change state and federal regulations, so they are not at a disadvantage locally.

Pete Sim stated he works on the BP Cherry Point environmental team. This process did not collaborate with the impacted stakeholders. They must be able to have dependable regulations so they can be competitive in the industry.

Charis Weathers stated she supports the proposed amendments in the ordinance. They don’t have the right to jeopardize existing species or treaty rights.

John Mutchler, Ferndale Mayor, stated he is opposed to the proposed ordinance. Ferndale and its people will be negatively impacted.

Jayne Freudenberger submitted and read from her testimony (on file) and stated she supports the proposed amendments in the ordinance. There are many other industries in the community where people can work, valuable benefits would be lost if there is an oil spill, and existing refinery jobs will not go away unless crude oil is shipped to other countries for refining.

Natalie McClendon stated the proposed amendments acknowledge the challenges and external restraints when making planning and development decisions. She supports the proposed amendments in the ordinance. This is a policy document, not regulation.

John Risser, BP Cherry Point Refinery, stated don’t limit growth options. The County should partner with Cherry Point industries. He does not support the proposed amendments in the ordinance. Delete policy 2CC-16.

Katy Welch stated she is opposed to proposed policies 2CC-11 and 2CC-16. BP Cherry Point donates thousands of dollars to the community. Don’t destroy jobs.
Elise McFaddon stated she is employed at Cherry Point. She does not support the proposed amendments. The company supports many nonprofit organizations and provides a living wage job to families.

Nick Hanson stated he is opposed to the proposed amendments to Cherry Point. Don’t restrict local industry from competing. Don’t make regulations subjective and open to legal challenges.

Pam Borso stated she supports the proposed amendments in the ordinance. The policies are consistent with the Growth Management Act. They are not regulations. They also protect the fishing industry. Promote alternative energy and protect Lummi treaty rights.

Mike Sennett stated he supports the proposed amendments in the ordinance. Protect the Lummi treaty rights and environment for future generations.

Ken Kaliher submitted and read from his testimony (on file) and stated he supports the proposed amendments in the ordinance because he doesn’t want remote companies to impact Whatcom County. The companies refused to meet with the County or confirm they would protect jobs. Protect natural resources and plan for future generations.

Dirk Vermeeren submitted and read from his testimony (on file) and stated he supports the proposed amendments in the ordinance to protect the environment. The amendments won’t result in lost jobs. Implement a long-term plan for the future that represents all stakeholders.

Alex Ramel stated he supports the proposed amendments in the ordinance. The policy is only aimed at new facilities that will export fossil fuels from Cherry Point, and will protect the existing jobs at Cherry Point. Unions oppose crude oil exports.

Barry Wenger stated he supports the proposed amendments in the ordinance and the previous speaker, Mr. Ramel. Don’t send crude oil and refinery jobs overseas.

Spencer Palmer stated it’s hard to find a job in Whatcom County, especially for young people. Don’t make it any harder. He does not support the proposed amendments in the ordinance.

Ria Bordian stated she works at the BP Cherry Point refinery. She does not support the proposed amendments in the ordinance. Cherry Point businesses support local nonprofit agencies. Assure that Cherry Point businesses continue to grow and compete.

Nick Sancrant, BP Cherry Point Refinery Human Resources Manager, stated he does not support the proposed amendments. The refinery is committed to operating environmentally safe, providing living-wage jobs, developing relationships with colleges in the area, and supporting local families. There is a high demand for refinery jobs.

Judith Akins, Mt. Baker Chapter of Sierra Club, submitted and read from her testimony (on file) and stated they support the proposed changes in the ordinance. It is policy, not regulation. There are no restrictions on the existing facilities.
Pam Brady, BP Cherry Point, stated her company is a good steward of the environment. Reject policy 2CC-16. Industries will be negatively impacted by the policy and it will restrict their competitiveness. It will freeze their ability to export LPG and grow. It is contrary to the Growth Management Act requirement to plan for growth.

Scott McCreery described his work for BP Cherry Point Refinery as the head of security for crisis management and emergency response and as a member of the Marine Resources Committee and other environmental committees. The company takes seriously its role as a steward of the environment. The company works to ensure they do not have any oil spills and is prepared to respond to any spill that may happen. He also manages tribal relations on behalf of the refinery.

Bob Johnston stated he supports the proposed amendments in the ordinance. Toxic substances can enter the environment and result in long-term contamination of the local environment. Promote cleaner fuel sources. The proposal does not impose new restrictions.

Lynne Dulman stated she supports the proposed amendments in the ordinance. Honor their responsibility to the public trust. Protect the air and water. Respect the Native American heritage.

Jane Bright stated she supports the proposed amendments in the ordinance. It’s time to adopt the ordinance.

Ryan Kennedy stated BP Cherry Point Refinery is a safety leader and good community member. He described the company’s various safety measures.

James Ochoa stated he is a member of the emergency response team at Cherry Point and described their unit and their expertise. The refinery is committed to safety.

Virginia Cleaveland submitted and read from her testimony (on file) and stated she supports a cleaner environment. Protect against the fossil fuel economy and the potential for a train derailment or pipeline explosion with tragic results. She supports the proposed amendments in the ordinances.

Eddy Ury, ReSources for Sustainable Communities, stated they support the proposed amendments in the ordinance to protect the economy, environment, Salish Sea, and other resources. The County has the authority to set development conditions. To protect refinery jobs, they must keep refining here, not ship unrefined crude oil overseas. Alternative energy sources are developing and growing rapidly. Demand for toxic fuel is declining.

Rachel Lewis, BP Cherry Point Refinery Health and Safety Manager, stated the refinery is very safe. They consider how to operate and invest in an environmentally and socially acceptable way. She does not support the proposed amendments in the ordinance. Future employment prospects are at risk. They must work together to transition to different energy sources, such as natural gas. Don’t fund the study to limit export of gas and oil. Reject policy 2CC-16.
Brandon Millap stated he is a safety representative at BP Cherry Point Refinery. The four companies at Cherry Point employ approximately 200 to 400 military veterans, which helps lower the number of homeless veterans.

Willie Truemper, BP Cherry Point employee, described his background and family and stated he is opposed to the proposed amendments in the ordinance, particularly policy 2CC-16. The councilmembers need to understand the oil industry.

Joe Wilson stated he supplies steel fabrication to industrial sites, including the local refineries. No facilities are safer or better environmentally-managed than those at Cherry Point. He does not support the proposed amendments in the ordinance. It sends a bad message to potential investors. Work with the refineries.

Karen Brown stated the Council is destroying the county. She is opposed to the proposed amendments in the ordinance. Green jobs don’t provide living wages. The refineries are safe. Don’t spend $150,000 on the study. An interlocal agreement is not legal.

John Huntley, Mills Electric President, stated he represents a coalition that supports Cherry Point jobs. His company works with Cherry Point businesses. The County has not listened to or worked with the businesses. His coalition has suggested amendments. He is opposed to the proposed amendments that ban the fourth pier and fund a proposed study. There is already a process for project review in the Cherry Point UGA.

Nathaniel Maddux, IAMAW Local Lodge 2379 President, stated allow the Cherry Point industries to continue to be environmental stewards. If they aren’t allowed to expand, they may not invest in capital maintenance. Trust them to take care of things the right way.

Rikki Smeltzer stated she does not support the proposed amendments in the ordinance. They prevent the possibility of a fourth pier and future growth. These jobs follow safety requirements and support thousands of jobs. Protect family wage jobs.

Kristal McKinstry stated she supports the proposed amendments in the ordinance. Protect water, and prevent against inevitable tanker oil spills and other toxic pollution.

Larry Hildes stated he supports the proposed amendments in the ordinance. Don’t believe that BP Cherry Point is safe, environmentally sound, and will protect local jobs. Doing a study won’t cause any catastrophe.

Karen Weill stated she supports the proposed amendments in the ordinance and protecting the environment, which the industries won’t do. The industries will send the local jobs overseas regardless of what the County does.

Chelsea Blank stated she supports the proposed amendments in the ordinance. Respect treaty rights. Protect the environment. Focus on renewable energy.

Hanna Bridgham stated she supports the proposed amendments in the ordinance to keep the environment clean for the future.
Bob McCarthy, BP Cherry Point Refinery, stated he is opposed to the proposed amendments in the ordinance. Cherry Point industry contributes to multiple nonprofit programs in the community.

Max Perry stated he does not support the proposed amendments in the ordinance. Many people feel they aren’t represented by the County Council.

Kim Feringer stated he supports the proposed amendments in the ordinance. There is much less marine life than there used to be.

Alyssa Willis submitted a handout (on file) and stated she does not support the proposed amendments or study. Cherry Point industries share an interest in environmental stewardship and have an excellent environmental record. BP Global supports alternative energy such as wind farms. There must be a transition process. Students in the Bellingham Technical College (BTC) technical programs will be negatively impacted.

Ashley Butenschoen stated she does not support the proposed amendments in the ordinance. Protect jobs.

June Coover stated she supports her industrial clients, which are sustainable industries. She does not support the proposed amendments in the ordinance. The industries must be able to expand and remain competitive.

Art DeBoer stated the Cherry Point refineries aren’t as environmentally bad as recent sewage problems spilling into the bay.

Dick Casper stated he supports the proposed amendments in the ordinance. He’s concerned about the safety of rail transport of raw materials to Bellingham.

Eddie McCracken, BP Cherry Point Refinery, stated the County can’t legally limit crude or other exports to protect refinery jobs. Refineries only shut down and operate as shipping terminals when the refineries no longer become viable. Ensure they remain good investments for their companies. The companies provide much tax revenue for the community.

John Holstein stated he supports the proposed amendments in the ordinance. Everyone against the amendments depends financially on the refineries.

Patrick Alesse stated BP Cherry Point argued for and received a sharp reduction in their property taxes recently.

Shawn Kaylor stated he is opposed to the proposed amendments in the ordinance. The refinery is a good steward of the environment. The amendments are a threat to limit activities at Cherry Point. The study will result in many lawsuits. The refineries already have a good working relationship with existing State agencies.

John Ellis stated the refineries have to comply with many environmental laws. People have to earn a living. He does not support the proposed amendments in the ordinance.
Scott Simons stated he is a BP employee. He does not support the proposed amendments in the ordinance, particularly policy 2CC-16. They must be competitive in the industry. Continue to work on the issues.

Carol Perry stated they must use common sense and protect the tax base so they can pay for a new jail and address the Hirst decision.

Emma Oppenheimer stated she supports the proposed amendments in the ordinance. Governing begins on a local level. She appreciates the civil discussion at tonight’s meeting. Promote sustainable, renewable energy.

Rod Pemble stated he supports the proposed amendments in the ordinance. Many people without high paying jobs also donate to nonprofits and volunteer in the community. They are not being too hasty on this issue. They must act locally.

(Inaudible), Bellingham High School Freshman, stated she supports the proposed amendments in the ordinance to protect future generations.

Natalie Chavez stated she supports the proposed study and the proposed amendments in the ordinance. They must rely on State and local communities to protect the environment, the health of the people, and the local economy.

Tyler Berg stated there is a reputation that it’s difficult to do business in this community. They should not spend $150,000 to research how to limit businesses. Instead, spend it on bettering the environment and solving existing problems.

Hearing no one else, Buchanan closed the public hearing.

Mark Personius, Planning and Development Services Department, described the voting process for the Comprehensive Plan amendments.

Councilmembers discussed how to make amendments.

Mann moved to forward for concurrent review.

The motion was seconded.

Brenner moved to amend to eliminate policy 2CC-16 on Council packet page 345.

The motion was seconded.

Councilmembers discussed prohibiting export of just unrefined fossil fuel versus export of both unrefined and refined fossil fuels, whether fracking can be done safely, the negative tone of the proposed language, whether acidification from Asia impacts the salmon, the process for making these proposed amendments, the intent and purpose of the study, whether they should trust the existing agencies, nationwide concerns about negative impacts to public health and safety and the environment, the revoked federal ban on export of crude oil, whether companies intend to export crude oil, whether there are impacts to existing refinery operations, what to do with byproducts, the intent of the amendments to preserve and grow refinery jobs at Cherry Point and the health and safety of the rest of the
community, ensuring that the refineries can continue to sell their refined fossil fuels and their byproducts, and ensuring the Council is educated enough to understand its rights in this issue and be able to represent its constituents.

The motion to amend failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

*Brenner moved* to reinstate language, "Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20-year planning period."

The motion was seconded.

The motion to amend failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

*Brenner moved* to remove language on Council packet page 339, lines 7 through 21:

The United States Congress approved the "Magnuson Amendment" in 1977 in order to restrict tankers carrying crude oil in the Puget Sound area. Congress found that Puget Sound and the adjacent shorelines were threatened by the increased possibility of vessel collisions and oil spills. Therefore, Congress restricted federal agencies from issuing federal permits as follows:

...no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increases in the volume of crude oil capable of being handled at any such facility (measured as of October 18, 1977), other than oil to be refined for consumption in the State of Washington.

The motion was seconded.

Councilmembers discussed the County's power in terms of the Magnuson Amendment.

The motion to amend failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Brenner moved to amend language on page 338, lines 27 through 29, to reinstate language, "The Management Plan acknowledges that the existing industries , complying
with the laws and regulations, do not conflict with the Aquatic Reserve.” The motion was not seconded.

Brenner moved to amend to remove language on page 341, lines 28-32, because the tone of the language is too negative, “…for their facilities. Existing industries consume large quantities of water, in many cases drawn from the Nooksack River. It is the County’s policy to support renewed efforts to reduce both water consumption levels and the quantity of discharges, in favor of recycled water use (see Policy 2CC-3 and Policy 2CC-10).”

The motion was seconded.

The motion to amend failed by the following vote:

Ayes: Brenner (1)
Nays: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Brenner moved to amend language on Council packet page 343, line 3. …, where possible; and”

The motion was seconded.

The motion to amend failed by the following vote:

Ayes: Brenner (1)
Nays: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

The motion to forward for concurrent review carried by the following vote:

Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

APPROVAL OF COMPREHENSIVE PLAN AMENDMENTS

1. 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)

Mann moved to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. ORDINANCE ADOPTING WHATCOM COUNTY COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE CHERRY POINT URBAN GROWTH AREA (AB2017-063A)

Donovan moved to adopt the ordinance.
The motion was seconded.

The motion carried by the following vote:
**Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

**Nays:** Brenner (1)

**Mann moved** to approve all the Comprehensive Plan amendments concurrently.

The motion was seconded.

The motion carried by the following vote:
**Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

**Nays:** Brenner (1)

*(Clerk’s Note: The Council took a break at 11:45 to 11:55 p.m.)*

**OPEN SESSION**

The following people spoke:

- Carol Perry spoke about the draft jail facilities use agreement (JFUA), size, location, and operating expenses.
- Dan McShane spoke about staff working on the critical areas ordinance and best available science from the Technical Advisory Committee.
- Patrick Alesse spoke about public safety of pedestrians in Birch Bay.
- Matt Petryni spoke about improving water resources in the community.
- Patrick Austin Freeland spoke about education leading to good jobs and supporting struggling students.
- Chris Cook spoke about ocean habitat pollution from international sources.

**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 AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE PORT OF BELLINGHAM FOR THE PROVISION OF REAL ESTATE SERVICES RELATED TO THE COUNTY OWNED BUILDING LOCATED AT 3720 WILLIAMSON WAY (AB2017-164)**

2. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND LAKE WHATCOM WATER AND SEWER DISTRICT FOR THE WHATCOM COUNTY SHERIFF’S OFFICE DIVISION OF EMERGENCY MANAGEMENT TO PROVIDE EMERGENCY MANAGEMENT**
SERVICES, IN THE AMOUNT OF $20,000 PER YEAR FOR THREE YEARS (AB2017-165)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE WHATCOM DISPUTE RESOLUTION CENTER TO PROVIDE FOR THE CERTIFICATION OF FAMILY LAW MEDIATORS, THE CONDUCT OF MANDATORY PARENTING SEMINARS (INCLUDING LANGUAGE INTERPRETATION AS NEEDED) AND THE SCHEDULING OF AND CONDUCT OF MEDIATION SESSIONS, IN THE AMOUNT OF $50,000 PER YEAR FOR TWO YEARS (AB2017-166)

OTHER ITEMS

1. 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)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

Councilmembers discussed reserving economic development funds for economic development activities and projects, whether it’s appropriate to spend those funds on infrastructure projects, and developing a clear policy for spending economic development funds.

The motion carried by the following vote:
Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Mann (1)

2. 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)

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. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, FIFTH REQUEST, IN THE AMOUNT OF $251,050 (AB2017-155)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.
The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

4. **RESOLUTION IN THE MATTER OF THE SALE OF SURPLUS PROPERTY AND SETTING OF A DATE FOR PUBLIC HEARING THEREON PURSUANT TO WHATCOM COUNTY CODE 1.10 (AB2017-162)**

Browne reported for the Finance and Administrative Services Committee and **moved** to approve the resolution.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

**Nays:** None (0)

5. **RESOLUTION AUTHORIZING THE PURCHASE OF RENEWABLE WIND ENERGY FROM PUGET SOUND ENERGY FOR A TERM OF TEN YEARS, BEGINNING IN 2019 (AB2017-163)**

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)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. **APPOINTMENT TO THE DRAYTON HARBOR SHELLFISH PROTECTION DISTRICT ADVISORY COMMITTEE, APPLICANT: GEORGE KAAS (THE DRAYTON HARBOR SHELLFISH PROTECTION DISTRICT ADVISES THE COUNTY COUNCIL ON PROPOSED ACTIONS AND OPERATIONS RELATING TO THE RESTORATION OF WATER QUALITY IN THE DISTRICT) (AB2017-139)**

Browne **moved** to appoint George Kaas.

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 JEFFERY HART AND JOSHUA MCINTYRE TO THE DEVELOPMENTAL DISABILITIES BOARD (AB2017-168)**
Mann moved to confirm the appointment.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

INTRODUCTION ITEMS

Mann 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 GRANTING A QUIT CLAIM DEED TO THE CITY OF BELLINGHAM (AB2017-167)

2. ORDINANCE ADOPTING VARIOUS MINOR AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING, MAKING CORRECTIONS, UPDATES, AND CLARIFICATIONS (AB2017-169)

3. RESOLUTION AUTHORIZING THE SALE OF WHATCOM COUNTY SURPLUS PROPERTY PURSUANT TO WHATCOM COUNTY CODE 1.10 (2017-162A)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Donovan reported for the Natural Resources Committee.

Browne reported for the Finance and Administrative Services Committee.


Buchanan reported on the Special Committee of the Whole meeting.

Councilmembers gave updates on other business and on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 12:23 a.m. on Wednesday, May 17, 2017.

The County Council approved these minutes on ______, 2017.
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 10:00 a.m. in the Civic Center Garden Level Conference Room, 322 Commercial Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Todd Donovan and Carl Weimer
Absent: Ken Mann

SURFACE WATER WORK SESSION (AB2017-024)

1. WATER PLANNING UPDATE

Gary Stoyka, Public Works Department, updated the councilmembers on the Planning Unit and the Watershed Management Board. Last month the Planning Unit discussed the Nooksack Tribe’s South Fork conservation planning process. This month the Planning Unit will discuss Geneva Consulting’s status report of activities and implementation plans. They’ve received all final invoices from Joint Board activities, and are closing the account with a remaining balance of $16,200, which will transfer to the flood fund to help pay for groundwater modeling. He reported on the status of the groundwater modeling project. He answered questions about a Lake Whatcom data committee of the City that doesn’t seem to be open to the public.

Jon Hutchings, Public Works Department Director, answered questions about how agencies look at phosphorous loading in Lake Whatcom and open public meetings.

2. FLOOD AND WATER RESOURCES LEVELS OF SERVICES – ADDITIONAL SERVICES

Gary Stoyka, Public Works Department, gave a staff report and provided a list of potential items that might be added to water-related services (on file). He described the items on the list. The items are extra projects that the Council could decide to fund. The biggest challenge is the funding situation from the State budget. They may not get any State money for Swift Creek or through the Floodplains by Design program. The next step is to work on resolving the funding issue. He will provide more information on these items if the councilmembers are interested.

Councilmembers discussed and Stoyka answered questions about cash reimbursements versus discounts for the homeowner incentive program (HIP); adding an audit of infrastructure and creating a geographic information system (GIS) layer for private water districts; the timeline of the projects on the list; funding to accelerate replacement of
fish-blocking culverts; using the flood fund only for flood issues; getting cost information on annual costs versus total project-costs; and whether they need to do the Lake Samish stormwater plan right away.

ADJOURN

[Clerk’s Note: Councilmembers adjourned the meeting at 10:30 a.m. to attend a tour of the Swift Creek area with Public Works Department staff. See handout (on file). Councilmembers Brenner and Weimer did not attend the Swift Creek tour.]

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
CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to:
--- | --- | --- | --- | --- | ---
Division Head: | | | | |
Dept. Head: | 6/7/17 | | | |
Prosecutor: | 6/7/17 | | | |
Purchasing/Budget: | | | | |
Executive: | | | | |

TITLE OF DOCUMENT:
Public hearing on the proposal to create a Lummi Island Park and Recreation District

ATTACHMENTS:
Miscellaneous related documents

SEPA review required? ( ) Yes ( ) No
SEPA review completed? ( ) Yes ( ) No
Should Clerk schedule a hearing? (x) Yes ( ) No
Requested Date: 7/11/2017

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.)

COMMITTEE ACTION:

COUNCIL ACTION:
6/13/2017: Approved 6-0, Donovan Absent, Res. 2017-036

Related County Contract #: Related File Numbers: Ordinance or Resolution Number: Res. 2017-036

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.
Full text of petition proposal:

Whereas Lummi Island is a community of families and individuals who seek to benefit from dedicated outdoor space and recreational facilities as described in RCW 36.69.010 to serve to enrich community recreation opportunities, children and adult physical well-being, nurture neighborly connection; and

Whereas the Lummi Island Subarea Plan provides for the creation of a park and recreation district; and

Whereas RCW 36.69.020 provides for creation of a park and recreation district by petition and for boundaries of the district as set forth in the petition; and

Whereas RCW 36.69.090, provides that five elected commissioner volunteer positions may be designated in the formation of a park district; and

Whereas a general tax on all property located in said Park and Recreation District shall not exceed sixty cents per thousand of assessed value each year as outlined in chapter 36.69.145 of Washington State Code, unless otherwise authorize by law; and,

Whereas RCW 36.69.085 allows for initial capital or operational costs to be submitted to voters with the petition initiating the formation of the proposed park and recreation district.

NOW, THEREFORE

1. The Lummi Island Park and Recreation District should be hereby created. The district boundaries generally would include all of Lummi Island located in Whatcom County, being parts of Township 36 North, Range 2 East; Township 37 North, Ranges 1 and 2 East, and part of Township 38 North, Range 1 East, W.M., and all tidelands abutting said Island.

2. Pursuant to RCW 36.69.090, the Park and Recreation District's board of commissioners shall be composed as follows: five elected Volunteer Park and Recreation Commissioners.

3. The petitioners encourage the County Auditor to place these measures on the general election (November 7, 2017) ballot. The following ballot questions should be presented to the voters:

   Ballot Title: This measure concerns the formation of the Lummi Island Park and Recreation District. This measure would create the Lummi Island Park and Recreation District, to be governed by five elected Park Commissioners. Should this measure be enacted into law?
   Yes _ __
   No _

   Ballot Title: This measure would authorize the district to impose a property tax levy of $.60 (60 cents) per thousand dollars of assessed valuation for six (6) years to fund recreational facilities. Should this measure be enacted into Law?
   Yes _ __
   No _

Circulator's Certificate:
I, R.M. Smith, swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and the offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

Circulator Signature: R.M. Smith
Printed Name: R.M. Smith
Street Address: 2620 N. Nugent
City: Lummi Island
Date: 4-2-17
Obligation to Pay Receipt

Date Received: June 5, 2017

Petition Name: Petition to Create Lummi Island Park & Recreation District
Petition No. P-2017-1

Received From: Nancy Moore, Auditor’s Office

The Office of the County Council acknowledges receipt of the above-named Obligation to Pay.

Name and Title
May 30, 2017

Debbie Adelstein
Whatcom County Auditor
311 Grand Ave
Suite 103
Bellingham, WA 98225

RE: Petition # 2007-1, Petition for Lummi Island Parks & Recreation District

Dear Ms. Adelstein,

I am pleased to submit signatures on the above referenced petitions for approval. We are hopeful that you can confirm sufficient signatures have been collected for this petition to be forwarded to the County Council for placement on the November general election ballot.

Two individuals who have signed the petition have signed this letter below certifying their responsibility for paying the necessary costs of publication for this petition to be placed on a future agenda of the Whatcom County Council.

I look forward to hearing from you as we are excited to continue to move forward on this project. If you have any questions please don't hesitate to contact me at 360-758-2559 or janiceholmes@runbox.com.

Again, many thanks,

Janice Holmes

I certify that I have signed the above referenced petition and will be responsible for the costs of publication for public notice to be issued.

Janice E. Holmes

Randy Smith
To: Dana Brown-Davis  
Clerk of County Council

From: Debbie Adelstein  
County Auditor

Re: Certificate of Sufficiency  
Lummi Island Park and Recreation District

Date: June 6, 2017

Enclosed is the Certificate of Sufficiency for the creation of the Lummi Island Park and Recreation District and the Petition Results Breakdown.

We are also enclosing the 11 petition pages submitted to us by the proponents of the district which are to be retained by the Council Office.

If you have any questions, please contact me at 778-5105.

cc: Janice E. Holmes
CERTIFICATE OF SUFFICIENCY

I hereby certify that I and members of my Election Division staff have reviewed the petition entitled Creation of Lummi Island Park and Recreation District submitted to this office by Janice Holmes.

The formula utilized in determining the number of signatures necessary as outlined in RCW 36.69.020 is "signed by not less than fifteen percent of the registered voters residing within the area so described." In this case, 115 registered voters' signatures were needed to warrant sufficiency.

We verified 166 signatures, therefore, a sufficiency of signatures is established.

Debbie Adelstein  
County Auditor

Date: June 6, 2017
## Petition Result Breakdown

### 2017 May - LIP&R Creation
**2017 Creation of the Lummi Island Park & Recreation District**

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### Statistics Summary

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Min Required (95%): 109.3
Min Required to pass
Based on Sample (110%): 126.5
RESOLUTION NO. 2017-036

ACCEPTING A PETITION TO CREATE
THE LUMMI ISLAND PARK AND RECREATION DISTRICT AND
SET A DATE FOR PUBLIC HEARING ON THE PROPOSAL

WHEREAS, on June 5, 2017, a petition proposing the creation of a park and recreation district on Lummi Island was delivered to the Whatcom County Council Office by a representative from the County Auditor’s Office; and

WHEREAS, included with the petition was a Certificate of Sufficiency from the County Auditor verifying that the petition contains a sufficient number of qualified signatures; and

WHEREAS, the petition meets the requirements of RCW 36.69.020; and

WHEREAS, the County Council's current role in the petition process is to accept the petition and schedule a public hearing on the proposal; and

WHEREAS, the Council's future role, following public hearing, will be to establish the boundaries of the proposed park and recreation district, establish its name, and call for an election of the property owners residing within the proposed district boundaries to determine whether the district shall be formed.

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council hereby accepts the petition proposing to create the Lummi Island Park and Recreation District.

BE IT FURTHER RESOLVED that a public hearing on the proposal will be scheduled for the Council's regular evening meeting at 7 p.m. on July 11, 2017.

BE IT FURTHER RESOLVED on July 25, 2017, it is anticipated that the Council will adopt an ordinance naming the proposed district, setting the district boundaries, and forwarding the proposal to the County Auditor for inclusion on the November General Election ballot.

BE IT FINALLY RESOLVED that the name and boundaries of the proposed park and recreation district as submitted by the petitioners, are outlined in Exhibit A to this resolution.

APPROVED this 15th day of June, 2016

WHATCOM COUNTY COUNCIL

WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

APPROVED as to form.

Karen A. Falck
Civil Deputy Pros. Atty.
EXHIBIT A
(RESOLUTION ACCEPTING PROPOSED LUMMI ISLAND PARK AND RECREATION DISTRICT PETITION)

PROPOSED NAME:
Lummi Island Park and Recreation District

PROPOSED DISTRICT BOUNDARIES:
The district boundaries generally will include all of Lummi Island located in Whatcom County, being parts of Township 36 North, Range 2 East; Township 37 North, Ranges 1 and 2 East, and part of Township 38 North, Range 1 East, W.M., and all tidelands abutting said island.
PUBLIC HEARING NOTICE

Whatcom County Council will have a public hearing on a PETITION TO CREATE THE LUMMI ISLAND PARK AND RECREATION DISTRICT (AB2018-200). Citizens have submitted a petition to create the Lummi Island Park and Recreation District. The County Council will have a public hearing on the matter on July 11, 2017. The boundaries of the proposed district are legally described as follows: The district boundaries generally will include all of Lummi Island located in Whatcom County, being parts of Township 36 North, Range 2 East; Township 37 North, Ranges 1 and 2 East, and part of Township 38 North, Range 1 East, W.M., and all tidelands abutting said island. It is anticipated the Council will adopt an ordinance following the hearing that names the proposed district, sets the district boundaries, and forwards the proposal to the County Auditor for inclusion on the November General election ballot.

Council approved Resolution 2017-036 accepting the petition at its June 13 meeting. Public documents are available for review in the Council Office, 311 Grand Avenue, Bellingham, and at www.co.whatcom.wa.us/council. Meetings are in the Council Chambers, same address, at 7:00 p.m., unless otherwise announced. The Council Chambers is handicapped accessible. People with special needs or disabilities who will be attending this meeting are asked to please contact our office (778-5010 or 800-676-6757) at least 96 hours in advance, so that we may make any needed accommodations. If interpretive services or transportation is needed, please call more than two days ahead of time.

Dated June 14

Dana Brown-Davis
Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan
Council Chair

Publish June 17, June 24, and July 1
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**

Ordinance amending the Whatcom County Code Title 20 Zoning and the Whatcom County Comprehensive Plan relating to cumulative impervious surface coverage standards.

**ATTACHMENTS:**

- Staff Memorandum
- Draft Ordinance
- January 17 Staff Report
- February 28 Staff Memorandum to Planning Commission
- April 19 Staff Memorandum to Planning Commission
- Planning Commission Minutes
- Planning Commission Findings and Recommendations
- Public Comments

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

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

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

**Requested Date**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

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

Ordinance amending the Whatcom County Code Title 20 Zoning and the Whatcom County Comprehensive Plan relating to cumulative impervious surface coverage standards.

**COMMITTEE ACTION:**

6/13/2017: Discussed

**COUNCIL ACTION:**

6/13/2017: Introduced 6-0, Donovan Absent

**Related County Contract #:** PLN2016-00013

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: The Honorable Jack Louws, Whatcom County Executive
   The Honorable Whatcom County Council
FROM: Gary Davis, AICP, Senior Planner
THROUGH: Mark Personius, AICP, Assistant Director
DATE: May 30, 2017
SUBJECT: Impervious Surface Code Amendments

Discussion of proposed amendments involving impervious surface standards are scheduled for discussion at the June 13 Planning and Development Committee meeting. The attached draft recommended by the Planning Commission would apply to land in the Rural and Residential Rural zones (about 132,000 acres total), but would not apply to farms in those zones that currently have a farm plan that addresses stormwater. For the affected parcels, a new development project that causes the cumulative impervious surface to exceed a threshold of 35 percent of the parcel size, or 45,000 square feet, whichever is greater, would require use of the Department of Ecology stormwater manual to assure stormwater mitigation.

The Planning Commission held four public hearings on the proposal and made its recommendation on April 27 (the minutes of these meetings are attached). The attached April 19 staff memorandum to the Planning Commission outlines four options that were discussed. The memorandum also explains the accompanying Comprehensive Plan amendment, which would update Policy 2DD-2, which references the County’s measures to protect water quality in rural areas.

This proposed amendment is in response to the water quality portion of the Supreme Court’s decision regarding water resources (the Hirst decision). A limit on impervious surfaces is one of the Growth Management Hearings Board’s suggestions for additional measures to protect water quality in rural areas.
If you have any questions, please call Gary Davis, Senior Planner, at extension 5931.

Attachments:

Draft ordinance and amendments: WCC Title 20 Zoning and WCCP
Staff Report
February 28, 2017 staff memorandum to Planning Commission
April 19, 2017 staff memorandum to Planning Commission
Planning Commission Minutes
Planning Commission Findings and Recommendations
Public Comments
ORDINANCE NO. ____________________

AMENDING THE WHATCOM COUNTY CODE TITLE 20 ZONING AND THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO CUMULATIVE IMPERVIOUS SURFACE COVERAGE STANDARDS

WHEREAS, an October 6, 2016 Washington State Supreme Court decision (Whatcom County, Hirst vs. Western Washington Growth Management Hearings Board, No. 91475) has found that Whatcom County’s Comprehensive Plan does not comply with the Growth Management Act (GMA) requirements for protecting water resources; and

WHEREAS, RCW 36.70A.070(1), requires that the land use element of a county comprehensive plan “shall provide for protection of the quality and quantity of groundwater used for public water supplies.”; and

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county comprehensive plan “shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: ... protecting critical areas...and surface water and groundwater resources.”; and

WHEREAS, 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 and conclusions:

FINDINGS OF FACT

1. Whatcom County Planning and Development Services has submitted an application for amendments to WCC Title 20 Zoning to establish cumulative impervious surfaces.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 25, 2017.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on January 5, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on January 26, March 9, March 23, and April 27, 2017.

6. The Growth Management Hearings Board and Washington Supreme Court have found Whatcom County’s Comprehensive Plan to be out of compliance with the Growth Management Act in that its rural element lacks measures to protect water quality and availability in rural areas. The Board suggested impervious surface limits as a possible measure the County might adopt to protect water quality.

7. The Whatcom County Comprehensive Plan adopts by reference County Code provisions related to water resources under Policy 2DD-2.C. Revisions to the County Code are therefore also revisions to the Comprehensive Plan. The amendments propose adding Policy 2DD-2.C.10 to adopt by reference the new impervious surface standards proposed in WCC 20.32.500 and 20.36.500.

8. On October 11, 2016 the County adopted Ordinance 2016-045 revising the County’s stormwater regulations and integrating low impact development principles and best management practices into the County’s development regulations in order to meet the state’s 2014 NPDES Phase 2 Permit requirements.

9. The purpose of the proposed Zoning Code and Comprehensive Plan amendments is to resolve an appeal of the Comprehensive Plan filed with the Growth Management Hearings Board. Comprehensive Plan amendments may be considered outside the annual concurrent review of Comprehensive Plan amendments per WCC 2.160.010D.

10. WCC 2.160.080 provides approval criteria for Comprehensive Plan amendments.

11. Whatcom County Comprehensive Plan (WCCP) Policy 10H-8 states: “Strongly incentivize the use of low impact development strategies. Minimize the amount of impervious surface whenever practicable by using natural engineering design methods such as the use of open, grassed, street swales and rain gardens instead of curbs and gutters. Where feasible, encourage alternate surfacing options and other techniques associated with low impact development.”
12. WCCP Policy 10H-12 states: “Amend subdivision, zoning, and other land use regulations and design standards to encourage that land use activities minimize the amount of impervious surface.”

CONCLUSIONS

1. The amendment regarding impervious surface limits in rural zoning districts is in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

3. The Comprehensive Plan amendments meet the approval criteria of WCC 2.160.080.

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

Section 1. Amendments to the Whatcom County Code and Comprehensive Plan are hereby adopted as shown on Exhibits A and B.

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 3 of 3
EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 20 ZONING

Chapter 20.32
RESIDENTIAL RURAL (RR) DISTRICT

20.32.656 Drainage. (Adopted by reference in WCCP Chapter 2.)
All development activity within Whatcom County shall be subject to the stormwater
management provisions of the Whatcom County Development Standards-WCC
20.80.630 – 20.80.635 unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating
to stormwater management in the appropriate chapters of the Whatcom County
Development Standards Code.

Chapter 20.36
RURAL (R) DISTRICT

20.36.656 Drainage. (Adopted by reference in WCCP Chapter 2.)
All development activity within Whatcom County shall be subject to the stormwater
management provisions of the Whatcom County Development Standards-WCC
20.80.630 – 20.80.635 unless specifically exempted.
No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards Code.

[Note: Revisions identical to the 20.36.656 revision above are made to Sections 20.34.659; 20.37.655; 20.44.652; 20.59.704; 20.60.655; 20.61.704; 20.63.654; 20.64.655; 20.67.653; and 20.69.655.]

Chapter 20.80
GENERAL PROVISIONS

20.80.630 Stormwater and drainage.

(1) Unless exempted in WCC 20.80.631, all development activity on lands within Whatcom County shall be subject to stormwater management requirements as follows:

(a) NPDES Phase II Permit Area. Except in the Lake Whatcom Watershed Overlay District, development activity inside the NPDES Phase II permit area shall comply with:


(ii) Appendix 1, Minimum Technical Requirements, of the Western Washington Phase II Municipal Stormwater Permit; and


(b) Lake Whatcom Watershed Overlay District. Except for areas within or that overlap with the NPDES Phase II permit area (see subsection (1)(a) of this
section. All development activity inside the Lake Whatcom Watershed Overlay District shall comply with Chapter 20.51 WCC, Lake Whatcom Watershed Overlay District, which satisfies all 2013 Western Washington Municipal Stormwater Permit development and redevelopment requirements.

(c) Stormwater Special Districts. Except for areas within or that overlap with the NPDES Phase II permit area (see subsection (1)(a) of this section), development activity inside stormwater special districts (as defined by WCC 20.80.635) shall comply with the Stormwater Manual, using the following modified minimum requirements in the table below, and using the Stormwater Manual’s definitions of terms for “stormwater site plan,” “impervious surface,” “hard surface,” “land disturbing activity,” “project,” “site,” and “replaced hard surface”:

**Within Special Stormwater Districts – Modified Thresholds for Stormwater Management Table**

<table>
<thead>
<tr>
<th>Minimum Requirement (MR)(^1)</th>
<th>When Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>MR1 Stormwater Site Plan</td>
<td>&gt; 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value</td>
</tr>
<tr>
<td>MR2 Construction SWPPP</td>
<td>Always required</td>
</tr>
<tr>
<td>MR3 Source Control</td>
<td>Not required</td>
</tr>
<tr>
<td>MR4 Preserve Natural Drainage</td>
<td>&gt; 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value</td>
</tr>
</tbody>
</table>
| MR5 On-Site Stormwater | • Property ≥ 2 acres meeting MR1, provide dispersion  
• Property < 2 acres meeting MR1 where soils are suitable |
Within Special Stormwater Districts – Modified Thresholds for Stormwater Management Table

<table>
<thead>
<tr>
<th>Minimum Requirement (MR)¹</th>
<th>When Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management</td>
<td>for infiltration, provide infiltration</td>
</tr>
<tr>
<td></td>
<td>• Property &lt; 2 acres meeting MR1 where soils are not suitable for infiltration and project does not increase the 24-hour, 100-year peak flow rate by ≥ 0.1cfs; provide dispersion</td>
</tr>
<tr>
<td>MR6 Treatment</td>
<td>Always required</td>
</tr>
<tr>
<td>MR7 Flow Control</td>
<td>Property &lt; 2 acres meeting MR1 where project increases the 24-hour, 100-year peak flow rate by ≥ 0.1cfs; provide detention</td>
</tr>
<tr>
<td>MR8 Wetlands Protection</td>
<td>&gt; 500 sq. ft. of new impervious surface, or Renovation projects where the estimated cost exceeds 50% of the assessed value</td>
</tr>
<tr>
<td>MR9 O&amp;M</td>
<td>Required only if stormwater facility installed</td>
</tr>
</tbody>
</table>

¹ Minimum requirements MR5 – MR9 likely require preparation by a professional engineer.

(d) Outside (i) the NPDES Phase II Permit Area, (ii) the Lake Whatcom Watershed Overlay District, and (iii) the Stormwater Special Districts. Development activity outside the NPDES Phase II permit area, Lake Whatcom Watershed Overlay District, and stormwater special districts (as defined by WCC 20.80.635) shall comply with the Stormwater Manual, using the following modified minimum requirements in the table below, the definitions for land use intensity in subsection (e) of this section, and using the Stormwater Manual’s definitions of terms for “stormwater site plan,” “impervious surface,” “hard
Outside the NPDES Phase II Permit Area, the Lake Whatcom Watershed Overlay District, and the Stormwater Special Districts – Modified Thresholds for Stormwater Management Table

<table>
<thead>
<tr>
<th>Minimum Requirement (MR)</th>
<th>Land Use Intensity</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low</td>
<td>Medium</td>
</tr>
<tr>
<td>MR1 Stormwater Site Plan</td>
<td>≥ 7,000 sq. ft. of new plus replaced hard surface, or ≥ 14,000 sq. ft. land disturbing activity</td>
<td>≥ 4,000 sq. ft. of new plus replaced hard surface, or ≥ 14,000 sq. ft. land disturbing activity</td>
</tr>
<tr>
<td>MR2 Construction SWPPP</td>
<td>Always required</td>
<td></td>
</tr>
<tr>
<td>MR3 Source Control</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>MR4 Preserve Natural Drainage</td>
<td>≥ 7,000 sq. ft. of new plus replaced hard surface, or ≥ 14,000 sq. ft. land disturbing activity</td>
<td>≥ 4,000 sq. ft. of new plus replaced hard surface, or ≥ 14,000 sq. ft. land disturbing activity</td>
</tr>
<tr>
<td>MR5 On-Site Stormwater Management</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>MR6 Treatment</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>MR7 Flow Control</td>
<td>Not required</td>
<td></td>
</tr>
<tr>
<td>MR8 Wetlands</td>
<td>≥ 7,000 sq. ft. of new</td>
<td></td>
</tr>
</tbody>
</table>
Outside the NPDES Phase II Permit Area, the Lake Whatcom Watershed Overlay District, and the Stormwater Special Districts – Modified Thresholds for Stormwater Management Table

<table>
<thead>
<tr>
<th>Minimum Requirement (MR)¹</th>
<th>Land Use Intensity²</th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection</td>
<td>plus replaced hard surface, or ≥ 14,000 sq. ft. land disturbing activity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MR9 O&amp;M</td>
<td>Required only if stormwater facility installed</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ Minimum requirements MR5 – MR9 likely require preparation by a professional engineer.

² See subsection (1)(e) of this section to determine land use intensity.

³ Application of the stormwater manual is not required where a County-, state-, or federally-approved farm plan, or equivalent document, demonstrates stormwater is being effectively managed.

(e) The land use intensities in the above table have the following meanings:

**Land Use Intensity for Stormwater Management Table**

Note: Any project that results in new plus replaced hard surface greater than or equal to 10 percent of the gross parcel size or 20,000 sq. ft., whichever is greater, or converts 1.5 acres of vegetation to lawn or five acres of vegetation to pasture, or results in cumulative impervious surface exceeding 35% of the total parcel area (between 10,000 and 45,000 square feet) is subject to the thresholds for “high
<table>
<thead>
<tr>
<th>Level</th>
<th>Land Uses</th>
</tr>
</thead>
</table>
| **Low** | • Single-family residential and accessory uses on lots of record of 25,000 sq. ft. or larger;  
• Construction of agricultural buildings, including those used in the processing and wholesale of agricultural products, on agricultural land as defined by RCW 84.34.020(2);  
• Seasonal roadside stands; or  
• Roads (other than those exempt as pavement maintenance). |
| **Medium** | • Single-family residential and accessory uses on lots of record smaller than 25,000 sq. ft.;  
• Short subdivisions of land into four or fewer lots;  
• Minor utility developments; or  
• Trails and trailheads. |
| **High** | • All other uses, including all commercial, industrial, institutional, and urban or multifamily residential uses;  
• Subdivisions of land into more than four lots;  
• All uses on parcels bisected by the NPDES Phase II permit area boundary; or  
• Any project that results in new plus replaced hard surface greater than or equal to 10 percent of the gross parcel size or 20,000 sq. ft., whichever is greater, or converts 1.5 acres of vegetation to lawn or five acres of vegetation to pasture; or  
• In the Rural and Residential Rural districts, any project on a parcel smaller than three acres that results in the parcel having a cumulative impervious surface exceeding 10,000 square feet or 35% of gross parcel size, whichever is greater; or |
• **In the Rural and Residential Rural districts, any project on a parcel of three acres or larger that results in the parcel having a cumulative impervious surface exceeding 45,000 square feet.**

Note: For purposes of determining high intensity land use, the calculation of cumulative impervious surface shall not include roadways or driveways in public rights-of-way or in easements that serve other parcels.

(2) No project permit shall be issued prior to meeting the stormwater requirements of this section and/or the 2012 Washington State Department of Ecology Stormwater Management Manual for Western Washington, as amended. Advisory Note: Certain stormwater discharges to natural receiving waters are subject to state water quality standards and the requirements of the National Pollutant Discharge Elimination System (NPDES). Hydraulic project approval (HPA) may also be required if stormwater is discharged to a water body or stream that provides, or could provide, habitat for fish.

. . . . .

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**EXHIBIT B**

Whatcom Comprehensive Plan

**AMENDMENTS**

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Chapter Two – Land Use

. . . . .

Policy 2DD-2: Protect the character of the rural area through the County’s development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County’s key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:
C. Measures to protect critical areas and surface and groundwater resources:

1. Protect the functions and values of critical areas (geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and habitat conservation areas) and the ecological processes that sustain them, through WCC 16.16 Critical Areas provisions, which apply throughout the rural area and are adopted herein by reference.

2. Minimize the adverse effects of discharges from on-site sewage systems on ground and surface waters through WCC 24.05, adopted herein by reference.


4. Protect surface and ground water resources through stormwater management standards established in the County’s Development Standards per WCC 20.80.630 through .636.635, WCC 20.51, 20.71, and 12.08.035 20.08 referenced in the following Zoning Code provision, adopted herein by reference:

   a. 20.32.656 Drainage, Residential-Rural District;
   b. 20.34.659 Drainage, Rural—Residential-Island District;
   c. 20.36.656 Drainage, Rural-District;
   d. 20.37.655 Drainage, Point Roberts Transitional District;
   e. 20.44.652 Drainage, Recreation and Open Space District;
   f. 20.59.704 Drainage, Rural—General—Commercial District;
   g. 20.60.655 Drainage, Neighborhood—Commercial District;
   h. 20.61.704 Drainage, Small—Town—Commercial District;
   i. 20.63.654 Drainage, Tourist Commercial District;
   j. 20.64.655 Drainage, Resort Commercial District;
   k. 20.67.653 Drainage, General—Manufacturing District;
5. Assure that subdivisions meet requirements for critical areas, shoreline management, and stormwater management through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:

   a. WCC 21.04.034 Application Procedures, Short subdivisions.
   b. WCC 21.05.037 Hearing Examiner Notice Hearing and Decision, Preliminary Long Subdivisions.

6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:

   a. WCC 21.04.090 Water supply, Short Subdivisions.
   b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions.

7. Regulate groundwater withdrawals by requiring purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology water right requirements per WCC 24.11.050, adopted herein by reference.

8. Require evidence of an adequate water supply prior to issuance of any building permit, per WCC 24.11.060, adopted herein by reference.

9. Determine adequacy of water supply for building permit applications proposing to use a well, spring, or surface water, per WCC 24.11.090, .100, .110, .120, .130, .160, and .170, adopted herein by reference.

10. Limit phosphorus entering Lake Whatcom through WCC 20.51 Lake Whatcom Watershed Overlay District and Lake Whatcom and Lake Samish due to the application of commercial fertilizers to residential laws and public properties through WCC 16.32, adopted herein by reference.

11. Protect vital drinking water, sensitive habitats, and recreational resources within the Department of
Ecology’s designated Western Washington Phase II Municipal Stormwater Permit area and the Lake Whatcom watershed by prohibiting illicit discharges to the county’s stormwater collection system through WCC 16.36 Illicit Discharge Detection and Elimination Program, adopted herein by reference.

12. Maintain standards for clearing activity in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the area can result in hazardous conditions per WCC 20.80.735 Water Resource Special Management Area, adopted herein by reference.
Whatcom County
Planning & Development Services
Staff Report
Rural Impervious Surface Amendments

I. BACKGROUND INFORMATION

File # PLN2016-00013

File Name: Water Resources Amendments

Applicant: Whatcom County Planning and Development Services (PDS)

Summary of Request: Planning and Development Services proposes amendments to Whatcom County Code (WCC) Title 20 Zoning to:

1. Add maximum limits on impervious surfaces in the Residential Rural (RR) and Rural (R) zones,
2. Update references to stormwater standards in several chapters of the zoning code.

The proposed amendments to the Whatcom County Comprehensive Plan (WCCP) include adding a reference to the impervious surface standards in the zoning code and updating the plan’s references to the stormwater standards.

Location: County-wide.

Staff Recommendation: Approval.

II. BACKGROUND

The purpose of the amendments is to resolve part of an appeal of the WCCP filed with the Growth Management Hearings Board. The amendments are in response to the Washington Supreme Court’s October 6, 2016 Hirst decision affirmed the June 7, 2013 Growth Management Hearings Board order, which found that the WCCP does not contain adequate measures to protect water quantity and water quality (the WCCP does not contain policies regarding protection of water quality that apply throughout the rural area). The County is in the process of addressing the first issue, water quantity, through new regulations requiring proof of adequate legal water supply prior to issuance of development permits (Ordinance 2016-066). The proposed amendment setting standards for impervious surface (attached) is
intended to address the second issue, water quality. Impervious surface regulation is one of the measures suggested by the Growth Management Hearings Board in its 2013 order (Case No 12-2-0013, June 7, 2013 Final Decision and Order, p. 43) and suggested again in Justice Madsen’s opinion concurring with the Hirst decision.

III. AMENDMENT PROVISIONS

The attached code amendment would place limits on impervious surfaces on lots in the Residential Rural (RR) and Rural (R) zoning districts. The proposed square footage limits would include the building footprints permitted under the 2012 lot coverage limits plus additional areas such as driveways, patios, and other impervious surfaces not covered by buildings. Pervious pavement, and driveways in public rights of way or serving other lots, would be excluded from the impervious surface total. The revised stormwater standards adopted in 2016 establish thresholds for individual buildings that would be subject to stormwater management per the 2012 Department of Ecology Stormwater Manual but those standards do not address the cumulative effect on a lot. These proposed amendments provide a cumulative standard for all impervious surfaces on a lot but allow for exceeding that maximum if stormwater is managed through the 2012 manual. This measure would be adopted by reference into the WCCP with the addition of a new Policy 2DD-2.C.10.

PDS proposed impervious surface standards as part of the Rural Element amendments in 2012, at the same time revised lot coverage (maximum building footprint) regulations were proposed. The lot coverage standards were adopted (WCC 20.32.450 and 20.36.450) but the additional impervious surface standards were not. The proposed impervious surface standards would provide a measure to protect water quality in the rural areas, while the existing lot coverage standards would serve more to protect rural character by limiting size of buildings (exempting agricultural buildings).

PDS prepared the attached study of typical impervious surface and lot coverage patterns in the rural areas for discussion in 2012. This study focuses on smaller rural lots (created in 2-acre zoning or nonconforming lots in 5-acre zoning) where impervious surface maximums are likely to be the most challenging. The study indicates that on some of these lots (A, J, N, R, V, W, and X) the the proposed impervious surface coverage is already exceeded. The proposed amendments would allow relief for these lots similar to relief allowed for other nonconforming uses.
Other County actions responding to the water quality aspect of the Hirst decision have been completed or are pending. One finding of the decision is that the policy that adopted by reference the County’s provision for self-inspection of on-site septic systems (OSS), Policy 2DD-2.C.2, does not adequately protect water quality. The County Health Department will soon be proposing amendments to the County’s Health Code that would eliminate the provision for OSS self-inspection. This would amend WCC Chapter 24.05, which is adopted by reference in W CCP Policy 2DD-2.C.2.

On October 11, 2016 the County adopted Ordinance 2016-045 revising the County’s stormwater regulations and integrating low impact development principles and best management practices into the County’s development regulations in order to meet the state’s 2014 NPDES Phase 2 Permit requirements. These regulations apply throughout the County, including all the rural areas. The stormwater standards were consolidated into WCC 20.80.630-635. These proposed amendments would update various code chapters to refer to that section of the code, rather than the County Development Standards document, where the standards had been located prior to Ordinance 2016-045. Proposed amendments to W CCP Policy 2DD-2.C.4 reflect this change.

In addition, the proposed W CCP amendment adds wording to Policy 2DD-2.C.1, clarifying that the County’s Critical Areas Ordinance (WCC Chapter 16.16) applies to the entire rural area.

IV. COMPREHENSIVE PLAN AMENDMENT CRITERIA

This proposal includes W CCP amendments that would update references to the water quality provisions of WCC. Per WCC 2.160.080, in order to approve an initiated comprehensive plan amendment, the planning commission and the county council shall find all of the following:

1. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

   The amendment is intended to conform to the GMA requirement of measures to protect water quality in the rural element of the Comprehensive Plan.

2. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.
The findings of the Growth Management Hearings Board and Supreme Court suggest the need for the amendment.

3. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
   a. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

   The amendment is intended to lessen the impact of population growth and conversion of land on water quality.

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

   The amendment is not expected to affect provision of services.

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

   The amendment primarily affects rural lands, not resource lands.

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

   The amendment proposes no change of zoning boundaries.

5. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area.

   The amendment proposes not changes to urban growth area boundaries.

V. 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 for a code amendment to limit impervious surfaces in the Residential Rural (RR) and Rural (R) zones.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January ____, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on January 5, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on January 26, 2017.

6. The Growth Management Hearings Board and Washington Supreme Court have found Whatcom County's Comprehensive Plan to be out of compliance with the Growth Management Act in that its rural element lacks measures to protect water quality and availability in rural areas. The Board suggested impervious surface limits as a possible measure the County might adopt to protect water quality.

7. The Whatcom County Comprehensive Plan adopts by reference County Code provisions related to water resources under Policy 2DD-2.C. Revisions to the County Code are therefore also revisions to the Comprehensive Plan. The amendments propose adding Policy 2DD-2.C.10 to adopt by reference the new impervious surface standards proposed in WCC 20.32.500 and 20.36.500.

8. On October 11, 2016 the County adopted Ordinance 2016-045 revising the County's stormwater regulations and integrating low impact development principles and best management practices into the County's development regulations in order to meet the state's 2014 NPDES Phase 2 Permit requirements.

9. The purpose of the amendments is to resolve an appeal of the Comprehensive Plan filed with the Growth Management Hearings Board. Such amendments may be considered outside the annual concurrent review of Comprehensive Plan amendments per WCC 2.160.010D.

10. WCC 2.160.080 provides approval criteria for Comprehensive Plan amendments.

VI. PROPOSED CONCLUSIONS

1. The amendment regarding impervious surface limits in rural zoning districts is in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.
3. The Comprehensive Plan amendments meet the approval criteria of WCC 2.160.080

**VII. RECOMMENDATION**

Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

Attachments:
- Proposed Amendments
- Lot Coverage and Impervious Surface Estimates
Memorandum

TO: The Honorable Planning Commission

FROM: Gary Davis, AICP, Senior Planner

THROUGH: Mark Personius, AICP, Assistant Director

DATE: February 28, 2017

SUBJECT: Impervious Surface – Alternative Draft Amendment

On January 26, 2017 the Planning Commission held a public hearing on Planning and Development Services staff’s proposed addition of an impervious surface limit in the Residential Rural and Rural zoning districts. At that meeting, commissioners asked for a revised proposal with larger limits or more flexibility on storm water treatment of impervious surfaces, and requested additional information on the Growth Management Hearings Board (Board) suggestions for measures to protect water quality contained in their 2013 order, and on water quality science.

Attached is a revised draft of the code amendments. In this draft, impervious surface provisions would be incorporated into the newly-revised stormwater provisions in WCC 20.80.630 rather than as maximum “impervious surface” size limits in Chapters 20.32 and 20.36, which govern Residential Rural and Rural zoning districts. Those latter two chapters would still contain “lot coverage” standards for maximum structure coverage, as well as references to WCC 20.80.630 for drainage/stormwater standards. The revised amendment also raises the impervious surface threshold for stormwater review to a cumulative impervious surface amount of 10,000 square feet or 35% of the parcel size (whichever is greater) for parcels under 3 acres, and any project in which the cumulative total of impervious surface is more than 40,000 square feet on parcels greater than 3 acres. The hard limit on impervious surfaces has been removed.

Below is the paragraph from the Board’s June 7, 2013 order listing the Board’s suggestions:
In sum, the County is left without Rural Element measures to protect rural character by ensuring land use and development patterns are consistent with protection of surface water and groundwater resources throughout its Rural Area. This is especially critical given the water supply limitations and water quality impairment documented in this case and the intensity of rural development allowed under the County’s plan. The record shows that the County has many options for adopting measures to reverse water resource degradation in its Rural Area through land use controls. As is discussed by state agency reports and the County’s own Comprehensive Plan, the County may limit growth in areas where water availability is limited or water quality is jeopardized by stormwater runoff. It may reduce densities or intensities of uses, limit impervious surfaces to maximize stream recharge, impose low impact development standards throughout the Rural Area, require water conservation and reuse, or develop mitigation options. The County may consider measures based on the strategies proposed in the Puget Sound Action Agenda, the WRIA 1 process, WDFW’s Land Use Planning Guide, Ecology’s TMDL or instream-flow assessments, or other ongoing efforts. It may direct growth to urban rather than rural areas.

As staff said on January 26, the County has already addressed several of these suggestions. In October 2016 the County adopted low impact development standards and a revision to its stormwater code in WCC 20.80.630. Reducing densities and directing growth to urban areas had already been accomplished to a great extent during the 2011-12 rural element rezones, and the recent urban growth area review done as part of the 2016 Comprehensive Plan update. Though growth limitations would have an effect on creating less impervious surfaces, these measures are arguably geared more toward water quantity issues than water quality, as are conservation and mitigation options.

The Board’s order (p. 32) also cites science-based policy recommendations from the Washington Department of Fish and Wildlife’s “Planning for Salmon, Steelhead and Trout,” which in turn references the Booth and May studies cited by staff at the January 26 meeting:

"Traditional urban and rural development practices remove forests, vegetation and topsoil, compact soils, and increase impervious surface areas, diminishing the land’s ability to hold and infiltrate rainwater. The remaining water becomes stormwater runoff, rushing off impervious surfaces such as roofs, roads and compacted soils instead of infiltrating the soil column (Booth 2000). Runoff is of particular concern in regions of intense rainfall, such as glacial outwash regions surrounding Puget Sound, or limited vegetation and landscapes with thin soils, such as the arid and semiarid interior east of the Cascade Range (Booth 2000).

Recent research in western Washington has determined that measurable degradation to downstream aquatic habitat occurs where impervious cover exceeds 5-10% and native forest cover is reduced to less than 65% of watershed area (May et al. 1996; Booth 2000). Washington state agencies such as the Puget Sound Partnership and the State of Washington Department of Ecology, as well as the federal Environmental Protection Agency, have determined that stormwater runoff is the leading contributor to water quality pollution of urban waterways in western Washington State.
As staff presented on January 26, the May study did not say 5-10% impervious surface level represented a threshold:

Results of the Puget Sound Lowlands study have shown that physical, chemical, and biological characteristics of streams change with increasing urbanization in a continuous rather than threshold fashion. Although the patterns of change differed among the attributes studied and were more strongly evident for some than for others, physical and biological measure generally changed most rapidly during the initial phase of the urbanization process as %TIA above the 5-10% range. As urbanization progressed, the rate of degradation of habitat and biologic integrity usually became more constant.

And the Booth study added:

Almost every increment of cleared land, and of constructed pavement, is likely to result in some degree of resource degradation of loss. The decision of how much is “acceptable” is as thus as much a social decision as a hydrologic one.

Links to the full GMHB order and the Booth and May studies are provided below:

GMBH Case No. 12-2-0013 Final Decision and Order, June 7, 2013

Derek B. Booth, "Forest Cover, Impervious-Surface Area, and the Mitigation of Urbanization Impacts in King County, Washington, 2000
https://www.researchgate.net/publication/251805504_FOREST_COVER_IMPERVIOUS_SURFACE_AREA_AND_THE_MITIGATION_OF_FOREST_COVER_IMPERVIOUS_SURFACE_AREA_AND_THE_MITIGATION_OF_URBANIZATION_IMPACTS_IN_KING_COUNTY_WASHINGTON_URBANIZATION_IMPACTS_IN_KING_COUNTY?_sg=ml80osI89mgEGcXY6TS1x_490a2SxoxqUvNrwRmwKoiGdLdeAH89S2nfA5eIl_eDPgL7WZNDb7Eiutc038FFw

https://www.researchgate.net/publication/240437080_Effects_of_Urbanization_on_Small_Streams_in_the_Puget_Sound_Lowland_Ecoregion

Attachments:
Revised Draft Amendments
Memorandum

TO: The Honorable Planning Commission
FROM: Gary Davis, AICP, Senior Planner
THROUGH: Mark Personius, AICP, Assistant Director
DATE: April 19, 2017
SUBJECT: Impervious Surface – April 27 Public Hearing

In January 2017 the Planning Commission held a public hearing on Planning and Development Services staff’s proposed addition of an impervious surface limit in the Residential Rural and Rural zoning districts. At that meeting, commissioners asked for a revised proposal with larger limits or more flexibility on storm water treatment of impervious surfaces.

Staff returned with a revised draft for a second public hearing on March 9. Under that proposal, impervious surface provisions would be incorporated into the newly-revised stormwater provisions in WCC 20.80.630 rather than as maximum “impervious surface” size limits in Chapters 20.32 and 20.36, which govern Residential Rural and Rural zoning districts (those latter two chapters would still contain “lot coverage” standards for maximum structure coverage, as well as references to WCC 20.80.630 for drainage/stormwater standards). The revised amendment also raised the impervious surface threshold for stormwater review to a cumulative impervious surface amount of 10,000 square feet or 35% of the parcel size (whichever is greater) for parcels under 3 acres, and any project in which the cumulative total of impervious surface is more than 45,000 square feet on parcels greater than 3 acres. The hard limit on impervious surfaces was removed. Because the threshold would be located in the general “supplementary requirements” chapter of the code, it would be effective countywide, not just in the R and RR zones.

At a third public hearing on March 23, the Planning Commission asked staff to return in April to discuss options for reducing the impact on agricultural uses, as the greater concern for stormwater runoff is on the smaller parcels in the Rural zones, rather than agricultural uses on larger parcels where there is more room for water to be infiltrated.
on the site. At that meeting, four alternatives were discussed, each of which would provide relief for agricultural uses on large parcels:

**Option 1:** Return to original proposal of applying the requirements to the Residential Rural (RR) and Rural (R) zones only.

**Option 2:** Replace the 45,000 square foot threshold for all parcels over three acres with a threshold that increases based on a percentage of the parcel size.

**Option 3:** Exempt uses where stormwater is managed through a farm plan.

**Option 4:** Exempt all parcels over 20 acres.

Option 1 would make the threshold apply to the RR and R zones only, and not the Ag zone. The disadvantage of this option is that agricultural uses in the RR and R zones would be subject to different rules that those in the Ag zone. This option could be accomplished either by placing the threshold in the Zoning Code chapters for the RR and R zones (WCC 20.32 and 20.36, as was originally proposed) or by noting in the stormwater standards of 20.80.630 that the thresholds apply to R and RR zones only (of the two, staff would recommend the latter).

Option 2 would require a new formula for the percentage of the parcel covered by impervious surface (the March 10 draft holds the threshold constant at 45,000 square feet – a little over one acre – for parcels larger than 3 acres). A disadvantage of tying the threshold to parcel size is that an agricultural operation can consist of several tax parcels under the same ownership, and the parcel on which a project is proposed might be a relatively small one and subject to a lower threshold than if the parcel lines were drawn differently.

Option 3 would require PDS staff to ascertain whether a parcel has a farm plan or nutrient management plan that assures retention and infiltration on the parcel. An advantage of this option is that stormwater mitigation measures would not be duplicated; if a farm plan already shows that stormwater is being effectively managed, there would be no need for additional study. A disadvantage of Option 3 is that some agricultural uses (particularly berry operations) might not have a farm plan currently.

Option 4 would exempt parcels larger than 20 acres that have considerable impervious surface and may or may not retain all its stormwater. Also, as in Option 2, tax parcel sizes may vary, making some agricultural operations subject to the thresholds, while others that happen to be on larger parcels are not.

Staff discussed these four options with the Agricultural Advisory Committee (AAC) at its April 12 meeting. Though the committee lacked a quorum and could not make a formal recommendation, consensus of those present was to support Option 3. Staff concurs with the AAC that this is the most equitable and effective option, and
has added it to the draft code amendment (Exhibit A), as a note in 20.80.630, p. 5-6.

Also proposed was a change to the definition of “impervious surface” to WCC 20.97 Definitions, exempting driveways serving other lots from the impervious surface calculation for a parcel. The Department of Ecology submitted a comment letter saying these surfaces would be considered impervious surfaces in the Ecology’s stormwater manual, and this blanket exemption could be inconsistent with the stormwater manual. Staff proposes moving the exemption to the cumulative impervious surfaces standards of 20.80.630, where it is clear the exemption would only apply to determining the threshold for requiring use of the stormwater manual, rather than change the countywide definition of impervious surface.

As discussed in the January staff report, this action also includes proposed amendments to the Comprehensive Plan (Exhibit B) updating Policy 2DD-2.C.4’s references to stormwater standards in WCC, and adding wording to Policy 2DD-2.C.1 clarifying that the County’s Critical Areas Ordinance (WCC Chapter 6.16) applies to the entire rural area.

Proposed findings of fact and reasons for action (revised):

1. Whatcom County Planning and Development Services has submitted an application for amendments to WCC Title 20 Zoning to establish cumulative impervious surfaces.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 25, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on January 5, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on January 26, March 9, March 23, and April 27, 2017.

6. The Growth Management Hearings Board and Washington Supreme Court have found Whatcom County’s Comprehensive Plan to be out of compliance with the Growth Management Act in that its rural element lacks measures to protect water quality and availability in rural areas. The Board suggested impervious surface limits as a possible measure the County might adopt to protect water quality.

7. The Whatcom County Comprehensive Plan adopts by reference County Code provisions related to water resources under Policy 2DD-2.C. Revisions to the County Code are therefore also revisions to the Comprehensive Plan. The amendments propose adding Policy 2DD-2.C.10
to adopt by reference the new impervious surface standards proposed in WCC 20.32.500 and 20.36.500.

8. On October 11, 2016 the County adopted Ordinance 2016-045 revising the County's stormwater regulations and integrating low impact development principles and best management practices into the County's development regulations in order to meet the state's 2014 NPDES Phase 2 Permit requirements.

9. The purpose of the proposed Zoning Code and Comprehensive Plan amendments is to resolve an appeal of the Comprehensive Plan filed with the Growth Management Hearings Board. Comprehensive Plan amendments may be considered outside the annual concurrent review of Comprehensive Plan amendments per WCC 2.160.010D.

10. WCC 2.160.080 provides approval criteria for Comprehensive Plan amendments.

11. Whatcom County Comprehensive Plan (WCCP) Policy 10H-8 states: "Strongly incentivize the use of low impact development strategies. Minimize the amount of impervious surface whenever practicable by using natural engineering design methods such as the use of open, grassed, street swales and rain gardens instead of curbs and gutters. Where feasible, encourage alternate surfacing options and other techniques associated with low impact development."

12. WCCP Policy 10H-12 states: "Amend subdivision, zoning, and other land use regulations and design standards to encourage that land use activities minimize the amount of impervious surface."

Proposed Conclusions:

1. The amendment regarding impervious surface limits in rural zoning districts is in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

3. The Comprehensive Plan amendments meet the approval criteria of WCC 2.160.080.

Attachments:

Exhibit A: Proposed Zoning Code Amendments
Exhibit B: Proposed Comprehensive Plan Amendments
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
January 26, 2017

Regular Meeting

1 Call To Order: The meeting was called to order, by Whatcom County Planning
2 Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:30
3 p.m.

4 Roll Call
5 Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael
6 Knapp, Kelvin Barton, Andy Rowlson, Atul Deshmane
7 David Hunter in attendance at 6:34

10 Staff Present: Mark Personius, Ryan Ericson, Gary Davis, Becky Boxx

12 Department Update

14 Mark Personius updated the commission on the following:
15
16 • Mr. Personius presented Kate Blystone who was chosen to fill the vacancy on the
17 Planning Commission. She will begin serving at the February 9, 2017 meeting.
18
19 • Mr. Personius thanked Jerry Vekved and presented him with a plaque for his
20 years of service on the commission.
21
22 • The upcoming Planning Commission schedule.
23
24 • Updates from County Council.

26 Open Session for Public Comment

28 Carole Perry, Whatcom County: Thanked Commissioner Vekved for his work on the
29 commission. She commented on the Planning Commission meeting that had taken
30 place regarding dog kennels. That meeting was a disaster because not all of the
31 commissioners were at the meeting. Because lot of the members were not at the
32 meeting the truth didn't really come out. She asked if there is some sort of code
33 stating who a Planning Commissioner member should be or who they should represent.
34 She would like to know how they are chosen. (Staff will supply her with the
35 information.)

37 Commissioner Comments

39 Commissioner Honcoop thanked Commissioner Vekved for his service on the
40 commission.
41
42 Commission Deshmane also thanked Commissioner Vekved.
43
44 Commission Hunter also thanked Commissioner Vekved.
45
46 File #PLN2016-00013: Proposed amendments to the Whatcom County Code Title 20
47 Zoning, adding standards for impervious surface coverage in the Residential Rural (RR)
and Rural (R) districts, amending references to stormwater standards, in addition to amendments to the Whatcom County Comprehensive Plan Policy 2DD-2.C to amend references to WCC Title 20 Zoning.

Gary Davis presented the staff report.

These amendments would add maximum limits on impervious in the Residential Rural (RR) and Rural (R) zones. It would also update references to stormwater standards in several chapters of the zoning code. It would also amend the Comprehensive Plan by adding a reference to the impervious surface standards that would be added to the zoning code and updating the plan’s references to the stormwater standards which were updated and moved last year. The purpose of the amendment is to respond to the Supreme Court’s October 6, 2016 Hirst Decision which affirmed the 2013 Growth Management Hearing’s Board (GMHB) order that found that the county’s Comprehensive Plan does not contain adequate measures to protect water quantity and quality. The county is in the process of addressing the first issue. Setting standards for impervious surface is intended to address the second issue which is water quality. This is one of the measures suggested by the GMHB in its 2013 order.

Back in 2012, when the county was originally responding to the GMHB decision on the 2011 Rural Element amendments, the county adopted new lot coverage requirements, which were basically 20 percent of the lot area which was capped at 25,000 square feet. The impervious surface amendments were proposed at the same time but were not adopted. The lot coverage standard applies to structures only. What is being proposed now is to, in addition to that, add more room to allow for impervious surfaces such as driveways, patios, etc. That would create a cap of 25 percent up to 35,000 square feet. Back in 2012 the county did a study looking at some sample parcels from around the county. They were designed to look at what might be the toughest cases. A lot of them are on smaller lots. Parcels that have existing impervious surfaces greater than 25 percent would be considered nonconforming and they would be treated as any other nonconforming use. In 2012 staff presented some studies that had been commonly cited in Western Washington regarding impervious surfaces. Is there a good threshold and hard and fast rule for what percentage improves water quality? What one of the studies found says that degradation of water quality occurs pretty rapidly, into the 5 and 10 percent impervious surface range. After that it is a judgement call. Other studies have shown there is no truly negligible amounts of clearing or watershed imperviousness. The decision about how much is acceptable is as much a social decision as a hydrologic one. In October 2016 the county adopted revised stormwater regulations. The impervious surface proposals do not make any changes to those regulations but they would update various code chapters that refer to the stormwater regulations.

Commissioner Oliver asked if there were any other options the county was looking at.

Mr. Davis stated the county has already done low impact development and there were some rezones done. The Health Department is proposing changes to the on-site septic inspection system. There are also the recently adopted stormwater changes.
Commissioner Oliver asked if driveways in the public right-of-way are exempt.

Mr. Davis stated driveways in an easement or public right-of-way would be exempt. Also not counted against the property is a driveway that crosses your property and accesses the neighbor. Driveways on your property, only used by you, would be counted.

Commissioner Honcoop stated the site of the residence on a property is typically decided by type of soils, critical areas, etc. Sometimes there is no choice but to put the house at the back of the property and have a long driveway.

The hearing was opened to the public.

Loren VanderYacht, Whatcom County: Mr. VanderYacht distributed photos of his property. He stated he has five acres which he has lived on for 19 years. Clean stormwater is not only a personal priority but also a civic duty. He has 25 years’ experience in the asphalt business. He has built several hundred driveways and parking lots including their stormwater conveyance systems, both pervious and impervious. If this proposal goes through his property will be nonconforming. He currently has about 41,000 square feet of impervious surface. He had been planning on doing a 1,000 square foot addition to his house but he would not be able to if this passes. It will be cost prohibitive to do engineered stormwater. He has built his own driveway which should be a model for stormwater. The stormwater pond doubles as a green swimming pool. It does not use chemicals. All of the stormwater from the buildings is piped into catch basins, goes through a rain garden or infiltrated through sand layers. He would like the cap changed to 45,000 or 50,000 square feet.

Ron Reimer, Whatcom County: He is an excavation contractor. He has taken low impact development classes at Washington State University. Making people get professional stormwater design is going to kill them financially. It does not have to be that way. Top soil can be brought in to mitigate the runoff. That is a simple answer. Why add an arbitrary cap? It should just be left at a percentage. These things can be done very simply. You are not considering all of the impacts to the rural lifestyle and certainly not to farming. Don’t put limits on people. Give them criteria and a reasonable expectation.

Carole Perry, Whatcom County: Most of the people in this room have had training on this issue. You have to in order to understand it. Is there any science that supports what is being done? Last Tuesday the council discussed the septic tank issue. We have been lead to believe that the county is running with sewage all over. Now they want to take away letting a person do their own inspection. The actual numbers show that out of 600 people that did their own inspection only 17 failed. Ordinary citizens can’t understand all of these rules. How do all of these rules affect real people on the ground?

The hearing was closed to the public.
Mr. VanderYacht stated he has taken classes regarding pervious and impervious pavement design. Porous pavement works until it plugs. They all plug. He can treat the water just as good with a conventional pavement system as with he can with porous pavement as long as the soil conditions allow him to do so. The pervious surface limits become very arbitrary.

Commissioner Barton asked what the maintenance cycle is for cleaning of pervious surfaces.

Mr. VanderYacht stated the problem is no one maintains them. The schedule depends on the site. It could be as frequent as monthly. You design them as if they are going to fail which it will if not maintained.

Commissioner Honcoop stated rural areas are not like urban areas. If you look at coverage per acre and look at urban versus rural impervious surfaces your total coverage is urban areas is significantly greater. In rural areas the runoff on the site is typically very limited. Most of the time the water shedding off of the driveway is hitting the grass on each side and that is the end of it. That is the way it should be. The percentages are much too low because it is not allowing the area that would be created by the driveways in a typical rural area. In the rural areas the house is typically not up against the road as in urban areas, for a variety of reasons. Where did these percentages come from? They are just pulled out of the air. Where is the scientific backing?

Commissioner Rowlson asked if this proposal is the least onerous, the most or where is it in the range of solutions to solve the lawsuit.

Mr. Davis stated this is the number we are starting with based on proposals from 2012. Is there anything magical about the 35,000 foot cap? No.

Commissioner Rowlson asked if there is a magic number.

Mr. Davis stated the studies he summarized earlier indicate thee is no magic number. It’s a balancing act.

Commissioner Rowlson stated that is an issue for him because there is only one proposal with one option. It would be helpful to have ranges of options. The commission has no idea what the right number would be. Are there other things that can be done besides lot coverage? He had no idea what was in the tool kit.

Mr. Ericson clarified the new rules that were put into effect in October 2016. If a project comes in that is 20,000 square feet of impervious surface, or greater, it triggers review of the stormwater manual. With this impervious surface area proposal this catches the cumulative impacts to the lot.
Commissioner Knapp asked if there were specific violations that triggered the need to do this. What is prohibiting illicit discharge? Other than the state asking the county to bring this into compliance is there any specific thing that triggered it?

Mr. Ericson stated the illicit discharge program is a requirement of our phase II stormwater NPDES permit. The state requires the county to have the program. Commissioner Knapp asked if there is a certain threshold that has been violated that caused the county to need to do this.

Mr. Ericson stated Whatcom County streams are impaired. They don’t meet the state water quality standards. That is the driving force of the court case. The illicit discharge is prohibiting the discharge of anything but rainwater into the stormwater system. The impervious surface wouldn’t get to that because that is more targeted at oil, phosphates, etc. getting into the system.

Commissioner Hunter stated the thing he was concerned about was the dissatisfaction with the underlying premise that there is a good reason for attempting to establish limits on impervious surfaces. Whether there is some evidence that impervious surfaces create problems for us. What is the science? He was not ready to make any decisions because of his uncertainty about the full understanding of what is happening and why these regulations occur. The public seems to be uneasy about these things. He asked if staff could provide the commission what it is that linked the problems with impaired water systems and impervious surfaces. Is there precise information that provides them with guidance in order to help them? There is the assumption that this is a very hard decision to make on individual property owners in the county and they are wondering why it can’t be done more simply. He was open to less onerous ways to resolve the problem of degradation of our waterways. He was not open to ignoring the problem of the degradation of waterways.

Commissioner Honcoop stated there should be some simple things in the toolkit. We should be looking at what is existing and what is new. If the water is not leaving the site it shouldn’t be an issue. If it is not discharging to a public body of water it doesn’t need to be treated. Someone should be able to demonstrate this and not be limited to the square footage. There should be options.

Commissioner Deshmane agreed that there should be some flexibility. People often buy property with plans of what they want to do with it so they should be able to without having these strict regulations. It would be good to understand how this court decision connects to this particular policy.

Commissioner Barton agreed there needs to be more tools in the toolkit. Applicants should be able to show other alternatives. He also wanted to know the scientific data behind the numbers chosen.

Mr. Davis reviewed the options stated in the GMHB case. It states the County may limit growth in areas where water availability is limited or water quality is jeopardized by stormwater runoff. It may reduce densities or intensities of uses, limit impervious
surfaces to maximize stream recharge, impose low impact development standards throughout the Rural Area, require water conservation and reuse, or develop mitigation options. Some of these apply to water quantity, where we are only looking at quality in these regulations.

Commissioner McClendon wanted conformation on the comments she heard that if the water is not running off the site none of this matters. Is that true?

Mr. Ericson stated full dispersion is one of the options but the 2012 stormwater manual almost always jumps to engineering. The option of ignoring runoff is no longer there because of restrictions from the state.

Commissioner Oliver stated there needs to be more context to get them to why we are doing this. Saying it is because the court says we have to is not going to fly. What is a reasonable reaction to the court order? We aren’t doing these things to penalize individuals we are doing it for the bigger picture reason which is Puget Sound is polluted. Everyone has to do this. The economy is currently supporting spending large amounts of money to develop lots that would have never been developed before.

Commissioner Honcoop pointed out examples where it is highly unlikely the water is running into Puget Sound. Why is a driveway exempt if it is for access for the neighbor? It has the same amount of runoff. The key to all of this is not concentrating that water. Driveways, of reasonable width, don’t concentrate the water. Houses, patios, etc. should be treated differently than driveways.

Commissioner Rowolson commented on some comments made. It has been said if the water does not leave the site than it is good, but is it clean?

Mr. Personius stated the issue there is that it doesn’t flow into a stream and pollute it. The presumption is that if the water stays on site the filtering occurs as it permeates the soil.

Commissioner Oliver stated that if you get over a certain amount of impervious surface you have to hire someone to show that doesn’t leave the site.

Commissioner Honcoop stated the fix through the manual is worse than if you do nothing.

Commissioner Hunter stated laws can’t be written that address every single issue. Rules have to be written that cover generalized situations, to some extent. He would love to see a limit on density in the rural areas but can’t imagine how it can be done. It can’t be done unless it’s by incentive, certainly not by regulation. He was not willing to vote no on a proposal just because it may have a negative effect on some people. That is just the nature of regulations.
Commissioner Oliver stated there needs to be balance when doing regulations. You need to be able to regulate but also enforce it. You have to figure out how to fit most things pretty well.

Mr. Davis stated staff will look at other alternatives to present to the commission at a later date.

The meeting was adjourned at 8:33 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair

Becky Boxx, Secretary
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:35 p.m.

Roll Call
Present: Nicole Oliver, Gary Honcooop Michael Knapp, David Hunter, Kelvin Barton
Natalie McClendon in attendance at 6:38
Atul Deshmane in attendance at 6:40
Absent: Andy Rowson, Kate Blystone

Staff Present: Mark Personius, Ryan Ericson, Gary Davis, Becky Boxx

Department Update
Mark Personius updated the commission on the following:
- The County Council schedule
- The Planning Commission schedule

Open Session for Public Comment
Carole Perry, Whatcom County: Stated there is a need for people to really know their fields. The commission needs to know how their decisions really affect people. The council really needs information from people who really know how it affects lives. People who are experts don’t come to the meetings. She also stated there was a close association with the latest person appointed to the commission and someone on the council. She is not comfortable with that. She is also glad that the commission decided to continue the flag salute.

Commissioner Comments
Commissioner Knapp presented a book he has been working on regarding the history of the Lake Samish area.

Approval of Minutes
February 23, 2017: Commissioner Honcooop moved to approve as written. Commissioner Oliver seconded. The motion carried.

Public Hearing
Gary Davis updated the commission on comments received and changes made since the last meeting on this issue.

The lot coverage regulations, in place now, have a 20% lot coverage limit, capping at 25,000 square feet. That lot coverage applies to structures only. At the last meeting staff proposed to add to that an additional requirement that would limit impervious surfaces, both structural and non-structural, to 25% and capped at 35,000 square feet.
per lot. After the discussion staff is proposing some changes. One being that threshold
would go up to 35%, for lots under 3 acres, and over that would be a 45,000 square
foot threshold. The other change is that limit would not be in the individual chapters
for the Rural and Rural Residential codes along with the lot coverage. It would instead
be applied as a cumulative total in the stormwater section of code. The exception
regarding a neighbor’s driveway crossing your property is not included in this version.
Staff would like to discuss this with the commission to see if they are comfortable with
not having that. It can be a confusing issue.

The hearing was opened to the public.

Loren VanderYacht, Whatcom County: Has experience in the paving industry. He has
read both the Booth and the May studies that the memo references. Both of the
studies are those done on the effects of urbanization on waterways. Here we are
addressing rural, not urban, areas. How can a study done in an urban area be applied
to a rural area? These studies should only apply to properties within current UGA
boundaries. Current rural zoning and the Growth Management Act (GMA) do not allow
growth beyond what is currently allowed in the rural areas. Also, these studies were
done in King County. They describe the glacial soils in King County, which are
predominately made up of glacial till. This is a non-porous soil that does not allow the
water to penetrate. On the other hand, western Whatcom County is primarily made up
of a glacial outwash, which allows free draining. These facts make the studies
arbitrary. There is insufficient test data, or evidence, of poor stormwater quality in the
rural areas. There are about a dozen different agencies working to clean up water
quality in the county, but that water quality is fecal coliform and E.coli which is not
related to rural stormwater. He did not feel there was a need for the proposed rules. It
would not improve water quality because the water permeates well here. There is no
incentive to put your water in the ground on your own property. There should be an
incentive for this in the proposal.

Carole Perry, Whatcom County: Having speakers here who know about the issues is a
good thing. She was troubled by the fact that the commissioners don’t understand
these rules and some of them work in this field. In this county things are so
complicated that the commission and the council don’t have enough information to
make good decisions so the only people that can make the decisions are the people in
the Planning Department. If no one can figure this stuff out why do you think people
are frustrated? It happens over and over.

Max Perry, Whatcom County: How would one know that there was a hearing that
evening? It’s not in any notifications. Because of that there is only one person here.

The hearing was closed to the public.

Commissioner Knapp stated there is a mix of soils in the county.
Mr. Ericson agreed there is a mix of soils but they are predominately well drained soils. The reason these studies were referenced is because all of the subsequent literature done by the agencies, since those studies, all point back to those studies.

Commissioner Knapp asked if there is any literature from the GMHB relating to us upgrading what we are doing and if they had any concerns about the different soil types.

Commissioner Oliver stated the commission had asked for more scientific understanding as to why we are doing this. That is why these studies were provided.

Mr. Davis stated one of the main points staff wanted to make from the studies was that those studies found there is no magic threshold under which there is no impairment and over which there is always impairment. The more impervious surface the more impairment. Impairment starts to appear at levels where you have even 5% to 10% impervious surfaces.

Mr. Ericson stated they look at the impact of impervious surfaces as a whole in the entire watershed not just on a parcel by parcel basis.

Commissioner Honcoop stated the studies are not that applicable to Whatcom County. They address the cumulative effect of urbanization on small streams. They have been completely taken out of context.

Commission Deshmane asked staff to clarify the use of incentives to keep water on site.

Mr. Ericson stated that low impact development (LID) is required first in the stormwater manual. Infiltration is always the first recommendation. There are really no incentives listed. Instead of applying all of the most stringent regulations to every single type of land use we have divided land uses up into three types. Low is residential and accessory uses. We have also included construction of agricultural buildings and seasonal roadside stands. It also includes uses that are larger than ½ acre. Medium intensity would be single residences and their accessory uses on lots smaller than ½ acre and short subdivisions. High would be commercial, industrial or long subdivisions. There is also the provision that states: Any project that results in new plus replaced hard surface greater than or equal to 10 percent of the gross parcel size or 20,000 square feet, whichever is greater immediately bumps you up to a high intensity use for purposes of stormwater. What it didn’t capture was a project that may be 30,000 square feet of impervious surface with and addition of 15,000 square feet it would be under the threshold. Staff felt that they should have to use the manual due to the fact that they are going to have a paved area with just over an acre of impervious surface in total.

Commissioner Honcoop stated staff is interchangeably using the term hard surface and impervious. They are not the same thing. Mixing the definitions creates some confusion.
Mr. Ericson stated they stand by the regulations they have written. The definitions clarify what each means.

Commissioner Hunter stated he was not comfortable with the idea that we don’t need to worry about the amount of impervious surface in the rural areas becoming significant. Would the amount of impervious surface likely be below 10% in the rural areas, and therefore not something we should worry about?

Mr. Davis stated he was not sure that blanket statement could be made. That would be reasonable to assume on some of the larger rural residential parcels.

Commissioner Hunter asked if there is any way to know whether other types of development contribute to impervious surface that goes beyond 10%. Industrial lots, etc.

Mr. Personius stated he was not aware of any studies done here that would show that. Staff doesn’t think that is a major water quality issue.

Commissioner Oliver stated that for years she has heard there is potential for growth in the county because of all the lots that have been created out there. Is that some of the problem we are dealing with?

Mr. Personius stated that is one of the arguments. The permitted uses in the rural zones are GMA compliant.

Commissioner Hunter stated the proposal allows for more cumulative impervious surface than it did before.

Mr. Personius stated the code never had a cap for impervious surface. This proposal says that rather than putting a cap on it says the stormwater manual will mitigate any additional impervious surface over a certain amount.

Commissioner Hunter asked if they were satisfied to have the potential for that much impervious surface.

Commissioner Honcoop stated the stormwater manual is going to apply its own cap which could be at a lower level depending on lot size, coverage, etc. The advantage of the manual is that it creates an enforcement mechanism that wasn’t there before. The manual clearly says you have to do certain things. He doesn’t like the fact that a developer has to spend a lot of money to go through this and the county doesn’t have the staff to deal with it. That in itself will create limits.

Commissioner Knapp asked staff if the recommendations they have made satisfy the GMHB. Are there other options that might better address the issue?

Mr. Davis stated he couldn’t predict what the GMHB will say but this is one of the options they suggested to us.
Mr. Personius stated the county had conversations with the appellants and they stated this proposal would satisfy them.

Commissioner Hunter stated that in his opinion there needs to be an exemption for the shared driveway especially when it comes to building new ones. In the case of a subdivision, that serves more than one lot, the stormwater is taken care of when the road is put in. If that is not exempt it is being counted twice. There is a fairness issue for the lots in the front versus the lots in the back. Also, what happens when the Health Department changes their rules? That is a challenge all the time. The exemption that was there previously needs to go back in.

Mr. Ericson stated his recommendation would be to put the exemption in the impervious surface definition due to the fact that the special watershed districts have caps on the amount of impervious surface. Staff processes variances, which cost more money, for people in these situations were staff has to count everything. Under the definition you would state the portion of the shared driveway is not counted towards your lot.

**Commissioner Honcoop moved to add to the definition of Impervious surface, 20.97.187: The following shall not be included in the impervious surface total: roadways or driveways in public rights of way or in easements that serve neighboring properties.**

**Commissioner Knapp seconded.**

Commissioner Hunter stated that he would rather it reflect that once it is figured out how many properties are being served by that driveway that the cumulative effect for the number of properties that are served by that should be the figure that you look at when doing impervious surface calculations, rather than just the lot it is on.

Commissioner Knapp stated that often these properties are developed over time, not all at once so that would not work.

Commissioner Honcoop did not agree with Commissioner Hunter’s comments. There are too many variables. You are going to have to survey every other lot that is served by that driveway. The county is going to require documentation of what the real surface area is.

**The motion carried (ayes-7, nays-0).**

The commission will have another public hearing on this issue March 23, 2017.

The meeting was adjourned at 8:30 p.m.

Minutes prepared by Becky Boxx.
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
March 9, 2017

Regular Meeting

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2 WHATCOM COUNTY PLANNING COMMISSION ATTEST:
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7 Nicole Oliver, Chair __________________________________________ Becky Boxx, Secretary
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:30 p.m.

Roll Call
Present: Natalie McClendon, Gary Honcoop, Nicole Oliver, Michael Knapp, Andy Rowson, Kate Blystone
Atul Deshmane in attendance at 6:33 p.m.
David Hunter in attendance at 6:48 p.m.
Absent: Kelvin Barton,

Staff Present: Mark Personius, Ryan Ericson, Gary Davis, Becky Boxx

Department Update
Mark Personius updated the commission on the following:
The County Council schedule.

Open Session for Public Comment
Carole Perry, Whatcom County: Stated she was glad to see so many people at the meeting and that the public hearing was extended. She hoped the people attending had an understanding of impervious surfaces. There is no subject the commission has taken up that illustrates more the complexity, that citizens endure trying to understand the laws and regulations of, than the lahar issue. The council was privileged to have a three hour presentation from the USGS on lahars. The commission was not privileged to have that so they struggled with the issue. She received a paper regarding the presentation and shared a small amount of it.

Commissioner Comments
Commissioner Blystone introduced herself as the new member of the commission.

Public Hearing
File #PLN2016-00013: Proposed amendments to the Whatcom County Code Title 20 Zoning, adding standards for cumulative impervious surface coverage, amending the definition of impervious surface, and amending references to stormwater standards, in addition to amendments to the Whatcom County Comprehensive Plan Policy 2DD-2.C to amend references to WCC Title 20 Zoning.

Gary Davis gave an update of the current proposal. At the last meeting staff brought forward a proposal that moved the proposed impervious surface standards from the RR and R zones to a more general location of the supplementary requirements in Chapter 20.80 of the zoning code. At the end of the session there was a motion to add an amendment to the definition of impervious surface which exempted driveways that
served other parcels, so that would not count against the parcel for total impervious surface.

Mr. Davis reviewed the different land use intensities:

Agricultural buildings, and single family residences on > 25,000 sq.ft. lot, are **Low Intensity** land uses

Minimum Requirements (MR’s) **currently** required for:

- **≥7,000 sq.ft. new plus replaced hard surface:**
  - MR1 Stormwater Site Plan
  - MR2 Construction SWPPP
  - MR4 Preserve Natural Drainage
  - MR8 Wetlands Protection

- **<7,000 sq.ft. new plus replaced hard surface:**
  - None of the MR’s are required

Effect of **proposed amendment:**

- **>2,000 sq.ft. new surface** where a parcel’s *cumulative impervious surface* would exceed 45,000 sq.ft. (35% if under 3 acres): Use becomes High Intensity
  - All MR’s per stormwater manual

- **<2,000 sq.ft. new surface** exempt from stormwater manual, even if parcel’s impervious surface would exceed 45,000 sq.ft.

Staff received a comment from the Department of Ecology (DOE) stating they believe the proposed change to the definition of impervious surface would be at odds with the Stormwater Manual. Staff does not agree with this because of the difference between the definition of “hard surface” and “impervious surface”. The staff proposal only changes the definition of impervious surface. Everything in the stormwater section of the code and the Stormwater Manual deal with “hard surface.”
The hearing was opened to the public.

Carole Perry, Whatcom County: Why has this subject come up again? Is it in relation to the Hirst case?

Mr. Davis stated the Hirst decision touched upon both water quality and water quantity. The GMHB found that the county’s rural land use regulations did not protect water resources, either in terms of water quantity, which is the well issue, or water quality which is stormwater and impervious surfaces. In their decision, which was upheld by the Supreme Court, they listed a number of measures that the county could take in order to properly address those things. Placing limits on total impervious surface was one of those things. At the first meeting, regarding this issue, the proposal that staff brought forward was to place limits on impervious surface in the Rural and Residential Rural zones. Originally the proposal stated 25% of your property, under 3 acres or 35,000 square feet if over 3 acres. The Planning Commission asked staff to increase those numbers so they went up to 35% if under 3 acres and 45,000 square feet if over 3 acres. The big change was that instead of being a cap, it was now a cumulative threshold over which you could go but it would mean there would be extra work in terms of making sure that the water stayed on site. There is no way to know if this will pass with the GMHB. Some of the other things they suggested the county has already done.

Loren VanderYacht, Whatcom County: The stormwater degradation is coming off of the roads, it is not coming off of the individual residential properties. The largest single owner of impervious surface, in rural Whatcom County, is Whatcom County. There are not many projects being done by Whatcom County to improve their stormwater quality. The burden is being placed on the private owners, who are not, at this point, contributing to poor stormwater quality. In most cases stormwater in infiltrated on site and in most cases is not running off of the property. The studies the county reference, as to why this needs to be done, were done in King County and urban settings, on glacial till soils, not glacial outwash soils. This is completely different from what we have here. We don’t have any studies or data showing that the stormwater, in rural Whatcom County, is not of good quality. The county is jumping to regulations to potentially satisfy the state. We don’t even know if this will work. Why doesn’t the county go back to them with the things they have implemented to see if that satisfies them before taking this further.

Brad Radder, Whatcom County: Why is this necessary? As a member of the farming community they would like to see the water go back into the soil on the property so they can use it. Why move it to another parcel? Berries are not an easy crop to grow and they feel like they are swimming upstream and fighting a battle they shouldn’t have to be fighting. With these types of regulations it is one thing after another. The farmers are very disappointed that things have come to this. Was any due diligence done to know the cost of this and what it could cost the industry? Did anyone think to notify the people in the county that this might affect? Don’t try to sneak this in.
Wayne Stremler, Whatcom County: The officials in this county have created a culture of almost fighting the public. He is in the construction business and people are constantly asking him if permits are needed for what they are doing. He tells them to do it the right way and get a permit. They get punished for that by the county saying instead of can I help you they get an attitude of the county looking at everything they can to make it difficult for them. You can pass all the rules you want but if you deter everyone around you you will not get what you are trying to get. What happens if the county does nothing to satisfy the court decision?

Marty Maberry, Whatcom County: There is ambiguous language in this ordinance. The way it currently exists is a big problem if they add onto their farm processing. He wanted clarification on the thresholds. (Mr. Ericson clarified for him) Things are changing so fast in this community it makes it a very difficult place to do business, particularly in the north county. Things are coming at the farmers at such rapid speed they can’t deal with things. People need to be notified regarding these things. It seems most of the regulations are coming down on rural Whatcom County. Agriculture needs to be able to move forward or it will go away. When you have hundreds of acres and you have x amount of impervious surface it’s not the same as when you have a couple of acres and you are covered ¾ with impervious surface. They have plenty of room. The roads in their fields should not be considered. The rain rolls off and goes right into the dirt.

Terry Lenssen, Whatcom County: Agrees with the previous speakers. These rules are not what the county needs. He does see what the county is trying to do in satisfying the Hirst case. The county talks a lot about preserving agricultural land and farming but if the farmer is not preserved there will not be anyone here to take care of the farm land and be good stewards of it. They want to take care of land. Decimating the environment makes no sense because they need to make money off of the land. As a dairyman he is already fighting multiple fronts. To be sustainable they need to keep growing. At some point it gets ridiculous to even try anymore because they are being driven out of business. No one in the community was even aware this meeting was taking place. There needs to be better communication so people can get involved.

Landon VanDyke, Whatcom County: Dairy and raspberry farmer. Agrees with the previous speakers. The farmers know how to take care of the ground. The rules don’t make sense, as presented. The farmers are already well regulated and this just adds a huge burden. If the county wants to preserve agriculture don’t put more burden on the farmers.

Andy Enfield, Whatcom County: A Whatcom County farmer. Agrees with the previous speakers. Sustainability is the current buzzword. Agriculture is sustainable if they don’t get run out. The land and water have to be sustainable or they won’t have a crop. They use the same water over and over. They pull it out of the ground to irrigate and it goes back in the ground to be reused. There is no problem with the water. Farmers test their water a lot. These rules will hurt farmers.
Rob Dhalwal, Whatcom County: Agrees with the previous speakers. There has not been any testing done on where the contamination has come from and what the county wants the farmers to do. The county is just putting the burden on the farmers to put them out of business. The calculations in the proposal don’t make sense. There has to be some type of tradeoff based on the amount of acres. What does the DOE consider pervious surfaces? His understanding is that once rainwater or stormwater hits the ground it becomes property of the state, so for it to be treated does not fall within the guidelines.

Alan Yoder, Whatcom County: He noted there was mention of removing vegetation and replanting pasture, over a certain threshold, in the proposal. Most of the people that run livestock on pasture have fence lines, tree lines, etc. which they occasionally clear and reseed so they can reclaim some of that ground. It seems silly to make a vegetation buffer that is going to filter the rainwater maybe even better than the original vegetation and they are being penalized for that. Agriculture is not given the recognition it deserves for being the stewards of the water that they are. All of the rainwater is filtered through these fields.

Tony Larson, Whatcom County: A lot of people have been impacted by the water quantity part of this issue. His sense from the County Council was that they want to do something to help people but the Supreme Court makes the final decisions. They agreed that the original intent was probably honorable but it is overreaching. Now there are people from the state legislature looking for a fix to the issue. This is probably the only way this mess is going to get fixed. If there are so many people that believe that this is an overreach why, as a county, why don’t we wait and find out if there is a fix to this before we put more problems onto the existing problems?

Harold VanBerkum, Whatcom County: Dairy farmer. It is hard to encourage the next generation to go into farming. The expense and the rules are too much. The small local farmers can’t compete against the large farms if the county keeps tying their hands. These rules will add major costs to doing any improvements.

Carole Perry, Whatcom County: Was happy to see so many people at the hearing. The rules are too complicated.

Max Perry, Whatcom County: A state senator said that if the GMA is not working for a county, which it’s not, then the counties need to get together and let the legislature know that and opt out of it. Maybe that is an option for Whatcom County.

Marty Mayberry, Whatcom County: There was a comment made at a County Council meeting that the Hirst case was good intentioned but it went too far. He took issue with that. He did not believe that case was good intentioned.

Landon VanDyke, Whatcom County: As farmers and business owners they have to get creative. He requested the commission take the same approach in looking at how they meet the requirements but at the same time not hamper the citizens.
Andy Enfield, Whatcom County: Agreed with Mr. Mayberry that the Hirst case did not have good intentions.

The hearing was closed to the public.

**Work Session**

Commissioner Oliver asked staff what happens if the county does not move forward with this proposal.

Mr. Personius stated that the GMHB stated, in the original decision regarding water quality, was pretty specific about pointing out things in particular that the county was not doing a good enough job at. It included the county’s on-site septic self-inspection system. They suggested impervious surface limitations and made some suggestions on how to approach it. Staff decided on the approach to put a cap on the amount of impervious surfaces based on parcel sizes and zones. Through discussions with the commission staff is now proposing to get rid of the cap and do stormwater review at certain levels. The Supreme Court only rules on the water quantity issue, not the quality issue. If the county does not act on the quality issue the threat is that the GMHB will rule the county out of compliance.

Commissioner Hunter asked how do we know if there is a problem with water quality in the county and if there is a problem is it the result of impervious surfaces.

Commissioner Oliver stated they asked for that after their first meeting on this issue. They received the memo that spoke to the King County studies.

Mr. Davis stated those studies were in King County and studied urban areas that may have different soil, but without having done a study in Whatcom County it is hard to know exactly what the situation is. Relatively speaking, if we are concerned it should probably be for the areas that are more heavily populated. There are pockets of these in rural areas of the county. Roads are certainly a concern. They can’t retrofit everything but the new roads do address stormwater.

Mr. Ericson stated that everyone who spoke at the meeting stated their stormwater goes back into the soil which is exactly what the county wants. Most farms are doing what needs to be done through the requirements of other agencies. The county staff can work with farmers to see that they are doing what they need to do.

Commissioner Honcoop stated that some of the federal, state and local regulations are in conflict with the proposal. Dairy farms are required to keep manure on slabs, but the impervious surface rules won’t allow more impervious surface.

Commissioner Deshmene stated he did not know how much the county can avoid the compliance issue. Are there alternatives to the hard cap of 45,000 square feet? Are county roads really the greatest source of stormwater pollution?
Mr. Personius stated that to be clear there is no cap, only a threshold before certain things are triggered. The county has always argued, as part of the court case, that it was not a major contributor to the water quality issue. The Pollution Identification and Correction Program (PIC) has identified issues that are mostly related to fecal coliform. Those mostly don’t come off of roads and impervious surfaces.

Mr. Ericson stated there has been some studies showing a lot of the pollution is coming from roads and catch basins from commercial and industrial areas. Whatcom County does have an unusually high amount of roads per acre in the watershed.

Commission Blystone asked what is a “parcel” as used in the new language under 20.80. Is it the Assessor parcel of the site of the project or the legal lot of record? A lot of these farms have many parcels that make up the farm.

Mr. Ericson stated the county parcel layer is not necessarily accurate. There is the ability to bind parcels for tax purposes. The county needs to determine if it is a legal lot of record or not. Typically, on a permit, the county uses the Assessor parcel number. We don’t usually do more unless the property is being subdivided.

Commissioner Blystone wanted clarification regarding hard packed dirt roads. Are they included in the calculations?

Mr. Ericson stated they would not be included, only the access roads.

Commissioner Rowolson asked if somehow parcels with farm plans can be exempt from the rules.

Commissioner Honcoop stated there is no need to have these rules apply in all the zones in the county just to make it easier for staff.

Mr. Personius stated there are dairy farms in both the Rural and Agricultural zones. If the rules were only applied in the rural zones then there would be two different sets of standards for the guy who is doing the same thing in the agricultural zone. That is what staff is trying to avoid.

Commissioner Honcoop stated the GMHB decision did not mention any zones other than the rural zones so why are we taking it beyond that? The farmers are going to be hitting triggers under other rules. We need to focus on the smaller parcels.

**Commissioner Honcoop moved to recommend the regulations apply only in the Rural and Residential Rural zones.**

**Commissioner Rowolson seconded.**

Mr. Davis stated that rather than going back to the original proposal it may be possible to reword it in the supplementary requirements so it only applies to the rural zones.
Commissioner Oliver stated from what she has heard farm plans deal extensively with water quality. Rather than limit the zoning perhaps exempt those properties that have farm plans. The county did not seem to be in favor of that when brought up before.

Mr. Ericson stated there are a variety of farm plans. Some more complex than others. He had no objection to the idea that properties be exempt if covered by a farm plan.

Commissioner Oliver stated she did not think there has been adequate work done with the farming community. We need to take more time to examine the issue before making a decision.

Commissioner Knapp asked if any research has been done regarding how other counties have dealt with this issue.

Mr. Ericson stated most of the counties simply follow the stormwater manual. They don’t have the thresholds like we have proposed.

Commissioner Hunter stated from what he had heard these regulations will really have no impact on large farming operations. It will have an impact on the smaller farms. He was not uncomfortable with having a consistent plan throughout the county that turns out to be more regulatory with regards to small places. It just needs to be implemented consistently. Before voting on the motion he needed to know for a fact that the rules, if applied countywide, would be a significant burden on the people that are going to be regulated, primarily the large farms.

Mr. Ericson stated he has read farm plans and the majority of them have space to have 50 feet of some sort of vegetative strip. That is all that this requires. If you have winter cover over your field that counts as vegetation.

Commissioner Hunter asked for clarification that the things farmers already do would satisfy the proposal.

Mr. Ericson stated one of the issues would be that the manual does say that it has to be from an engineer to tell staff what we all know to be true. That is the major hang up with the stormwater manual.

Commissioner Hunter asked if having to pay an engineer to do that a significant amount of money.

Commissioner Honcoop said it is significant.

Commissioner Blystone stated she could not support the motion because there should be options. She did not want an option excluded in favor of an old option. She would like to see options side by side.

Commissioner Honcoop asked if there is really a problem that is seeking a solution or are we creating a problem. The farmers take better care of the land than anyone else
Regular Meeting

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does, by far. Their buildings are regulated through a variety of other sources. Why put this additional burden on them? The farmer needs the ability to farm.

Commissioner McClendon stated she would vote against the motion because she wanted to see more options. She would like to know if farms covered by a farm plan can be exempted and what impact that would have. We could also up the threshold of the acreage that it applies to.

**The vote on the motion failed (ayes-3, nays-5).**

Commissioner Oliver stated she believed they are overdramatizing the burden that is being imposed in addition to what is already going to be imposed with the new stormwater rules.

Commissioner Deshmane thought that the 45,000 threshold may not be necessary. The public roads issue needs to be addressed. The court did not say anything about it but it would be good to see a public/private partnership to help the county improve its problem. There are a lot of private land owners along public roads. Perhaps they could help the county solve its problem.

Commissioner Blystone stated she was not against the idea of the motion she just wanted to see more options. She agreed with Commissioner Deshmane regarding the 45,000 threshold. The percentage seems to better reflect what they are trying to get at.

Commissioner Hunter was not convinced if there was an actual problem or not. Are the farms the problem or not? He does not want to see additional burden added to those doing a satisfactory job of addressing the problem of water quality. There are a variety of ways to address the issue. What is before the commission is a good framework but does need more work.

Commissioner Blystone would like staff to address the DOE letter at the next meeting.

Mr. Ericson stated staff will present this proposal to the Agricultural Advisory Committee at their next meeting for their input on the issue.

File #PLN2017-00007: [item omitted from this copy – not related to impervious surface item]

The meeting was adjourned at 9:20 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
March 23, 2017

Regular Meeting

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4 Nicole Oliver, Chair	Becky Boxx, Secretary
Regular Meeting

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:30 p.m.

Roll Call
Present: Natalie McClendon, Gary Honcoop, Nicole Oliver, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowlson, Atul Deshmame
Kate Blystone in attendance at 6:45 p.m.

Staff Present: Mark Personius, Ryan Ericson, Gary Davis, Jessie Roberts

Department Update

Mark Personius updated the commission on the following:
- the County Council schedule
- the Planning Commission schedule

Open Session for Public Comment

There was no public comment.

Commissioner Comments

There were no commissioner comments.

Approval of Minutes

April 13, 2017: Commissioner Oliver changed page 4, line 23 to read: 14th meeting of the Point Roberts Community...

Commissioner Rowlson moved to approve as amended. Commission Deshmame seconded. The motion carried.

Public Hearing

File #PLN2016-00013: Proposed amendments to the Whatcom County Code Title 20 Zoning, adding standards for cumulative impervious surface coverage, amending the definition of impervious surface, and amending references to stormwater standards, in addition to amendments to the Whatcom County Comprehensive Plan Policy 2DD-2.C to amend references to WCC Title 20 Zoning.

Gary Davis gave an overview of the process to date.

At first the proposal from staff was to place a cap on cumulative impervious surfaces within the Rural and Residential Rural zones. After some discussion the Planning Commission had considered it be placed in the stormwater code. Staff came back with
the proposal that instead of being a cap it would be a threshold for requiring when the
stormwater manual be used. That would be placed in the stormwater section which
would affect all zones. This raised concerns because it would affect the agricultural
zone also. At the last meeting there was some discussion regarding several options
that could give some relief to the agricultural uses. Option 1 would be to return to the
original proposal of applying the requirement to the Residential Rural and Rural zones
only. Option 2 would replace the 45,000 square foot threshold for all parcels over three
acres with a threshold that increases based on a percentage of the parcel size. Option
3 would exempt uses where stormwater is managed through a farm plan. Option 4
would exempt all parcels over 20 acres. Options 2 and 4 tie the standard to the parcel
size which could make it difficult if parcels got created that were much smaller even
though they may be tied to a much larger agricultural use. The actual impervious
surface might be on the smaller parcel, which could be restrictive. Option 1 could be
accomplished as stated. Option 3 was the one preferred by the members of the
Agricultural Advisory Committee (AAC) who were present at their April 12 meeting.
Staff also recommends adding the text: For purposes of determining high intensity
land use, the calculation of cumulative impervious surface shall not include roadways
or driveways in public rights-of-way or in easements that serve other parcels to the
stormwater regulations rather than the countrywide definition of impervious surface. It
would only apply to the high intensity calculations. Staff believes this would satisfy the
comment received from the Department of Ecology (DOE).

The hearing was opened to the public.

Greg Ebe, Whatcom County: A farmer and stormwater engineer. Having structures and
impervious surfaces are a necessary part of farming. The product needs to be stored
and equipment needs to be maintained. If they find they need to build they take it
very seriously. They try to minimize any impact to productive land. The proposal
contains many disincentives. In their farming activities they will probably exceed some
of the thresholds. It implies that more impervious surface means more adverse
impacts which is not always the case. They have a very clean operation. The size of
parcels can be manipulated with boundary line adjustments to be exempt. Options 2
and 4 don’t make sense.

Commissioner Rowlson asked Mr. Ebe if he had a farm plan.

Mr. Ebe stated no. Generally crop farmers do not have farm plans. Most farm plans
apply to dairies. Crop farmers are regulated by 8 to 10 different agencies already.
They also rotate crops.

Loren VanderYacht, Whatcom County: He stated he understood this issue was a result
of the Hirst decision and the Growth Management Hearings Board (GMHB). He stated
he had a solution to satisfy this. He suggested applying the limits to the UGAs. This is
where urban growth is designated and we know, as a result of the studies, that the
urban areas are where the stormwater pollution is generated. He also suggested going
to the GMHB to educate them on the efforts that are already being taken, in Whatcom
County, to clean up the stormwater. There are many groups that are working
collaboratively with the farm and agricultural community. All of the cities and UGAs are
now bound by the NPDES Phase II permit which is a much more stringent stormwater
permit. All new commercial development, regardless of where is takes place in the
county, is bound by the 2012 stormwater manual. He has had numerous conversations
with Eric Hirst, in the past month. Mr. Hirst reached out to him to speak to the North
County Rotary. He did not feel the rotary was the proper platform to have the
discussion so he has not facilitated that yet. Mr. Hirst sent him a copy of the program
that he wanted to present which is called *Whatcom County Water. Why You Should be
Concerned*. This was written in March 2017. It states that the nitrates and fecal
coliform are the issues to be concerned with. These are not generated by impervious
surfaces. If the GMHB knew of the efforts underway he felt that it would satisfy them.
The USGS has some new testing equipment they are using to test for fecal coliform.

Roger Hawley, Whatcom County: Farmer in the county. Crop farmers have a lot of
rules they need to abide by. They are not polluting. The impervious surfaces help keep
the water clean.

Commissioner Rowolson asked Mr. Hawley if he had a farm plan and if his property was
zoned agricultural.

Mr. Hawley stated yes.

Marty Mayberry, Whatcom County: Berry farmer in Whatcom County. He has been
working on water issues for about 25 years. The rules are getting to be too much. The
cumulative effect has become too much. He supports Option 1. There is no nexus
between impervious surfaces and a farm plan. This proposal is just a way to get crop
farmers to have a farm plan. Farm plans are like all other regulations they deal with.
Farm plans can sound innocuous at first then over time they become an unworkable
situation. People are pushing certain agendas that do not work. You should go back to
the original intent of just the rural areas. The water gets infiltrated back into the
ground in agricultural areas. We all know the stormwater pollution comes from the
cities, not agricultural impervious surfaces. Regarding the Hirst decision, we keep
getting told we have to comply. There seems to be selective compliance. If we agree
with it we comply. Many people in the community would be willing to defy federal law
on issues like immigration. Another is marijuana laws. Why aren’t we complying with
the federal law on that? When it comes to water we don’t push it because we don’t
want to. Nobody is saying this water issue is wrong and it’s hurting people.

Commissioner Rowolson asked if he had a farm plan and his property is zoned
agricultural.

Mr. Mayberry stated he had a farm plan and most of his property is zoned agricultural.

Paul Sangha, Whatcom County: Agreed with the previous speakers. They have a lot of
good points.
Rob Dhaliwal, Whatcom County: Stated he has not seen any data showing this is an issue. This is just another burden on the farmers. He supported Option 1. Staff stated, at a previous meeting, that it is the small parcels that are causing the issues. He does not have a farm plan. He is a berry grower. There is no purpose for a farm plan for a crop grower. They are managed by other agencies. Pesticides, fertilizers, etc. are not cheap and farmers do not waste them just to contaminate the fields. The data he has seen shows that the water quality is getting better. The Drayton Harbor shellfish beds were reopened because of good management practices. The farmers do not want to destroy the land because they want to be able to continue to farm and for their kids to be able to farm.

Fred Likkel, Whatcom County: Executive Director of Whatcom Family Farmers. There needs to be more discussion with the ag community regarding this issue. What is the economic impact to this? That is a big concern to the farmers. He is in favor of Option 1. There needs to be an analysis of how many farms are in the rural zones versus the agricultural zones. If there is only a small amount of farming in the rural zones then Option 1 could very easily be the best option or perhaps a combination of Options 1 and 3. At a recent Drayton Harbor Shellfish meeting he was asked to examine all of the regulations that are negatively affecting agriculture that are keeping people from farming the way they need to and keeping people from reporting things that they don’t dare say anything about because they are afraid of what will happen to them. He would hate to see these proposed regulations put on that list.

Brad Rader, Whatcom County: Was disappointed the staff did not do the due diligence he had suggested. The farmers are more organized than they ever have been. They have agencies in which the county can make one phone call to and get the farmers together to talk. That is what the county should do to find out the costs of this. When someone calls a staff person at the county please call them back. Follow up is important. He does not have a farm plan. He supported Option 1. Crop farmers do not need farm plans. Tell the farmers if you are not going to listen to them, don’t just push through.

(Name not stated) One of the things that needs to be considered, regardless of what option you go with, is exempting switching from one type of impervious to another. That shouldn’t trigger anything. If the type of service pushes you into having to spend one half a million dollars it won’t happen. Having impervious surface can be vital to your ability to continue to farm.

Carole Perry, Whatcom County: The commission was presented with where the data came from. It was done in King County which is not Whatcom County. Many of the commissioners come from a planning background so that is your focus. You represent districts and the people in those districts. Regardless of your training it is more important that you listen to the people. It was disappointing to her that county government isn’t listening to the people. The farmers have taken about all they can take. Please listen to them.
Todd Beld, Whatcom County: 30 years ago there was over 600 dairies in Whatcom County. Today there is under 100. Most of the reason is because it’s hard to compete in the market there in and the regulations are so much pressure on people that they are fed up. They don’t want to face what it takes to run a dairy and be in agriculture. It is the hardest job there is. Now you are trying to put regulations on the rest of the agricultural community. This is the most ridiculous thing he has ever heard of. He was affected by the Hirst decision. Who is thinking this stuff up and putting it in front of the county? None of the farmers are in favor of this nonsense. The commission should listen to them. How can we have instream flow when the sediment is constantly filling the river because it can’t be dredged because it kills the fish? We have an unattainable amount of rules.

Max Perry, Whatcom County: Planners like paperwork. He attended the last Agricultural Advisory Committee meeting. There was not a quorum and only one farmer in the group. These committees don’t represent most people.

Kevin Price, Whatcom County: Does not agree with any of the proposals. This just adds more paperwork. His farm has a nutrient plan which is already a lot of work. There needs to be more education so people can see what is being done already.

Dave Onkels, Whatcom County: Stated those in the room need to be aware of what is happening when their backs are turned. This process is about the petitioners in the Hirst case. They were careful to build a case about the effects of impervious surface on stormwater quality. The GMHB is not cautious about what is put in the record. The appeals that occur afterward have to be based on that record. The county is reacting to what is in that record and what the petitioners, in the eyes of the GMHB, established during that hearing. He does not agree with more restrictive stormwater regulations but they have to reflect what is in that record. It is important to pay attention all the time because the petitioners don’t have the farmers interests in mind or the interests of the citizens of Whatcom County.

Tony Larsen, Whatcom County: Representing the Whatcom Business Alliance (WBA). The GMA was passed in 1990. When it was passed they had 13 goals in mind. Later they added another. In those goals they did not ask municipalities and counties to weight one over the other. One of the goals is environmental protection which everyone understands is vitally important. Also economic development is another piece of the GMA. The reason there is pushback on this proposal is because many people believe this is a threat. People have talked over and over about the cumulative effect of these rules. When you are making a decision there needs to be data. There is always a balance to these things. One of the things missing from this is the data on the economic impact. What impact is there when we start harming our farmers? The WBA is working with Western Washington University on an economic impact study of the farming industry in Whatcom County. Something that is never mentioned is that when farming is discussed it’s not about farmers and tractors; it’s also about logistics such as transportation, storage, manufacturing, etc. There is no reason to rush this. Slow down and make sure you have all of the information.
The hearing was closed.

Commissioner Honcoop moved to return to the original proposal (Option 1) of applying the requirements to the Residential Rural and Rural zone only and incorporate Option 3 which states the parcel is exempt when stormwater is managed through a farm plan and by noting in the stormwater standard of 20.80.630 that the threshold applies to the R and RR zones only.

Commissioner Barton seconded.

Commissioner Blystone asked how many farmers were in attendance at the Agricultural Advisory Committee meeting when they made their recommendation.

Mr. Davis stated he did not make record of that. The four options were presented to them, they discussed it and gave their input.

Commissioner Blystone stated her concerns about who was in attendance at that meeting and the general recommendation they made which may not accurately reflect the farming community.

Mr. Davis stated there was not a quorum so they could not take official action but those in attendance came to that consensus.

Commissioner Blystone asked what the consequences are of defying the Hirst decision.

Mr. Davis stated there were two issues involved in the Hirst decision. One was the water availability issue which is the exempt well issue. The other is the water quality issue. The decision stated the county did not have what is required, by GMA, in terms of having adequate measures to provide water quality. They issued a series of suggestions based on what was in the record. The county has done some things already. The stormwater manual was put into effect in October 2016 among a few other things. A cumulative impervious surface code was one of the suggestions. As far as consequences go, if the county goes without being in compliance for a long time and the GMHB thinks we aren’t making progress they could find invalidity which means the state says this particular part of your regulations are invalid and we could not enforce those. That puts things into limbo. At the extreme level there are sanctions. He did not believe that has ever been carried through on a county in the state. Sanctions could include things such as withholding tax revenues, etc. Being out of compliance does have some consequences because there are some state grants that we may not be eligible for.

Commissioner Knapp asked if there is any combination that would get the county into compliance.

Mr. Davis stated we don’t know what the exact combination is. We don’t always know what the GMHB is going to find in compliance and what they aren’t.
Commissioner Knapp asked if it would be in their best interest to try to figure out what pieces of this would get us closest to compliance.

Mr. Davis stated it is hard to do.

Commissioner Honcoop stated the damage done to the economy by this can far exceed the grants that may not have been obtained while not in compliance. Policy should be balancing the needs of regulators and the citizens. The new stormwater regulations require agricultural projects, over 20,000 square feet, to meet the DOE stormwater manual. Most of the agricultural industry has not experienced this yet. There seems to be a perception that the farmers have very little stormwater regulations the way it is right now. That is not the case. There is another regulation under consideration by the council right now and will pass in some fashion is the Critical Areas Ordinance. What left the Planning Commission had larger buffers, stricter runoff requirements, expansion limitations, etc. The dairy farmers are under the new CAFO rules, which are significantly stricter than what they had before and they have been appealed as not strict enough. The CAFO rules are in many ways going to conflict with the DOE stormwater manual. The Planning Commission needs to stop and look at these current regulations and give them a chance to work. Don't burden them with another one. The cumulative square foot area is going to have tremendous impact on farms. There is the perception that the farmers and that stormwater are not regulated but they are.

Commissioner Deshmame stated he heard several comments that stormwater in the agricultural zone is not an issue of concern because it is being handled through other programs. It was stated stormwater runoff is not an issue. How does staff see that?

Mr. Davis stated that it is correct that the smaller parcels have more of an impact. The pattern of high density in an area is the concern. Sometimes parcels have been divided down to very small sizes even in the agricultural areas.

Commissioner Rowlson stated he was surprised to see Option 3 recommended because he had heard in previous meetings that farm plans aren't used that often. It would solve the problem for only a few people. What the Agricultural Advisory Committee thought does not match what we have learned over the course of time.

Mr. Ericson stated farm plans mean different things to different types of farming.

Commissioner Rowlson asked what type of plan Option 3 refers to.

Mr. Ericson stated it refers to any local, state and federal program that manages runoff of stormwater in some capacity.

Commissioner Rowlson liked parts of each option but he would like it get back into the box that it was originally in.

Commissioner Hunter stated it is unfortunate that people mistakenly perceive the purpose of the Planning Commission. There is no conspiracy to impose more and more
 regulations on farmers. Part of the reason the commission looked at trying to change
this was there was concern that people were already doing things and that by what
was being proposed at the time it would impose more regulations on top of what they
were already doing. It was an attempt to step back from that. This issue has been
going on for two months. There has been ample opportunity for people to come and
present what they perceive as their actual financial consequences for this. It's not that
we aren't willing to listen to that, it's that the public has never brought that to them.
He perceived that the farming community feels there is going to be significant financial
consequences, which he was not disinterested in, but has no way of knowing if that is
ture. It is not simply petitioners in the Hirst matter because respondents also present
evidence. It was not clear to him if these regulations are necessary or not. He was not
sure if the regulations are hitting the points that need to be hit. It is all guess work on
our part as to how much and what we need to do. We need to do what we can in order
to make a difference in water quality in the county. He was not convinced this proposal
will do that.

Commissioner Blystone asked how stormwater is dealt with in the UGAs.

Mr. Ericson stated the stormwater manual is automatically applied in the UGAs.

Commissioner Blystone stated her concern with Option 3 is that she does not
understand how they deal with impervious surface. She asked for more clarification.

Mr. Ericson stated farm plans do deal with impervious surfaces and effective
monitoring is happening through the Whatcom Conservation District.

Commissioner Blystone stated she was frustrated with the proposals in front of the
commission. She agreed with Commissioner Hunter's comments. She felt Option 1 was
the best choice. She did not see how Option 3 fits with Option 1. The areas of concern
are the rural areas and the UGAs. She also was not in favor of Option 2 because the
45,000 square foot threshold seems like a blunt instrument.

Commissioner Deshane stated he was concerned about the complexity of regulations.
We need to be able to support the smaller size farms that are in Whatcom County.
They are beneficial to the county in many ways. He was concerned with Option 3
because there is not clear language regarding farm plans.

Commissioner Honcoop stated the way Option 3 is written provides a choice for the
farmers. It is not something that is being forced on them. If they don't want to have a
farm plan they can simply follow the stormwater manual.

Mr. Davis clarified how Options 1 and 3 would work together. They could be done
simultaneously. In the agricultural zone the cumulative threshold would not be in
effect. It would only be the stormwater code as it is now and farms in the Rural and
Residential Rural zones are the ones that would be affected.
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
April 27, 2017

Regular Meeting

1 Commissioner Rowlson asked if it would make sense to add some version of Option 4
2 to the mix.
3
4 Mr. Davis stated the smaller parcels are the ones they are most concerned about, not
5 the large parcels.
6
7 Commissioner Rowlson asked if the farms in the rural zones are typically large or
8 small.
9
10 Mr. Davis stated there are some large farms in the rural areas.
11
12 **Commissioner Blystone moved to amend the motion to add: Application of the
13 stormwater manual is not required where a county, state or federally
14 approved farm plan, or equivalent document demonstrates stormwater
15 is already being effectively managed to the standards equivalent to an NPDES
16 Phase II permit.**
17
18 Mr. Ericson suggested it read: NPDES “area” instead of “permit”. He also suggested it
19 read: equivalent to the standards in the stormwater manual.
20
21 Commissioner Blystone agreed with the second part of Mr. Ericson’s suggestion. The
22 language was too vague as it was originally written.
23
24 **The motion failed for lack of a second.**
25
26 **Roll Call Vote on the main motion: Ayes-Barton, Blystone, Deshmane,
27 Honcoop, Hunter, Knapp, McClendon, Oliver, Rowlson; Nays-0; Abstain-0;
28 Absent-0. The motion carried.**
29
30 Unfinished Business
31
32 Commissioner Rowlson stated Boarding of Horses can be removed from the Pending
33 Business Items as it has been taken care of.
34
35 The meeting was adjourned at 8:46 p.m.
36
37 Minutes prepared by Becky Boxx.
38
39 WHATCOM COUNTY PLANNING COMMISSION ATTEST:
40
41 ____________________________  ____________________________
42 Nicole Oliver, Chair          Becky Boxx, Secretary
WHATCOM COUNTY
PLANNING COMMISSION

Impervious Surface Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

1. Whatcom County Planning and Development Services has submitted an application for amendments to WCC Title 20 Zoning to establish cumulative impervious surfaces.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 25, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on January 5, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on January 26, March 9, March 23, and April 27, 2017.

6. The Growth Management Hearings Board and Washington Supreme Court have found Whatcom County’s Comprehensive Plan to be out of compliance with the Growth Management Act in that its rural element lacks measures to protect water quality and availability in rural areas. The Board suggested impervious surface limits as a possible measure the County might adopt to protect water quality.

7. The Whatcom County Comprehensive Plan adopts by reference County Code provisions related to water resources under Policy 2DD-2.C. Revisions to the County Code are therefore also revisions to the Comprehensive Plan. The amendments propose adding Policy 2DD-2.C.10 to adopt by reference the new impervious surface standards proposed in WCC 20.32.500 and 20.36.500.

8. On October 11, 2016 the County adopted Ordinance 2016-045 revising the County’s stormwater regulations and integrating low impact development principles and best management practices into...
the County’s development regulations in order to meet the state’s 2014 NPDES Phase 2 Permit requirements.

9. The purpose of the proposed Zoning Code and Comprehensive Plan amendments is to resolve an appeal of the Comprehensive Plan filed with the Growth Management Hearings Board. Comprehensive Plan amendments may be considered outside the annual concurrent review of Comprehensive Plan amendments per WCC 2.160.010D.

10. WCC 2.160.080 provides approval criteria for Comprehensive Plan amendments.

11. Whatcom County Comprehensive Plan (WCCP) Policy 10H-8 states: “Strongly incentivize the use of low impact development strategies. Minimize the amount of impervious surface whenever practicable by using natural engineering design methods such as the use of open, grassed, street swales and rain gardens instead of curbs and gutters. Where feasible, encourage alternate surfacing options and other techniques associated with low impact development.”

12. WCCP Policy 10H-12 states: “Amend subdivision, zoning, and other land use regulations and design standards to encourage that land use activities minimize the amount of impervious surface.”

CONCLUSIONS

1. The amendment regarding impervious surface limits in rural zoning districts is in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

3. The Comprehensive Plan amendments meet the approval criteria of WCC 2.160.080.

RECOMMENDATION

Based upon the above findings and conclusion, the Whatcom County Planning Commission recommends approval of the proposed amendments as shown on Exhibits A and B.
Commissioners present at the April 27, 2017 meeting when the vote was taken: Kelvin Barton, Kate Blystone, Atul Deshmane, Gary Honcoop, David Hunter, Michael Knapp, Natalie McClendon, Nicole Oliver, and Andy Rowlson.

Vote: Ayes: 9, Nays: 0, Abstain: 0, Absent: 0. Motion carried to adopt the above amendment.
I have reviewed the new impervious surface rules intended to achieve compliance with the Hirst case. I assume this is not the county's complete response to its obligation to achieve GMA compliance as it does not address the county's obligation to determine water availability under prior appropriation rules. Will there be an attempt to craft a water budget, following up on the groundwater work and studies done in 2012 and 2013?

Given the state of Whatcom County waters, in terms of quality and quantity, more stringent standards are necessary to comply with the Hirst case and most importantly to protect public health and safety. Doing too little too late, under a court compliance order, while giving in to the tremendous pressure exerted by special interest lobbyists groups for agriculture and development community is what helped create our water problems. We need to do more than we have been doing and we need to give the staff the ability to more readily say "no" to special interests.

More Specifically:

I vehemently oppose any attempt to relax application of impervious or storm water rules when a farm plan is in place:

- Farm plan secrecy will prevent the release of information to the public. As a member of the public, I have an inherent right to know that regulations in place for health and safety are adequate and are enforced. That is why it is crucial to have farmers waive farm plan secrecy as precondition of the privilege of having a farm plan. Any thing that becomes part of a farm plan loses its transparency and accountability, while the county has enforcement problems that are well known. This is not a good combination. (And if staff tells you they can not waive farm plan secrecy, that is inaccurate. It specifically is allowed under RCW 42.56.270.

- Farm plans and farm management of stormwater runoff is not adequate or protective of our surface and ground waters and this has been known for over 30 years. Of the 12 Washington State Puget Sound Districts, Whatcom County has the greatest concentration of dairy cows, with 53% of the total, or over 45,562 animals (USDA, 2012), within its boundaries. Due to land use changes and population pressures, the Lower Nooksack Sub-basin has a heavily impacted floodplain, high nitrates in groundwater, elevated fecal coliform levels in surface waters, and poor riparian conditions throughout the Nooksack River and most of its tributaries. Department of Ecology's (Ecology) current (2012) 303(d) list of impaired waters shows that there are 34 stream and river segments in the watershed that are above acceptable limits for, among other things, fecal coliform. The Ecology Nooksack River Watershed TMDL (Hood,
2002) plan lists the improper application of manure to agricultural fields as a potential, significant source of fecal coliform to the watershed. The discharge of fecal coliform into local harbors and bays has led to a significant history of shellfish bed closures and reopenings, which has had a detrimental effect to Tribes and commercial harvesters.

- By the end of 2015, approximately 80% of the freshwater sampling sites in Whatcom County were not meeting the standards for fecal coliform bacteria. A review of the testing sites indicates the problems are connected to watersheds with agricultural activity, the most prominent one being Drayton Harbor. While Drayton Harbor is claimed as a "success story" because it was subject to partial reopening of shellfish beds, while its primary tributaries, California Creek and Dakota Creek reflect some of the highest E. coli contamination levels in the county. [http://www.whatcomcounty.us/2170/Water-Quality-Monitoring-Results; http://www.whatcomcounty.us/DocumentCenter/View/2767](http://www.whatcomcounty.us/2170/Water-Quality-Monitoring-Results; http://www.whatcomcounty.us/DocumentCenter/View/2767)

- The activities conducted on farms, creating ditches and culverts and tiling, prevent groundwater recharge and promote storm water run off that carries manure, herbicides and toxic chemicals indicating a need for the most stringent of regulations.

There is no justification and no science that supports different threshold standards for large lots and small lots that I am aware of. Is this something that staff can provide? The issue is not one of size, but one of use and activity. An undeveloped, fully forested lot should be treated differently than a cleared and graded lot that has modified the natural hydrology and infiltration capacity of the land. We should be focused on the whether the land is ecologically functional. That is the true test of how well we will be protecting our waters.


What criteria and standards will the county use to establish it is protecting county waters? How will this be quantified and monitored? Why are we only currently testing water for fecal coliform? How about nitrates and pesticides, herbicides, fertilizer, and farm chemicals? Has anyone considered the impacts that all of the fire and smoke in the rural county have on water quality? This would also be something appropriate for testing. Why aren't we testing for temperature and oxygen levels for the survival of anadromous fish? These nuts and bolts questions are what makes or breaks a good regulation.

I also oppose the attempt to get around the DOE requirements to include driveways as impervious surfaces by moving this provision to a different section.
Again, it was these kinds of tactics that caused such grave harm to county waters. It is time to stop trying to game the system and get serious about protecting and restoring our watershed ecosystems, particularly things like wetlands and critical aquifer recharge areas that play such an important role in protecting functions and values, and promoting ecosystem benefits.

The comp. plan language is rather weak and subjective and does not create any mandatory standards. It is possible it will have little actual impact. It might be a more effective approach to strengthen the comp. plan language and also include specific, mandatory regulations in the critical area ordinance undergoing current council review.

I think the new rules should more specifically refer to the "2012 Stormwater Management Manual for Western Washington, as Amended in December 2014" (The 2014 SWMMWW) for clarity and to avoid confusion. There is also reference to a comment letter from DOE that I did not see listed in the comments. Could this please be posted for public review?

In conclusion, best available science indicates that degradation and sometimes irreparable harm happens once the cumulative impervious surface of a watershed ecosystem exceeds 10%. The standards in this proposal do not reflect BAS. They start out with 10%, but quickly digress into numerous mutations. Why not just stay at 10% and keep it simple and effective? This is a good start, but it needs to go further in protecting our criticals areas, ecosystems and surface and ground water from continuing degradation. To date, none of our efforts have achieved this, so let's try it straight, without any loopholes.

Sincerely,
Wendy Harris
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:** Ordinance authorizing a ballot proposition to authorize a sales and use tax for jail facilities

**ATTACHMENTS:** Memo
Ordinance

**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.)

An Ordinance providing for submission to the qualified voters of the county a proposition authorizing a local sales and use tax of two tenths of one percent for the purpose of providing funds for costs associated with construction, maintenance, and operation of jail facilities, including adult correctional, medical and behavioral health facilities and programs, and for other public safety purposes, all pursuant to RCW 82.14.450

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

6/13/2017: Held for two weeks
6/27/2017: Substitute Amended and Introduced 4-3, with Mann, Donovan, and Buchanan opposed

**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.*
MEMO:

TO: Whatcom County Council
DATE: June 6, 2017
FROM: Jack Louws, County Executive
RE: Ordinance to Submit to the Voters a Ballot Proposition Authorizing a Sales and Use Tax for a New Jail.

Background and Purpose:

Over the last couple of years, we have made strides to find consensus on a new jail use agreement. At the last Council meeting, the Whatcom County Council took another major step in this process and approved and authorized my signature on the Jail Facility Finance and Use Agreement (JFFUA) and authorized distribution to the Cities for their consideration.

I have asked the Cities to present to their respective Councils and seek approval of the JFFUA. As of the date of this memo, Ferndale and Lynden have ratified the agreement and Bellingham postponed action until after the June 13th Whatcom County Council public hearing. I expect that all of the cities will be take action on the JFFUA prior to June 30th, 2017.

Enclosed is the ordinance to place the ballot measure on the November General Election for your consideration.

Requested Action:

June 13th, 2017: Introduction of ordinance

June 27th, 2017: Authorize the ballot proposition for a two-tenths of one percent sales and use tax for the construction, maintenance, and operation of jail facilities, including adult correctional, medical and behavioral health facilities and programs, and for other public safety purposes, all pursuant to RCW 82.14.450.

I thank you in advance for your consideration of this important work to establish funding for the new countywide jail.
ORDINANCE NO. 2017-__

AN ORDINANCE OF THE COUNTY COUNCIL OF WHATCOM COUNTY, WASHINGTON, PROVIDING FOR SUBMISSION TO THE QUALIFIED VOTERS OF THE COUNTY A PROPOSITION AUTHORIZING A LOCAL SALES AND USE TAX OF TWO TENTHS OF ONE PERCENT FOR PUBLIC SAFETY PURPOSES, INCLUDING THE COSTS ASSOCIATED WITH FINANCING, CONSTRUCTION, MAINTENANCE, AND OPERATION OF JAIL FACILITIES, AND INCARCERATION PREVENTION PROGRAMS, INCLUDING MEDICAL AND BEHAVIORAL HEALTH FACILITIES AND PROGRAMS, ALL PURSUANT TO RCW 82.14.450

WHEREAS, ensuring the protection and safety of the residents of Whatcom County is an essential priority; and

WHEREAS, the Whatcom County Council has determined that the present county-wide jail facilities on Prospect Street and an interim jail on Division Street in Bellingham, which are owned, operated, and maintained by Whatcom County, do not meet existing and future County and cities' inmate incarceration needs; and

WHEREAS, the health, welfare and safety of the residents and businesses of Whatcom County necessitate that the County provide replacement jail facilities; and

WHEREAS, the health and safety of jail inmates and the safety of the County jail staff necessitate that the County provide new jail facilities that are consolidated; and

WHEREAS, the Whatcom County Jail Planning Task Force has recognized the need and recommended to replace the existing County Jail, the Whatcom County Jail Stakeholders Workgroup unanimously recommended to the Whatcom County Council the financial agreement needed to develop the funding mechanism and cost-sharing allocation to build a new jail, and the County Sheriff and the County Executive have collectively submitted a recommended plan for the building and operation of a new County jail located on LaBounty Road in Ferndale; and

WHEREAS, the new jail will include jail housing, booking and administration facilities, expanded medical and behavioral health facilities and jail alternative programming space to serve the needs of the community for the foreseeable future; and

WHEREAS, in order to provide funding for public safety purposes, including the costs associated with financing, construction, maintenance, and operation of jail facilities, and incarceration prevention programs, including medical and behavioral health facilities and programs, it is deemed necessary and advisable for Whatcom County to submit a ballot proposition to the voters for authorization to impose an additional local sales and use tax of two tenths of one percent (0.002 -- 20 cents for every $100), as authorized by RCW 82.14.450; and

WHEREAS, the Whatcom County Council, pursuant to the passage of Resolution 2017-031, has authorized and approved the Whatcom County Executive to enter into long-term agreements in the form of the Jail Facility Financing and Use Agreement (JFFUA), with
the Whatcom County cities to share in the costs of the construction and ongoing operating
costs of a new jail and jail-related facilities that serve the future needs of their city and
county inmates with the proceeds of a sales and use tax; and

WHEREAS, the parties of the JFFUA, recognize and fully support the goals of the
Incarceration Prevention and Reduction Task Force ("IPRTF"), established through
Ordinance 2015-025, to reduce incarceration and recidivism. The IPRTF is charged with
continually reviewing 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. This includes increasing the
availability of Alternative Jail programs, including Electronic Home Detention, Work Release
and Work Crew programs, the establishment of a County pretrial supervision program, and
the expansion of the Crisis Triage Facility.

WHEREAS, to ensure public safety and to support the goals of the IPRTF, the
Whatcom County Council urges the Cities of Whatcom County to continue to fund
incarceration prevention programs. The Whatcom County Council requests the City of
Bellingham to commit at least 25% annually (projected at $255,632 in 2019) of the City’s
net sales tax revenue, in excess of the City’s portion of the capital cost of the new jail, to
fund these programs. Since Whatcom County is not projected, in the first few years, to
receive net sales tax revenue, in excess of Whatcom County’s portion of the capital cost, the
Whatcom County Council commits to use sales tax revenue or other legitimate funding
sources on a dollar for dollar match, up to an annual amount of 25% of the County’s net
sales tax revenue or $300,000, whichever is greater. If both jurisdictions commit to this
funding, this amount would be projected to be $30,193,628 over 30 years, and shall last
until repayment of the total capital cost of jail facilities, or December 31, 2048, whichever
occurs first. This commitment is intended to accomplish the continued implementation of
the criminal justice and behavioral health programs recommended by the IPRTF.

WHEREAS, following passage of a voter-approved proposition for a sales and use
tax and signing of the JFFUA, the County will issue general obligation bonds for the
construction costs of the new jail and the Whatcom County cities will pay capital payments
commensurate with those outlined in the JFFUA; and

WHEREAS, as soon as practical after December 31, 2048, or when the total capital
cost of the new jail has been paid for by all the Cities and County, whichever occurs earlier,
the Cities and County have agreed that collection of one half of the two tenths of one
percent (0.001) of the sales and use tax shall expire;

NOW, THEREFORE, BE IT ORDAINED that:

Section 1. a ballot proposition shall be submitted to the qualified voters of the
County pursuant to RCW 82.14.450 to authorize the County Council to fix and impose a
local sales and use tax of two tenths of one percent (0.002 -- 20 cents for every $100) to
provide funding for public safety purposes, including the costs associated with financing,
construction, maintenance, and operation of jail facilities, plus incarceration prevention
programs, including medical and behavioral health facilities and programs; and

Section 2. that the County Executive is hereby authorized and requested to initiate
the appropriate action necessary to ensure that a proposition in substantially the following
form be submitted to the voters of Whatcom County:
WHATCOM COUNTY, WASHINGTON
PROPOSITION NUMBER 2017-_________
PUBLIC SAFETY FACILITIES SALES AND USE TAX

The Whatcom County Council passed Ordinance 2017-_________ concerning a
proposal to authorize a sales and use tax for public safety purposes, including new jail
facilities. This proposition would authorize a sales and use tax of two tenths of one percent
(0.002) for public safety purposes, including costs associated with construction,
maintenance, and operation of jail facilities, plus incarceration prevention, medical and
behavioral health facilities and programs, as authorized by RCW 82.14.450. Half of this tax
(0.001) will expire upon repayment of the total capital cost of jail facilities, or December 31,
2048, whichever occurs first. Should this proposition be:

_______ Approved

_______ Rejected

Section 3. that the County Auditor shall cause notice of the proposed proposition to
be published in accordance with the state constitution and general law, and shall place the
proposed proposition upon the ballot of the county-wide general election to be held on
November 7, 2017.

ADOPTED this _______ day of __________________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis,
Clerk of the Council

Barry Buchanan,
Council Chair

APPROVED AS TO FORM:

Chief Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved ( ) Denied

Date Signed: ___________________________
### WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td>Council</td>
<td>6/19/2017</td>
<td></td>
<td>6/27/2017</td>
<td>Introduction</td>
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<tr>
<td>Division Head:</td>
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<td></td>
<td></td>
<td>7/11/2017</td>
<td>Council</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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<tr>
<td>Executive:</td>
<td></td>
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</tbody>
</table>

### TITLE OF DOCUMENT:
Appointment to fill vacancy on Planning Commission District 3

### ATTACHMENTS:
Application

### 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.)

Introduction Item of Appointment to fill District 3 vacancy on Whatcom County Planning Commission. This is a partial term ending on 1/31/2019. The Planning Commission assists the Planning and Development Services Department, the Commission conducts hearings and makes findings and conclusions to the Planning and Development Services Department and the Whatcom County Council. Current applicants: John Campbell and Kelly Krieger.

### COMMITTEE ACTION:

### COUNCIL ACTION:
6/27/2017: Introduced 7-0

<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.
JULY 11, 2017  REGULAR COUNCIL MEETING APPOINTMENT TO:

DISTRICT 3 VACANCY ON WHATCOM COUNTY PLANNING 
COMMISSION PARTIAL TERM ENDING 1/31/2019 

DISTRICT 3 AND/OR AT-LARGE COUNCILMEMBERS MUST 
NOMINATE   APPLICANTS BEFORE VOTING 

Applicants: John Campbell
Larry Helm
Kelly Krieger
William Dominic Moceri
Board and Commission Application

**Step 1**

Application for Appointment to Whatcom County Boards and Commissions

**Public Statement**

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| First Name | john |
| Last Name  | campbell |
| Date       | 6/15/2017 |
| Street Address | 3780 brownsville place |
| City       | bellingham |
| Zip        | 98226 |

Do you live in & are you registered to vote in Whatcom County?  Yes

Do you have a different mailing address?  *Field not completed.*

| Primary Telephone | 3609279069 |
| Secondary Telephone | 3609279069 |

| Email Address | campkids@comcast.net |

**Step 2**
<table>
<thead>
<tr>
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<td>6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?</td>
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<td>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?</td>
<td>No</td>
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<td>You may attach a resume or detailed summary of experience, qualifications, &amp; interest in response to the following questions</td>
<td>Field not completed.</td>
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10. Please describe why you’re interested in serving on this board or commission

As a lifetime resident of Whatcom county, I have seen what has worked well with county growth and what hasn’t worked well. Hopefully I can be of some use to the planning commission.

References (please include daytime telephone number):


Signature of applicant: John W. Campbell

Place Signed / Submitted: Home

Email not displaying correctly? View it in your browser.
John W. Campbell
3780 Brownsville Place, Bellingham, WA 98226
Phone: 360-927-9069
Email: campkids2@comcast.net

As a lifetime resident of Whatcom County, I have seen what has worked well with county growth and what hasn’t. I have an interest in preserving the wildlife and ecology of our area while providing needed growth opportunities. My strengths include being a good listener and observer who can focus in on the heart of a situation. I hope to be of use to the County Planning Commission.

Volunteer Activities

Nooksack Salmon Enhancement Society Member and occasional volunteer
Whatcom Storm Water Steward – training through ReSources
Native Plant Society Member and volunteer
Bellingham Parks and Recreation Parks volunteer
National Wildlife Federation Habitat Steward 2006 to present. Worked to certify Bellingham as a Wildlife Habitat Community.
Bellingham Backyard Habitat Mentor 2002 to 2008

Work History
April 2010 to January 2014
Employer: Cascade Cuts
Position: Weekend Supervisor

March 2006 to June 2009
Employer: Shady Lane Hostas
Position: Delivery driver - seasonal

April 2007 to June 2008
Employer: Bellingham School District
Position: Substitute Bus Driver

March 1975 to August 2003
Employer: Washington State Dept. of Transportation
Position: Highway maintenance
Retired August 2003
Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

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First Name: Larry
Last Name: Helm
Date: 6/28/2017
Street Address: 2660 E 41st Terrace
City: Bellingham
Zip: 98226
Do you live in & are you registered to vote in Whatcom County?: Yes
Do you have a different mailing address?: Field not completed.
Primary Telephone: 360-961-9584
Secondary Telephone: 3605920144
Email Address: larnsha@earthlink.net

Step 2
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<td>9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education</td>
<td>Retired California State Park Superintendent Enforcement Division. Served two terms on the Ag Advisory Committee and current Chair of the Whatcom County Conservation District Board of Supervisors. Own &quot;Spartan Arms&quot; business in Bellingham and run a 20 acre beef cattle farm.</td>
</tr>
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10. Please describe why you’re interested in serving on this board or commission

I have a strong background in farming issues as current Chair of the Conservation District Board of Supervisors and having served two full terms on the County AG advisory committee. I think the Planning Commission needs more farm representation.

References (please include daytime telephone number):

360-592-4345 360-319-2839

Signature of applicant: Larry R Helm

Place Signed / Submitted: Bellingham, WA

(Section Braak)

Email not displaying correctly? View it in your browser.
Short Bio= Larry Helm
I was raised and educated in California. I graduated from Humboldt State University with a BS in Oceanography and went on to work, teach and take graduate courses in Oceanography at Oregon State University. After two years took a job as a California State Park Ranger (enforcement) and after moving around the State in various parks promoted to State Park Superintendent. I spent the last ten year of my career working in Sacramento at Headquarters dealing with legislative bills, budgets, land acquisition, internal affairs, etc. After retiring in 2000 my wife and I moved to Bellingham Washington and bought a small 20 acre farm where we raise Scottish Highlander beef cattle. We were soon embroiled in all the regulations facing the farming community. I currently am Chair of the County Conservation District Supervisory Board and recently termed out on the County AG Advisory Board. I also serve on the WRIA caucus for Water Associations (non-government). I am very familiar with the GMA, critical area issues, farm plan best management practices, Hirst decision, etc. I believe the answers too many of the regulation conflicts currently being experienced in our County between urban and rural interests is education and compromise. I am willing to do both
Board and Commission Application

Step 1

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First Name  Kelly

Last Name  Krieger

Date  6/16/2017

Street Address  2046 Academy Rd.

City  Bellingham

Zip  98226

Do you live in & are you registered to vote in Whatcom County?  Yes

Do you have a different mailing address?  Field not completed.

Primary Telephone  206-419-0879

Secondary Telephone  Field not completed.

Email Address  kjkrieger27@gmail.com

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<td>9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education</td>
<td>Currently, I am owner and Race Director for Hamster Endurance Running, a 501c3 entity in Whatcom County. See the attached resume for details on past occupations.</td>
</tr>
</tbody>
</table>

RESUME FOR KELLY KRIEGER.docx
10. Please describe why you’re interested in serving on this board or commission

I live and work in Whatcom County, and have witnessed the growth and associated challenges occurring in our county for the past 12 years. I want to be part of creating a county where we can manage our resources, manage our growth, and create sustainable livelihoods for our residents.

References (please include daytime telephone number):

JoAnn Johnson 360-739-9035 Arlane Olson 360-739-5141

Signature of applicant: Kelly Krieger

Place Signed / Submitted: Bellingham, WA

(Section Break)

Email not displaying correctly? View it in your browser.
RESUME FOR KELLY KRIEGER

2012-Present – Founder and Race Director for Hamster Endurance Running, a 501c3 entity in Whatcom County. I currently direct five running related events in Whatcom County. Each event is created with gathering funds for a specific organization. I support Wild Whatcom, Girls On The Run, National Archery in Schools Program, Planned Parenthood, and Animals As Natural Therapy with my events.

2010-2012 – American Red Cross. Volunteer Shelter Manager and Emergency Response.

1990-2010 – Homeschooling Mother/Teacher of two students. During this time, I was very active in planning and organizing activities for our larger homeschool community.

1990-1994 – Puget Consumer’s Cooperative Board of Directors. In this capacity, I helped make decisions for growth, store management, and product selection for the PCC.

1987-1990 – Owner and Designer for Kelly Krieger Designs, a clothing design and manufacturing businesses in Chicago, IL.

1985-1987 – Brand Research at Kraft Foods, Chicago, IL.

1984-1985 - Research Associate at Needham Harper Worldwide, an advertising agency in Chicago, IL.
Hi:

Thank you for your call! The elected position that I applied for was Whatcom Conservation District, in February. I met with one of the other candidates just before the ballot was printed, and withdrew my name to endorse her instead. I am honestly not even sure if that counts as running!

Kelly Krieger

Sent from my iPad
**Board and Commission Application**

**Step 1**

**Application for Appointment to Whatcom County Boards and Commissions**

**Public Statement**

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<tr>
<td>First Name</td>
<td>William Dominic</td>
</tr>
<tr>
<td>Last Name</td>
<td>Moceri</td>
</tr>
<tr>
<td>Date</td>
<td>6/30/2017</td>
</tr>
<tr>
<td>Street Address</td>
<td>3858 Nelson Rd</td>
</tr>
<tr>
<td>City</td>
<td>Deming</td>
</tr>
<tr>
<td>Zip</td>
<td>98244</td>
</tr>
<tr>
<td>Do you live in &amp; are you registered to vote in Whatcom County?</td>
<td>Yes</td>
</tr>
<tr>
<td>Do you have a different mailing address?</td>
<td>YES</td>
</tr>
<tr>
<td>Mailing Address</td>
<td>PO Box 715 Deming, WA 98244</td>
</tr>
<tr>
<td>Primary Telephone</td>
<td>360-739-4371</td>
</tr>
<tr>
<td>Secondary Telephone</td>
<td><em>Field not completed.</em></td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:dominic@mocericstruction.com">dominic@mocericstruction.com</a></td>
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<td>Yes</td>
</tr>
<tr>
<td>If yes, please explain</td>
<td>Owner, Moceri Construction, Inc. Permit acquisitions for construction projects Whatcom County contractor On Call program</td>
</tr>
<tr>
<td>You may attach a resume or detailed summary of experience, qualifications, &amp; interest in response to the following questions</td>
<td>William Dominic Moceri Planning Commission Application Attachment pdf</td>
</tr>
<tr>
<td>9. Please describe your</td>
<td>See Attachment</td>
</tr>
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</table>
occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

10. Please describe why you're interested in serving on this board or commission

References (please include daytime telephone number):

Signature of applicant: William Dominic Moceri

Place Signed / Submitted: Bellingham, WA

{Section Break}

Email not displaying correctly? View it in your browser.
William Dominic Moceri  
P.O. Box 715  
Deming, WA 98244  
(360) 739-4371  
dominic@mocericonstruction.com

June 30, 2017

Whatcom County Council Office  
311 Grand Avenue, Suite 105  
Bellingham, Washington 98225

Dear Whatcom County Council,

I am a lifelong resident of Whatcom County. I have a strong connection to the community and I am always looking for ways to give back. I see the opportunity to serve on the Planning Commission as a great way to combine my love for Whatcom County and my skills in the building industry. Both personally and professionally I have experience dealing with land use throughout the county. I have dealt with planning and development departments in the county and the cities. I feel that this experience has helped me see the many issues and complexities that surround land use and development. I feel that I have a balanced approach when it comes to thinking about these issues. Growing up in a construction family, I see the value that comes from having land available for development and resource use. That being said, I also grew up in the South Fork Valley and have a strong connection to the land. I understand the need to protect our local forests and water bodies. As a community we need to have the foresight to understand that once we damage our local and global ecosystems, in many cases, that damage cannot be undone. I would appreciate the opportunity to serve on the Planning Commission to give back to the county that has given me so much.

Sincerely,

[Signature]

William Dominic Moceri
William Dominic Moceri  
P.O. Box 715  
Deming, WA 98244  
(360) 739-4371  
dominic@mocericstruction.com

Education

- LID Design of Bioretention; Permeable Pavement; Rainwater Collection Systems and Green Roofs; Hydrologic Modeling; and Site Assessment, Planning, and Layout.

Homeowner Incentive Program (HIP) Certified Contractor (2017)  
- LID construction for the Lake Whatcom Watershed

Homeowner Incentive Program (HIP) Certified Designer (2017)  
- LID Design for the Lake Whatcom Watershed

Bachelor of Arts in Sustainable Building with a Minor in Sociology (2015)  
Fairhaven College of Interdisciplinary Studies, Western Washington University, Bellingham, WA

Internship with Habitat for Humanity Whatcom County (2015)  
- Helped Coordinate and supervise work parties

National Home Building Association Master Certified Green Professional (2014)

National Home Building Association Certified Green Professional (2013)

Attended (2008)  
University of Barcelona, Barcelona, Spain

Attended (2006-2007)  
University of Portland, Portland, Oregon

Diploma (2006)  
Mount Baker Senior High, Deming, WA

Professional Experience

Owner/Project Manager (2014-Current)  
Moceri Construction, Inc., Bellingham, WA  
- New Construction, Remodels, and Commercial throughout Whatcom and Skagit Counties  
- A strong emphasis on Sustainable Building
Maintenance/Acquisitions (2013-Current)
MP Rentals, LLC, Deming, WA
- Managing rental properties in multiple cities and jurisdictions in Whatcom County

Carpenter (2003-2014)
Moceri Construction, Inc., Bellingham, WA
- Worked in all stages of construction on residential and commercial projects

Field Hand (2009)
Mount Baker Vineyards, Inc., Everson, WA
- Worked with crop production and grounds maintenance

Building Industry Association of Whatcom County Built Green Builder of the Year (2016)

Community Involvement

Building Industry Association of Whatcom County Board (2016-Current)

South Fork Valley Watershed Group (2017)
- Advisory Group for the Nooksack Tribe South Fork Valley Watershed Plan

East County Scholarship (2015-Current)
- Provides tuition scholarships for Mount Baker High School Graduates pursuing careers in the construction industry

Built Green Whatcom County Board (2014-Current)

Habitat Whatcom (2008-Current)
- Volunteered in a variety of ways over the years from laborer and carpenter to project consultant

- Volunteered with a variety of Nonprofits

References

Rose Lathrop
Green Building and Smart Growth Manager Sustainable Connections
(360) 647-7093

Elliot J. Swaney
Executive Officer Building Association of Whatcom County
(360) 671-4247
John Moon
Executive Director Habitat for Humanity Whatcom County
(360) 715-9170
TITLE OF DOCUMENT: Reappointment to the Northwest Senior Services Board

ATTACHMENTS: NWRC Executive Director correspondence recommending the re-appointment of Baozhen Luo; application

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

County Executive Jack Louws requests confirmation of his reappointment of Baozhen Luo to the Northwest Senior Services Board.

COMMITTEE ACTION: 

COUNCIL ACTION:

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

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
June 21, 2017

Jack Louws, Whatcom County Executive
Whatcom County Courthouse
311 Grand Avenue
Bellingham, WA 98225

Dear Jack,

The term of Baozhen Luo of the Northwest Senior Services Board ends on June 30 of this year. Ms. Luo has expressed a desire to be reappointed to a new three-year term beginning July 1, 2017 and ending June 30, 2020.

Ms. Luo has provided exemplary service to the board.

Should Ms. Luo be reappointed, Whatcom County will have two remaining slots vacant. We will work with Suzanne Mildner of your office in recruiting candidates for your consideration.

If I can be of further assistance, please do not hesitate to contact me.

Thank you.

Sincerely,

Dan Murphy
Executive Director

cc: Suzanne Mildner, Baozhen Luo
Application for Appointment to Whatcom County Boards and Commissions

Public Statement
THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

First Name           Baozhen
Last Name            Luo
Date                 6/21/2017
Street Address       1133 Birch Falls Dr.
City                 Bellingham
Zip                  98229
Do you live in & are you registered to vote in Whatcom County? Yes
Do you have a different mailing address? Field not completed.
Primary Telephone    360-389-1889
Secondary Telephone  360-650-7913
Email Address        baozhen.luo@wwu.edu
1. Name of Board or Committee
Northwest Senior Service
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? Yes
3. Which Council district do you live in? District 2
4. Are you a US citizen? Yes
5. Are you registered to vote in Whatcom County? Yes
6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?

   No

7. Have you ever been a member of this Board/Commission?

   Yes

   If yes, please list dates:

   2014-2017

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?

   No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

   I am a faculty member in the department of sociology at Western Washington University. My specialty is social gerontology, in particularly public policies related to aging. I received a Ph.D degree in sociology and have a graduate certificate in social gerontology. I have taught and done research on aging policies and services for almost 10 years.

10. Please describe why you’re interested in serving on this board or commission

   I see the opportunity to serve on the board as a valuable way for me to participate in policy advocacy and community services for the elderly population. The State of Washington has one of the best long-term care service and support systems in the country because of the excellent work of NWRC and the service provided by this board. It will be an honor to be part of this board. I also think my expertise in this area will be something valuable to the board.

References (please include daytime telephone number):

   Larry Polivka, Director, Claude Pepper Center, 850-228-7289
   Kristen Parris, Professor, WWU, 360-318-4376
   Mick Cunningham, Professor, WWU, 360-650-4881

Signature of applicant:

   Baozhen Luo

Place Signed / Submitted

   Bellingham, WA
BAOZHEN LUO

Arntzen Hall #531
Department of Sociology
Western Washington University
Bellingham, WA 98225-9081

Contact info:
360-650-7913
baozhen.luo@wwu.edu
updated on 9/27/2016

EDUCATION

Ph.D. Sociology, Georgia State University (2009)
Graduate Certificate Gerontology, Georgia State University (2007)
M. A. Sociology, Georgia State University (2006)
B. A. Journalism and Communication, Nanjing University, China (2003)

RESEARCH SPECIALTY

Global Aging (Political Economy, Long-Term Care Policies and Practices, Community), Social Theories, Contemporary Chinese Society, Chinese Americans

POSITION

2015- Western Washington University
Associate Professor with Tenure
Department of Sociology
Affiliated Faculty in East Asian Studies

2015- Jiangxi University of Finance and Economics, China
Guest Professor
College of Taxation and Public Administration

2010-2015 Western Washington University
Assistant Professor
Department of Sociology
Affiliated Faculty in East Asian Studies

2009- 2010 LaGrange College
Assistant Professor
Department of Sociology and Anthropology

December 2008- July 2009 Western Kentucky University
Undergraduate Research Coordinator, Honors College
Adjunct Faculty, Department of Sociology
TITLE OF DOCUMENT: 2017 Supplemental Budget Request #8

ATTACHMENTS: Ordinance, Memoranda & Budget Modification Requests

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

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

Supplemental #8 requests funding from the General Fund:
1. To appropriate $1,700 in WSU Extension to fund June 2017 Training class.
From the Election Reserve Fund:
2. To appropriate $4,850 to fund ballot drop boxes.
From the Whatcom County Jail Fund:
3. To appropriate $170,000 to fund Jail transport vehicles.
From the Stormwater Fund:
4. To appropriate $385,000 to fund additional support for Homeowner Incentive Program.
From the Conservation Futures Fund:
5. To appropriate $29,485 to fund Williams I & II PDR Whatcom Land Trust fees.
From the Real Estate Excise Tax I Fund:
6. To appropriate $27,800 to fund Williamson Way building repair and maintenance.
From the Equipment Rental & Revolving Fund:
7. To appropriate $49,259 to fund return of equity for animal control vehicles.
8. To appropriate $170,000 to fund Jail transport vehicles purchase.
ORDINANCE NO.
AMENDMENT NO. 8 OF THE 2017 BUDGET

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

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

<table>
<thead>
<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WSU Extension</td>
<td>1,700</td>
<td>(1,700)</td>
<td>-</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>1,700</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Election Reserve Fund</td>
<td>4,850</td>
<td>-</td>
<td>4,850</td>
</tr>
<tr>
<td>Whatcom County Jail Fund</td>
<td>170,000</td>
<td>-</td>
<td>170,000</td>
</tr>
<tr>
<td>Stormwater Fund</td>
<td>385,000</td>
<td>(385,000)</td>
<td>-</td>
</tr>
<tr>
<td>Conservation Futures Fund</td>
<td>29,485</td>
<td>-</td>
<td>29,485</td>
</tr>
<tr>
<td>Real Estate Excise Tax I Fund</td>
<td>27,800</td>
<td>-</td>
<td>27,800</td>
</tr>
<tr>
<td>Equipment Rental &amp; Revolving Fund</td>
<td>219,259</td>
<td>(170,000)</td>
<td>49,259</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>838,094</td>
<td>(556,700)</td>
<td>281,394</td>
</tr>
</tbody>
</table>

ADOPTED this ____ day of __________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

Daniel J. Gibson
Civil Deputy Prosecutor

Jack Louws, County Executive

Date:
<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WSU Extension</td>
<td>To fund June 2017 Training class.</td>
<td>1,700</td>
<td>(1,700)</td>
<td></td>
</tr>
<tr>
<td>Total General Fund</td>
<td></td>
<td>1,700</td>
<td>(1,700)</td>
<td></td>
</tr>
<tr>
<td>Election Reserve Fund</td>
<td>To fund ballot drop boxes.</td>
<td>4,850</td>
<td>-</td>
<td>4,850</td>
</tr>
<tr>
<td>Whatcom County Jail Fund</td>
<td>To fund Jail transport vehicles.</td>
<td>170,000</td>
<td>-</td>
<td>170,000</td>
</tr>
<tr>
<td>Stormwater Fund</td>
<td>To fund additional support for Homeowner Incentive Program.</td>
<td>385,000</td>
<td>(385,000)</td>
<td></td>
</tr>
<tr>
<td>Conservation Futures Fund</td>
<td>To fund Williams I &amp; II PDR Whatcom Land Trust fees.</td>
<td>29,485</td>
<td>-</td>
<td>29,485</td>
</tr>
<tr>
<td>Real Estate Excise Tax I Fund</td>
<td>To fund Williamson Way building repair and maintenance.</td>
<td>27,800</td>
<td>-</td>
<td>27,800</td>
</tr>
<tr>
<td>Equipment Rental &amp; Revolving Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment Rental &amp; Revolving Fund</td>
<td>To fund return of equity for animal control vehicles.</td>
<td>49,259</td>
<td>-</td>
<td>49,259</td>
</tr>
<tr>
<td>Equipment Rental &amp; Revolving Fund</td>
<td>To fund Jail transport vehicle purchases.</td>
<td>170,000</td>
<td>(170,000)</td>
<td></td>
</tr>
<tr>
<td>Total Equipment Rental &amp; Revolving Fund</td>
<td></td>
<td>219,259</td>
<td>(170,000)</td>
<td>49,259</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td></td>
<td>838,094</td>
<td>(556,700)</td>
<td>281,394</td>
</tr>
</tbody>
</table>
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MEMORANDUM

TO: Jack Louws, County Executive
FROM: Drew Betz, Director
RE: Supplemental Budget Request
DATE: June 27, 2017

Enclosed is the necessary paperwork for a Supplemental Budget Request. This request is to increase the Interdepartmental Agreement between WSU Extension and Health Department.

- **Background and Purpose**
  - Provide a professional development training on facilitation and guiding youth and families.
  - The purpose of this training is to increase the skills of professionals working with parents, youth and families that will decrease and/or prevent substance abuse, violence and other destruction youth behaviors.

- **Funding Amount and Source**
  - $1,700 from Health Department these funds are from the United General Hospital Funds and federal DSHS DBHR SAPT funds.

- **Differences from Previous Contract**  $1,700

Please contact Drew Betz, WSU Whatcom County Extension, at extension 5805, if you have any questions or concerns regarding this request.

Encl.

290
Supplemental Budget Request

WSU Extension

Supp' ID # 2322  Fund 1  Cost Center 2003  Originator: D. Betz

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

Name of Request: June 2017 Training

X  

Department Head Signature (Required on Hard Copy Submission)  Date

6/27/17

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>6120</td>
<td>Extra Help</td>
<td></td>
<td>$740</td>
</tr>
<tr>
<td>6230</td>
<td>Social Security</td>
<td></td>
<td>$50</td>
</tr>
<tr>
<td>6259</td>
<td>Worker's Comp-Interfund</td>
<td></td>
<td>$11</td>
</tr>
<tr>
<td>6269</td>
<td>Unemployment-Interfund</td>
<td></td>
<td>$9</td>
</tr>
<tr>
<td>6320</td>
<td>Office &amp; Op Supplies</td>
<td></td>
<td>$160</td>
</tr>
<tr>
<td>6630</td>
<td>Professional Services</td>
<td></td>
<td>$250</td>
</tr>
<tr>
<td>7140</td>
<td>Meeting Refreshment</td>
<td></td>
<td>$480</td>
</tr>
<tr>
<td>8301</td>
<td>Operating Transfer In</td>
<td></td>
<td>(1,700)</td>
</tr>
</tbody>
</table>

Request Total  $0

1a. Description of request:
Train up to 30 participants at the professional development workshop on June 23, 2017. Purpose of this training is to increase the skills of professionals working with parents, youth and families that will decrease and/or prevent substance abuse, violence and other destructive youth behaviors.

1b. Primary customer:
Professionals who are trained through the WSU Strengthening Families program.

2. Problems to be solved:
The Whatcom County Substance Abuse Prevention Program has identified Family Management Programs for families with middle school aged children as a top priority for funding. We have already signed an Interdepartmental Funds Transfer Agreement with the Health Department for this training.

3a. Options / Advantages:
3b. Cost Savings:

4a. Outcomes:
Up to 30 participants will be trained on June 23.

4b. Measures:
Training will take place and sign in will be mandatory with evaluations to follow.

5a. Other Departments/Agencies
Health Department

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

6. Funding Source:
Health Department. Interdepartmental Agreement Amendment #4

Thursday, June 22, 2017
WHATCOM COUNTY INTERDEPARTMENTAL AGREEMENT AMENDMENT
STRENGTHENING FAMILIES PROGRAM

PARTIES:
Whatcom County Health Department
509 Girard St.
Bellingham, WA 98225

AND CONTRACTOR:
Whatcom County Cooperative Extension
1000 N Forest Street
Bellingham, WA 98225

AMENDMENT NUMBER: 4
AGREEMENT PERIODS:
Original: 09/01/2014 – 08/31/2015
Amendment #1 09/01/2015 – 08/31/2016
Amendment #2 05/01/2016 – 08/31/2016
Amendment #3 09/01/2016 – 08/31/2017
Amendment #4 06/01/2017 – 08/31/2017

THE AGREEMENT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY
EXTENDED AS SET FORTH IN THE DESCRIPTION OF THE EXTENSION BELOW BY MUTUAL CONSENT OF ALL
PARTIES HERETO

=================================================================================================

DESCRIPTION OF EXTENSION:

1. Add the following activity to the Statement of Work:

   Refilling Your Tool Box: Tips & Tools for Working with Parents & Families Training – Provide professional development training on
   facilitation and guiding youth and families.

   Measures:
   #8: The Contractor will train up to 30 participants at the professional development workshop on June 23, 2017. The purpose of this
   training is to increase the skills of professionals working with parents, children, youth, and families that will decrease and/or
   prevent substance abuse, violence and other destructive youth behaviors.

   The County’s purpose for entering into this agreement is to pay expenses associated with registration and supplies necessary to
   execute the workshop. The Contractor is solely responsible for the conduct and management of this event, for enrolling
   participants and for ensuring the health and safety of participants.

2. Increase total contract compensation from $70,000 to $71,700 with Public Hospital District 304 dba United General
   Hospital funds and federal DSHS DBHR SAPT funds. Replace the compensation section of the agreement with the
   attached.

3. All other terms and conditions remain unchanged.

Health Department

Anne Deacon
Date 4/19/17

Cooperative Extension

Regina Delahunt
Date 4/19/17

Drew Betz
Date 4/18/17
Compensation

The source of funding for this agreement, in an amount not to exceed $71,700, is Whatcom County Chemical Dependency/Mental Health Program, Public Hospital District 304 dba United General Hospital Marijuana Prevention, and Federal DSHS DBHR SAPT (CFDA #333.99.59) Funds. Extension will be reimbursed for expenses incurred in coordinating the "Strengthening Families" program as follows:

<table>
<thead>
<tr>
<th>Allowable Expense</th>
<th>Documentation Required with Invoice</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplies, Printing/Copying, Meeting refreshments</td>
<td>Receipts</td>
<td>$71,700</td>
</tr>
<tr>
<td>Wages, benefits</td>
<td>General Ledger Detail</td>
<td></td>
</tr>
<tr>
<td>Training, Evaluation</td>
<td>Invoices or Receipts</td>
<td></td>
</tr>
</tbody>
</table>

TOTAL $71,700

Invoicing

Extension will invoice Health during the agreement period according to the following:

1. Extension shall submit interfund transfer requests by the 15th of the month following each month of service.

2. Extension shall submit an interfund request to:

   HL-BusinessOffice@whatcomcounty.us
   Business Office
   Whatcom County Health Department
   509 Girard St.
   Bellingham, WA  98225

3. Payment by Health will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
MEMORANDUM

To: Jack Louws, County Executive

From: Debbie Adelstein, Auditor

Date: June 13, 2017  

Re: Supplemental Budget Request

We are hereby requesting additional funding for the Election Division. The Legislature recently passed new criteria for placement of ballot drop boxes throughout the county. To meet the requirements they have outlined we will need to place two new permanent boxes, one in Custer and one in Acme. We are going to continue with using an Election Day only box at Point Roberts. This is an unexpected expense so we are requesting additional funding to provide for these boxes.

In addition to not funding the cost of the boxes, the Legislature did not provide any funding for performing this function – the additional time and expense to have our drop box teams regularly pick up ballots at these locations and return to the Courthouse. Another unfunded mandate from Olympia.

I am, therefore, requesting additional budget authority to cover the additional expense of $4,850.

If you have any questions, please feel free to contact me.

Encl.
Supplemental Budget Request

Auditor

Suppl' ID # 2317  Fund 109  Cost Center 10904  Originator: Debbie Adelstein

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

Name of Request: Ballot Drop Boxes

X  

Department Head Signature (Required on Hard Copy Submission)  Date  6/3/17

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4341.4510</td>
<td>Elections</td>
<td>$0</td>
</tr>
<tr>
<td></td>
<td>6699</td>
<td>Other Services-Interfund</td>
<td>$750</td>
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<tr>
<td></td>
<td>7440</td>
<td>Equipment-Capital Outlay</td>
<td>$3,800</td>
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<tr>
<td></td>
<td>7440</td>
<td>Equipment-Capital Outlay</td>
<td>$300</td>
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<tr>
<td></td>
<td>Request Total</td>
<td></td>
<td>$4,850</td>
</tr>
</tbody>
</table>

1a. Description of request:
Recent Legislation requires additional ballot dropboxes be added to those we currently have in the county. Additional locations include at this time Custer and Acme.

1b. Primary customers:
Voters in and around the Custer or Acme area.

2. Problem to be solved:
The Legislature passed and the Governor signed legislation requiring that we place a ballot drop box in each Census Designated Place that has a post office. The ones we do not currently serve are in Custer and Acme. This request for funding will bring us into compliance with this requirement.

3a. Options / Advantages:
Having a permanent placement seems the best option. We currently have routes that pick up ballots from boxes near the area and will add these stops on those routes.

3b. Cost savings:
There is no cost savings. This will incur the cost of getting the boxes, installing them, maintaining them and serving the pickup routes to get the ballots. This is an unfunded mandate that the Legislature is requiring the county perform.

4a. Outcomes:
More drop boxes in the county.

4b. Measures:
Installation complete.

5a. Other Departments/Agencies:
AS-Facilities to assist with installation.

5b. Name the person in charge of implementation and what they are responsible for:
Mike Russell/Danny Phillips - installation

6. Funding Source:
Election Reserve Fund

Wednesday, June 14, 2017
WHATCOM COUNTY SHERIFF’S OFFICE
MEMORANDUM

DATE: 05/24/2017

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

FROM: Sheriff Bill Elfo

RE: Supplemental Budget Request #2306 for Replacement Jail Transport Vehicles

Please allow this memo to serve as a request for approval of the accompanying budget supplemental. This supplemental will provide funding for the replacement of 2 jail transport vehicles. 1 of the vehicles being replaced was actually decommissioned and sold at auction in 2013, the other has been “red-tagged” as a safety hazard due to an unrepairable issue with the braking system, causing it to intermittently lock up when being driven.

The Corrections Transport Deputies are currently using the red-tagged vehicle and a surplus vehicle in order to move offenders within the County. We are unable to use either of them for transports outside of the immediate area due to their reliability. This has resulted in using the large transport truck on a daily basis for the Cooperative Transport System. This is significantly increasing fuel costs and wear and tear on our most expensive transport vehicle.

Due to regulatory changes, we are requesting an upgrade in the replacement vehicles. We are requesting to move to Sprinter high-roofed prisoner transport vans with installed Havis prisoner transport inserts. This will allow us to meet Federal PREA (Prisoner Rape Elimination Act) regulations and meet current NHTSC (National Highway Transport Safety Commission) standards. Public Works reports that standardizing the transport vehicles will also create efficiencies in their division by reducing the number of different replacement parts, and that their experience with the Sprinter vehicles has demonstrated high reliability and reduced repair costs when compared to other transport vehicles.

Chief Wendy Jones is overseeing this process and will be happy to answer any question you may have. Thank you,
Supplemental Budget Request

Jail

Supp1ID #: 2306 | Fund: 11B | Cost Center: 118000 | Originator: Wendy Jones

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

Name of Request: Jail Transport vehicles

X

Department Head Signature (Required on Hard Copy Submission) Date

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$170,000</td>
</tr>
</tbody>
</table>

1a. Description of request:
This Supplemental Budget Request is for the replacement and upgrade of 2 Inmate Transport vehicles for the Whatcom County Jail. The vehicles are used to transport offenders between facilities and along the I-5 corridor.

1b. Primary customers:
Offenders and Transport Deputies.

2. Problem to be solved:
The Corrections Bureau is currently down 2 transport vehicles. Vehicle 8009 was taken off-line and sold at auction in May of 2013. We have been trying to get it replaced since that time. Vehicle 8014 was "red-tagged" as being unsafe to drive due to unrepairable, intermittent, seizing of the braking system., and was scheduled for replacement in 2016. As of this writing, neither vehicle has been replaced.

Due to the loss of these vehicles, we are currently using 2 surplus vehicles that are restricted to use within the County. They are too unreliable to transport offenders over longer distances and do not have the ability to segregate offenders by gender, a requirement of the Prison Rape Elimination Act (PREA). In addition to using questionable vehicles to transport within the County for trips such as medical appointments or transfers to the work center, this limits us to using the large Braun transport on all Cooperative Transport runs. Runs are done 5 days a week, and may travel as far south as Chehalis. This vehicle, while meeting our needs for supervision and gender segregation, is significantly more expensive to run, and as a result of the additional mileage, is shortening its lifespan.

The type of vehicles we have traditionally used (a standard passenger van with a "cage" installed) have brought with them issues in terms of the ability of the Deputies to view into the passenger compartment. This has lead to offenders removing their seatbelts, removing pieces of the vehicle itself to be manufactured into weapon, and acting in an inappropriate manner with members of the opposite gender. This has been done while the Deputy was focused on his/her driving. With the traditional vehicles, there is no ability to record actions taken by the offenders or the Deputies while it is in use.

Additionally, during the process of researching options for replacement, we have also discovered that our traditional transport vehicles do not meet NHTSC (National Highway Transport Safety Commission) standards for seating configuration. The traditional configuration sits offenders too far back in the passenger compartment, creating an increased risk of roll-over.

Given these factors, a thorough evaluation was conducted on replacement options with representation from the Public Works and Corrections. The result of that evaluation is the recommendation for the purchase of 2 Sprinter high-roofed prisoner transfer vans with Havis prisoner transport inserts.

3a. Options / Advantages:

Tuesday, June 27, 2017

Rpt: Rpt Suppl Regular

297
Supplemental Budget Request

Jail

Supp't ID #: 2306  Fund 118  Cost Center 118000  Originator: Wendy Jones

Status: Pending

3a. Options / Advantages:
Alternative vehicles were researched, including the following: GM passenger van, Ford Transit, Dodge Ram van and a Ford F450 cab with a custom prisoner transport unit. None of these options provided the necessary driver/passenger visibility, space requirements, or cost effectiveness.

The Sprinter vans are large enough for the insert, and will hold up to 12 offenders. With the requested configuration, offenders can be separated by gender and there is the ability to further segregate offenders who may present some transport challenges. This set up will allow Corrections Deputies to clearly view offenders to make sure seatbelts have been fastened, and provides for video monitoring and recording. The seating configuration follows NHTSC standards and the vehicle should have a life span of, at minimum, 15 years and/or 200,000 miles. The Sprinter vehicles have demonstrated good reliability and very minimal repair issues when compared to a standard passenger van. If the vehicles needs to be replaced in the future, the insert can be pulled and re-installed into a new vehicle. In addition, Public Works advises us that they already have other Sprinter vehicles in the fleet (1 in Facilities, 1 in Parks, 2 in Public Works and one other in the Sheriff's Office). This makes it more efficient when stocking replacement parts.

3b. Cost savings:
Reduction in costs associated with using the Braun transport on all Cooperative Transport runs, including extending the lifespan of the vehicle ($5,000.00 est.).
Per Public Works, reductions in repair costs over the lifetime of the vehicles.
Avoidance of civil penalties for failing to follow separation of genders while transporting.

4a. Outcomes:
2 new vehicles, with inserts, will be ordered, made ready and turned over to Corrections during the 4th quarter of 2017.

4b. Measures:
We will work cooperatively with Public Works to make sure the purchase and outfitting of the vehicles begins within 30 days of approval of this supplemental.

5a. Other Departments/Agencies:
Public Works Department will be responsible for the ordering and supervision of the make ready process for both vehicles.

5b. Name the person in charge of implementation and what they are responsible for:
Eric Schlehuber, Public Works Equipment Services Manager. Eric will oversee obtaining the vehicles and the make ready process. Eric has been working with us for approximately 18 months to get the specifications set for these vehicles, and recommends this option (please see attached memo from November 2016).

6. Funding Source:
The Jail Sales tax fund.
MEMORANDUM

To: Brad Bennett, AS Finance Manager
Through: Jon Hutchings, Public Works Director
From: Eric L. Schlehuber, PW Equipment Services Manager
Caleb Erickson, Corrections

Date: November 18, 2016
Re: Upgrade of Corrections Prisoner Transport Vans #8009 & 8014

Requested Action

After researching costs of replacement Prisoner Transport Vans for the below two units which are due for replacement, we are proposing to upgrade these two vehicles from standard 15 “passenger” vans to Mercedes-Benz Sprinter high roofed prisoner transport vans with Havis 12 prisoner transport inserts specifically designed for the intended use for the following reasons:

- The current “passenger” vans do not provide required separation per the Prison Rape Elimination Act (PREA) of the male and female prisoners, juveniles and adults, victims and predators. We have already had one female prisoner groped by a male prisoner because we are unable to provide separation in the current vans. The current contracts with: DOC, WA State Women’s Correctional Facility, Skagit/Island/San Juan Counties and the US Marshal Service contracts all have the PREA requirement for transport of prisoners.

- The new Havis prisoner transport insert provides for the required separation with two separated compartments holding six and five prisoners respectively along with a separated third compartment holding one prisoner. The Havis insert will also be transferable to the next replacement chassis for double the life.

- There is no monitoring system (cameras or microphone/speaker) in the current vans for the Corrections officers to keep tabs on the prisoners other than the small reareview mirror, which is a safety issue for both the prisoners and the Corrections officers.

- Prisoners presently have to be loaded at or behind the mid-line of the 15 passenger vans based on the current configuration. According to the NHTSC to reduce the roll over risk associated with 15 passenger vans prisoners should be loaded as near the front as possible which is accomplished with the new 12 passenger inserts.

- The current 15 passenger van configuration does not allow line of sight to verify seatbelt use and other security concerns. The Havis insert provides for this line of sight in addition to additional lighting, HVAC, bright white backgrounds to increase visibility of prisoner contraband, weapons, etc. and recording and monitoring capabilities. The current 15 passenger vans do not have adequate prisoner property storage locations. The Sprinter van with Havis insert provide an additional two feet of storage space.

- The upgraded diesel Sprinter vans provide increased service longevity/life, increased fuel economy and the ability to re-use and move the prisoner transport insert into the next replacement van. It is anticipated the Sprinter van with insert will have a 15 year life and 200,000+ miles before replacement is needed of the chassis only.

- The County currently has several Sprinter vans that have had very good reliability and very minimal repair issues as compared to a standard “passenger van” with one Sprinter in Facilities, one in Parks, two in Public Works and one in the Sheriff’s office. With this number of Sprinter vans it makes it more efficient and productive to stock parts rather than multiple makes of vehicles.

- Because we are not able to provide the required separation of prisoners in the current vans, the larger prisoner transport vehicle (#900) has needed to be used daily at an additional cost due to its size and fuel economy. This will extend the life of #900 and reduce fuel costs.
December 1, 2016
Page 2

- Alternative vans were researched and demoed (including the current GM passenger van, Ford Transit, Dodge Ram Van and Ford F450 cab & chassis with custom prisoner transport module.) None of these alternatives provided the necessary driver/passerenger visibility, space requirements or cost effectiveness. These would all be one-off's as compared to other van in the ER&R fleet.

<table>
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<th>DEPARTMENT</th>
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<th>YEAR / MAKE / MODEL</th>
<th>EST. MILEAGE</th>
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<tr>
<td>CORR</td>
<td>8009</td>
<td>2002 Dodge B3500 15 Passenger Van</td>
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<tr>
<td>CORR</td>
<td>8014</td>
<td>2002 Dodge B3500 15 Passenger Van</td>
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- **Background and Purpose**
These Corrections Department vehicles were not anticipated to be replaced in the 2016 Equipment Rental and Revolving Capital Equipment budget. The typical costs would be as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Qty</th>
<th>Price each</th>
<th>Sales Tax 8.9% ea.</th>
<th>Total for 2</th>
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<tbody>
<tr>
<td>2016/2017 Mercedes-Benz Sprinter High Roofed Van</td>
<td>2</td>
<td>$48,000.00</td>
<td>$4,272.00</td>
<td>$104,544.00</td>
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<tr>
<td>Havis 12 Prisoner Transport Insert for Sprinter Van</td>
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<td>$25,000.00</td>
<td>$2,225.00</td>
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- **Funding Amount and Source**
This amount was not budgeted during the 2016 budget process. Unit 8009 was budgeted to be replaced in 2014, but was not replaced at that time. Unit 8014 was red-tagged as unsafe to operate due to unrepairable intermittent complications from the braking system seizing. This malfunction created safety concerns; dangerous conditions for employees and inmates; and has already opened the County to claims of legal liability due to a past prisoner injury with the current 15 passenger vans.

Adequate capital budget authority exists from not replacing unit #264 (2003 Kenworth T800B, $325,000), which did not meet current replacement criteria. I am requesting Executive and Council approval to purchase this unit from Mercedes-Benz of Spokane for the price of $47,350.19 each plus 8.9% total sales tax of $8,428.33 for a total amount of $103,128.71.

- **Recommendation**
Please approve this request for upgrade for the Corrections Department. Please contact Eric L. Schlehuber at extension 6405 or Caleb ......, if you have any questions or concerns.

Enclosures
MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Rob Ney, Special Programs Manager
       Kirk N. Christensen, P.E., Stormwater Supervisor
       Ingrid Enschede, Program Specialist

DATE: June 14, 2017

RE: 2017 Budget Supplemental #2315 for Lake Whatcom Homeowner Incentive Program

Please find attached for approval a supplemental budget request from Public Works Stormwater for continued implementation of the Lake Whatcom Homeowner Incentive Program (HIP).

- **Background and Purpose**
  The HIP is a joint Whatcom County and City of Bellingham program that reduces phosphorus in runoff from developed residential property in the Lake Whatcom watershed to meet Lake Whatcom Total Maximum Daily Load (TMDL) requirements. The 2017-2019 Interlocal Agreement between the City of Bellingham and Whatcom County for the Lake Whatcom Homeowner Incentive Program (contact# 201611031) outlines each jurisdiction’s responsibilities and obligations for the cooperative administration of the HIP through the end of the current 5-Year Work Plan. This supplemental budget request allows Whatcom County to fulfill its obligations as defined in this interlocal agreement.

- **Funding Amount and Source**
  This request has no net impact on the budget or Whatcom County fund balances. Per the terms of the interlocal agreement with the City of Bellingham, the City will reimburse Whatcom County for expenses incurred to manage and implement the HIP above the County’s annual budget of $100,000. This supplemental budget request of $385,000 gives Whatcom County the additional budget authority it needs to implement the HIP in 2017. All expenses incurred through this request will be reimbursed by the City.

Please contact Ingrid Enschede at extension 6229 if you have any questions or concerns regarding this request.

Attachment
Supplemental Budget Request

Public Works

Fund 123 Cost Center 123211 Originator: Ingrid Enschede

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

Name of Request: HIP 2017 Supplemental #1

Department Head Signature (Required on Hard Copy Submission) Date 6/16/17

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1a. Description of request:
Reduce phosphorus in runoff entering Lake Whatcom through the Lake Whatcom Homeowner Incentive Program (HIP). The HIP provides technical assistance and financial reimbursement to install stormwater best management practices on private property in the Lake Whatcom watershed. Whatcom County and the City of Bellingham have an interlocal agreement outlining each jurisdiction's responsibilities and obligations for the cooperative administration of the HIP. This supplemental budget request allows Whatcom County to fulfill its obligations as defined in the interlocal agreement.

1b. Primary customers:
Owners of developed parcels in the HIP area. Residents of Whatcom County who benefit from improved Lake Whatcom water quality.

2. Problem to be solved:
Lake Whatcom does not meet Washington State dissolved oxygen (DO) level requirements. Low DO in the lake is a result of too much phosphorus and threatens the survival of fish and aquatic life. The United States Environmental Protection Agency (EPA) approved the Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum Daily Load study (TMDL) in 2016. Whatcom County is required to meet phosphorus reduction targets established in the TMDL.

3a. Options / Advantages:
Whatcom County works in cooperation with the City of Bellingham and other partners to meet TMDL requirements through the Lake Whatcom Management Program. The HIP is one of many options to meet TMDL requirements. Others include capital improvement projects and regulations. TMDL phosphorus reduction targets can not be met with capital projects and current regulations alone. The HIP reduces phosphorus in runoff from existing development, especially from areas that do not drain through a public right-of-way. Not funding the HIP could result in not being able to meet long-term TMDL requirements.

3b. Cost savings:
The HIP offers cost effective phosphorus reduction from existing development. Best management practices (BMPs) supported through the HIP have been selected to offer good phosphorus reduction per installation cost. Program administration costs are shared between the City of Bellingham and Whatcom County, creating a cost savings for both jurisdictions.

4a. Outcomes:
Stormwater best management practices (BMPs) that reduce phosphorus will be installed on developed parcels annually.

4b. Measures:

Wednesday, June 14, 2017
BMPs installed through the HIP will be permitted, recorded in a database, and protected with through maintenance agreements. Pounds of phosphorus reduced per year will be quantified for each BMP installed.

5a. Other Departments/Agencies:
This request will allow Whatcom County to implement the HIP as agreed in the 2017-2019 Interlocal Agreement between the City of Bellingham and Whatcom County for the Lake Whatcom Homeowner Incentive Program (contract# 201611031). Without budget authority to implement the HIP, which the City of Bellingham will reimburse per the terms of the interlocal agreement, this joint City-County program will not continue. This request will also allow Whatcom County to fulfill the terms of the 2016 Interlocal Agreement between Whatcom County and the Whatcom Conservation District for Lake Whatcom Homeowner Incentive Program Assistance (contract# 201610015).

5b. Name the person in charge of implementation and what they are responsible for:
Whatcom County: Gary Stoyka, Natural Resources Manager, and Kirk Christensen, Stormwater Manager; responsible for administering the HIP and delegating staff responsibilities.
City of Bellingham: Renee LaCroix, Assistant Director, and Jason Porter, Storm and Surface Water Manager; responsible for administering the HIP and delegating staff responsibilities for the City of Bellingham.
Whatcom Conservation District: George Boggs, Executive Director, Aneka Sweeney, Education Specialist, and Jenny Coe, HIP Coordinator; responsible for providing technical assistance per the terms of the interlocal agreement.

6. Funding Source:
The City of Bellingham will reimburse Whatcom County for amount of this supplemental budget request per the terms of the 2017-2019 Interlocal Agreement between the City of Bellingham and Whatcom County for the Lake Whatcom Homeowner Incentive Program (contract# 201611031).
Memorandum

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

Through: Mark Personius, Assistant Director for J.E. Ryan, Director

FROM: Chris Elder, Planner I

DATE: June 26, 2017

SUBJECT: Supplemental Budget request for Williams 2 and Servid Williams Conservation easements

Introduction
Whatcom County recently purchased agricultural conservation easements on Williams 2 and Servid-Williams PDR applicant properties. In the previous supplemental budget request, staff neglected to include a request to cover baseline documentation fees and easement monitoring fees. This request intends to complete the PDR process on these two properties. Please note that due to the order in which these two easements were enacted, the easements have been named Williams I and Williams II.

Background and Purpose
The Williams I and Williams II conservation easements, located adjacent to the city of Nooksack, represent the seventeenth and eighteenth purchase under the County’s Agricultural Purchase of Development Rights Program. Whatcom Land Trust developed baseline condition reports for each of the two easement areas and is the legally responsible party to monitor and enforce terms of the conservation easements.

Williams I and Williams II PDR Supplemental Budget Request
Whatcom Land Trust
- Monitoring fund fee $24,000
- Background Documents preparation $5,485

TOTAL $29,485

Whatcom County – Conservation Futures Fund $29,485

Request Summary
This request is consistent with Resolution 2016-029 which authorizes the Executive to enter into a purchase and sale agreement on these properties. Conservation Easements on Williams I and Williams II have been recorded and Whatcom Land Trust is entitled to receive compensation for work completed and ongoing monitoring as described above.

Please contact Chris Elder at (360)778-5932 with any questions or concerns.
Supplemental Budget Request

Planning & Development Services

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

Name of Request: Williams I & II PDR Whatcom Land Trust Fees

Department Head Signature (Required on Hard Copy Submission)

X 6-26-17

Date

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Request Total $29,485

1a. Description of request:
The proposed budget amendment is for the payment to Whatcom Land Trust for development of baseline conditions report and ongoing easement monitoring on the Williams I & Williams II conservation easements purchased.

1b. Primary customers:
The community at large benefits from the PDR program due to the permanent protection of the land for farming purposes. This area will never be developed with additional housing and will stay in low-service cost status in perpetuity. Multiple benefits to agriculture, wildlife, water quality and stormwater retention are among the benefits for the community.

2. Problem to be solved:
The primary focus of the Purchase of Development Rights Program is to permanently protect prime/productive agricultural land from conversion to non-agricultural uses. This property is prime and is located in an area targeted for agricultural land preservation by the Agricultural Advisory Committee and Purchase of Development Rights Oversight Committee.

3a. Options / Advantages:
The Agricultural Advisory Committee has considered the PDR program an integral component of any overall agricultural protection strategy. The Growth Management Act requires the protection of resource lands. This is one of several efforts the County is making to comply with the state requirement. Zoning and Open Space Taxation are other programs currently employed by Whatcom County to protect agricultural land. TDRs are currently being contemplated. PDR's are valuable partly because they are the only action currently available for the County to achieve permanent protection on agricultural lands.

3b. Cost savings:
Savings are difficult to quantify. Studies indicate that resource lands are the lowest cost properties for community services. Other savings are based on the benefits of not converting the property to some more intensive use. Water quality degradation, excessive stormwater runoff and increased costs for roads and other service provisions are eliminated when conservation easements establish a permanent agricultural development pattern in a given area. Maintaining a critical mass of viable agricultural land especially land with water rights as this has also helps support the agriculture economy.

4a. Outcomes:
The PDR program originally targeted 10,000 acres for purchase. Since that time the Council endorsed a "Rural Land Study" that has targeted some 25,000 acres of agricultural lands within rural zoned land that they would like to see with additional protection. This additional acreage will require significant increase in funding for the PDR program as well as the development of additional innovative techniques. The addition of this farm to the PDR land base occurred during the month of May 2017.

4b. Measures:
The easement on this farm will be purchased with assistance from a Title company through a typical closing process. The successful closing of the easement purchase marks the outcome of this specific request.

5a. Other Departments/Agencies:

This is a joint project which involves the Whatcom Land Trust (on-going monitoring/enforcement responsibilities) and Whatcom County – PDR program administration/funding.

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

The Whatcom Land Trust will be responsible for the long-term monitoring under the terms of the conditions in the conservation easement and based on the contract that they have with Whatcom County. Gabe Epperson is the Conservation Director

6. Funding Source:

Conservation Futures Fund
MEMORANDUM

TO: Jack Louws, Whatcom County Executive
    Whatcom County Council

FROM: Tawni Helms, Administrative Coordinator

DATE: June 22, 2017

SUBJECT: Williamson Way Property Repairs and Maintenance

Requested Action:
We are requesting Council consideration and approval of the attached 2017 budget supplemental for maintenance and repair costs associated with the Williamson Way Property.

Background and Purpose:
On May 10, 2017, Whatcom County entered into an interlocal agreement with the Port of Bellingham to receive the real estate services needed to secure a tenant and manage the building located at the Port’s Airport Industrial Park.

After a walk-through of the building a number of items were found in need of repair and maintenance as listed below:

Exterior:
1. Roof, gutters, storm drains and down spouts need to be cleaned. Parking and landscaping needs attention.
2. Repair outside storage unit.
3. Replace and rehang broken door
4. Cap or remove compressor wires
5. Install door sweeps on exterior doors
6. Inspect/repair all garage doors including the missing support on main garage door.

Interior:
1. General and overall cleaning to include carpets,
2. Replace missing door handles and hardware on interior doors
3. Repair bathroom stalls and and dry wall
4. Secure eye was station
5. Remove/cut/or grind floor bolts re-install baseboard
6. Replace/install threshold between lunch area and hallway
7. Inspect/replace/refill fire extinguishers
8. HVAC/Reznor: change filters, service and inspect
9. Re-lamp interior
10. Inspect and service exhaust fans

Once the repairs are completed, the property will be ready for occupancy.

**Funding Amount and Source:**
We are asking for budget authority to complete these work orders through the Rural Sales Tax; EDI Fund.

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

Non-Departmental

Supp1ID # 2320  Fund 326  Cost Center 3262417001  Originator: Tawni Heims

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

Name of Request: Williamson Way Building Maintenance & Repair

X

Department Head Signature (Required on Hard Copy Submission)  Date  6/30/17

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<td>7060</td>
<td>Repairs &amp; Maintenance</td>
<td>$19,350</td>
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Request Total  $27,800

1a. Description of request:

Whatcom County is working with the Port of Bellingham to facilitate the rental process of the property located on Williamson Way. After a walk through of the building a number of items were found to be needing attention. This budget supplemental will provide for the repair and maintenance of the following:

Exterior:
- Landscaping and parking lot: General clean, mow/weed
- Outside lockers/storage units on North side: Clean inside, replace/rehang broken door, cap or remove compressor wires
- Roof, gutters, down spouts: Clean
- Storm drains: Clean

Interior:
- Building: Vacuum, shampoo carpet, mop, dust, and window wash (interior and exterior)
- Garage doors: Inspect and repair all overhead doors so that they are in good working condition. Main garage door is missing a support and insulation
- Exterior (man) doors: install door sweeps
- Interior door: East side – between work area and office – replace door handle/missing hardware
- Ceiling tiles: replace/install missing tiles in main shop area
- Women’s rest room: Replace/repair rusted stall divider by sink
- Women’s rest room: Fix/patch water damage to wall by sink
- Secure eye wash station
- East work area: Remove/cut/grind floor bolts
  - Re-install baseboard
- Lunch Area (South/east side): Replace/install threshold between lunch area and hallway
- Inspect and refill/replace fire extinguishers

Electrical:
- HVAC/Rezno: Change filters, service and inspect
- General: Re-lamp interior
  - Replace missing outlet covers
  - Service exhaust fans

1b. Primary customers:

Whatcom County will benefit from having a tenant in the building which will bring in rental income and

Thursday, June 22, 2017
deter vandalism associated with vacant buildings.

2. **Problem to be solved:**
   The building located on Williamson way is in need of repair and maintenance. The building was vacated by Chinook Enterprises on xxxx and has been sitting vacant since then. As a result the building has attracted some vandalism and also needs some repairs resulting from prior tenant use. Maintenance and minor repairs will be assumed by the new tenant once rented.

3a. **Options / Advantages:**
   Repairs and maintenance of the building are necessary to preserve the building as well as prepare for future occupancy.

3b. **Cost savings:**
   n/a

4a. **Outcomes:**
   After the completion of the repairs and maintenance the Port can solicit and show the building to prospective tenants.

4b. **Measures:**
   A new tenant will occupy the building which will bring in rental income and will detour vandalism commonly attracted to vacant buildings.

5a. **Other Departments/Agencies:**
   Facilities

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

6. **Funding Source:**
   REET 1
Supplemental Budget Request

Public Works

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<td>Kellie Eiswald</td>
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Expenditure Type: One-Time  Year: 2017  Add'l FTE ☐  Add'l Space ☐  Priority: 1

Name of Request: Return of Equity - Animal Control Vehicles

[Signature]  4/27/17

Department Head Signature (Required on Hard Copy Submission)  Date

Costs:

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1a. Description of request:
Return of Equity for the following vehicles:

#6704 - 2008 Chevrolet Silverado
#6705 - 2008 Ford F250
#6706 - 2008 Ford F250

1b. Primary customers:

2. Problem to be solved:
Animal Control vehicle equity needs to be transferred out of ER&R.

3a. Options / Advantages:
No other options. Vehicles have been sold to the Humane Society.

3b. Cost savings:
Reduction of fleet vehicles.

4a. Outcomes:
Ownership of three vehicles were transferred to the Humane Society during the first quarter of 2017.

4b. Measures:
Cash and vehicle titles transferred.

5a. Other Departments/Agencies:
Whatcom County Humane Society.

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

6. Funding Source:
ER&R Fund Balance

Tuesday, June 27, 2017
TO: TAWNI HELMS
ADMINISTRATIVE SUPERVISOR

FROM: KELLIE EISWALD
ADMINISTRATIVE SERVICES FINANCE

DATE: 4/11/2017

RE: ER&R EQUITY ACCOUNT BALANCE AS OF 12/31/16

Equity account balances have been prepared for equipment in the ER&R fleet. Attached is a summary worksheet showing the years activity for each piece of equipment.

Equity account balances are reviewed annually to determine if rental rates are sufficient to meet future equipment replacements.

If you have any questions please contact me at extension 50728.

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Animal Control
Return of Equity

Equity Balance 12/31/2016  $ 27,968.17

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<tr>
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Total Equity  $ 49,258.03
Supplemental Budget Request

Public Works

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

Name of Request: Jail Transport Vehicle Purchase

Department Head Signature (Required on Hard Copy Submission) Date

X 6/27/17

Costs:

<table>
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<tr>
<td>8301</td>
<td>Operating Transfer In</td>
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</tr>
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</table>

Request Total $0

1a. Description of request:
Companion supplemental to Jail Supplemental ID #2306 to purchase and make-ready two Inmate Transport vehicles

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:
Jail Sales Tax Fund transfer in
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<td>7/11/17</td>
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**TITLE OF DOCUMENT:** Flood Control Zone District and Subzones 2017 Supplemental Budget Request #3

**ATTACHMENTS:** Resolution, Memoranda and Budget Modification Requests

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

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

**Supplemental #3 requests funding from the Flood Control Zone District Fund:**

1. To appropriate $15,000 in Natural Resources to fund legal support services in response to Hirst decision. Funding provided by a transfer from the General Fund.

**COMMITTEE ACTION:**

**BOARD OF SUPERVISORS ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
RESOLUTION NO. ________
(A resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

AMENDMENT NO. 3 OF THE 2017 BUDGET

WHEREAS, the 2017 budget for the Whatcom County Flood Control Zone District and Subzones was adopted November 22, 2016; and,
WHEREAS, changing circumstances require modifications to the approved 2017 budget; and,
WHEREAS, the modifications to the budget have been assembled here for deliberation by the Board of Supervisors,

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors that the 2017 budget as approved in Resolution 2016-046 is hereby amended by adding the following additional amounts to the budgets included therein:

<table>
<thead>
<tr>
<th></th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
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<tr>
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<td>-</td>
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<tr>
<td>Total Supplemental</td>
<td>15,000</td>
<td>(15,000)</td>
<td>-</td>
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</table>

ADOPTED this ___ day of ___________________________, 2017

WHATCOM COUNTY FCZD
BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk
Barry Buchanan, Chair of the Board of Supervisors

APPROVED AS TO FORM:

Civil Deputy Prosecutor
Supplemental Budget Request

**Public Works**

- **Supp1 ID #**: 2275
- **Fund**: 169
- **Cost Center**: 169121
- **Originator**: Gary Stoyka

**Natural Resources**

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

**Name of Request**: Hirst Legal Support

---

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<tr>
<td>8301</td>
<td>Operating Transfer In</td>
<td>($15,000)</td>
<td></td>
</tr>
</tbody>
</table>

**Request Total**: $0

---

1a. **Description of request:**

Legal support services to the Prosecuting Attorney's office for County response to the Hirst Supreme Court Ruling.

1b. **Primary customers:**

Citizens of rural Whatcom County

2. **Problem to be solved:**

The Washington State Supreme Court issued a ruling in October 2016 in Whatcom County v. Western Washington Growth Management Hearings Board (WWGMHB)(Hirst) that places severe limits on the use of private domestic wells by development permit applicants as a potable water source. The case has been remanded back to the WWGMHB. Whatcom County is in the process of responding to the court's decision and needs specialized legal advice to do that.

3a. **Options / Advantages:**

In-house counsel was considered; however, this specialized expertise is not available in-house.

3b. **Cost savings:**

---

4a. **Outcomes:**

Whatcom County will make necessary changes to its comprehensive plan and development regulations that comply with the court's decision and any legislative changes to the applicable law. It is anticipated that these changes will be made by summer 2017.

4b. **Measures:**

The new development regulations will be accepted by the WWGMHB.

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

The Prosecuting Attorney’s office will manage the outside legal counsel.

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

Karen Frakes, PA Office will manage the contract with the law firm.

6. **Funding Source:**

Transfer in from the General Fund as per Council action of June 27, 2017

---

**Department Head Signature (Required on Hard Copy Submission)**

---

**Date**

6/28/17

---

**Wednesday, June 28, 2017**
<table>
<thead>
<tr>
<th>Flood Control Zone District and Subzones Budgets Amendment #3</th>
<th>Expenditures</th>
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<tr>
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<td>(15,000)</td>
<td>-</td>
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<tr>
<td>To fund legal support services in response to Hirst decision. Funding provided by a transfer from the General Fund.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>15,000</td>
<td>(15,000)</td>
<td>-</td>
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TITILE OF DOCUMENT:
Ordinance adopting amendments to Whatcom County Code Title 20 (Zoning), relating to the waiver of spacing requirements between marijuana production facilities and community centers in the Rural, Agriculture, and Rural Forestry districts, and amending the definition of community center.

ATTACHMENTS:
Staff Memorandum
Draft Ordinance
Staff Report
Application
Planning Commission Minutes

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 amendments to Whatcom County Code Title 20 (Zoning), relating to the waiver of spacing requirements between marijuana production facilities and community centers in the Rural, Agriculture, and Rural Forestry districts, and amending the definition of community center.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:
PLN2017-00002

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

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

FROM: Gary Davis, AICP, Senior Planner

THROUGH: Mark Personius, AICP, Assistant Director

DATE: June 21, 2017

SUBJECT: Zoning Code Amendments – Marijuana Production Facility Spacing

This proposal, scheduled for discussion by the Planning and Development Committee on July 11, 2017, is to amend Whatcom County Code Title 20 Zoning to allow a waiver of the required 1,000-foot distance between a marijuana production facility and a community center with a written agreement from that center, in the Rural (R), Agriculture (Ag), and Rural Forestry (RF) districts, and to amend the definition of “community center” to clarify that it includes facilities used for religious purposes (see attached staff report).

At the end of its June 8, 2017 public hearing, the Planning Commission voted 4-1 in favor of recommending approval (see attached minutes). Because at least five votes are needed to make a recommendation, this application is being forwarded without a recommendation or findings from the Planning Commission.

Attachments:
   Draft Ordinance, Proposed Amendments
   Staff Report
   Application
   Planning Commission Minutes, June 8, 2017
ORDINANCE NO. ____________

ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING, RELATING TO THE WAIVER OF SPACING REQUIREMENTS BETWEEN MARIJUANA PRODUCTION FACILITIES AND COMMUNITY CENTERS IN THE RURAL, AGRICULTURE, AND RURAL FORESTRY DISTRICTS, AND AMENDING THE DEFINITION OF COMMUNITY CENTER

WHEREAS, the applicant 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. The applicant has submitted an application for amendments to WCC Title 20 Zoning to list commercial kennels as a conditional use in the Agriculture zoning district.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on June 13, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 25, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on June 8, 2017.
6. Comprehensive Plan Policy 7K-1 supports small and cottage businesses in rural areas that minimally impact productive agricultural, forest, or mineral resource land.

7. Comprehensive Plan Policy 2FF-3 is to ensure that rural business operations do not adversely impact adjacent residential, agricultural or forest land, or compromise water quality and quantity.

CONCLUSIONS

1. The amendments to the zoning code are in 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 Exhibit A.

ADOPTED this ______ day of ______________, 2017.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

________________________
Dana Brown-Davis, Council Clerk

________________________
Barry Buchanan, Chairperson

APPROVED as to form:

________________________
Civil Deputy Prosecutor

________________________
Jack Louws, Executive

( ) Approved  ( ) Denied

Date: ______________________

Page 2 of 2
Whatcom County
Planning & Development Services
Staff Report

Marijuana Production Facility Separation Amendment

I. BACKGROUND INFORMATION

File # PLN2017-00002

File Name: Title 20 Zoning Code Amendments – Marijuana Spacing

Applicant: Seth Stromme

Summary of Request: Amend Whatcom County Code Title 20 Zoning to allow a waiver of the required 1,000-foot distance between a marijuana production facility and a community center with a written agreement from that center, in the Rural (R), Agriculture (Ag), and Rural Forestry (RF) districts, and to amend the definition of “community center” to clarify that it includes facilities used for religious purposes.

Location: County-wide.

Staff Recommendation: Approval, subject to a written agreement that would give community centers the ability to maintain or waive the zoning code’s restriction of marijuana production within 1,000 feet of a community center.

History

In 2015 Whatcom County added provisions for marijuana production and processing facilities in the Rural (R), Agriculture (Ag), and Rural Forestry (RF) zoning districts. These provisions included a 300-foot minimum separation between production facilities and residences, and a 1,000-foot minimum separation from community centers. The 300-foot separation from residences can be waived with a written agreement between the owner of the production facility and the owner(s) of the residences, but the code currently allows for no such waiver from the 1,000-foot community center separation.

The applicant intends to build a marijuana production facility that would be located within 1,000 feet of a church, which is included in the zoning code’s definition of a community center (WCC 20.97.070). The applicant submitted a suggested zoning code amendment per WCC 20.90.040(4) that would allow a waiver of the 1,000-foot spacing requirement with a written agreement between the owner of the
processing facility and the community center. The County Council granted the applicant’s request that the zoning code text amendment be placed on the 2017 docket and that the application fee be waived.

II. ZONING CODE AMENDMENT

Marijuana production facility\(^1\) is listed as an administrative approval use in the Rural (R) zone (WCC 20.36.137), and as a permitted use in the Agriculture (Ag) and Rural Forestry (RF) zones (WCC 20.40.059 and 20.42.070, respectively). The separation requirements between production facilities and residences (300 feet) and community centers (1,000 feet) are contained in the code chapters pertaining to those zoning districts, and in the setback provisions of Chapter 20.80 Supplementary Requirements.

The attached draft amendment would change both the zoning district chapters and the supplementary requirements, adding a provision to waive of the 1,000-foot community center separation if a notarized written agreement with the representatives of the community center, similar to the current allowance to waive the 300-foot separation from residences. Approval of the amendment has the potential to allow marijuana production facilities in more locations that would be allowed currently, but only with the written approval of the affected community center.

The zoning code’s current definition of “community center” includes churches, but PDS staff proposes clarifying the definition by adding “religious” to the listed purposes of the community center use. This amendment is intended to reduce the potential for differing interpretations of the community center definition.

III. COMPREHENSIVE PLAN EVALUATION

Whatcom County Comprehensive Plan goals and policies that are applicable to the proposed amendments are listed below:

**Goal 2DD:** Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County’s development regulations ...

---

\(^1\) Per WCC 20.97.227, marijuana production means a facility licensed by the state Liquor and Cannabis Board to produce, harvest, trim, dry, cure, and package marijuana, and sell marijuana at wholesale to state-licensed marijuana processors and other state-licensed marijuana producers. By contrast, a marijuana processing facility processes marijuana into useable marijuana, marijuana concentrates, and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sells useable marijuana and marijuana-infused products at wholesale to marijuana retailers (WCC 20.97.226). Marijuana processing facilities are administrative uses in the R zone and accessory uses in the Ag and RF zones, and may only be permitted as accessory to marijuana production facilities, therefore the separation requirements apply to both marijuana production and processing facilities.
Goal 2FF: Provide employment opportunities in the rural parts of Whatcom County.

Policy 2FF-1: Support small businesses, cottage industries, home occupations, resource-based, tourist, recreational, and other appropriate industries in the rural areas of Whatcom County. New rural commercial and industrial uses that are more intensive than those permitted within rural zones as home occupations or cottage industries should be located within designated Rural Communities and Rural Business areas.

Policy 2FF-3: Ensure that business operations do not adversely impact adjacent residential, agricultural or forest land, or compromise water quality and quantity.

Goal 7K: Enable a geographic balance for economic growth within the capacities of the county's natural resources, natural systems, public services, and public facilities.

Policy 7K-4: Consider establishing more resource and tourism based recreational, commercial, and industrial uses to create economic opportunity in the rural areas of the county.

Policy 7K-7: Support efforts and/or organizations trying to achieve agricultural diversity such as:
• niche markets for local products.

Goal 8B: Maintain and enhance Whatcom County's agricultural products industry as a long-term and sustainable industry.

Policy 8B-3: Support agricultural product processing facilities through appropriate planning, zoning, and land use regulations.

The subject amendment is consistent with the above referenced Comprehensive Plan goals that direct the County to promote new employment opportunities while adopting appropriate development regulations that retain the character and lifestyle of rural Whatcom County.

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. The applicant has submitted an application for amendments to WCC Title 20 Zoning to list commercial kennels as a conditional use in the Agriculture zoning district.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May ____, 2017.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 25, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on June 8, 2017.

6. Comprehensive Plan Policy 7K-1 supports small and cottage businesses in rural areas that minimally impact productive agricultural, forest, or mineral resource land.

7. Comprehensive Plan Policy 2FF-3 is to ensure that rural business operations do not adversely impact adjacent residential, agricultural or forest land, or compromise water quality and quantity.

V. PROPOSED CONCLUSIONS

1. The amendments to the zoning code are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VI. RECOMMENDATION

Planning and Development Services recommends that the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval, provided the proposed waiver of the separation requirement is subject to a written agreement that would give community centers the ability to prohibit marijuana production within 1,000 feet.

ATTACHMENTS

A. Exhibit A: Draft zoning code amendments
B. Application
EXHIBIT A

Chapter 20.36
RURAL (R) DISTRICT

20.36.130 Administrative Approval Uses

.137 Marijuana production facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:

(1) The 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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility.

(2) The 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 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.

(3) On parcels smaller than four and one-half acres the facility shall not exceed a total of 2,000 square feet, except where the facility is contained within a building that existed on the effective date of the ordinance codified in this section.

.138 Marijuana processing facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694 and WCC 20.84.235:

(1) The facility is accessory to the on-site production of marijuana.

(2) The 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 processing of marijuana. The zoning administrator may waive this spacing requirement 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.

(3) On parcels smaller than four and one-half acres the total area used for marijuana processing and production shall not exceed 2,000 square feet, except where the facility is contained within a building that existed on the effective date of the ordinance codified in this section.

********

Chapter 20.40
AGRICULTURE (AG) DISTRICT

********

20.40.050 Permitted Uses

********

.059 Marijuana production facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:

(1) The 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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 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.

(2) The 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 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.

********
20.40.100 Accessory Uses

.115 Marijuana processing facility, provided in addition to the criteria found in WCC 20.80.690 through 20.80.694:

(1) The facility is accessory to the on-site production of marijuana.

(2) The 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 processing of marijuana. The zoning administrator may waive this spacing requirement 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.

Chapter 20.42
RURAL FORESTRY (RF) DISTRICT

20.42.050 Permitted Uses

.070 Marijuana production facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:

(1) The 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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 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.
(2) The 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 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.

......

20.42.100 Accessory Uses

......

.106 Marijuana processing facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:

(1) The facility is accessory to the on-site production of marijuana.

(2) The 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 processing of marijuana. The zoning administrator may waive this spacing requirement 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.

......

Chapter 20.80
SUPPLEMENTARY REQUIREMENTS

......

20.80.210 Minimum setbacks

......

(5) Setbacks

......
(b) Setbacks Table.

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<tbody>
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<td>Collector Arterials or Major Collectors</td>
<td>Minor Collectors</td>
</tr>
<tr>
<td>50'</td>
<td>50'</td>
<td>50'</td>
</tr>
</tbody>
</table>

1. The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment and the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

2. The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor’s residence, and pastures are excluded from this section’s requirements.

3. Parcels of less than five nominal acres shall have the following minimum setbacks:

   Front yards:
   - Primary arterials and secondary arterials: 45 feet.
   - Collector arterials: 35 feet.
   - Neighborhood collectors, local access streets: 25 feet.
   - Minor access streets: 20 feet.

   Minimum front yard requirements can be reduced by the zoning administrator for boundary
line adjustments or farmstead parcels established through WCC 20.40.253 and 20.40.254 if the proposed placement of the structures will result in a better fit with critical areas or prime soils and goes through the approval process in Chapter 21.03 WCC. In no case shall front yard depth be less than 20 feet.

Side yards: minimum side yard setbacks shall be five feet. For boundary line adjustments or farmstead parcels established through WCC 20.40.253 and 20.40.254, the exterior side yard and exterior rear yard requirements of habitable structures shall be 30 feet.

Rear yards: minimum rear yard setbacks shall be five feet.

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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 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.

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.

6. 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>
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<tr>
<th>Rural Forestry (RF)</th>
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<tbody>
<tr>
<td><strong>Road Type</strong></td>
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<tr>
<td>Commercial, Collector</td>
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<tr>
<td>Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</td>
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**Water Resource Protection Overlay**

| 30'                                                    | 30'                           | 20'        | 20'           | 20'       | 20'           | 20' | 20'  |

1. Setbacks shall be increased to 100 feet for those parcels in the Rural Forestry Zone situated adjacent to the Commercial Forestry Zone, 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 of the Rural Forestry Zone. Forest industry buildings, stationary equipment or storage areas excluding scaling stations and watchman’s stations shall not be located within 100 feet of any other zone district.

2. 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.

3. When a permitted residence (WCC 20.42.056) adjoins an existing parcel of 20 acres or more in size or a parcel that is being cultivated for commercial forestry production, a minimum building setback of 100 feet shall be established from the common property line.

4. Lummi Island scenic estates setbacks shall be administered under the Rural Residential Island setback standards.

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.

6. 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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 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.
7. 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.

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**Rural (R)**

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<td>Rear Yard</td>
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**Water Resource Protection Overlay**

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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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility.

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.

\[ {\text{\textsuperscript{1}}Roof overhangs or other architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback.} \]

\[ \]

\[ 20.80.250 \] Special setback provisions by district.

\[ \]

\[ 20.80.252 \] Rural District.

(1) Rural District Setbacks. 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) 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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility.

(3) 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.

20.80.255 Agriculture District.  
(1) The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment, and the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

(2) The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, packinghouses and slaughterhouses, or areas used to contain, house or feed animals or store manure or feed, shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor’s residence, and pastures are excluded from this section’s requirements.

(3) The minimum separation between packinghouses/slaughterhouses and schools shall be 500 feet.

(4) The minimum separation between packinghouses/slaughterhouses and adjacent property lines shall be 150 feet.

(5) 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. The zoning administrator may waive this
spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 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.

(6) 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.

20.80.256 Forestry districts. (Adopted by reference in WCCP Chapter 2.)

(1) Setbacks shall be increased to 100 feet for those parcels in the Rural Forestry Zone situated adjacent to the Commercial Forestry Zone, 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. Forest industry buildings, stationary equipment or storage areas excluding scaling stations and watchman’s stations shall not be located within 100 feet of any other zone district.

(2) 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.

(3) Where a parcel had been created pursuant to the rural forestry district’s clustering provision or when a permitted residence (WCC 20.42.056), adjoins an existing parcel of 20 acres or more in size or a parcel that is being cultivated for commercial forestry production, a minimum building setback of 100 feet shall be established from the common property line.

(4) For parcels of less than five nominal acres, unless the provisions of subsection (2) of this section are applicable, the zoning setback established by the zoning district shall be observed.

(5) In the Rural Forestry Zone, 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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 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.

(6) In the Rural Forestry Zone, 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.

********

Chapter 20.97
DEFINITIONS

********

20.97.070 Community center.
"Community center" means land and/or building(s) owned by a public agency or private nonprofit entity used for social, civic, educational, religious, or recreational purposes, which serves mainly the community where located; including but not limited to community halls and centers, grange halls, senior citizen centers, teen centers, youth clubs, field houses, and churches. The facilities are available for occasional public meetings. They may also have the minimal kitchen facilities required for occasional banquets. Private clubs as defined in this ordinance are not included.

********
Regular Meeting

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:35 p.m.

Roll Call
Present: Kelvin Barton, Kate Blystone, Atul Deshmane, Natalie McClendon, Nicole Oliver
Absent: Gary Honcoop, David Hunter, Andy Rowlson

Staff Present: Mark Personius, Gary Davis, Nick Smith, Becky Boxx

Department Update

Mark Personius updated the commission on the following:

- Commissioner Knapp resigned from the commission as he has moved out of the district.
- County Council update
- Planning Commission schedule

Open Session for Public Comment

There was no public comment.

Commissioner Comments

Commissioner Deshmane commented on the jail. He wanted clarification if it was on the Planning Commission schedule for the year.

Mr. Personius stated it is not.

Public Hearing

File #PLN2017-00002: Proposed amendments to the Whatcom County Code Title 20 Zoning, regarding waiver of spacing requirements between marijuana production facilities and community centers in the Rural, Agriculture, and Rural Forestry districts, and amending the definition of community center.

Gary Davis presented the staff report.

This amendment was suggested by a single applicant but would take place countywide. Currently there is a 1,000 foot minimum separation between a production facility and a community center and a 300 foot separation from a facility and a residential use. The 300 foot separation can be waived with a written agreement between the owner of the production facility and the owners of the residence. Currently the code does not allow for that same waiver for the 1,000 from a community center. This proposal would add that similar language. The marijuana production facility is an administrative approval
use in the Rural zone and a permitted use in the Agricultural and Rural Forestry zones. The proposed amendments would change the zoning chapters and supplemental requirements which would allow the waiver of the setback. It would also change the definition of a community center. Staff recommends approval.

Commissioner Deshmane asked what other types of agricultural commodities have this type of restraint on them.

Mr. Smith stated the State of Washington has moved away from calling marijuana production an agricultural activity. It is not taxed or regulated the same. There is no other commodity treated like this. For retail it would be similar to liquor stores. Washington law requires a production facility setback of 1,000 feet from schools, parks, arcades, daycares, etc. The county code states that in order for a marijuana facility to be permitted you need to get a license from the state. The County Council felt that they wanted a special setback from churches similar to the setback for other places such as schools. That is the reason why the county took the extra step in adding a 1,000 foot setback in the code.

Commissioner Barton commented on the smell from production facilities. Other counties are looking at regulations to deal with that. Has the county looked into that?

Mr. Smith stated they have. Most grow facilities in Whatcom County are indoors. The County Council adopted an odor provision that states that a Washington State engineer must submit a ventilation system to control odor as part of the permit submittal.

Commissioner Barton asked if the size of the facility changes does that require a change in the conditions?

Mr. Smith stated that to begin the process a land use permit is required and they go through an administrative approval process with neighbors being notified, etc. If an expansion is wanted they would go through that same process. It would not require another waiver.

Commissioner Deshmane asked why hemp was not included in this proposal.

Mr. Smith stated hemp is still being studied as to whether it can be a viable agricultural crop.

Ezra Eickmeyer stated hemp is regulated by the Department of Agriculture. It would not apply to this situation. It is not treated as a controlled substance like marijuana.

The hearing was opened to the public.

Ezra Eickmeyer, Jefferson County: He is a lobbyist for the marijuana industry and the CEO of a production facility in Thurston County. His friend, Seth Stromme, has had a medical marijuana production company in Whatcom County for several years. The changes to the permitting process caught him off guard. He is too close to a church
that is considered a community center. That gets in the way of him getting permits to transition into the recreation marijuana production. Whatcom County is the only jurisdiction, that he knows of, that has taken all of these 1,000 foot setbacks and added churches to the list. It is an anomaly in the state. To his knowledge it has only hurt this one operator because he wasn’t paying close enough attention during the process. A few years ago the church wrote a letter supporting him and were fine with him being there. If this amendment is not passed it could cost him his business and investments. It is non-controversial because it is just giving an option to the church.

The hearing was closed to the public.

Commissioner Deshmane moved to recommend approval of the staff recommendation.

Commissioner Blystone seconded.

Commissioner Deshmane was in favor of something even more aggressive than this. He would like to see less setbacks.

Commissioner Barton stated the proposal is worth supporting but there is a piece that bothers him. What bothers him is that a person can get a permit, get permission from the neighbors, build and then later expand and the neighbors have no say in that.

Commissioner Oliver stated she understood Commissioner Barton’s concerns but churches shouldn’t be treated special.

Commissioner Blystone stated that neighboring property owners would be notified of any expansion so they have an opportunity to comment.

Mr. Smith agreed but he did not think staff would deny the expansion based on that.

Mr. Davis reminded the commission that the waiver would be from property line to property line not the site of the building. As long as they stay on the same property the facility is not going to get any closer.

Commissioner Blystone stated she would like to completely get rid of the setbacks.

Commissioner Barton stated he would not vote in favor of the motion because a person could agree to something that may change later.

Mr. Eickmeyer stated the main problem with these facilities is the smell, which has already been addressed in the county’s code. These facilities can only have one license which limits the facility to 30,000 square feet. Another license would be a whole new process.
Mr. Smith stated county code allows for some protections through the administrative approval process. The code requires a landscape buffer, based on neighboring property owner’s comments.

Commissioner Barton proposed an amendment to read: Expansion of a facility, for which a waiver has been given, will provide need for a new waiver before said expansion may be approved.

The motion failed for lack of a second.

Commissioner Deshmane stated Whatcom County has an opportunity for this industry to have a positive impact on the economy. To him this is a high value agricultural activity. He wanted to encourage the industry.

Mr. Smith stated marijuana production in the Rural zone requires that a facility cannot exceed 2,000 square feet on parcels 4 ½ acres or less. This was a way to ensure they blend into smaller, denser communities.

Roll Call Vote: Ayes – Blystone, Deshmane, McClendon, Oliver; Nays – Barton; Abstain – 0; Absent – Honcoop, Hunter, Rowson. The motion failed.

The meeting was adjourned at 7:26 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair

Becky Boxx, Secretary
Application for Zoning Amendments

Please check one of the following:

☐ Standard Map Amendment  ☐ Site Specific Rezone  ☑ Zoning Text Amendment
  Complete Sections A, B, C, F  Complete Sections A, B, D, F  Complete Sections A, E, F

Do not write in this section of the application-for official use only.

Date Received: 11/30/16  File: PLN2016-00014
Date Complete: __________________________ Initials of reviewer: __________________________

Topic of Proposed Amendment: Marijuana producer 1000 ft. buffer from churches/community centers

Waivers

A. General Information – All applicants must complete this section.

Applicant’s Name: Seth Stromme of Agape Research

Signature: [Signature]

Mailing Address: PO Box 106

Acme, WA 98220

Email Address: sstromme76@gmail.com

Home Phone #: Cell Phone #: 360-739-2045  Business Phone #: 360-739-2045
Agent's Name: Ezra Eickmeyer

Mailing Address: PO Box 504
Quilcene, WA 98376

Email Address: ezra@olypen.com

Business Phone #: 360-301-1842 Cell Phone #: 360-301-1842 Home Phone #: 

Please complete the questions below. Attach additional pages as needed.

1. Give a complete but short description of the proposed amendment.

   In the current county marijuana ordinance, churches are considered community centers and a 1000 ft buffer from churches has been implemented for production facilities in agriculture zoned districts. There is also a 300 ft buffer against residences, but a production company can get a waiver signed by the owner of the residence waiving the 300 ft. The proposed amendment is to create a similar waiver whereby the legal signers within a church organization could sign a waiver allowing a production facility within 500 or 1000 ft of their church. Under this waiver, whoever has legal signing authority for the church could sign the waiver.

2. Explain how the proposed amendment is consistent with the goals, policies, and overall intent of the Comprehensive Plan by listing specific goals or policies and explaining how the proposal complies with each of them.

   The Whatcom County Comprehensive Plan lists a number of relevant goals and priorities:
   1) Provide employment opportunities in the rural parts of Whatcom County. 2) Support small businesses. 3) Support efforts and/or organizations trying to achieve agricultural diversity such as niche markets for local products. 4) Maintain and enhance Whatcom County's agricultural products industry as a long-term and sustainable industry. 5) Support agricultural product processing facilities...

   Agape had been operating a medical marijuana growing facility in good faith and without incident in this location before implementation of I-502, believing that they were located where the county would want them, an agriculture zone. If the county does not adopt a change to allow their operation, they will lose their investments in the property and likely lose the business. This result would be opposite to the county's above-listed priorities. Additionally, tier-3 producers can employ as many as 90 employees when in full operation. The ramifications to the local community are significant.

3. Describe the “changed” condition(s) which support the amendment.

   It does not appear that the County Council knew that it would be eliminating an existing business when it adopted its zoning in 2015 on marijuana facilities. The owner, Mr. Stromme, was not aware of the language regarding churches/community centers until well after passage of the ordinance. Now that the situation has been brought to Council's attention, we believe that a simple solution is reasonable and easy to implement.
B. Zoning Map Amendments (Standard Map Amendments and Site Specific Rezones)

1. Property Interest of Applicant:
   □ Purchaser/Owner       □ Lessee       □ Other: ________________________

   Existing Comprehensive Plan Designation: ______________________________________

   Existing Zoning District: ______________________________________________________

   Subarea: ________________________________________________________________

2. What is the proposed zoning classification? ______________________________________

3. What is the present use of the property or properties within the proposed rezone?

4. Describe the land use of the surrounding properties.
C. Standard Map Amendments

1. Supporting information for standard map amendments. Attach the following items:

   a. A vicinity map showing property lines, roads, buildings and their use, easements, existing and proposed zoning, wells and other pertinent data.

   b. A list of all property owners and others having a legal interest in the property covered by the proposed change.

   c. A list of the names and mailing addresses of the owners of all property within 300 feet (exclusive of roads and alleys).

A site plan may be requested at a future date if the intended amendment is to accommodate a particular development. The applicant may wish to submit a plan at the time of application. The site plan is a scaled drawing showing approximate location of buildings, roadways, parking, drainage facilities, sanitation and water facilities, and easements. Where appropriate, the location of landscaping, buffers, common areas, and typical individual lease spaces for mobile home and recreational vehicle parks shall be included in the site plan.

D. Site Specific Rezones

1. Does the proposed amendment have a substantial relationship to public health, safety, morals, general welfare or community needs?

2. Will the proposed use be serviced adequately by essential public facilities such as highways, streets, public safety and fire protection, drainage structure, refuse disposal, water and sewers, and schools; or will the persons or agencies responsible for the establishment of the proposed use be able to adequately provide any such services? Describe.
3. Is the proposal is located within an Urban Growth Area? □ Yes □ No (go to question #14)

   a. Will the site be serviced by full urban services or be capable of receiving urban services in time to serve the development? □ Yes □ No

   b. Will the proposed site use preclude development at urban levels of density when the area is annexed into the city? □ Yes □ No

   c. Will the proposed site be five (5) or more acres in size? □ Yes □ No

4. Supporting information for site-specific map amendment. Attach the following items:

   a. A vicinity map showing property lines, roads, buildings and their use, easements, existing and proposed zoning, wells and other pertinent data.

   b. A conceptual site plan drawn at not less than one (1) inch to one-hundred (100), unless mutually agreed to by the proponent and administrative official, including, but not be limited to:
      1. General location of structures.
      2. Location and number of access points.
      3. Approximate gross floor area of structures.
      4. Name of the proposal.
      5. Identification of areas requiring special treatment due to their sensitive nature.
      6. North directional arrow.
      7. Names and location of all public streets or roads bordering the site.
      8. General legal description(s) for the site.

   c. Concurrent submittal of a Discretionary Development Permit or Building Permit, if required for the project.

   NOTE: If the project does not require a Discretionary Development Permit or Building Permit or will be constructed in phases, then a narrative statement must be submitted with the conceptual site plan that provides a detailed description of the project proposal and a project completion date. If the project will be constructed in phases provide start and completion dates for each phase and include a final completion date for the entire proposed project.

   d. A list of all property owners and others having a legal interest in the property covered by the proposed change.

   e. Evidence that all property owners within the proposed rezone boundary concur with the rezone and project proposal.
f. Mailing labels with names and mailing addresses of the owners of all property included within the area proposed for re-designation and:

- For a map amendment within an existing urban growth area, mailing labels with the typed address of each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor.

- For a map amendment outside existing urban growth areas, mailing labels with the typed address of each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

For map amendments that involve rezoning property to an Airport Operations District, mailing labels with the typed address of each property owner within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor.

g. A completed Environmental Checklist.

E. Zoning Text Amendments

Are there any other circumstances that justify the proposed change?

Creating an additional 1000 ft church buffer requirement for production facilities is not consistent with state law. We are not aware of any other jurisdictions that have enacted such a rule and this may be unique to Whatcom County. The buffer against residential areas is only 300 ft, creating inconsistency within the county’s code, while also allowing residents to sign waivers if they do not mind a production facility being located nearby. Additionally, since the county has strong rules against odor from indoor production operations, this possible source of conflict with neighboring homes and establishments has been eliminated.

F. Authorization:

Signature of Applicant(s) or Agent:

Ewa Eichmeyer / [Signature]
Date: 11/28/16

Seth Stevenson / [Signature]
Date: 11/28/16

Date:
**Whatcom County Council Agenda Bill**

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**Title of Document:**

*An Ordinance Regarding Establishment of Speed Limits on portions of North Shore Road*

**Attachments:**

1. Memo to County Executive and County Council
2. Vicinity Map
3. Petition to Reduce Speed
4. Speed Limit Ordinance

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes ( X ) No</th>
<th>Should Clerk schedule a hearing? Requested Date:</th>
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<td>SEPA review completed?</td>
<td>( ) Yes ( X ) No</td>
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**Summary Statement or Legal Notice Language:**

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

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 North Shore Road.

**Committee Action:**

<table>
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<tr>
<th>Council Action:</th>
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**Related County Contract #:**

<table>
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<tr>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
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 31, 2017

Re: Ordinance Regarding Change of Speed Limits for North Shore Road

Requested Action:
Adoption of an ordinance to lower the speed limit on portion of North Shore Road from 40 mph to 35 mph.

Background and Purpose:
North Shore area residents have submitted a petition to lower the speed limit on a portion of North Shore Road east of Y Road from the existing 40MPH to 30MPH (see attached).

The Public Works Department supports a speed limit reduction and would like to keep the speed limits consistent in the area. The speed limit on North Shore Road from the Bellingham City limits to Y Road is 35MPH. To be consistent we recommend the speed limit be changed to 35MPH from Y Road to the east end of North Shore Road.
ORDINANCE NO.
AN ORDINANCE REGARDING ESTABLISHMENT OF SPEED LIMIT
ON A PORTION OF NORTH SHORE ROAD

WHEREAS, the Whatcom County Council is authorized under RCW 46.61.415 to establish speed limits on certain County roads; and

WHEREAS, a request to lower the speed limit on North Shore Road by local residents; and

WHEREAS, the County Road Engineer has agreed that it is necessary to formally establish a new speed limit on North Shore Road; and

NOW, THEREFORE, BE IT ORDAINED that a speed limit be set and posted at 35 miles per hour at the following locations:

On North Shore Road, from the intersections of Y Road to the east end of the 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. ADOPTED this ____ day of ______, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Daniel L. Gibson

Jack Louws, Executive

Date:
May 2, 2017

Joe Rutan  
County Engineer/Assistant Director  
Whatcom County Public Works  
322 N Commercial Street, Ste 210  
Bellingham, WA 98225

Re: Northshore Road speed limit reduction

Dear Mr. Rutan,

As a concerned resident of Northshore Road I respectfully submit the attached petition for your consideration. The petition, signed by local residents and Lake Whatcom trail-goers, seeks to reduce the speed limit on Northshore Road from 40 mph to 30 mph from the Y Road intersection to the end of Northshore Road due to safety concerns (please see attachment).

This 2.6 mile portion of Northshore Road has approximately 135 homes and is the only section of the road that is posted at 40mph. From the 2700 block to the end of Northshore Road, almost half of these residents (61) must cross the road to access the waterfront. Recognizing that varying speed limits on the same roadway may cause confusion, this petition seeks to reduce the speed limit for the final portion of a dead-end road and would therefore not create that issue.

Lake Whatcom and the Ken Hertz Trail are beautiful and unique resources that should be available and enjoyed by all citizens. It is neither my intention, nor the neighbors', nor the trail-goers who signed the petition to limit access or stifle the development of the park in any way.

However, it is our intention seek a permanent decrease in the speed limit to better handle the current and steadily increasing traffic flow to ensure reasonable safety for all residents and users of Northshore Road and to avoid potential accidents.

I appreciate your time and look forwarding to hearing from you. Thank you for your consideration.

Sincerely,

[Signature]

Julie Elsbree  
2970 Northshore Road  
360-319-5683

Attachments  
Northshore Road safety concerns – list  
Signed petition (2 pages)
Northshore Road safety concerns
Attachment to petition to reduce speed limit

- Residents must cross Northshore Road in order to access the waterfront

- Numerous users; runners, walkers, bicyclists, pets, wildlife and Ken Hertz park-goers compete for space on a road with minimal or no shoulders

- Vehicles pulling out onto Northshore Road, experience in some cases, very limited site distance requiring entry into fast-moving traffic

- Use of Lake Whatcom and the Ken Hertz Trail continues to grow (2014 >44,000 visitors annually; 2015>54,000 visitors)*

- Whatcom Park Recreation Trail Plan increased Lake Whatcom Park by 4,593 acres; visitor use at full build-out is projected to be 100,000 annually*

- Use of the park, and thus traffic, is anticipated to continue to grow regardless of trail development due to a local shortage of publically accessible freshwater shoreline*

* Source - Whatcom County Parks & Recreation/Trail Plan-Lookout Mountain Forest Preserve and Lake Whatcom Park Recreational Trail Plan, June 2016
We, the undersigned, petition Whatcom County to reduce the speed limit from 40 mph to 30 mph on Northshore Road from the Y Road intersection to the end of Northshore Road because of safety concerns described as follows:

1) The numerous users of Northshore Road; runners, walkers, bicyclists, pets, wildlife and Lake Whatcom Park-goers with watercraft and/or bicycles compete for space on a road with minimal shoulders and in some cases, no shoulder at all.

2) Almost half of the ~135 residents from the Y Road intersection to the end of Northshore Road have parcels that are split by Northshore Road requiring pedestrian crossing of Northshore Road to access waterfronts. Unfortunately, this is the only portion of Northshore Road that is 40 mph.

3) Vehicle entry onto Northshore Road is sometimes challenging because of limited sight distance and the need to merge with vehicles traveling at a higher rate of speed.

4) Use of Lake Whatcom Park and the easily accessible Hertz Trail continues to grow (2014 >44,000 visitors annually; 2015 > 54,000 visitors).*

5) Whatcom County's approval of the Lake Whatcom Park Recreational Trail Plan increased Lake Whatcom Park by 4,593 acres; originally ~200 acres. Visitor use at full build-out is projected to be 100,000 annually.*

6) Use of Lake Whatcom Park is anticipated to continue to grow regardless of trail development due to a local shortage of publically accessible freshwater shoreline.*

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<thead>
<tr>
<th>Name (please print):</th>
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<th>Address:</th>
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<tr>
<td>1 Randy Elshere</td>
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<td>2970 Northshore Rd. B’ham 98226</td>
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<td>2 Julie Elshere</td>
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<td>3 Daughter Elshere</td>
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<td>4 Casey Harp</td>
<td></td>
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<td>5 Kayla Petrie</td>
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<td>910 Magnolia St. 98225</td>
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<td>6 Keef McCann</td>
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<td>410 E Magnolia St. 98225</td>
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<tr>
<td>7 Richard Vanderweiden</td>
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<td>22 Mainfield Dr. Unit 1 B’ham 98229</td>
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<td>8 Jane Vanderweiden</td>
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<td>12 Mike Vandenbergh</td>
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<td>13 Jennifer White</td>
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<td>8820 Kenwood Way. Lynden, WA 98260</td>
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<td>14 Jeffery Johnson</td>
<td></td>
<td>4411 31st ST Bellingham</td>
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<tr>
<td>15 Patrick Connell</td>
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<td>3442 Brookwood Ct. Bellingham</td>
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<td>Maria Prewivel</td>
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<td>Stacia Dahl</td>
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<tr>
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<td>508 Tremont Ave #102, Bellingham WA 98226</td>
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<tr>
<td>Niki Benner</td>
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<td>508 Tremont Ave Apt #302, Bellingham WA 98226</td>
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<tr>
<td>Michelle Bishop</td>
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<td>1000 Box 453, 98226</td>
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<tr>
<td>Mike Shopp</td>
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<td>Ryan Elmore</td>
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<td>1462 Left Dr, Bellingham, WA 98226</td>
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<td>Chelsea Messer</td>
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<td>Jon Lovell</td>
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<td>Kathy Lovell</td>
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<td>Audrey Halverson</td>
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<td>3964 Northshore Rd, Bellingham WA 98226</td>
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<tr>
<td>Darra Duxbury</td>
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* Source-Whatcom County Parks & Recreation/Trail Plan - Lookout Mountain Forest Preserve and Lake Whatcom Park Recreational Trail Plan, June 2016
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**CLEARANCES**

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**TITLE OF DOCUMENT:**

Ord Ordering Election to Determine Formation of Lummi Island Park and Rec Dist

**ATTACHMENTS:**

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

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

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

Ordinance ordering an election to determine the formation of the Lummi Island Park and Recreation District

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

ORDERING AN ELECTION TO DETERMINE THE FORMATION OF THE LUMMI ISLAND PARK AND RECREATION DISTRICT

WHEREAS, on June 5, 2017, a petition proposing the creation of a park and recreation district on Lummi Island was delivered to the County Council Office; and

WHEREAS, the petition met the requirements of RCW 36.69.020; and

WHEREAS, on June 13, 2017, the County Council approved Resolution 2017-036, officially receiving the petition into the record and scheduling a public hearing on the proposal; and

WHEREAS, the County Council held a public hearing on the petition on July 11, 2017, as required by RCW 36.69; and

WHEREAS, the next step in the park and recreation district formation process requires the Council to establish the boundaries of the proposed park and recreation district, establish its name, and call for an election of the property owners residing within the proposed district boundaries to determine whether the district shall be formed.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the proposed district shall be known as the Lummi Island Park and Recreation District.

BE IT FURTHER ORDAINED that the boundaries of the proposed district, as submitted by the petitioners, shall be as outlined in Exhibit A to this ordinance.

BE IT FINALLY ORDAINED that the proposal to form the Lummi Island Park and Recreation District is hereby forwarded to the County Auditor for inclusion on the November General Election ballot.

ADOPTED this ______ day of ____________, 2017.

ATTEST:

__________________________
Dana Brown-Davis
Clerk of the Council

__________________________
Barry Buchanan
Council Chair

APPROVED AS TO FORM:

__________________________
Karen Frakes
Civil Deputy Prosecutor

__________________________
Jack Louws
County Executive

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
EXHIBIT A
(ORDINANCE FORWARDING PROPOSED LUMMI ISLAND PARK DISTRICT PROPOSAL TO AUDITOR)

PROPOSED DISTRICT BOUNDARIES:
The district boundaries generally will include all of Lummi Island located in Whatcom County, being parts of Township 36 North, Range 2 East; Township 37 North, Ranges 1 and 2 East, and part of Township 38 North, Range 1 East, W.M., and all tidelands abutting said island.