**TITLE OF DOCUMENT:**
Discussion re blocked culvert where Everson-Goshen Rd and Ten Mile Creek cross

**ATTACHMENTS:**

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
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<th>( ) Yes</th>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Discussion re blocked culvert where Everson-Goshen Rd and Ten Mile Creek cross

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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Whatcom County Council

and

Mr. Louws, County Executive

There is a very serious water problem on our property East of the Everson-Goshen Rd where the Ten Mile creek goes under the road. Even prior to my husband's death nine years ago we would have water in our pump house each winter. At that time my husband disconnected the pump and put it up on blocks so it wouldn't be damaged or destroyed by the water. As of this writing (mid-July 2017) the water is so deep my son is unable to get to the pump house, even with our tractor.

This problem is caused by a massive beaver house/dam blocking the culvert on the East side of the Everson-Goshen Rd. We have been working with the county road department for years trying to resolve the matter. In that time it has changed from a minor blockage to a massive obstruction with this obstruction completely covered by backed-up water.

There are so many questions, i.e., when the county did a lot of rip/rap work on the West side of the road a big length of culvert appeared just tossed off in the bushes. I believe there are suppose to be two side-by-side culverts going under the Everson-Goshen Rd. It appears that, for whatever reason there is only one operating at this time. There has to be some county employees who know what happened.

Water is now approximately six feet over the top of the culvert, when at this time of the year half of the culvert should be above water. Words and/or pictures cannot show how serious this problem is.

I understand the county has a dragline that can reach down from the road and remove the blocking debris. This problem needs to be taken care of before fall rains come. I don't know if this backed-up water would be able to work its way along the outside of the blocked culvert and cause damage to the road.

Respectfully Submitted

Barbara Thomas

Barbara Thomas

Enc.; 6

P.S. This land has always been farmed.
Hard to tell depth of water because of tall grass.

7-15-17

Everson-Goshen Rd
July 31, 2013

Whatcom County Road Department
901 W. Smith Road
Bellingham, WA 98226

Attention: Randy Hanstead

Dear Randy,

Thanks for your prompt response to my inquiry yesterday about the county’s plans for the removal of the beaver dam/house which is blocking the culvert under the Everson-Goshen Road at the Ten Mile creek crossing. Was glad to hear the county has the required permit in hand.

I realise that all crews are busy re-surfacing the many roads in the county. They did the Everson-Goshen Road and I was very impressed with how fast and efficient they were. Good work!

BUT, that having been said, the culverts need to be uncovered and opened now. I know it is easy to find excuses for putting off a job that is difficult, especially one with no simple solution. With the annual restricted time frame for doing this kind of creek work, even with a permit, this project needs to be scheduled very soon. This culvert blockage was called to the county’s attention over a year ago. Perhaps the county could hire a company that does this kind of work?

Please keep me posted as things progress. Thanks.

Very truly yours,

Barbara Thomas

P.S. Don’t even think of retiring until after this dam is removed!
Pumphouse with Bath tub (4) Completely covered.

Feb 2016

Water level
This is the piece of culvert abandoned on west side of road.
Michael & Casey spent 3 1/2 hours pulling the beaver "hutch" off the culvert on the East side of the road. They got 1 culvert cleared which allowed enough water to escape that it was rushing over the sand bar on the West side of the road. They were unable to locate the 2nd culvert from either side of the road. Maybe County rocks are blocking it on West side???

My note made fall of 2013
**TITLE OF DOCUMENT:** Presentation and discussion on potential improvements for the farm animal display at Hovander Homestead Park

**ATTACHMENTS:**

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Staff presentation and discussion on potential improvements for the farm animal display at Hovander Homestead Park.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES
Originator: Weiner 7/25/2017
Division Head: Dept. Head:
Prosecutor: Purchasing/Budget:
Executive:

TITLE OF DOCUMENT:
Contract with Cascadia Law Group - Cherry Point UGA export limits

ATTACHMENTS:
Contract and memo

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.)
Contract for representing Whatcom County and assisting in (1) examining existing County laws including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017; (2) providing clear guidance to current and future county councils on the County’s legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20.88.130 (Major Projects Permit) of the Whatcom County Code; and (3) based on the above study, developing proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.

COMMITTEE ACTION:

COUNCIL ACTION:

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

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### WHATCOM COUNTY CONTRACT INFORMATION SHEET

**Originating Department:** Whatcom County Council  
**Division/Program:** (i.e. Dept. Division and Program)  
**Contract or Grant Administrator:** Karen Frakes, Prosecutor’s Office  
**Contractor’s / Agency Name:** Cascadia Law Group, Attorneys-at-Law  
**Is this a New Contract?** Yes ☐ No ☑  
**If not, is this an Amendment or Renewal to an Existing Contract?** Yes ☑ No ☐  
**Original Contract #:**  
**Does contract require Council Approval?** Yes ☑ No ☐  
**If No, include WCC:** WCC 3.08.060 (A)  
*(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)*  
**Is this a grant agreement?**  
Yes ☑ No ☐  
**If yes, grantor agency contract number(s):**  
**CFDA#:**  
**Is this contract grant funded?**  
Yes ☑ No ☐  
**If yes, Whatcom County grant contract number(s):**  
**Is this contract the result of a RFP or Bid process?**  
Yes ☑ No ☐  
**If yes, RFP and Bid number(s):**  
**Cost Center:**  
**Is this agreement excluded from E-Verify?** No ☑ Yes ☐  
**If no, include Attachment D Contractor Declaration form.**  
**If YES, indicate exclusion(s) below:**  
☐ Professional services agreement for certified/licensed professional.  
☐ Contract work is for less than $100,000.  
☐ Contract work is for less than 120 days.  
☐ Interlocal Agreement (between Governments).  
☐ Contract for Commercial off the shelf items (COTS).  
☐ Work related subcontract less than $25,000.  
☐ Public Works - Local Agency/Federally Funded FHWA.  

**Contract Amount:** (sum of original contract amount and any prior amendments):  
$ 40,000  
**This Amendment Amount:**  
$  
**Total Amended Amount:**  
$ 40,000  

**Summary of Scope:** The general purpose or objective of this Agreement is to represent Whatcom County and conduct the study and make the recommendations required by Whatcom County Comprehensive Plan Policy 2CC-16, as more fully and definitively described in Exhibit A hereeto.

**Term of Contract:** 8/1/17-12/31/17  
**Expiration Date:** 12/31/17  
**Contract Routing:**  
1. Prepared by: Marina Engels  
2. Attorney signoff: KNF  
3. AS Finance reviewed: M Caldwell  
4. IT reviewed (if IT related):  
5. Contractor signed:  
6. Submitted to Exec.:  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  
   
   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.
CONTRACT FOR SERVICES AGREEMENT
LEGAL REPRESENTATION BY CASCADIA LAW GROUP PLLC

Cascadia Law Group PLCC, 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), page 9,
Exhibit B (Compensation), page 10,
Exhibit C (Appointment of Special Deputy Prosecuting Attorney), page 11,
Exhibit D (Certificate of Insurance), page 12.

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 August, 2017, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2017.

The general purpose or objective of this Agreement is to conduct the study and make the recommendations required by Whatcom County Comprehensive Plan Policy 2CC-16, 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 $40,000.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this ______ day of ______________, 2017.

CONTRACTOR:

Cascadia Law Group PLCC

Rodney Brown

STATE OF WASHINGTON
COUNTY OF King

On this 21st day of July, 2017 before me personally appeared Rodney Brown, to me known to be the Partner (title) of Cascadia Law Group PLCC (Company) 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 Seattle.

My commission expires: 3.20.18.
WHATCOM COUNTY:

Approved as to form:

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:

Cascadia Law Group PLLC

Address:

1201 Third Avenue, Suite 320
Seattle, WA 98101-2933

Mailing Address:

1201 Third Avenue, Suite 320
Seattle, WA 98101-2933

Contact Name: Rod Brown

Contact Phone: (206) 292-6300

Contact FAX: (206) 292-6301

Contact Email: rbrown@cascadialaw.com

Contract for Services Agreement
Cascadia Law Group PLLC
V 1.0
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:** Not Applicable

11.2 **Termination for Reduction in Funding:** Not Applicable

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

Series 20-29: Provisions Related to Consideration and Payments

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

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

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

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

22.1 **Withholding Payment:** Not Applicable

23.1 **Labor Standards:** Not Applicable

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

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

Property Damage - $ 500,000.00 per occurrence
Bodily injury- $ 1,000,000.00 per occurrence

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit " D ". This insurance shall be considered as primary and noncontributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

b. The Contractor shall carry for the duration of this Agreement professional liability insurance with the following minimum:
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:** Not Applicable

34.3 **Defense & Indemnity Agreement:** Not Applicable

35.1 **Non-Discrimination in Employment:**
The County’s policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

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

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

35.2 **Non-Discrimination in Client Services:** Not Applicable

36.1 **Waiver of Noncompetition:** Not Applicable

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

Contractor and County are unaware of any current conflicts of interest. Any matters in which Contractor has represented a client that was adverse to the County are closed.

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:

David McEachran
Whatcom County Prosecuting Attorney
311 Grand Ave., Suite 201
Bellingham, WA 98225

37.2 Notice: Not Applicable

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: Not Applicable

38.3 E-Verify: Not Applicable

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

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

42.1 Disputes:

a. General:
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.
b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

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

d. Arbitration: Not Applicable

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

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

45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
EXHIBIT "A"
(SCOPE OF WORK)

The Contractor shall represent Whatcom County and assist in (1) examining existing County laws including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017; (2) providing clear guidance to current and future county councils on the County’s legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20. 88. 130 (Major Projects Permits) of the Whatcom County Code; and (3) based on the above study, developing proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.
EXHIBIT "C"

Whatcom County prosecuting Attorney
311 Grand Avenue
Bellingham, WA 98225

Appointment of Special Deputy Prosecuting Attorney

WHEREAS, RCW 36.27.040 authorizes the Prosecuting Attorney to appoint a Special Deputy Prosecuting Attorney, and

WHEREAS, the Prosecuting Attorney desires to appoint a Special Deputy to represent Whatcom County in conducting the study and making the recommendations required by Whatcom County Comprehensive Plan Policy 2CC-16, in conjunction with the Whatcom County Prosecutor’s Office.

That, Rodney Brown and/or attorneys assigned by him from the law firm of Cascadia Law Group, PLLC, Attorneys at Law, shall be and he/they are hereby appointed by the Whatcom County Prosecuting Attorney as Special Deputy Prosecuting Attorney(s) for the limited purpose of the above-described legal actions.

Dated this _____ day of July, 2017.

_________________________________________________________________
David S. McEachran
Prosecuting Attorney

STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM )

I, Rodney Brown, do solemnly swear that I will support the Constitution of the United States, the Constitution and the laws of the State of Washington, and I will to the best of my judgment, skill and ability, truly, faithfully, diligently, impartially and honestly perform and discharge the duties of the office of the Special Deputy Prosecuting Attorney in and for the County of Whatcom, State of Washington, according to the law and to the best of my ability, so help me God.

_________________________________________________________________
Rodney Brown

SIGNED AND SWORN to before me this _____ day of ________, 2017.

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

My commission expires: ________________
EXHIBIT "B"
(COMPENSATION)

In consideration of the services performed under the terms of this Contract, the Contractor shall be paid a total not to exceed Forty Thousand Dollars ($40,000.00) 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:

Rodney Brown .........................................................$395 per hour for work on this matter
Tanya Barnett ..........................................................$325 per hour for work on this matter
Greg Hibbard ...........................................................$190 per hour for work on this matter
Paralegal ..................................................................$100 per hour

Charges for time spent traveling will be at 75% of the rates shown above.

The Council 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, $.53.5 per mile); copying expenses at $.15 per copy ($.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.
**CERTIFICATE OF LIABILITY INSURANCE**

EXHIBIT D

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER 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 have ADDITIONAL INSURED provisions or 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**
Hub International Northwest LLC  
12100 NE 196th Street, Suite 200  
Bothell, WA 98011

**CONTACT**

**NAME:** Steven Colson  
**PHONE:** (206) 838-1090  
**FAX:**  
**E-MAIL:** steven.colson@hubinternational.com

**INSLR(S) AFFORDING COVERAGE**  
**NAIC #**  
**INSURER A :** American Fire and Casualty Company  
24066  
**INSURER B :** Ohio Casualty Insurance Company  
24074

**INSURED**
Cascadia Law Group PLLC  
Attn: Eric M. Giles  
1201 Third Avenue, Suite 320  
Seattle, WA 98101

**COVARES**

**CERTIFICATE NUMBER:**  
**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>INSURER</th>
<th>TYPE OF INSURANCE</th>
<th>ADDED SUBROGATION</th>
<th>POLICY NUMBER</th>
<th>POLICY EFFECT (MM/DD/YYYY)</th>
<th>POLICY EXPIRATION (MM/DD/YYYY)</th>
<th>LIMITS</th>
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<tbody>
<tr>
<td>A</td>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>X OCCUR</td>
<td>BZA57870498</td>
<td>03/01/2017</td>
<td>03/01/2018</td>
<td>EACH OCCURRENCE $2,000,000</td>
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<tr>
<td></td>
<td></td>
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<td>DAMAGE TO RENTED PREMISES $2,000,000</td>
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<td>MED EXP (Any one person) $15,000</td>
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<td>PERSONAL &amp; ADV INJURY $0</td>
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<td></td>
<td>GENERAL AGGREGATE $4,000,000</td>
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<td>PRODUCTS - COM/POR AGG $4,000,000</td>
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<td>03/01/2018</td>
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<td>BODILY INJURY (Per person) $0</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td>BODILY INJURY (Per accident) $0</td>
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<td>B</td>
<td>UMBRELLA LIAB</td>
<td>X OCCUR</td>
<td>USO57870498</td>
<td>03/01/2017</td>
<td>03/01/2018</td>
<td>EACH OCCURRENCE $3,000,000</td>
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<td></td>
<td>EXCESS LIABILITY</td>
<td></td>
<td></td>
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<td></td>
<td>AGGREGATE $3,000,000</td>
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<td>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</td>
<td>Y/N</td>
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<td>03/01/2017</td>
<td>03/01/2018</td>
<td>E.L. EACH ACCIDENT $2,000,000</td>
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<td></td>
<td></td>
<td>E.L. DISEASE - EA EMPLOYEE $2,000,000</td>
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<td></td>
<td></td>
<td></td>
<td>E.L. DISEASE - POLICY LIMIT $2,000,000</td>
</tr>
</tbody>
</table>

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Certificate Holder is named as an Additional Insured per the written Contract and/or agreement.

**CERTIFICATE HOLDER**
Whatcom County Prosecutor's Office  
311 Grand Ave., Suite 201  
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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2017 Supplemental Budget Request #9

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

**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 #9 requests funding from the Road Fund:
1. To appropriate $46,125 to fund Road Fund portion of Ferry Alternatives Analysis.
2. To appropriate $102,500 to fund Ferry Alternatives Analysis.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
7/25/2017: Introduced
ORDINANCE NO.
AMENDMENT NO. 9 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>Road Fund</td>
<td>46,125</td>
<td>(40,000)</td>
<td>6,125</td>
</tr>
<tr>
<td>Ferry Fund</td>
<td>102,500</td>
<td>(45,125)</td>
<td>56,375</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>148,625</td>
<td>(86,125)</td>
<td>62,500</td>
</tr>
</tbody>
</table>

ADOPTED this ____ day of _________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Chair of the Council

( ) Approved ( ) Denied

Jack Louws, County Executive

Date: ______________________

APPROVED AS TO FORM:

Civil Deputy Prosecutor

I:\BUDGET\SUPPLS\2017_Suppl\Supplemental #8-2017.docx 26
<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>Road Fund</td>
<td>To fund Road Fund portion of Ferry Alternatives Analysis.</td>
<td>46,125</td>
<td>(40,000)</td>
<td>6,125</td>
</tr>
<tr>
<td>Ferry Fund</td>
<td>To fund Ferry Alternatives Analysis.</td>
<td>102,500</td>
<td>(46,125)</td>
<td>56,375</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td></td>
<td>148,625</td>
<td>(86,125)</td>
<td>62,500</td>
</tr>
</tbody>
</table>
### Supplemental Budget Request

**Status:** Pending

<table>
<thead>
<tr>
<th>Public Works</th>
<th>Administration</th>
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</thead>
<tbody>
<tr>
<td><strong>Fund</strong></td>
<td>108</td>
</tr>
<tr>
<td><strong>Cost Center</strong></td>
<td>10895</td>
</tr>
<tr>
<td><strong>Originator:</strong></td>
<td>Randy Rydel</td>
</tr>
</tbody>
</table>

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

**Name of Request:** Companion to Ferry Supplemental 2017-2327

**Department Head Signature (Required on Hard Copy Submission):**  
**Date:** 7/10/17

<table>
<thead>
<tr>
<th>Costs:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Object</strong></td>
<td><strong>Object Description</strong></td>
</tr>
<tr>
<td>8301.444100</td>
<td>Operating Transfer In</td>
</tr>
<tr>
<td>8351 444</td>
<td>Operating Transfer Out</td>
</tr>
<tr>
<td><strong>Request Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

1a. **Description of request:**

Per WCC 10.34.030 the Whatcom County Ferry Operations are subsidized 45% by the Road Fund. Therefore substantial additions to the Ferry Operating budget require additional road fund contribution to comply with the funding split. The ferry request 2017-2327 for $102,500 covers additions to the proposed Level of Service Analysis for the Whatcom Ferry Operations. $46,125 is the additional burden to the road fund due to the additional spending.

Additionally, the LOS analysis will require more direct staff time from road fund employees. This time will be reimbursed to the Road fund and is estimated at $40,000 for 6 months of work on this project. This will be coming to the road fund through an operating transfer in.

1b. **Primary customers:**

2. **Problem to be solved:**

3a. **Options / Advantages:**

3b. **Cost savings:**

4a. **Outcomes:**

4b. **Measures:**

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

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

Public Works Staff and LIFAC are responsible for implementing this through the Ferry Fund.

6. **Funding Source:**

Road Fund Balance

---

**Monday, July 10, 2017**
MEMORANDUM

JUL 11 2017

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

Through: Jon Hutchings, Director

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

Date: July 10, 2017

RE: 2017 Supplemental Budget Request (2017-2327) – Lummi Island Ferry LOS

Requested Action
Whatcom County Public Works Department requests the addition of $56,375 in expenditure authority to proceed with the Alternatives Analysis to establish a level of service for the Lummi Island Ferry System.

Project Background
Following direction from the Whatcom County Council on February 21, 2017, the Lummi Island Ferry Advisory Committee (LIFAC) and Whatcom County Public Works Department are moving forward with the negotiated contract for a consulting firm to perform an alternatives analysis, establish preliminary cost and funding recommendations for a level of service of the Lummi Island Ferry System. The consultant will schedule to meet with LIFAC on a monthly basis to provide input on the direction and measured goals of the report/recommendation. This analysis implements Comprehensive Plan policy 6C-9.

Funding Amount and Source
This request utilizes ferry fund balance.

Please contact Roland Middleton at extension 6212, if you have any questions or concerns regarding this topic.
Supplemental Budget Request

Public Works  Ferry & Docks

Supp11D # 2327  Fund 444  Cost Center 444100  Originator: Roland Middleton

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

Name of Request: Ferry LOS Suppmental #2

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>
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<tbody>
<tr>
<td></td>
<td>Extra Help</td>
<td>$9,800</td>
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<tr>
<td>6120</td>
<td>Professional Services</td>
<td>$25,000</td>
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<tr>
<td>6630</td>
<td>Other Services-Interfund</td>
<td>$27,700</td>
<td></td>
</tr>
<tr>
<td>6699.108</td>
<td>Operating Transfer In</td>
<td>($46,125)</td>
<td></td>
</tr>
<tr>
<td>8301.108</td>
<td>Operating Transfer Out</td>
<td>$40,000</td>
<td></td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td>$56,375</td>
<td></td>
</tr>
</tbody>
</table>

1a. Description of request:
Additional budget approval is requested for consultant firm contract with additional funding allocation for staff time for the Lummi Island Ferry Service Alternatives Analysis.

1b. Primary customers:
The alternatives analysis was requested by the Whatcom County Council (Resolution #2017-012) and the Lummi Island Ferry Advisory Committee (LIFAC).

2. Problem to be solved:
Policy 6C-9 of the Whatcom County Comprehensive Plan identifies the need for a ferry feasibility study to establish a new level of service and analyze the alternatives for the Lummi Island Ferry System.

3a. Options / Advantages:
The additional Professional Services funds accounts for the final negotiated scope of work with KPFF consulting firm. The firm was selected by a committee including two LIFAC members, an additional representative of LIFAC and Whatcom County Public Works staff.

3b. Cost savings:
Most of the Data needs are collected and recorded by extra help at a much reduced rate than using the professional service contract.

4a. Outcomes:
The completed contract will provide LIFAC with a publicly vetted level of service to recommend to the Whatcom County Council.

4b. Measures:
Recommended level of service for the Lummi Island Ferry System.

5a. Other Departments/Agencies:
N/A

5b. Name the person in charge of implementation and what they are responsible for:
Lummi Island Ferry Advisory Committee is assisted by Roland Middleton, Whatcom County Public Works Special Programs Manager.

6. Funding Source:
Whatcom County Ferry Operations. Per WCC 10.34.030 Operations are 55% funded by fare box

Monday, July 10, 2017  Rpt: Rpt Suppl Regular
receipts. The remaining 45% is covered through operating subsidies from the Road Fund.
TITLE OF DOCUMENT: Approval to Purchase an Electronic Situational Status Display System

ATTACHMENTS: Memos from Finance and Facilities

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

The Sheriff's Office Division of Emergency Management requests approval for a sole source purchase of an electronic situational status display system. This display system will integrate with the incident management software currently used at the Whatcom Unified Emergency Coordination Center.
DATE: July 26, 2017
TO: Jack Louws, County Executive
FROM: Brad Bennett, Finance Manager
SUBJECT: Purchase of an Electronic Situational Status Display System

- Background & Purpose

The Sheriff’s Office Division of Emergency Management requests approval to purchase an electronic situational status display (ESSD) system. The vendor is The Response Group (TRG), and the total cost for this purchase will not exceed $52,671.00, including installation, configuration, and sales tax.

TRG is a sole source for this ESSD system, as it is designed to integrate with the incident management software currently in use at the Whatcom Unified Emergency Coordination Center, TRG’s Incident Action Plan SoftwareTM.

- Funding

Funding for this purchase was received through a grant appropriated on Supplemental Budget Request #1, Ordinance #2017-003, with additional funding approved on Supplemental Budget Request #6, Ordinance #2017-034.

Approved as recommended:

____________________
County Executive

Date of Council Action_________________
MEMO

To: Jack Louws, County Executive

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

Subject: Sole Source Justification with TRG – The Response Group
          WUECC Electronic Situational Status Display (ESSD) System

Date: July 17, 2017

Requested Action
Whatcom County Sheriff’s Office Division of Emergency Management (WCSO-DEM) is seeking approval to purchase an Electronic Situation Status Display (ESSD) System from The Response Group (TRG) as a sole source provider.

Background and Purpose
The Whatcom Unified Emergency Coordination Center (WUECC) is the single coordinated emergency point for Whatcom County and includes participation from the private sector and multiple political jurisdictions. After each exercise and disaster response, WUECC partners discuss and prioritize projects that will enhance the functionality of the WUECC.

The display equipment in place at the WUECC is old and does not support the current incident action plan software used by WCSO-DEM. WCSO-DEM, the US Coast Guard, and WUECC’s industry partners utilize TRG’s Incident Action Plan (IAP) SoftwareTM. TRG’s Electronic Situational Status Display (ESSD) has been designed to work directly with TRG’s IAP SoftwareTM. This integrated system will provide incident management teams with the ability to manage, organize, document, and display data collected and actions taken, ensuring that command officials have a timely common operating picture throughout the duration of an incident. Procuring TRG’s Electronic Situational Status Display (ESSD) has been identified as one of the WUECC priorities.

Funding Amount and Source
WCSO-DEM received a $45,000 Phillips 66 Corporate Citizenship General Grant to purchase the ESSD. The balance will be funded by additional donations from WUECC industry partners.

Please contact John Gargett (360-778-7160) if you have any questions.
June 20, 2017

John Gargett
Deputy Director
Whatcom County Sheriff’s Office Division of Emergency Management
311 Grand Avenue, Bellingham, WA 98225
Office: (360) 676-6681  Direct: (360) 778-7160
JGARGETT@CO.WHATCOM.WA.US
WWW.WHATCOMREADY.ORG

Re: Whatcom EOC – Electronic Sit Stat Display

I am pleased to submit the attached proposal for the Electronic Situation Status Display installation and configuration at Whatcom Unified Emergency Coordination Center

Project Description
Associated Costs
Proposal Acceptance

We look forward to your response and further engagement. Please do not hesitate to contact me with any questions.

Regards,

[Signature]

Kenny Rhame
The Response Group
13939 Telge Road
Cypress, TX 77429
Office: 281-880-5000
Cell: 832-493-3272
krhame@responsegrouppinc.com
WWW.RESPONSEGROUPINC.COM
Whatcom Unified Emergency Coordination Center
Proposal # 012417 Whatcom ESSD

June 20, 2017

The Response Group
Company Background:

The Response Group (TRG) is a unique provider of response planning and support services with offices in Houston, Anchorage, New Orleans, Boston and Lake Charles with additional representation in Chicago, Denver, San Diego, San Francisco, Seattle and Tampa. The company was founded in March 2003 and draws upon years of combined experience in the emergency response industries.

Project Description/Scope of Work:

Installation and configuration of equipment to build the Electronic Situation Status Display (ESSD) at the Whatcom Unified Emergency Coordination Center.

- 8 – 46" Multi touch display with onboard computer
- 8 – wall mount brackets for display
- 1 – 70" Display for center (will not have touch or onboard computer
- Clickshare Presentation System to control center 70" display

Proposed Costs:

Requirements

Wall mounts and displays to be installed on the walls similar to the diagram shown below. Installation will require electrical power for all wall mounted displays. The 8 – 46” displays require network access to the internet. TRG suggests hard wiring network connections for the displays, optionally the displays are capable of connecting to a wireless network. Spec sheets for the equipment will be included with the proposal.

*Time and material for the electrical, network and installing displays on the wall is not included in the proposal. TRG will provide requirement details for the installation and wiring.
## Estimated Cost

### Option 1 – Clickshare CSE-200 System with 2 connections

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<thead>
<tr>
<th>Personnel</th>
<th>Qty</th>
<th>Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT Support</td>
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<tr>
<td>- Onboard computer setup</td>
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<tr>
<td>- Display configuration</td>
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<td></td>
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<tr>
<td>- Testing</td>
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<tr>
<td>* Expenses not included (airfare, hotel, meals, etc.)</td>
<td>6 days</td>
<td>$950</td>
<td>$5,700</td>
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<table>
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<th>Qty</th>
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<th>Total Cost</th>
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<td>46&quot; Display (touch screen with onboard computer)</td>
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<td>$3,900</td>
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<td>70&quot; display wall mount bracket</td>
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<tr>
<td>46&quot; display wall mount bracket</td>
<td>8</td>
<td>$200</td>
<td>$1,600</td>
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<tr>
<td>Misc installation items</td>
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<td>(network patch cables, wire ties, etc.)</td>
<td>1</td>
<td>$200</td>
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<tr>
<td>Clickshare CSE-200 System (2 connectors)</td>
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<td>$2,400</td>
<td>$2,400</td>
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**Sub Total** $44,850

### Option 2 – Clickshare CSC-1 System with 4 connections

<table>
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<th>Qty</th>
<th>Cost</th>
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<tbody>
<tr>
<td>IT Support</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>- Onboard computer setup</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>- Display configuration</td>
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<td></td>
<td></td>
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<tr>
<td>- Testing</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>* Expenses not included (airfare, hotel, meals, etc.)</td>
<td>6 days</td>
<td>$950</td>
<td>$5,700</td>
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<table>
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<th>Equipment</th>
<th>Qty</th>
<th>Cost</th>
<th>Total Cost</th>
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<tbody>
<tr>
<td>70&quot; Display (center)</td>
<td>1</td>
<td>$3,200</td>
<td>$3,200</td>
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<tr>
<td>46&quot; Display (touch screen with onboard computer)</td>
<td>8</td>
<td>$3,900</td>
<td>$31,200</td>
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<td>70&quot; display wall mount bracket</td>
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<tr>
<td>46&quot; display wall mount bracket</td>
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<td>$1,600</td>
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<tr>
<td>Misc installation items</td>
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<tr>
<td>(network patch cables, wire ties, etc.)</td>
<td>1</td>
<td>$200</td>
<td>$200</td>
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<tr>
<td>Clickshare CSE-200 System (2 connectors)</td>
<td>1</td>
<td>$4,000</td>
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**Sub Total** $46,450
Estimated Expenses

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<td>Rental Car</td>
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<td>$420</td>
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<tr>
<td>Meals (per diem)</td>
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<td>$306</td>
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<td>Airport Parking</td>
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<td>$90</td>
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<tr>
<td>Mileage</td>
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<td>$0.545</td>
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<tr>
<td></td>
<td></td>
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<td><strong>Sub Total</strong></td>
</tr>
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</table>

Proposal Acceptance

If the terms set forth in Proposal # 012417 Whatcom ESSD meet with your approval, please complete the following and fax or mail a copy to our office. An email indicating approval will also be accepted (please include proposal #).

☐ Option 1 – Cickshare CSE-200 System with 2 connections
☒ Option 2 – Cickshare CSC-1 System with 4 connections

Agreed and accepted this _______ day of _______. _______

[Signature]

Name
Situation Status Display

Situation Status Board Layouts

Option 1 – Straight Wall

Dual 46” Display | Dual 46” Display | 70” Display | Dual 46” Display | Dual 46” Display

Minimum distance from wall – 16”

240”

65”

18”

32” Console
April 14, 2017

John Gargett  
Deputy Director  
Whatcom County Sheriff’s Office Division of Emergency Management  
311 Grand Avenue, Bellingham, WA 98225  
Office: (360) 676-6681  Direct: (360) 778-7160  
JGargett@co.whatcom.wa.us  
www.whatcomready.org

Re: Whatcom EOC Electronic Sit Stat Display – Sole Source Provider

The attached letter gives background on The Response Group (TRG) and the IAP Software™. TRG is the sole source provider of the IAP Software™. The Electronic Sit Stat Display (ESSD) equipment is designed to work directly with the IAP Software to create a digital situation display.

Please contact me if you have any questions.

Regards,

Kenny Rhame  
The Response Group  
13939 Telge Road  
Cypress, TX 77429  
Office: 281-880-5000  
Cell: 832-493-3272  
krhame@responsegroupinc.com  
www.responsegroupinc.com
Company Background

The Response Group (TRG) is a unique provider of response planning and support services with offices in Houston, Anchorage, New Orleans, Boston and Lake Charles with additional representation in Chicago, Denver, San Diego, San Francisco, Seattle and Tampa. The company was founded in March 2003 and draws upon years of combined experience in the emergency response industries.

Incident Action Plan (IAP) is a fully NIMS-compliant software package that provides for all services, functionality and capability. TRG’s unique and proven IAP Software™ was developed in the mid-90’s after seeing a need to track resources and ICS forms information more effectively than paper-based systems. Over the years, the IAP Software has evolved and continues to evolve based on user feedback from user groups, drills/exercises, training, and real events. By using the Incident Command System (ICS) process and enhanced Common Operating Picture (COP) module, IAP Software manages and conveniently organizes the entirety of an incident response from the necessary resources (personnel & equipment) to the finances and logistics. IAP is a user-friendly system of forms and reports that ensures command officials have valid, up-to-the-minute data through the duration of an incident.

Project Overview

In an effort to modernize and streamline the situation status display used in the Command Post, TRG has developed an Electronic Situation Status Display (ESSD). The display is powered by the IAP Software and uses a combination of 8 large multi-touch display screens with an extra-large center display for displaying the Common Operating Picture.

The IAP Software was developed to work specifically with the multi-touch display interface. The displays allow users to view documents on the display screens with the ability to scroll through multi page documents, pinch to zoom or switch between related documents on the same screen.

The COP (Common Operating Picture) is viewed on the large center display. It includes dynamic GIS layers that displays the current situation status on the map. Users have the ability to navigate the map, turn on/off different layers or run a variety of reports from the console. The COP is directly integrated with the IAP Software and displays locations for the incident, areas of operations, resource locations, medical facilities and resources at risk as they are documented on the correct forms.
Title of Document: Professional Service contract with KPFF Consulting Engineers to perform an alternatives analysis to establish a new level of service for the Lummi Island Ferry System.

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

Whatcom County Council Resolution #2017-012 directs the Lummi Island Ferry Advisory Committee (LIFAC) and Whatcom County Public Works Department to contract with a consultant to develop an alternatives analysis, establish preliminary cost and funding recommendations for a level of service of the Lummi Island Ferry System. KPFF Consulting Engineers was selected by LIFAC and Whatcom County Public Works for the professional services contract. This analysis implements Comprehensive Plan policy 6C-9 and follows the direction of the goal statements for new level of service for the Lummi Island Ferry System.
TO: The Honorable Jack Louws, Whatcom County Executive, and Honorable Members of the Whatcom County Council

THROUGH: Jon Hutchings, Director

FROM: Roland Middleton, L.E.G., Special Programs Manager

RE: Professional Services Contract with KPFF Consulting Engineers-Lummi Island Ferry LOS

DATE: July 11, 2017

- Requested Action

Whatcom County Public Works Department requests Whatcom County Council and the Whatcom County Executive to approve the attached contract.

- Project Background

Following direction from the Whatcom County Council from Resolution #2017-012, the Lummi Island Ferry Advisory Committee (LIFAC) and Whatcom County Public Works Department are moving forward with the negotiated contract for a consulting firm to perform an alternatives analysis, and establish preliminary cost and funding recommendations for a level of service of the Lummi Island Ferry System. Project scope considers alternative docking facilities to address long term needs of the Lummi Nation and Lummi Island community. The consultant is scheduled to meet with LIFAC on a monthly basis to provide input on the direction and measured goals of the report/recommendation. This analysis implements Comprehensive Plan policy 6C-9 and follows the direction of the goal statements for new level of service for the Lummi Island Ferry System.

- Funding Amount and Source

This request utilizes ferry fund balance. $300,000 of this contract was approved by Supplemental Budget Request #20 17-2254. The remaining $22,119 is requested in Supplemental Budget Request #2017-2327 scheduled for approval August 8, 2017.

Please contact Roland Middleton at extension 6212, if you have any questions or concerns regarding this topic.
**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>Lummi Island Ferry</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Roland Middleton</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>KPFF</td>
</tr>
</tbody>
</table>

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

**Does contract require Council Approval?** Yes □ No □
If No, include WCC: N/A
(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): N/A CFDA#: N/A

**Is this contract grant funded?** Yes □ No □
If yes, Whatcom County grant contract number(s): N/A

**Is this contract the result of a RFP or Bid process?** Yes □ No □
If yes, RFP and Bid number(s): RFP #17-39 Contract Cost Center: 444100

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

- 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):**
$ 322,119.00

**This Amendment Amount:**

$ 

**Total Amended Amount:**

$ 

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

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

**Summary of Scope:** Whatcom County Council resolution #2017-012 directs the Lummi Island Ferry Advisory Committee and Whatcom County Public Works to contract with a consultant to develop an alternatives analysis and recommended level of service for the Lummi Island Ferry System. KPFF consulting group was selected for the professional services contract. The Local Agency Agreement contract form was used as this phase of work will likely development into a Federally Funded project.

**Term of Contract:** August 9, 2017  
Expiration Date: December 31, 2019

**Contract Routing:**
1. Prepared by: Roland Middleton
2. Attorney signoff: Daniel L. Gibson
   
\[07/28/17\]
3. AS Finance reviewed:
4. IT reviewed (if IT related): C. Bennett
5. Contractor signed: ✔
6. Submitted to Exec.:  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  

**Last edited 10/31/16**
Local Agency A&E Professional Services
Negotiated Hourly Rate Consultant Agreement

Agreement Number:

<table>
<thead>
<tr>
<th>Firm/Organization Legal Name (do not use dba's):</th>
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</thead>
<tbody>
<tr>
<td>KPFF Consulting Engineers</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Address</th>
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<tbody>
<tr>
<td>1601 Fifth Avenue, Suite 1600, Seattle, WA 98101</td>
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<table>
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<th>Federal Aid Number</th>
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<th>1099 Form Required</th>
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<table>
<thead>
<tr>
<th>Federal Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
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Project Title
Lummi Island Ferry Level of Service Alternatives Analysis

Description of Work
Work with Whatcom County and the Lummi Island Ferry Advisory Committee to develop ferry service delivery options for the Lummi Island community.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No DBE Participation</th>
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<tbody>
<tr>
<td></td>
<td>Total Amount Authorized: 302,119.00</td>
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<table>
<thead>
<tr>
<th>Yes</th>
<th>No MBE Participation</th>
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<tr>
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<td>Management Reserve Fund: $20,000.00</td>
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<table>
<thead>
<tr>
<th>Yes</th>
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<tbody>
<tr>
<td></td>
<td>Maximum Amount Payable: $322,119.00</td>
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</tbody>
</table>

| Yes | No SBE Participation |

Index of Exhibits

- Exhibit A: Scope of Work
- Exhibit B: DBE Participation
- Exhibit C: Preparation and Delivery of Electronic Engineering and Other Data
- Exhibit D: Prime Consultant Cost Computations
- Exhibit E: Sub-consultant Cost Computations
- Exhibit F: Title VI Assurances
- Exhibit G: Certification Documents Including G-1(a and b), G-1, G-3, and G-4
- Exhibit H: Liability Insurance Increase
- Exhibit I: Alleged Consultant Design Error Procedures
- Exhibit J: Consultant Claim Procedures

Agreement Number:
THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the Whatcom County hereinafter called the “AGENCY,” and the “Firm / Organization Name” referenced on page one (1) of this AGREEMENT, hereinafter called the “CONSULTANT.”

WHEREAS, the AGENCY desires to accomplish the work referenced in “Description of Work” on page one (1) of this AGREEMENT and hereafter called the “SERVICES;” and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit “A” attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days’ notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit “A.”

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.
Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit “B” attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY’s “DBE Program Participation Plan” and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

The CONSULTANT, on a monthly basis, is required to submit DBE Participation of the amounts paid to all DBE firms invoiced for this AGREEMENT.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit “C – Preparation and Delivery of Electronic Engineering and other Data.”

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:
Name: Roland Middleton
Agency: Whatcom County
Address: 322 N. Commercial Street
City: Bellingham State: WA Zip: 98225
Email: RMiddlet@co.whatcom
Phone: (360)778-6200
Facsimile: (360)778-6201

If to CONSULTANT:
Name: Cassandra Schoenmakers
Agency: KPFF
Address: 1601 Fifth Avenue, Suite 1600
City: Seattle State: WA Zip: 98101
Email: cassandra.schoenmakers@kpff.com
Phone: (206)622-5822
Facsimile:

IV. Time for Beginning and Completion
The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall conform to the criteria agreed upon detailed in the AGREEMENT documents. These SERVICES must be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

Agreement Number:
V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Indirect Cost Rate, and Fixed Fee (Profit). The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits “D” and “E” attached hereto and by reference made part of this AGREEMENT. These negotiated hourly rates will be accepted based on a review of the CONSULTANT’s direct labor rates and indirect cost rate computations and agreed upon fixed fee. The accepted negotiated rates shall be memorialized in a final written acknowledgement between the parties. Such final written acknowledgement shall be incorporated into, and become a part of, this AGREEMENT. The initially accepted negotiated rates shall be applicable from the approval date, as memorialized in a final written acknowledgement, to 180 days following the CONSULTANT’s fiscal year end (FYE) date.

The direct (raw) labor rates and classifications, as shown on Exhibits “D” and “E” shall be subject to renegotiations for each subsequent twelve (12) month period (180 days following FYE date to 180 days following FYE date) upon written request of the CONSULTANT or the AGENCY. The written request must be made to the other party within ninety (90) days following the CONSULTANT’s FYE date. If no such written request is made, the current direct (raw) labor rates and classifications as shown on Exhibits “D” and “E”, will remain in effect for the twelve (12) month period.

Conversely, if a timely request is made in the manner set forth above, the parties will commence negotiations to determine the new direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period. Any agreed to renegotiated rates shall be memorialized in a final written acknowledgement between the parties. Such final written acknowledgement shall be incorporated into, and become a part of, this AGREEMENT. If requested, the CONSULTANT shall provide current payroll register and classifications to aid in negotiations. If the parties cannot reach an agreement on the direct (raw) labor rates and classifications, the AGENCY shall perform an audit of the CONSULTANT’s books and records to determine the CONSULTANT’s actual costs. The audit findings will establish the direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period.

The fixed fee as identified in Exhibits “D” and “E” shall represent a value to be applied throughout the life of the AGREEMENT.

The CONSULTANT shall submit annually to the AGENCY an updated indirect cost rate within 180 days of the close of its fiscal year. An approved updated indirect cost rate shall be included in the current fiscal year rates under this AGREEMENT, even if/when other components of the hourly rate are not renegotiated. These rates will be applicable for the twelve (12) month period. At the AGENCY’s option, a provisional and/or conditional indirect cost rate may be negotiated. This provisional or conditional indirect rate shall remain in effect until the updated indirect cost rate is completed and approved. Indirect cost rate costs incurred during the provisional or conditional period will not be adjusted. The CONSULTANT may request an extension of the last approved indirect cost rate for the twelve (12) month period. These requests for provisional indirect cost rate and/or extension will be considered on a case-by-case basis, and if granted, will be memorialized in a final written acknowledgement.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct (raw) labor, indirect cost rate, and fixed fee (profit) percentage. The CONSULTANT shall bill each employee’s actual classification, and actual salary plus indirect cost rate plus fixed fee.

Agreement Number:
B. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to lowest price available, unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT’s Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and all revisions thereto. Air, train and rental card costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 “Travel Costs.” The billing for Direct Non-salary Costs shall include an itemized listing of the charges directly identifiable with these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.

C. Maximum Amount Payable: The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, “Extra Work.” No minimum amount payable is guaranteed under this AGREEMENT.

D. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. The monthly billings shall be supported by detailed statements for hours expended at the rates established in Exhibit “D,” including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT’s employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.

E. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per WSDOT’s “Audit Guide for Consultants,” Chapter 23 “Resolution Procedures,” the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings.

F. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT’s Internal Audit Office and/or at the request of the AGENCY’s Project Manager.

Agreement Number:
VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit “A” attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit “E” attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub-consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fixed fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V “Payment Provisions” herein and shall be memorialized in a final written acknowledgement between the parties.

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE’s Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen’s Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT’s employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

Agreement Number:
VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 et. seq.)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 et. seq.)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit “F” attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit “F” in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT’s failure to perform is without the CONSULTANT’s or its employee’s fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

Agreement Number:
The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT’s supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII “Extra Work.”

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer’s decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit “J”. In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT’s agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT
to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT’s agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT’s negligence or the negligence of the CONSULTANT’s agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT’s agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY’s, their agents’, officers’ and employees’ failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT’s relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT’s own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the Parties.

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor’s failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Agreement Number:
Insurance Coverage

A. Worker’s compensation and employer’s liability insurance as required by the STATE.

B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars ($1,000,000.00) per occurrence and two million dollars ($2,000,000.00) in the aggregate for each policy period.

C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any “Auto” (Symbol 1) used in an amount not less than a one million dollar ($1,000,000.00) combined single limit for each occurrence.

Excepting the Worker’s Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the “AIs”), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT’s and the sub-consultant’s and/or subcontractor’s insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Christina Schoenfelder  
Agency: Whatcom County  
Address: 322 N. Commercial St. Suite 301  
City: Bellingham  
State: WA  
Zip: 98225  
Email: cschoenfelder@co.whatcom.wa.us  
Phone: (360)778-6274  
Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT’s professional liability to the AGENCY, including that which may arise in reference to section IX “Termination of Agreement” of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT or one million dollars ($1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT’s professional liability to third parties be limited in any way.

The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V “Payment Provisions” until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

Agreement Number:
XIII. Extra Work

A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.

C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.

D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit “G-1(a and b)” are the Certifications of the CONSULTANT and the AGENCY, Exhibit “G-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit “G-3” Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit “G-4” Certificate of Current Cost or Pricing Data. Exhibit “G-3” is required only in AGREEMENT’s over one hundred thousand dollars ($100,000.00) and Exhibit “G-4” is required only in AGREEMENTS over five hundred thousand dollars ($500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III “General Requirements” prior to its performance of any SERVICES under this AGREEMENT.

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

Agreement Number:
XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE and AGENCY security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY’s express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a non-disclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State’s Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State’s Confidential Information was received; who received, maintained and used the State’s Confidential Information; and the final disposition of the State’s Confidential Information. The CONSULTANT’s records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State’s Confidential Information, monetary damages, or penalties.

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

Agreement Number:
The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. “Proprietary and/or confidential information” is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and/or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as “Proprietary and/or confidential information” or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant’s proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY’s said disclosure of sub-consultants’ information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all “documents” pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all “documents” pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT’s place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. “Documents” shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, “documents” means every writing or record of every type and description, including electronically stored information (“ESI”), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENTs, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribblings, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.
For purposes of this AGREEMENT, “ESI” means any and all computer data or electronic recorded media of any kind, including “Native Files”, that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

“Native files” are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and/or modified.

The CONSULTANT shall include this section XX “Records Maintenance” in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the “Execution Date” box on page one (1) of this AGREEMENT.

[Signature]

[Date] 7/13/17

See attached Whatcom County Signature Page

[Signature]

[Date]

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

Agreement Number:
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 7/20/17
Jon Hutchings  Date
Department Director

Approved as to form:

[Signature] 07/28/17
Daniel L. Gibson  Date
Chief Civil Deputy Prosecutor

Approved:
Accepted for Whatcom County:

Jack Louws
Whatcom County Executive

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  ) ss

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

___________________________
NOTARY PUBLIC in and for the State of Washington, residing at _______________________
My commission expires ___________________
Exhibit A
Scope of Work

Project No. Lummi Island LOS

The Agency has established a Management Reserve Fund (MRF) to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the amount included for the MRF as shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, "Extra Work".

Please see the attached ten-page description of work to be performed by KPFF.
July 7, 2017

Mr. Roland Middleton
Special Programs Manager
Public Works Administration
322 North Commercial Street, Suite 210
Bellingham, WA 98225

Subject: Lummi Island Ferry Level of Service (LOS) Alternatives Analysis
Outline of Scope of Services – Revised

Dear Mr. Middleton,

Based on our understanding of the project and our discussion on July 6, 2017, we prepared the following scope of services for your review and approval. We look forward to working with you and LIFAC to develop service delivery options for the Lummi Island community.

CONSULTANT SCOPE OF SERVICES

TASK 1: Background and Baseline

The analysis will begin by establishing a baseline of the current Lummi Island Ferry System through the following subtasks:

1.1 Summarize Previous Studies
   • Review and summarize relevant studies completed by LIFAC and others related to vessels, capacity and siting studies.

1.2 Existing Vessel Characteristics
   • Review latest drydock specifications and condition reports, especially with respect to hull steel, in order to estimate the Whatcom Chief's remaining life. Main engine and generator condition will also be reviewed.
   • Determine passenger, freight and vehicle volumes (friction point on existing service).
   • Meet with key operational staff to understand how system works, impacts to crewing based on seasonal demands and identify successes and failures experienced.
   • Consider seasonal climate conditions (wind, waves and visibility).
   • Review existing terminal facilities for future vessel compatibility.
   • Review the annual maintenance data including expenditures for the Whatcom Chief.
1.3 Service Delivery Data
- Review and summarize current sailing schedules and wait times.
- Summarize existing queuing capacity, parking and amenities identified by LIFAC.

1.4 Financial Data Collection
- Review existing financial documents (3- to 5-year period).
- Review funding structure for capital and operating costs for the past 10 years.

1.5 Development Plans
- Document condition of existing and planned terminal infrastructure and ownership.
- Review and summarize future development plans at Gooseberry Point and Lummi Island.

Assumptions
- Whatcom County Public Works will provide all existing documentation necessary to assess the above listed tasks, in electronic format.
- EBDG will request any additional information they do not already have from their ongoing work on the Whatcom Chief.
- KPFF and consultant team will review these documents prior to the site visit.
- One site visit will be held over a period of one day to meet with the Project Manager and operational staff to obtain background information. Attendance at the site visit includes two (2) KPFF staff and one (1) EBDG staff person.
- Whatcom County Public Works and LIFAC will review and provide comments on draft memos within two (2) weeks of receiving the draft memo.
- The KPFF Team anticipates finalizing the memos within two (2) weeks of receiving review comments. This timeframe is dependent on the level of analysis required to address comments.

Deliverables
- Draft and final memo summarizing previous studies.
- Draft and final memo summarizing existing vessel characteristics.
- Draft and final memo summarizing service delivery and financial information.
- Draft and final memo summarizing development plans.

TASK 2: Ridership and Growth Projections

In addition to establishing a baseline of the Lummi Island Ferry System, ridership projections will be prepared through the following subtasks:

2.1 Ridership Data Collection
- The KPFF Team will review and analyze ridership data (passengers [residents and non-residents] and vehicles [autos, commercial vehicles, other]) from Daily Traffic & Sales Reports, as well as level of service (number of sailings) by day and by month for a minimum of 10 years to build the forecasting model. Data will be summarized and distinguished between weekdays and weekends/holidays.
• The KPFF Team will review and analyze historic fare levels for the same historical period of at least 10 years. The team will also obtain economic and demographic data tied to demand (including employment in the Whatcom County area, indicators of leisure and tourist activity, building permits) to be collected by the KPFF Team for a historical period of at least 10 years.

2.2 Freight Data Collection
• The KPFF Team will review and analyze commercial vehicle (heavy and light truck) data will be obtained from Daily Traffic & Sales Reports and summarized into monthly movements covering at least 10 years.

2.3 Prepare ridership demand model to forecast high-season and off-season ridership to Lummi Island for 5, 10, 20 years into the future.
• Estimate separate econometric models for weekday passengers/autos, weekend passenger/autos, weekday trucks and weekend trucks, as data clearly suggest different trends for these days.
• Prepare separate models to best capture the different market dynamics of passengers and autos versus trucks.
• Assess seasonal variations captured within the model parameters.
• Models will be based on historical relationships between employment, service levels, fares, and tourism/leisure activity and ridership, and the models that will generate future forecasts of demand based on regional economic forecasts, as well as, assumptions regarding future fare and service level assumptions.

2.4 Reassess Ridership Findings
• Use the model to test the service delivery options and determine how demand might respond to these options.
• Based on the service alternatives identified in Task 7, the econometric models, which will have estimated a relationship between various factors including level of service and ridership, will be used to assess how passengers, autos and trucks change in response to the service delivery options. The forecasts will then be adjusted based on various scenarios/assumptions regarding level of service recommendations developed in Task 6.

Assumptions
• Whatcom County Public Works staff will provide electronic data for ridership and fare levels to the KPFF Team.
• The model will be primarily driven by employment or population (depending on which produces a better model). The models will also incorporate service levels, leisure spending (especially for weekend models), as well fares. Other potential variables tested could include tourism indicators for Whatcom County, among other potential factors influencing ferry demand.
• The models would be run to both forecast future demand in a "base case" LOS as well as test impacts of several LOS scenarios.
• Whatcom County Public Works and LIFAC will review and provide comments on draft memos within two (2) weeks of receiving the draft memo.
• The KPFF Team anticipates finalizing the memos within two (2) weeks of receiving review comments. This timeframe is dependent on the level of analysis required to address comments.
Deliverables
- Draft and final memo summarizing existing ridership trends and freight traffic, statistical analyses and econometric estimation results.
- Analyses of LOS impacts.
- Draft and final ridership memo (approach, assumptions and findings).

**TASK 3: Establish Goals, Vision and Confirm Desired LOS for Lummi Island Ferry**

The KPFF Team will confirm assumptions of the Lummi Island Ferry System with the LIFAC, and refine the goals and long-term vision of the Lummi Island Ferry system to inform the operational analysis. This will be completed through the following subtasks:

**3.1 Confirm Task 1 and Task 2 Assumptions with LIFAC**
- Review and confirm findings identified in Task 1.
- Review and discuss findings of growth projections.

**3.2 Define Desired LOS**
- Conduct workshop with Whatcom County Public Works and LIFAC to define desired LOS (e.g., acceptable wait times, quantity/quality of the queue, service reliability, etc.)
- Identify desired LOS and performance metrics to monitor delivery of LOS.

**Assumptions**
- LIFAC will review the memos and findings from Tasks 1 and 2 prior to workshop with KPFF.
- KPFF (PM and Director) and EBDG will hold a 2-hour workshop with Whatcom County Public Works and LIFAC.
- Whatcom County Public Works and LIFAC will review and provide comments on draft memos within two (2) weeks of receiving the draft memo.
- The KPFF Team anticipates finalizing the memos within two (2) weeks of receiving review comments. This timeframe is dependent on the level of analysis required to address comments.

**Deliverables**
- Draft and final memo summarizing the goals, vision and desired LOS for the system and performance metrics for monitoring delivery of the LOS.

**Task 4: Vessel Characteristics and Alternatives**

The KPFF Team will review vessel alternatives to support the desired LOS through the following tasks:

**4.1 Vessel Alternatives Analysis**
- Evaluate three vessel alternatives to meet desired long-term LOS.
- Evaluation will include the following:
  - Vehicle and passenger loading/unloading time estimate for each alternative.
  - Preliminary schedule matrix for the alternatives.
  - Estimated crew requirements for each alternative.
  - Nominal design and construction schedule for a new vessel.
4.2 Maintenance/Reserve Vessels
- Examine the availability of existing reserve vessels that match the configuration and size required to meet the LOS.

4.3 Alternative Fuels and Propulsion System Evaluation
- Develop a propulsion study evaluating alternative fuels and electric/hybrid propulsion for the following configurations:
  - Conventional diesel engines (baseline option).
  - Dual fuel engines (LNG and diesel).
  - Diesel electric/hybrid propulsion plant.
  - All electric propulsion plant.
- The propulsion systems will be evaluated and quantitatively scored using a selection matrix.
  - Selection criteria and weightings for the matrix will be used based on preferences from Whatcom County. Possible criteria could include capital cost, life cycle cost, maintenance/maintainability, crew familiarity and training, and reliability.

4.4 Vessel Capital and Operating Expenses
- Provide inputs for financial model
  - Estimate capital costs for each of the three vessel alternatives.
  - Estimate annualized operating costs including crew levels, fuel and maintenance for each of the three vessel alternatives.

Assumptions
- Only double-ended ferry designs with open vehicle decks will be considered in the vessel alternatives analysis.
- Capital and operational costs will be developed parametrically.
- General arrangement drawings are excluded at this stage.
- Vessel particulars will be estimated parametrically.
- Whatcom County Public Works and LIFAC will review and provide comments on draft memos within two (2) weeks of receiving the draft memo.
- The KPFF Team anticipates finalizing the memos within two (2) weeks of receiving review comments. This timeframe is dependent on the level of analysis required to address comments.

Deliverables
- Draft and final memo summarizing the results of the vessel alternatives analysis including preliminary schedule options and evaluation matrix, and direction on new vessel acquisition.
- Draft and final memo summarizing the results of the reserve vessel study.
- Draft and final memo detailing the results of the alternative fuels and propulsion system evaluation.
- Draft and final memo summarizing the results of the capital and operating expense estimates.
TASK 5: Terminal Improvement Options

The KPFF Team will review terminal improvement options to support the desired LOS through the following tasks:

5.1 Site Opportunities for the Lummi Island Terminal
- Determine landing infrastructure modifications for the three vessel alternatives provided in Task 4.
- Present emergency landing options.
- Define queuing area requirements and identify queuing options.
- Assess parking options.
- Identify locations for passenger amenities like restrooms and passenger waiting areas.
- Provide regulatory considerations (safety, security, environmental, cultural resources) for each alternative.
- Prepare a planning-level schedule and rough order of magnitude (ROM) cost estimate for the site alternatives.

5.2 Site Opportunities for the Gooseberry Point Terminal
- Identify three site development alternatives for the Gooseberry Point terminal.
- Present emergency landing options.
- Define queuing area requirements for each site.
- Assess parking and options for each site.
- Identify locations for passenger amenities like restrooms and passenger waiting areas.
- Provide regulatory considerations (safety, security, environmental, cultural resources) for each alternative.
- Prepare a planning-level schedule and ROM cost estimate for the site alternatives.

Assumptions
- KPFF will review three (3) alternatives for the Gooseberry Point Terminal.
- Planning-level concepts of the site alternatives will be provided, this effort does not include engineered drawings.
- KPFF will conduct one (1) site inspection at the Lummi Island Terminal and Gooseberry Point Terminal.
- Whatcom County Public Works and LIFAC review and provide comments on draft memos within two (2) weeks of receiving the draft memo.
- The KPFF Team anticipates finalizing the memos within two (2) weeks of receiving review comments. This timeframe is dependent on the level of analysis required to address comments.

Deliverables
- Draft and final memo summarizing terminal improvement options that support the delivery of the desired LOS with an evaluation matrix weighing the benefits and challenges of each option.
- Planning-level implementation schedule and ROM cost for each alternative.
TASK 6: Cost Projections and Funding Opportunities

The financial analysis will evaluate the variable revenue and cost of the proposed vessel alternatives and service delivery options. A financial model will be built to forecast the net direct operating cost (forecast revenue less forecast cost) and other selected performance metrics (such as cost per passenger or farebox recovery) of each alternative. These forecasts can be compared to one another.

6.1 Cost Projections
- Define key operating parameters and their relationship to direct (variable) costs.
- Identify variable cost elements (inputs).
- Assess available data.
- Identify, define required data and approach to collecting.
- Collect and compile data to develop cost inputs.

6.2 Identify Funding Sources
- Prepare an inventory of potential funding sources including federal state and local grant programs and local tax authorities.
- Evaluate the potential yield and likelihood of each source.

6.3 Develop Financial Forecast
- Develop cost forecasting model.
- Develop financial statement for each proposed service delivery option.
- Develop financial plan for selected option.

Assumptions
- The KPFF Team will work with Whatcom County Public Works staff to identify and assess local funding sources and past experience with grant applications.

Deliverables
- Service delivery option financial forecast.
- Potential funding matrix.
- Proposed financial plan for the selected service delivery option.

TASK 7: Service Alternatives

Based on the information gathered in Tasks 1-6, develop service alternatives that reflect the desired LOS.

7.1 Draft Service Delivery Alternatives
- Prepare matrix of service options including vessels, service delivery options and costs.

7.2 Final Service Delivery Recommendation
- Based on feedback from Task 8, refine the recommended service alternatives and prepare a matrix of final vessel, site and cost/funding recommendations.
Assumptions

- Draft and final service alternatives will be reviewed by Whatcom County Public Works and LIFAC prior to presenting in the public workshop.
- Whatcom County Public Works and LIFAC will review and provide comments on draft memos within two (2) weeks of receiving the draft memo.
- The KPFF Team anticipates finalizing the memos within two (2) weeks of receiving review comments. This timeframe is dependent on the level of analysis required to address comments.

Deliverables

- Draft and final service alternatives presented in packages for various stakeholders including Whatcom County Public Works, LIFAC and the public.

Task 8: Public Outreach

Public outreach component will include an initial public outreach workshop to educate, present and solicit feedback on the goals and vision for the Lummi Island Ferry System and initial LOS alternatives. The second public outreach workshop will present the refined alternatives and receive feedback findings and recommendations and ultimately present the final recommendations.

8.1 Initial Public Outreach Workshop

- Coordination and support of Whatcom County Public Works in facilitating a public workshop.
- Present draft service delivery alternatives with cost and findings.
- Develop workshop materials and questions to ask participants.

8.2 Follow-up Public Outreach Workshop

- Coordination and support of Whatcom County Public Works in facilitating a public workshop.
- Present recommended service delivery option with cost and findings.
- Develop workshop materials and questions to ask participants.

Assumptions

- Attend two (2) public workshops for four (4) hours each with two (2) KPFF staff (KPFF Project Manager and Director).
- Whatcom County Public Works will distribute information for the public workshops electronically and hard copy at least two (2) weeks prior to the workshops.
- Whatcom County Public Works and LIFAC will review and provide comments on draft memos within two (2) weeks of receiving the draft memo.
- The KPFF Team anticipates finalizing the memos within two (2) weeks of receiving review comments. This timeframe is dependent on the level of analysis required to address comments.

Deliverables

- Materials for two (2) workshops.
- Draft and final memo summarizing public outreach process and findings.
TASK 9: Draft/Final Reports and Presentation

The findings from Tasks 1-8 will be summarized in draft and final reports. The final report will include the final recommendation. The KPFF Team will support Whatcom County Public Works in presenting the final recommendation to the Whatcom County Council.

9.1 Draft and Final Findings and Recommendations Reports and Evaluation Matrix

- Findings and recommendations from the previous tasks will be summarized in a report.
- The task memos will serve as appendices of the final report.
- Performance measures will be identified.

9.2 Preparation and Presentation of Alternatives to Whatcom County Council

- KPFF will support Whatcom County Public Works in preparing for and attending the presentation to Whatcom County Council.

Assumptions

- Travel for two (2) KPFF staff (PM and Director).
- Whatcom County Public Works and LIFAC will provide comments on the draft report within four (4) weeks of receiving the document or the schedule will be impacted.
- KPFF will require two to four (2 to 4) weeks for responding to comments and finalizing the report.

Deliverables

- Draft Report (1 electronic copy)
- Final Report (1 electronic copy and 3 hard copies)
- Presentation materials

TASK 10: Project Management

Project management for this task will include client coordination and preparation of monthly progress reports and invoicing. We anticipate bi-weekly conference calls with the Whatcom County Public Works Project Manager, Roland Middleton and KPFF throughout the duration of the project. Subconsultants will be requested to join the conference calls on an as-needed basis. KPFF will coordinate with subconsultants on a weekly basis. KPFF will attend monthly LIFAC meetings for the duration of the project.

Assumptions

- Project duration is 11 months.
- Monthly attendance by the KPFF Project Manager, Cassandra Schoenmakers, at the LIFAC meetings (10 meetings at 6 hours each for attendance and travel, 2 hours each for preparation and follow-up).
- Bi-weekly conference calls with Whatcom County Public Works for 1 hour each for two (2) KPFF staff and subconsultants as needed.
- Weekly coordination between KPFF and subconsultants.
Mr. Roland Middleton  
July 7, 2017  
Page 10

Deliverables
- Meeting agendas and summaries
- Monthly progress reports of the team’s efforts

FEES
Please see attached fee schedule for each estimated task and subtask.

SCHEDULE
Please see attached DRAFT project schedule.

Thank you for the opportunity to work with the Whatcom County Public Works on this effort. If you have any questions about the scope of work outline, please feel free to contact me at (206) 926-0585.

Sincerely,

Cassandra Schoenmakers
Marine Transit Project Manager
n/a
Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following: See Exhibit A Scope of Work

I. Surveying, Roadway Design & Plans Preparation Section
   A. Survey Data

   B. Roadway Design Files

   C. Computer Aided Drafting Files
D. Specify the Agency's Right to Review Product with the Consultant

E. Specify the Electronic Deliverables to Be Provided to the Agency

F. Specify What Agency Furnished Services and Information Is to Be Provided
II. Any Other Electronic Files to Be Provided

III. Methods to Electronically Exchange Data
A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format
Exhibit D

Prime Consultant Cost Computations

See attached five-page cost computations
<table>
<thead>
<tr>
<th>Summary</th>
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<tr>
<td><strong>Lummi Island LOS Alternatives Analysis</strong></td>
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<td><strong>1.0 Background Development and Baseline</strong></td>
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**Labor Total:**

| **$171,671** | **$42,048** | **$55,032** | **$33,368** | **$352,119** |
## KPFF
**CONSULTANT FEE DETERMINATION**
**SUMMARY OF COST**
Lummi Island LOS Alternatives Analysis

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**Subtotal** $169,424.05

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**Subtotal** $2,247.00

**GRAND TOTAL:** $171,671.05
## Lummi Island LOS Alternatives Analysis

### 1.0 Data Collection, Criteria Development and Current Operations Analysis

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<td>1.3Service Delivery Data</td>
<td></td>
<td>$3,669</td>
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### 2.0 Ridership and Growth Projections

<table>
<thead>
<tr>
<th>Task</th>
<th>Category and Hours</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1Ridership Data Collection</td>
<td></td>
<td>$499</td>
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<td>2.2Freight Data Collection</td>
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<td>2.3Ridership Demand Model</td>
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### 3.0 Establish Goals, Vision and Confirm Desired LOS for LiFerry System

<table>
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<th>Task</th>
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<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1Formulate Assumptions of Task 1</td>
<td></td>
<td>$2,042</td>
</tr>
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<td>3.2Define Desired LOS</td>
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### 4.0 Vessel Characteristics and Alternatives

<table>
<thead>
<tr>
<th>Task</th>
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<th>Cost</th>
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</thead>
<tbody>
<tr>
<td>4.1Vessel Characteristics and Alternatives</td>
<td></td>
<td>$5,270</td>
</tr>
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### 5.0 Terminal Improvement Options

<table>
<thead>
<tr>
<th>Task</th>
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<tbody>
<tr>
<td>5.1Site Opportunities for the Lummi Island Terminal</td>
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<td>$19,093</td>
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<td>5.2Site Opportunities for the Gooseberry Point Terminal</td>
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### 6.0 Cost Projections and Funding Opportunities

<table>
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<tr>
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### 7.0 Service Alternatives

<table>
<thead>
<tr>
<th>Task</th>
<th>Category and Hours</th>
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<tbody>
<tr>
<td>7.1Draft Service Delivery Alternatives</td>
<td></td>
<td>$1,746</td>
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<td>7.2Final Service Delivery Recommendation</td>
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### 8.0 Public Outreach

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<tr>
<td>8.1Initial Public Outreach Workshop</td>
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<td>8.2Follow-up Public Outreach Workshop</td>
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### 9.0 Draft Final Reports and Presentation

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<tr>
<td>9.1Draft and Final Findings and Recommendations Report and Evaluation Matrix</td>
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<td>9.2Preparation and Presentation of Findings to Whatcom County Council</td>
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### 10.0 Project Management

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<td>10.1Monthly Meetings with LiFAC</td>
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<td>10.2Biweekly Meetings with Whatcom County Public Works PM</td>
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<td>10.3Internal Team Coordination</td>
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<td>10.4Monthly Progress Reports, Maintain Project File, Invoicing</td>
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**Subtotal**

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<td>Labor Total</td>
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### Other Direct Costs

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<td>Airfare</td>
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<tr>
<td>Hotel</td>
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<td>Meals</td>
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<td>10.6Misc. Expenses</td>
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<td>Reproduction &amp; Postage</td>
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**Subtotal**

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**Total**

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<tbody>
<tr>
<td>KPF</td>
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</table>

80
October 6, 2016

KPFF, Inc.
1601 Fifth Avenue, Suite 1600
Seattle, WA 98101

Subject: Acceptance FYE 2016 ICR – CPA Report

Dear Ms. Marci Monroe-Jones:

We have accepted your firm’s FYE 2016 Indirect Cost Rate (ICR) of:

Field Office Rate: 97.32% of direct labor (Rate includes 0.17% FCCM)
Home Office Rate: 137.52% of direct labor (Rate includes 0.04% FCCM)

Based on the “Independent CPA Report,” prepared in accordance with Part 31 of the FAR, by Clark Nuber, PS. Your ICR acceptance is in accordance with 23 CFR 172.7 and must be updated on an annual basis. This rate may be subject to additional review if considered necessary by WSDOT and will be applicable for:

☒ WSDOT Agreements
☒ Local Agency Contracts in Washington State only

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with the firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at (360) 705-7104 or via email consultantrates@wsdot.wa.gov.

Regards;

ERIK K. JONSON
Manager, Consultant Services Office

EKJ:kms
KPFF, INC. AND SUBSIDIARY

Consolidated Statement of Direct Labor, Fringe Benefits and General Overhead
For the Year Ended April 30, 2016

<table>
<thead>
<tr>
<th>Classification</th>
<th>Financial Statements for the Year Ended April 30, 2016</th>
<th>Adjustments</th>
<th>Allocations (A &amp; B)</th>
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<td></td>
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</tr>
<tr>
<td></td>
<td></td>
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<td>Field Office Costs</td>
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<td>1. Direct Labor Base</td>
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<td>$ 110,457</td>
<td>$ 51,115,227</td>
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<td></td>
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<tr>
<td>Fringe benefits-</td>
<td></td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>2. Payroll taxes</td>
<td>6,757,863</td>
<td>(162,721)</td>
<td>6,484,485</td>
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<tr>
<td>3. Group insurance</td>
<td>6,370,126</td>
<td></td>
<td>6,263,245</td>
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<tr>
<td>4. Vacation, holiday and sick pay</td>
<td>8,019,072</td>
<td></td>
<td>7,884,524</td>
</tr>
<tr>
<td>Total fringe benefits</td>
<td>21,147,061</td>
<td>(162,721)</td>
<td>20,632,254</td>
</tr>
<tr>
<td>General overhead-</td>
<td></td>
<td></td>
<td>352,086</td>
</tr>
<tr>
<td>5. Indirect labor</td>
<td>11,040,682</td>
<td>(110,457)</td>
<td>10,746,832</td>
</tr>
<tr>
<td>6. Bid and proposal</td>
<td>4,604,864</td>
<td>(1,026,946)</td>
<td>3,577,918</td>
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<tr>
<td>8. Professional services</td>
<td>1,150,112</td>
<td>(448,686)</td>
<td>689,657</td>
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<tr>
<td>9. Reproduction</td>
<td>565,727</td>
<td>(126,258)</td>
<td>437,981</td>
</tr>
<tr>
<td>10. Rent</td>
<td>8,045,832</td>
<td>(118,854)</td>
<td>7,926,978</td>
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<tr>
<td>11. City and state business tax</td>
<td>896,217</td>
<td></td>
<td>893,182</td>
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<tr>
<td>12. Depreciation</td>
<td>1,719,168</td>
<td>(26,792)</td>
<td>1,692,376</td>
</tr>
<tr>
<td>13. Other taxes and licenses</td>
<td>707,557</td>
<td>(34,952)</td>
<td>672,328</td>
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<tr>
<td>14. Insurance, other than life</td>
<td>1,182,396</td>
<td>(33,728)</td>
<td>1,144,779</td>
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<tr>
<td>15. Clerical supplies, drafting</td>
<td>975,561</td>
<td>(108,287)</td>
<td>864,776</td>
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<tr>
<td>supplies and postage</td>
<td>841,742</td>
<td>(57,552)</td>
<td>781,535</td>
</tr>
<tr>
<td>17. Professional dues, fees, books</td>
<td>609,567</td>
<td>(111,681)</td>
<td>496,200</td>
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<tr>
<td>and conferences</td>
<td>1,002,310</td>
<td>(512,432)</td>
<td>488,219</td>
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<td>18. Car</td>
<td>1,282,742</td>
<td>(943,442)</td>
<td>338,151</td>
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<td>19. Travel</td>
<td>1,403,570</td>
<td>(1,230,003)</td>
<td>172,979</td>
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<td>20. Legal</td>
<td>175,963</td>
<td>(4,894)</td>
<td>170,490</td>
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<tr>
<td>21. Accounting</td>
<td>1,160,716</td>
<td>(1,091,912)</td>
<td>68,571</td>
</tr>
<tr>
<td>and morale</td>
<td>703,181</td>
<td>(684,571)</td>
<td>18,547</td>
</tr>
<tr>
<td>24. School</td>
<td>28,923</td>
<td>(3,410)</td>
<td>25,427</td>
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<tr>
<td>25. Personnel procurement</td>
<td>121,039</td>
<td>(74,050)</td>
<td>46,980</td>
</tr>
<tr>
<td>26. Miscellaneous job fixes</td>
<td>26,314</td>
<td>(26,314)</td>
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<tr>
<td>27. Contributions</td>
<td>176,914</td>
<td>(176,914)</td>
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</tr>
<tr>
<td>28. Computer</td>
<td>2,421,072</td>
<td>(32,545)</td>
<td>2,380,439</td>
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<td>29. Promotional and other entertainment</td>
<td>234,692</td>
<td>(234,692)</td>
<td>8,088</td>
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<tr>
<td>30. Bank service charges</td>
<td>93,498</td>
<td>(20,996)</td>
<td>72,257</td>
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<tr>
<td>Total general overhead</td>
<td>63,630,128</td>
<td>(13,578,727)</td>
<td>49,554,935</td>
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<tr>
<td>Total Indirect Costs</td>
<td>84,777,189</td>
<td>(13,741,448)</td>
<td>70,187,189</td>
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<tr>
<td>31. Facilities Cost of Money (FCCM)</td>
<td></td>
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<td>848,552</td>
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<tr>
<td>Total Indirect Costs With FCCM</td>
<td>$ 84,777,189</td>
<td>($13,635,913)</td>
<td>$ 70,292,367</td>
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<td>Overhead Rate</td>
<td>$ 163.42%</td>
<td>-26.58%</td>
<td>137.52%</td>
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</table>

See accompanying notes.
Exhibit E
Sub-consultant Cost Computations

There isn't any sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI “Sub-Contracting” of this AGREEMENT.

See attached twelve-page cost computations.
EBDG
CONSULTANT FEE DETERMINATION
SUMMARY OF COST
Lummi Island LOS Alternatives Analysis

<table>
<thead>
<tr>
<th>Classification</th>
<th>Direct Hourly Rate</th>
<th>Direct Total Hours</th>
<th>Direct Hourly Rate</th>
<th>Direct Cost</th>
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<td>$276.31</td>
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<td>Senior NA/ME</td>
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<td>$52.04</td>
<td>136.00 X</td>
<td>$170.43</td>
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<td>Naval Architect / Marine Engineer 2</td>
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<td>188.00 X</td>
<td>$143.87</td>
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<td>Naval Architect / Marine Engineer 3</td>
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<td>$119.80</td>
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<td>Designer 1</td>
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<td>Designer 2</td>
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<td>0.00 X</td>
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<td>Technician</td>
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<td>6.00 X</td>
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Subtotal $54,497.24

Reimbursables

<table>
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<th>Rate</th>
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<td>Mileage (## Miles x $0.535/mile)</td>
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<tr>
<td>Reprographics (## Sheets x $X.xx/sheet)</td>
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<td>Subcontract (Sub Name &amp; Task)</td>
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<td>(Blank) (Allowance)</td>
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<td>(Blank) (Blank)</td>
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<tr>
<td>(Blank) (Blank)</td>
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GRAND TOTAL: $55,032.24
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<th>Engineer 1</th>
<th>Engineer 2</th>
<th>Engineer 3</th>
<th>Tech</th>
<th>DEQ/ON Mkt</th>
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<tr>
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<td></td>
<td></td>
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<td>$</td>
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<td>2.3 Ridership Demand Model</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>2.4 Reassess Ridership Findings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
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<tr>
<td>3.0 Establish Goals, Vision and Confirm Desired LOS for U/I Ferry System</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1 Confirm Analysis of Task 1 and Task 2 with UFAC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>3.2 Define Desired LOS</td>
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<td></td>
<td></td>
<td>6.0</td>
<td></td>
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**Other Direct Costs**

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**Expenses Subtotal** | $530

**FPFF Total** | $56,032
Certification of Final Indirect Costs for Self-Certification

Firm Name: Elliott Bay Design Group LLC

Proposed Indirect Cost Rate: 197.5%

Completion Date of Cost Report (mm/dd/yyyy): 4/12/2017

Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): 01/01/2016 to 12/31/2016

I the undersigned, certify that I have reviewed the proposal to establish the final indirect cost for the period as specified above and to the best of my knowledge and belief:

1.) All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.

2.) This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.

Signature: ____________________________

Name of Certifying Official * (Print): Peter J. Tarabochia

Title: Vice President and Chief Financial Officer

Date of Certification (mm/dd/yyyy): 04/12/2017

*The “Certifying Official” must be an individual executive or financial officer of the firm at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to make such a representation of the organization’s financial information.


December 2011

86
SELF CERTIFIED REPORT ON THE
STATEMENT OF DIRECT LABOR, FRINGE BENEFITS, AND GENERAL OVERHEAD
FOR THE YEAR ENDING DECEMBER 31, 2016

Texas Department of Transportation
Austin, Texas

In accordance with Section 9.34 (b) of Title 43 in the Texas Administrative Code, The Management of Elliott Bay Design Group LLC (have prepared a Statement of Direct Labor, Fringe Benefits, and General Overhead, hereinafter referred to as "the Schedule", for the fiscal year ended December 31, 2016. The Schedule is the sole responsibility of the Company's management. The Company's management expresses and certifies that the Schedule is accurate and correct and was developed from the financial records of the Company.

Management has prepared the Schedule in manner to obtain reasonable assurance that the Schedule is free of material misstatement. The self-certified report includes examining the evidence supporting the amounts and disclosures in the Indirect Cost Schedule. Management follows the general accepted accounting principles for recording all their accounting transactions.

The accompanying overhead schedule was prepared on a basis of accounting practices prescribed by Part 31 of the Federal Acquisition Regulations (FAR) and certain other Federal and State regulations as discussed in Note B, and is not intended to be a presentation in conformity with generally accepted accounting principles.

Management states that the overhead schedule referred to above presents fairly, in all material respects, the direct labor, fringe benefits, and general overhead of the Company for the year ended December 31, 2016 on the basis of accounting described in Note B.

In accordance with FAR 31 and other Federal and State Regulations, Management has issued a report dated December 22, 2016. This report is intended solely for the use and information of the Company and for the Texas Department of Transportation and should not be used for any other purpose.

Peter J. Tarabochia
Vice President/CFO: Peter Tarabochia

Elliott Bay Design Group LLC
Legal Name of Company

DATE: 4/12/2017

STATE of WASHINGTON
COUNTY of KING

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE 12TH DAY OF April, 2017

Sandra M. Scatena
Notary Public
My Commission Expires: 13/17/2030

(Noteary Seal)
From: Bruce Reed <Bruce.Reed@txdot.gov>
Sent: Monday, May 1, 2017 3:20 AM
To: Tarabochia, Peter
Subject: 2016 Self Certification

Please be advised that we have accepted the 2016 Self Certification Rate of 197.50%. We will add you to the AQ list. Thank you.

Bruce Reed
PEPS Analyst-Administrative Qualification
118 E Riverside Drive
Austin, Texas 78704
(512) 416-2315

FAILURE
In accordance with TAC 43, Part 1, Chapter 9, Subchapter C. Rule 9.34(3)(B), all information, requested must be returned within 30 calendar days of the request by the Department. FAILURE to return all information, or returning only a portion of the information requested, will result in the file being closed, the submittal will not be processed for administrative qualification, and the submitter will be notified via email the file has been closed.

TAC9.34 (3) ( C): If AQ submittal is rejected under subparagraph (B), the provider may refile a corrected audit report or self-certification and shall include any previously requested information. The provider may not refile earlier than 90 days after the date that the department sends the notice rejecting the submittal.
## SDG

### CONSULTANT FEE DETERMINATION

#### SUMMARY OF COST

Lummi Island LOS Alternatives Analysis

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Subtotal $42,049.42

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GRAND TOTAL: $42,049.42
## Lummi Island LOS Alternatives Analysis

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**Labor Total**

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**Other Direct Costs**

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7/11/2017

90
10 March 2017

Dear Sir or Madam,

I can confirm that the overhead multiplier rate for Steer Davies & Gleave Incorporated, with registered seat at Empire State Building, 350 Fifth Avenue, 59th Floor, New York, NY 10118, USA, for the financial year ended March 2016 was 2.20.

Note that this is not an audited rate. However, the calculation has been done to the best of our knowledge in accordance with the ASHTO American Association of State Highway and Transportation Officials) guidelines.

Please find attached a summary of the calculation.

Yours sincerely

[Signature]

Catherine Clark
Finance Director
Steer Davies & Gleave Ltd
### Steer Davies & Gleave Inc
Overhead rate, financial year ending March 31, 2016

<table>
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<tr>
<th>Description</th>
<th>Amount in $</th>
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<td>1. Gross salaries</td>
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<td><strong>Fringe benefits</strong></td>
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<tr>
<td>2. Pension</td>
<td>88,729</td>
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<td>3. Medical/dental Ins</td>
<td>389,440</td>
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<tr>
<td>4. Bonus</td>
<td>168,716</td>
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<tr>
<td>5. Payroll taxes</td>
<td>299,900</td>
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<tr>
<td>5. Adjustment for field staff</td>
<td>(61,115)</td>
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<tr>
<td><strong>Business overhead</strong></td>
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<td>7. Corp OH</td>
<td>635,678</td>
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<td><strong>8. Total</strong></td>
<td>5,564,330</td>
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<tr>
<td><strong>9. Direct labour</strong></td>
<td>1,737,183</td>
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<tr>
<td><strong>10. Overhead cost</strong></td>
<td>3,824,147</td>
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<tr>
<td><strong>11. Overhead multiplier</strong></td>
<td>2.20</td>
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\[1 = 2 + 3 + 4 + 5 + 6 + 7 + 8\]

(project hrs * salary per hr) per person

\[(10) / (9)\]
### CONSULTANT FEE DETERMINATION

#### SUMMARY OF COST

**Lummi Island LOS Alternatives Analysis**

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<tr>
<th>Classification</th>
<th>Direct Hourly Rate</th>
<th>Total Hours</th>
<th>Negotiated Hourly Rate</th>
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<tr>
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<td>0.00 X</td>
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**Subtotal** $33,000.00

**Reimbursables**

- **Mileage** (# Miles x $0.535/mile) $267.50
- **Reprographics** (# Sheets x $X.xx/sheet)
- **Subcontract** (Sub Name & Task)
- **Misc** (Allowance) $100.00
- **(Blank)**
- **(Blank)**

**Subtotal** $367.50

**GRAND TOTAL:** $33,367.50
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<td>1.0 Background Development and Baseline</td>
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<td>1.1 Summarize Previous Studies</td>
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<tr>
<td>1.2 Existing Vessel Characteristics</td>
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### Other Direct Costs

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**Expense Subtotal:** $ 288
July 11, 2017

Cassandra Schoenmakers
KPFF
1601 Fifth Avenue Suite 1600
Seattle, WA 98101

Hello Cassandra,

Progressions is a sole proprietorship with no employees other than its sole proprietor, Carla Sawyer. The sole proprietor does not have a set wage rate or annual compensation but rather takes in compensation the net income of the business. Hours billed and annual income can vary greatly from year to year and hence establishing a reliable and constant overhead and profit rate is difficult.

Progressions maintains thorough accounting and time keeping records. Work performed for individual clients is tracked on bi-weekly time sheets. All business income, expenses and tax liabilities are entered into business bookkeeping software capable of identifying direct, indirect and unallowable business expenses.

Currently, Progressions bills all clients at a single, all in rate of $150 an hour. This is the lowest and best rate offered.

Regards,

[Signature]

Carla Leigh Sawyer
During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. Compliance with Regulations: The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the “REGULATIONS”), which are herein incorporated by reference and made a part of this AGREEMENT.

2. Non-discrimination: The CONSULTANT, with regard to the work performed during this AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when this AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.

3. Solicitations for Sub-consultants, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT’s obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports: The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY, the STATE, or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, the STATE, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Non-compliance: In the event of the CONSULTANT’s non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE, or the FHWA may determine to be appropriate, including, but not limited to:
   • Withholding of payments to the CONSULTANT under this AGREEMENT until the CONSULTANT complies, and/or;
   • Cancellation, termination, or suspension of this AGREEMENT, in whole or in part.

6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the STATE, the AGENCY, or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY enter into such litigation to protect the interests of the STATE and/or the AGENCY and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

Agreement Number:
Exhibit G
Certification Documents

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>G-1(a)</td>
<td>Certification of Consultant</td>
</tr>
<tr>
<td>G-1(b)</td>
<td>Certification of</td>
</tr>
<tr>
<td>G-2</td>
<td>Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions</td>
</tr>
<tr>
<td>G-3</td>
<td>Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying</td>
</tr>
<tr>
<td>G-4</td>
<td>Certificate of Current Cost or Pricing Data</td>
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</tbody>
</table>
Exhibit G-1(a)  Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of KPFF Consulting Engineers whose address is 1601 Fifth Avenue, Suite 1600, Seattle, WA 98101 and that neither the above firm nor I have:

a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;

b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or

c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

KPFF Consulting Engineers

Consultant (Firm Name)

Signature (Authorized Official of Consultant)  
7/13/2017  
Date

Agreement Number:
Exhibit G-2  Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions

I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

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

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

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

D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.

II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

KPFF Consulting Engineers

Consultant (Firm Name)

[Signature]  7/13/2017

Authorized Official of Consultant  Date

Agreement Number:
Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00, and not more than $100,000.00, for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed $100,000, and that all such sub-recipients shall certify and disclose accordingly.

KPFF Consulting Engineers

Consultant (Firm Name)

______________________________
Signature (Authorized Official of Consultant) 7/13/2017

Date

Agreement Number:
Exhibit G-4  Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of ** are accurate, complete, and current as of **.

This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.

Firm: KPFF Consulting Engineers

____________________  ________________________
Signature             Title

Date of Execution***:

**Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Agreement Number:
Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to $1,000,000.

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of $1,000,000.

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed $1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: $.

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

Agreement Number:

WSDOT Form 140-089 EF Exhibit H
Rev: 10/2020

Page 1 of 1
Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant’s alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

**Step 1 Potential Consultant Design Error(s) is Identified by Agency’s Project Manager**
At the first indication of potential consultant design error(s), the first step in the process is for the Agency’s project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

**Step 2 Project Manager Documents the Alleged Consultant Design Error(s)**
After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer’s concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

**Step 3 Contact the Consultant Regarding the Alleged Design Error(s)**
If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

**Step 4 Attempt to Resolve Alleged Design Error with Consultant**
After the meeting(s) with the consultant have been completed regarding the consultant’s alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.

- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant’s agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Agreement Number:
Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General’s Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.

- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.
Exhibit J
Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than $1,000. If the consultant’s claim(s) are a total of $1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant’s claim(s) that total $1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement’s scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency’s project manager.

The consultant’s claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant’s Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency’s project manager. The project manager will review the consultant’s claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project’s funding, forward a copy of the consultant’s claim and the Agency’s recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant’s claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action in needed regarding the claim procedures.

If the Agency does not agree with the consultant’s claim, proceed to step 3 of the procedures.
Step 3 Preparation of Support Documentation Regarding Consultant’s Claim(s)

If the Agency does not agree with the consultant’s claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency’s summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency’s summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant’s claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant’s claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant’s Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.
# Certificate of Liability Insurance

**Client #: 25326**

**ACORD**

**Certificate of Liability Insurance**

**PRODUCER**

Greyling Ins. Brokerage/EPIC  
3780 Mansell Road, Suite 370  
Alpharetta, GA 30022

**CONTACT**

Jerry Noyola  
PHONE: 770-552-4225  
FAX: 866-550-4082  
EMAIL: jerry.noyola@greyling.com

**INSURER**

| INSURER A: | Travelers Property Casualty Co. 25674 |
| INSURER B: | The Phoenix Insurance Company 25623 |
| INSURER C: | Travelers Indemnity Company 25658 |
| INSURER D: | Lloyds of London |

**COVERAGES**

**CERTIFICATE NUMBER:** 16-17  
**REVISION NUMBER:**

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Re: Lummi Island Ferry Level of Service Alternatives Analysis. The State and Whatcom County, their officers, employees, and agents are named as Additional Insureds on the above referenced liability policies with the exception of workers compensation & professional liability where required by written contract.

Waiver of Subrogation is applicable where required by written contract & allowed by law.

Should any of the above described policies be cancelled by the issuing insurer before the expiration date (See Attached Descriptions)

**CERTIFICATE HOLDER**

Whatcom County  
322 N. Commercial Street  
Suite 301  
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**

[Signature]
thereof, we will endeavor to provide 30 days' written notice (except 10 days for nonpayment of premium) to the Certificate Holder.
Commercial General Liability

Policy Number: 680003H32477A

This endorsement changes the policy. Please read it carefully.

Blanket Additional Insured
(Architects, Engineers and Surveyors)

This endorsement modifies insurance provided under the following:
Commercial General Liability Coverage Part

A. The following is added to Who Is An Insured
(Section II):

Any person or organization that you agree in a
"contract or agreement requiring insurance" to in-
clude as an additional insured on this Coverage
Part, but only with respect to liability for "bodily in-
jury", "property damage" or "personal injury"
caused, in whole or in part, by your acts or ommi-
sions or the acts or omissions of those acting on
your behalf:

a. In the performance of your ongoing oper-
ations;

b. In connection with premises owned by or
rented to you; or

c. In connection with "your work" and included
within the "products-completed operations
hazard".

Such person or organization does not qualify as
an additional insured for "bodily injury", "property
damage" or "personal injury" for which that per-
son or organization has assumed liability in a con-
tract or agreement.

The insurance provided to such additional insured
is limited as follows:

b. This insurance does not apply on any basis to
any person or organization for which coverage
as an additional insured specifically is added
by another endorsement to this Coverage
Part.

This insurance does not apply to the render-
ing of or failure to render any "professional
services".

f. The limits of insurance afforded to the addi-
tional insured shall be the limits which you
agreed in that "contract or agreement requiring
insurance" to provide for that additional
insured, or the limits shown in the Declara-
tions for this Coverage Part, whichever are
less. This endorsement does not increase the
limits of insurance stated in the Limits Of

Insurance (Section III) for this Coverage
Part.

B. The following is added to Paragraph a. of 4.
Other Insurance in Commercial General
Liability Conditions (Section IV):

However, if you specifically agree in a "contract or
agreement requiring insurance" that the insurance
provided to an additional insured under this Cov-
erage Part must apply on a primary basis, or a
primary and non-contributory basis, this insurance
is primary to other insurance that is available to
such additional insured which covers such addi-
tional insured as a named insured, and we will not
share with the other insurance, provided that:

(1) The "bodily injury" or "property damage" for
which coverage is sought occurs; and

(2) The "personal injury" for which coverage is
sought arises out of an offense committed;

after you have entered into that "contract or
agreement requiring insurance". But this insur-
ance still is excess over valid and collectible other
insurance, whether primary, excess, contingent or
on any other basis, that is available to the insured
when the insured is an additional insured under
any other insurance.

C. The following is added to Paragraph 8. Transfer
Of Rights Of Recovery Against Others To Us
in Commercial General Liability Con-
ditions (Section IV):

We waive any rights of recovery we may have
against any person or organization because of
payments we make for "bodily injury", "property
damage" or "personal injury" arising out of "your
work" performed by you, or on your behalf, under
a "contract or agreement requiring insurance" with
that person or organization. We waive these
rights only where you have agreed to do so as
part of the "contract or agreement requiring insur-
ance" with such person or organization entered
into by you before, and in effect when, the "bodily
COMMERCIAL GENERAL LIABILITY

...injury" or "property damage" occurs, or the "per-
sonal injury" offense is committed.

D. The following definition is added to DEFINITIONS
(Section V):
"Contract or agreement requiring insurance" means that part of any contract or agreement un-
der which you are required to include a person or organization as an additional insured on this Cov-
erage Part, provided that the "bodily injury" and
"property damage" occurs, and the "personal in-
jury" is caused by an offense committed:

a. After you have entered into that contract or agreement;
b. While that part of the contract or agreement is in effect; and
c. Before the end of the policy period.
Policy Number: BA1283L587

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO COVERAGE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:
BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BLANKET ADDITIONAL INSURED
B. EMPLOYEE HIRED AUTO
C. EMPLOYEES AS INSURED
D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS
E. TRAILERS – INCREASED LOAD CAPACITY
F. HIRED AUTO PHYSICAL DAMAGE
G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

A. BLANKET ADDITIONAL INSURED
The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – LIABILITY COVERAGE:
Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

B. EMPLOYEE HIRED AUTO
1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – LIABILITY COVERAGE:
An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., Other Insurance, of SECTION IV – BUSINESS AUTO CONDITIONS:
b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:
(1) Any covered "auto" you lease, hire, rent or borrow; and
(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

C. EMPLOYEES AS INSURED
The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – LIABILITY COVERAGE:

© 2010 The Travelers Indemnity Company. All rights reserved.
Includes copyrighted material of Insurance Services Office, Inc. with its permission.
Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

**D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS**

1. The following replaces Paragraph A.2.a.(2) of SECTION II – LIABILITY COVERAGE:

   (2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4) of SECTION II – LIABILITY COVERAGE:

   (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

**E. TRAILERS – INCREASED LOAD CAPACITY**

The following replaces Paragraph C.1. of SECTION I – COVERED AUTOS:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

**F. HIRED AUTO PHYSICAL DAMAGE**

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

(1) The most we will pay for "loss" in any one "accident" to a hired, rented or borrowed "auto" is the lesser of:

   (a) $50,000;

   (b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

   (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

(2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

(3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

(4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".

(5) This Coverage Extension does not apply to:

   (a) Any "auto" that is hired, rented or borrowed with a driver; or

   (b) Any "auto" that is hired, rented or borrowed from your "employee".

**G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**

The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

**H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT**

Paragraph C.2., Limit Of Insurance, of SECTION III – PHYSICAL DAMAGE COVERAGE is deleted.

**I. WAIVER OF DEDUCTIBLE – GLASS**

The following is added to Paragraph D., Deductible, of SECTION III – PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

**J. PERSONAL EFFECTS**

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Personal Effects Coverage

We will pay up to $400 for "loss" to wearing apparel and other personal effects which are:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage only applies in the event of a total theft of your covered "auto".

No deductibles apply to Personal Effects coverage.
K. AIRBAGS

The following is added to Paragraph B.3., Exclusions, of SECTION III — PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. AUTO LOAN LEASE GAP

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III — PHYSICAL DAMAGE COVERAGE:

Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

(1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto";

and

(2) Any:

(a) Overdue lease or loan payments at the time of the "loss";

(b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

(c) Security deposits not returned by the lessor;

(d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

(e) Carry-over balances from previous loans or leases.

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV — BUSINESS AUTO CONDITIONS:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.
This page has been left blank intentionally.
Contract with RESPEC Consulting for the Lake Whatcom Hydrological Model Review

ATTACHMENTS:
1. Memo
2. Contract information sheet
3. Contract and exhibits

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

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

The City of Bellingham has developed a new HFAM (Hydrocomp Forecast and Analysis Model) for Lake Whatcom. This HFAM model is being considered as a replacement for the HSPF (Hydrologic Simulation Program Fortran) model currently used for the TMDL (Total Maximum Daily Load). The County would like to have an independent review of the model and modeling documents prepared for this project to ensure that it provides reliable output that can be used for making long-term decisions on how to comply with the TMDL requirements and meet water quality standards. This is contract with RESPEC Consulting for the independent review.

COMMITTEE ACTION:  
COUNCIL ACTION:

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

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

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

THROUGH: Jon Hutchings, Public Works Director

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

DATE: July 24, 2017

RE: Contract with RESPEC Consulting for the Lake Whatcom Hydrological Model Review

Please find attached two (2) originals of a contract agreement between RESPEC Consulting and Whatcom County for your review and signature.

Background and Purpose
The City of Bellingham has developed a new HFAM (Hydrocomp Forecast and Analysis Model) for Lake Whatcom. The purpose of the model is the estimation of the delivery of phosphorus, sediment and water to the Lake. This HFAM model is being considered as a replacement for the HSPF(Hydrologic Simulation Program Fortran) model currently used for the TMDL (Total Maximum Daily Load). The County would like to have an independent review of the model and modeling documents prepared for this project to ensure that it provides reliable output that can be used for making long-term decisions on how to comply with the TMDL requirements and meet water quality standards. This is a contract with RESPEC Consulting for the independent review. RESPEC Consulting was chosen through the competitive selection process.

Funding Amount and Source
This contract in the amount of $49,990.00 is funded by the 2107 Stormwater base budget cost center 123212.

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

Encl.
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<th>Originating Department:</th>
<th>Public Works</th>
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<tr>
<td>Division/Program:</td>
<td>Stormwater-NPDES</td>
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<tr>
<td>Contract Administrator:</td>
<td>Kirk Christensen</td>
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<tr>
<td>Contractor's Name:</td>
<td>RESPEC Consulting Services</td>
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**Is this a New Contract?** If not, is this an Amendment or Renewal to an Existing Contract?  
Yes ☐ No ☐  
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:  

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

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

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

Is this contract the result of a RFP or Bid process?  Yes ☒ No ☐  
If yes, RFP and Bid number(s):  RFP 17-03  
Cost Center: 123212

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:  
$ 49,950.00

**This Amendment Amount:**  
$  

**Total Amended Amount:**  
$

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

**Summary of Scope:** The City of Bellingham has developed a new HFAM (Hydrocomp Forecast and Analysis Model) for Lake Whatcom. The County would like to have an independent review of the model and modeling documents prepared for this project to ensure that it provides reliable output that can be used for making long-term decisions on how to comply with the TMDL requirements and meet water quality standards. This is contract with RESPEC Consulting for the independent review.

**Term of Contract:**  
1. Prepared by:  Beth Bushaw  
2. Attorney signoff:  Daniel L. Gibson  
3. AS Finance reviewed:  M Caldwell  
4. IT reviewed (if IT related):  
5. Contractor signed:  
6. Submitted to Exec.:  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  

**Expiration Date:** 6/30/18

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<tr>
<th>Date</th>
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<tr>
<td>7/24/17</td>
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RESPEC Consulting & Services, 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 9,
Exhibit A (Scope of Work), pp. 10 to 12,
Exhibit B (Compensation), pp. 13 to 14,
Exhibit C (Certificate of Insurance).
Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 15th day of August, 2017, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2017.

The general purpose or objective of this Agreement is to: provide an independent review for the Hydrocomp Forecast and Analysis Model for Lake Whatcom Model Review, 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 $48,990.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 26th day of July, 2017.

CONTRACTOR:

Anthony S. Donigan, RESPEC Consulting & Services

Anthony S. Donigan, Jr., PE, D.WRE

STATE OF WASHINGTON
ss.
COUNTY OF _________________

On this __ day of __________, 20 __, before me personally appeared ________________ to me known to be the __________________________ (title) of __________________________ (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SEE ATTACHED
NOTARY CERTIFICATE

NOTARY PUBLIC in and for the State of Washington, residing at __________________________, My commission expires __________________________.
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  )
County of Santa Clara  )

On July 26, 2017 before me, Blanca E. Oliva, Notary Public,  

Date Here Insert Name and Title of the Officer

personally appeared Anthony S. Donigian Jr

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Blanca Oliva

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Contract for Services Document Date: 7/26/17
Number of Pages: 1 Signer(s) Other Than Named Above: 

Capacity(ies) Claimed by Signer(s)

Signer’s Name: ____________________________

□ Corporate Officer — Title(s): ____________________________

□ Partner — □ Limited □ General

□ Individual □ Attorney in Fact

□ Trustee □ Guardian or Conservator

□ Other: ____________________________

Signer Is Representing: ____________________________

Signer’s Name: ____________________________

□ Corporate Officer — Title(s): ____________________________

□ Partner — □ Limited □ General

□ Individual □ Attorney in Fact

□ Trustee □ Guardian or Conservator

□ Other: ____________________________

Signer Is Representing: ____________________________

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WHATCOM COUNTY:
Recommended for Approval:

Department Director  7/26/17
Date

Approved as to form:

Chief Civil Deputy Prosecutor  07/28/17
Date

Approved:
Accepted for Whatcom County:

By: ______________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  }
COUNTY OF WHATCOM  )
) ss

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

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

CONTRACTOR INFORMATION:

Anthony S. Donigian, Jr., PE.D.WRE
RESPEC Consulting & Services

Address:
2685 Marine Way, Suite 1314
Mountain View, CA 94043

Contact Name: Brian Bicknell
Contact Phone: 650-962-1865
Contact Email: Brian.Bicknell@respec.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

Contract for Services
RESPEC Consulting & Services
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 the 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.

31.1 Ownership of Items Produced:
When the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:
The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its 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 insurance with the following minimums:
1) Commercial General Liability --
   a. Property Damage - $500,000.00 per occurrence;
   b. General Liability & Bodily injury- $1,000,000.00 per occurrence.

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 noncontributory, and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

2) Professional Liability - $1,000,000 per occurrence.

If the professional liability insurance is a claims made policy, and if the Contractor discontinues coverage either during the term of this contract or within three years of completion, the Contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

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

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 **Non-Discrimination in Employment:**
The County’s policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

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

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

35.2 Non-Discrimination in Client Services:
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:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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:

Kirk Christensen, P.E., Stormwater Supervisor, Whatcom County Public Works, 322 Commercial Street, Suite 220, Bellingham, WA 98225

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: Not Applicable
38.3 E-Verify: Not Applicable

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:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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 award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. 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)

RESPEC Consulting and Services
Lake Whatcom Hydrologic Model Evaluation

BACKGROUND

Whatcom County and the City of Bellingham wish to evaluate the effects of their activities in attainment of the phosphorus Total Maximum Daily Load (TMDL) that was developed by the state of Washington for Lake Whatcom in response to deteriorating water quality in the lake. The Lake Whatcom TMDL requires the city and county to narrow the uncertainty of the TMDL models every ten years. The Lake Whatcom Hydrologic Model was developed primarily as a model of the City of Bellingham’s water supply and consists of a watershed model of the Lake Whatcom Watershed and a simple water balance model of the lake. The model also includes the Middle Fork of the Nooksack River, since part of the flow of the river is periodically diverted to Lake Whatcom via a tunnel and Anderson Creek to supplement the water supply. The model is constructed using the Hydrocomp Forecast and Analysis Modeling (HFAM), which is a proprietary program that is closely related to the US Environmental Protection Agency’s (US EPA) HSPF watershed modeling system. The Bellingham water supply system model was recently enhanced to include simulations of sediment erosion and runoff as well as phosphorus cycling in soil and its runoff to streams and lakes. One purpose of the model is the estimation of the delivery of water, sediment, and phosphorus to Lake Whatcom, for simulating the complex hydrodynamics, temperature, sediment transport, phosphorus cycling, and algal dynamics in the lake with the separate CEQUAL-W2 water quality model of the lake. The HFAM-based model is being considered as a replacement for the HSPF model used in the TMDL in this first cycle.

SCOPE OF WORK

Description of Project
This scope of work is to obtain an independent review of the Lake Whatcom hydrologic model to ensure that the model is developed using sound principles and tools, and that it will provide an appropriate replacement to the HSPF model used for the Lake Whatcom TMDL.

Scope of Work
The work described in the following sections constitutes services to be provided by RESPEC Consulting and Services to the County. Separate tasks are described for the project.

SCHEDULE AND BUDGET
The evaluation will be completed by June 30, 2018. The attached Exhibit B shows the budget and labor rates for the project.

TASK DESCRIPTIONS

Task 1 Project Management and Communications
- Track budget, timelines of submittals, project performance, monthly progress reports to Whatcom County Project Manager, phone calls with Whatcom County and City of Bellingham staff
• Coordinate work tasks between RESPEC staff members
• Write draft and final reports of the model evaluation (Tasks 2 – 6), attend two meetings with County staff in Bellingham. Other telephone meetings as needed.

**Task 2 Evaluate Model Code and Documentation**
RESPEC will evaluate the model code and operation based on the model files and documentation, to be provided by Whatcom County. Confirm that HFAM uses the same basic hydrology and hydraulic algorithms as those in HSPF.

Focus model code review on sediment erosion and the detailed phosphorus cycling algorithms in the soil layers; review how the program uses the simulated flow and sediment fluxes to compute the associated dissolved and particulate phosphorus contributions to the stream channel.

Review model documentation provided by the County, including the HFAM user and theory documentation plus the specific documents that describe application of HFAM to the Lake Whatcom watershed.

**Task 3 Evaluate Data Availability**
Evaluate the data used in the model to determine whether it is sufficient to provide the necessary inputs to the model and whether the data are reasonable, reliable, and sufficient to provide the necessary inputs to the model. The following data types will be evaluated:
- geophysical data for characterizing the land area, including land use/cover, elevation and slope, and soils.
- data for driving the model hydrology, such as precipitation, potential evapotranspiration (ET), and the meteorological data required for snow accumulation and melt
- data required for the hydrology and water quality calibrations, including observed streamflow and water quality concentrations at various locations in the watershed;

Evaluate data for appropriate resolution in time and space.

Evaluate sediment and phosphorus data to determine their usefulness. Observed sediment and phosphorus concentrations in the streams and lake will be evaluated along with estimates of their supposed accuracy. Data to characterize point sources, and the small amount of agriculture in the watershed will also be evaluated.

**Task 4 Evaluate Model Setup and Execution**
Check to ensure that the model is set up correctly, including the watershed segmentation and land area representation, such as land use/cover, sub-watershed delineation, and model stream, river, and lake drainage areas and connectivity. Verify that meteorological data and other data inputs, including point sources, diversions, and boundary conditions, have been coded correctly. The model options will be evaluated along with the land cover-specific parameter values for hydrology, sediment, and phosphorus to ensure that they are reasonable. If possible, install and execute the HFAM model on RESPEC computers. Evaluate selected outputs to verify that they match the documented results. Investigate any code-generated error or warning messages.
Task 5 Evaluate Model Results and Performance
Evaluate the hydrologic calibration and verify that the model results match observed streamflow at the various tributary stream gages using standard statistical metrics and comparisons. Compare/contrast hydrologic verification of HFAM model to hydrologic verification of the HSPF model used in the Lake Whatcom TMDL. Evaluate water balance information (if available) to verify that the various fluxes, such as runoff and evapotranspiration via various pathways in the model are reasonable for the hydrologic region and land cover. The snow calibration for both the Middle Fork Nooksack River and the Lake Whatcom Watersheds will also be evaluated for agreement with observed snow depths and timing of snowmelt runoff.
Evaluate water quality (sediment and phosphorus) calibration, including the development of expected nutrient balances for phosphorus, adjustment of the model process rates to reflect the expected nutrient balances, and comparison of the simulated runoff rates with target rates. Evaluate the internal soil phosphorus cycling fluxes plus the total runoff to verify their reasonableness and agreement with literature values. Evaluate phosphorus agreement with measured data. Check agreement of (1) phosphorus from HFAM model and (2) phosphorus from HSPF model used in the Lake Whatcom TMDL, with measured data.
Evaluate sediment erosion and compare with measured data. Evaluate the model representation of the transport of sediment and phosphorus in the streams.

Task 6 Evaluate and Summarize Model Limitations and Their Implications
Determine the limitations and possible flaws in the model, the implications of these limitations on the results and/or predictions of the model, and the conclusions that are drawn from these model results. The limitations will include effects of data errors and data availability, limitations in the scientific basis of the model process algorithms (with focus on the sediment and phosphorus scientific approach), model parameters, spatial and temporal resolution of the model, and the quality of the calibration (agreement between model predictions and observed data). Provide a qualitative sensitivity for each limitation by identifying if it must be resolved before using the model to revise the TMDL or should be addressed in improvements in future decades.

DELIVERABLES FOR SCOPE OF WORK:
1. Monthly Progress Reports
2. Biweekly Phone Calls
5. Presentation of Final Findings
## RESPEC Consulting and Services
Lake Whatcom Hydrologic Model Evaluation

<table>
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### Travel costs for two round trips

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### Total Labor and Travel Costs

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Exhibit “B-1”
(Compensation)

As consideration for the services provided pursuant to Exhibit A, Scope of Work, the County agrees to compensate the Contractor according to the hourly rates provided below. Compensation for engineering analysis and hydrological/water quality model evaluation professional services shall be for time and expenses not to exceed $49,990, as outlined below and in Exhibits A and B, based on work performed in satisfactory fulfillment of all items listed and receipt of deliverables.

Work continuing after the completion date of this contract shall be at the Contractor’s expense unless otherwise agreed to in writing. In no event, shall total compensation paid to Contractor by the County under this contract exceed $49,990 for engineering analysis and hydrological/water quality model evaluation professional services plus travel and other expenses unless the contract is modified in this regard and such amendment executed in writing by the parties hereto.

Where professional services are provided on an hourly basis, the following rates shall apply to cover salaries, taxes, insurance, administration, general overhead, and profit:

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Direct expenses will be reimbursed at cost plus 13%. Direct expenses include but are not limited to the following:
- Travel costs
- Postage, shipping, courier

Mileage to be reimbursed at the current IRS rate; lodging and per diem will be reimbursed at a rate not to exceed the GSA rate for the location at which services are provided. Reimbursement for air travel will be at coach rates: rental cars at no greater than full size car rates.

The Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE BECOMES NULL AND VOID IF NOT AFFIRMATIVELY OR NEGATIVELY AMENDED, 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
Black Hills Insurance Agency, Inc.
820 St. Joseph
PO Box 3330
Rapid City, SD 57709

INSURED
RE/SBPC Inc.
3824 Jet Drive
Rapid City, SD 57703

CONTACT NAME: Rich Maguire
PHONE: (605) 342-5555
FAX: (605) 342-7901
EMAIL: richmguire@blackhillsagency.com

INSURER AFFORDING COVERAGE
INSURER A: Travelers Indemnity Company 25658
INSURER B: Travelers Indemnity Company of 25682
INSURER C: Travelers Property Casualty Company 25674
INSURER D: Lexington Insurance Company

COVERAGE
CERTIFICATE NUMBER: CL1732913346

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 MAINTAINED, 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.

INSR LTR TYPE OF INSURANCE ADDL SUBR INS/MVD POLICY NUMBER POLICY EFF (MM/DD/YYYY) POLICY EXP (MM/DD/YYYY) LIMITS
A X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR

630-0D5556518 4/1/2017 4/1/2018 EACH OCCURRENCE $1,000,000

DAMAGE TO RENTED PREMISES (Ex occurring) $300,000

MED EXP (Any one person) $5,000

PERSONAL & ADV INJURY $1,000,000

PROPERTY AGGREGATE $2,000,000

PRODUCTS - COMPLIANT $2,000,000

B X AUTOMOBILE LIABILITY

810-0D5556518 4/1/2017 4/1/2018

COMBINED SINGLE LIMIT (PA/PA/PA000)

BODILY INJURY (Per person) $1,000,000

BODILY INJURY (Per accident) $1,000,000

PROPERTY DAMAGE (Per accident) $1,000,000

C X UMBRELLA LIABILITY CLAIMS-MADE X OCCUR

C02-0D5556518 4/1/2017 4/1/2018

EACH OCCURRENCE $8,000,000

AGGREGATE $8,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER CANCELLATION

Whatcom County (Public Works Department)
322 N Commercial Street
Ste 210
Bellingham, WA 98225

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

Daniel Maguire/Kelly

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WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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TITLE OF DOCUMENT:
Intergovernmental Agreement for EMAC and PNEMA Assistance

ATTACHMENTS:
Contract Information Sheet
Memo to the County Executive

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

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

To authorize the County Executive to enter into an Intergovernmental Agreement between Washington Military Department and Whatcom County for mutual aid assistance through both the Emergency Management Assistance Compact (EMAC) and the Pacific Northwest Emergency Management Arrangement (PNEMA).

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: Sheriff Bill Elfo, Director
        John Gargett, Deputy Director
        Sheriff’s Office Division of Emergency Management
RE: Washington State Military Department – IGA #E18-007
    EMAC and PNEMA Assistance
DATE: July 17, 2017

Enclosed are two (2) originals of an Intergovernmental Agreement between Whatcom County and the Washington Military Department for your review and signature. Also enclosed for your signature are the W-9, Signature Authorization Form, and Debarment Certification Form.

- **Background and Purpose**
  The State of Washington is a member of two interstate mutual aid agreements: the Emergency Management Assistance Compact (EMAC) and the Pacific Northwest Emergency Management Arrangement (PNEMA).
  - EMAC is a national interstate mutual aid compact that facilitates the sharing of resources (personnel and equipment) across state lines during times of governor declared disasters and emergencies. All 50 states, Puerto Rico, the US Virgin Islands, Guam, and the District of Columbia are part of the compact.
  - PNEMA is an inter-jurisdictional agreement that enables entities to provide mutual assistance and the sharing of resources during times of need. The members of PNEMA include the US States of Washington, Oregon, Idaho, and Alaska, as well as the Canadian Province of British Columbia and the Yukon Territory.

This Agreement provides for the use of authorized resources (including employees and equipment) from Whatcom County in responding to requests for EMAC or PNEMA assistance from a participating party in which the Washington State Military Department Emergency Management Department (WA-EMD) has identified authorized resources of Whatcom County that are
qualified and immediately available to deploy and perform the requested EMAC or PNEMA assistance in a requesting participating party.

When County resources deploy to an emergency under this agreement, they are considered employees of the requesting State for tort liability and immunity purposes. Whatcom County will be reimbursed for authorized costs incurred as a result of authorized resource deployment.

This agreement is not an authorization to deploy. Deployment is authorized only by an amendment to this agreement which would relate to a specific event, specific resources to be deployed, and duties to be performed. In tight economic times having County assets deploy in support of regional/ national disaster can bring outside funding into the county for participants' wages or operational costs that frees up County financial resources that were designated toward these expenses.

This agreement will be in effect from signature date through June 30, 2022.

- **Funding Amount and Source**
  There are no funds required by this agreement. Specific costs, requirements, and reimbursement authorizations will be detailed in an amendment to this agreement, which will be required prior to actual deployment of resources.

Please contact John Gargett at 360-778-7160, if you have any questions or concerns regarding the terms of this agreement.

Encl.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

**Sheriff’s Office**
**Emergency Management**

**Originating Department:**

**Division/Program:** (i.e. Dept. Division and Program)

**Contract or Grant Administrator:**

**Contractor’s / Agency Name:**

Washington Military Department

---

**Is this a New Contract?**
**No**

**If not, is this an Amendment or Renewal to an Existing Contract?**

Yes [ ]

**If Amendment or Renewal, (per WCC 3.08.100 (a))**

Original Contract #:________________

---

**Does contract require Council Approval?**

Yes [ ]

No [ ]

**If No, include WCC:**

(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

---

**Is this a grant agreement?**

Yes [ ]

No [ ]

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

________________________

**CFDA#:**

________________________________________

---

**Is this contract grant funded?**

Yes [ ]

No [ ]

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

____________________________________________

---

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

Yes [ ]

No [ ]

**Contract Cost Center:**

________________________________________

---

**Is this agreement excluded from E-Verify?**

No [ ]

Yes [ ]

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

---

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

[ ] Professional services agreement for certified/licensed professional.

[ ] Contract work is for less than $100,000.

[ ] Contract work is for less than 120 days.

[ ] Interlocal Agreement (between Governments).

---

**Contract Amount:**

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

$ 0.00

---

**This Amendment Amount:**

$ ____________________________

---

**Total Amended Amount:**

$ ____________________________

---

Summary of Scope: To provide reimbursement of costs incurred if County resources (personnel or equipment) deploy to an emergency outside the State of Washington that is covered by national or regional mutual aid agreements. An amendment to this contract, detailing requirements and reimbursement authorization, will be established prior to each deployment.

---

**Term of Contract:**

**Upon Signature**

**Expiration Date:** 06/30/2022

---

1. Prepared by: Frances Burkhart
   Date: 7/17/17

2. Attorney signoff:
   Date: 7/17/17

3. AS Finance reviewed:
   Date: 7/20/17

4. IT reviewed (if IT related):
   Date:

5. Contractor signed:
   Date:

6. Submitted to Exec.:
   Date: 7-20-17

7. Council approved (if necessary):
   Date:

8. Executive signed:
   Date:

9. Original to Council:
   Date:

---

**Last edited 10/31/16**

---
INTERGOVERNMENTAL AGREEMENT
FOR EMAC AND PNEMA ASSISTANCE BETWEEN

Washington Military Department  AND  Whatcom County
Bldg #20, M.S.TA-20  311 Grand Avenue
Camp Murray, Washington  98430-5122  Bellingham, WA, 98225-4038

FAX: 253.512.7203  PHONE: 360-778-7160  FAX: 360-738-2518

Contact Person: Mark Douglas  Contact Person: John Gargett
Email: mark.douglas@mil.wa.gov  Email: jgargett@co.whatcom.wa.us
Phone: 253.512.7097

Contact Person: Mark Woodward
Email: mark.woodward@mil.wa.gov
Phone: 253.512.7055

UBI: 371-010-246

Start Date: Upon Signature  End Date: June 30, 2022

1. INTRODUCTION:

This Intergovernmental Agreement (Agreement), pursuant to Ch. 38.10 RCW (Emergency Management Assistance Compact (EMAC)), ch. 39.34 RCW (Interlocal Cooperation Act), ch. 38.52 RCW (Emergency Management Act), and the Pacific Northwest Emergency Management Arrangement (PNEMA), is made and entered into by and between the Washington State Military Department through its Emergency Management Division (EMD), and the local jurisdiction within the State of Washington identified above, hereinafter referred to as “Jurisdiction”. EMD, through these authorities, coordinates interstate mutual aid according to the model presented in the National Strategy for Homeland Security. EMAC, Chapter 38.10 RCW, and Public Law 104-321, authorize and direct the deployment of certain necessary mutual aid between the EMAC participants, who are currently all fifty states, Puerto Rico, Guam, the U.S. Virgin Islands, and the District of Columbia. PNEMA and Public Law 105-381 authorize and direct the deployment of certain necessary mutual aid between the PNEMA participants, who are currently the States of Alaska, Idaho, Oregon, and Washington, the Canadian Province of British Columbia, and the Yukon Territory. This Agreement provides for the use of authorized resources (including employees and equipment) of the Jurisdiction in responding to requests for EMAC or PNEMA assistance from a participating party in which EMD has identified authorized resources of the Jurisdiction that are qualified and immediately available to deploy and perform the requested EMAC or PNEMA assistance in a requesting participating party.

2. SCOPE:

Pursuant to this Agreement, the authorized resources of the Jurisdiction will be deployed to provide EMAC or PNEMA assistance. When the deployed authorized resources of the Jurisdiction are employees of the Jurisdiction, those Jurisdiction employees will be treated as state employees for purposes of EMAC or PNEMA deployment only and will be entitled to the rights and benefits under EMAC or PNEMA available to state officers and employees, but not for any other purpose. The Jurisdiction will be reimbursed for authorized costs incurred as a result of authorized resource deployment as provided in this Agreement.

3. Authorization and Deployment of Resources

a. This Agreement is not an authorization to deploy. EMAC and PNEMA deployment of the Jurisdiction’s resources under this Agreement shall only be authorized as provided in a completed amendment to this Agreement in the form of “Attachment A” that has been mutually executed by the parties. The Jurisdiction shall not deploy any resources under this Agreement except in compliance with such authorization. No reimbursement will be provided for resources deployed inconsistent with such authorization.
b. Jurisdiction resources authorized for deployment under this Agreement (the "authorized resources") are only those listed on mutually executed amendments in the form of "Attachment A" that reference this Agreement by number and include the authorized charge code, EMAC or PNEMA mission number and disaster name, identification of the authorized resource (employee/equipment), description of the anticipated EMAC or PNEMA duties, maximum reimbursement, estimated duration of deployment, reporting location, point of contact at the destination, and completed verification of credentials.

4. Financial Management and Reimbursement

a. The Military Department will reimburse the Jurisdiction for the expenses of authorized resources deployed under this Agreement up to the maximum amount provided for herein to the extent supported by proper documentation establishing the expenses were actually incurred pursuant to authorized deployment under the Agreement. No reimbursement will be provided for resources deployed inconsistent with the authorization contained in a completed amendment to this Agreement in the form of "Attachment A" that has been mutually executed by the parties.

b. The authorized resource expenses that may be reimbursed are only those contained in a completed amendment to this Agreement in the form of "Attachment A" that has been mutually executed by the parties, and include employee salary, benefits, overtime, air and land travel expenses, lodging, and per diem; and equipment use and operation costs. Unless this Agreement is amended by Attachment A to provide otherwise, lodging and per diem shall only be reimbursed in accordance with the Federal General Services Administration (GSA) rates for the applicable deployment location existing at the time of deployment under this Agreement, which are located at http://www.gsa.gov/portal/category/21287.

c. The maximum amount of reimbursement for Fire District and Fire Department authorized resources shall be based on the State Fire Chiefs Rate Schedule in effect at the time of deployment, which is incorporated herein by reference. For all other Jurisdictions, the maximum amount of reimbursement for authorized employee expenses under this Agreement shall be the lesser of (1) the maximum amount identified in the mutually executed Attachment A to this Agreement and amendments thereto, or (2) the amount that the employee would have received in the absence of this Agreement. In no case will reimbursement for authorized resources of any Jurisdiction (including Fire Districts and Fire Departments) exceed the maximum estimated total resource cost identified in the mutually executed Attachment A or a subsequent mutually executed written amendment thereto in the same form.

d. The Jurisdiction shall maintain books, records, documents, receipts and other evidence which sufficiently and properly support and reflect all costs and expenditures authorized by this Agreement. These records shall be subject to inspection, review or audit during normal business hours by authorized Department personnel or its designee(s), the Office of the State Auditor, and federal officials so authorized by law. Such books, records, documents, receipts and other material relevant to this Agreement shall be retained for six (6) years after expiration.

e. The Jurisdiction will submit a final state invoice voucher identifying this Agreement and the appropriate charge code to the Military Department within 45 days after return by the deployed authorized resource, and must include documentation and receipts supporting all claimed reimbursement. The Jurisdiction agrees to immediately comply with any request by EMD for additional supporting documentation or receipts.

5. Resource Management

a. The Jurisdiction agrees that it will only deploy employees as authorized resources under this Agreement who are fully qualified and capable of performing the duties described in the completed and mutually executed Attachment A and under the conditions described therein. The Jurisdiction agrees that if any of its employees deployed as an authorized resource under this Agreement are determined by the EMAC or PNEMA requesting participant, in its sole discretion, to not meet this requirement, those employees may in the sole discretion of the EMAC or PNEMA requesting participant be returned to the Jurisdiction from which they deployed at the sole cost and expense of the Jurisdiction, and the cost and expense of deploying and returning the employee(s) will not
be reimbursed under this Agreement. Such qualifications and capabilities shall include, but not be limited to, the following:

1) Has completed training for ICS 100, 700 and 800;
2) Has received training customary or required for the position for which they are being deployed;
3) Currently possesses all certifications and licenses required in the state of Washington to perform the duties for which they are being deployed;
4) Has past experience operating in the position for which they are being deployed; and
5) Has the ability to fully and effectively perform all duties of the position for which they are being deployed.

b. The Jurisdiction agrees that if any of its employees deployed as an authorized resource under this Agreement exhibit behavior, conduct or other condition that, in the sole discretion of the EMAC or PNEMA requesting participant, interferes with the employee’s ability to perform the duties for which they are deployed, that employee may, in the sole discretion of the EMAC or PNEMA requesting participant, be returned to the Jurisdiction from which they deployed at the sole cost and expense of the Jurisdiction, and such cost and expense will not be reimbursed under this Agreement.

c. The Jurisdiction agrees that it will only deploy equipment as an authorized resource under this Agreement that is in good working order and condition when deployed. Any such equipment determined by the EMAC or PNEMA requesting participant in its sole discretion not to have been in good working order or condition at the time of deployment may, in the EMAC or PNEMA requesting participant’s sole discretion, be returned to the Jurisdiction from which it was deployed at the sole cost and expense of the Jurisdiction, and the cost and expense of deploying and returning the equipment will not be reimbursed under this Agreement.

d. The Jurisdiction agrees that its employees deployed under this Agreement will be required by the Jurisdiction to conduct themselves in a professional and ethical manner throughout the period of deployment, consistent with all laws, regulations and policies applicable to the Jurisdiction and its employees.

e. Hold Harmless. To the extent allowed by law, each party shall defend, protect and hold harmless the other party from and against any claims, suits, and/or actions arising from any negligent act or omission of that party’s employees, agents and or authorized representatives while performing under this Agreement.

6. Alterations And Amendments

This Agreement and any of its Attachments may only be altered or amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties. All other terms and conditions of this Agreement shall remain in full force and effect and binding upon the parties.

7. Termination

Either party may terminate this Agreement upon thirty (30) days prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

8. All Writings Contained Herein

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
IN WITNESS WHEREOF, the parties have executed this Agreement.

For the Department:  

BY:  
Dan Swisher  
Chief Financial Officer  
Washington Military Department  

Date

For the Jurisdiction:  

BY:  
Jack Louws  
Whatcom County Executive  
Whatcom County  

Date

APPROVED BY DEPARTMENT HEAD

BY:  
Bill Eils  
Whatcom County Sheriff  
Whatcom County  

Date

APPROVED AS TO FORM ONLY

BY:  
Date

Whatcom County Civil Deputy Prosecutor

BOILERPLATE APPROVED AS TO FORM:

Brian Buchholz (signature on file) 01/09/2012  
Senior Counsel, Assistant Attorney General
TITLE OF DOCUMENT:
Agreement between Whatcom County and the Northwest Educational Service District 189

ATTACHMENTS:
1. Contract Information Sheet
2. Memo to County 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 the contracted services is to provide behavioral health services within schools in Whatcom County for substance use disorder prevention.

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: Northwest Educational Service District 189, Behavioral Health Services Contract

DATE: July 19, 2017

Enclosed are two (2) originals of a contract between Whatcom County and Northwest Educational Service District 189 for your review and signature.

- **Background and Purpose**

This purpose of the contracted services is to provide substance use disorder prevention services within the school districts in Whatcom County in order to improve behavioral health outcomes.

- **Funding Amount and Source**

The source of funding for this contract, in an amount not to exceed $121,000, is Dedicated Marijuana Account Funds from the North Sound Behavioral Health Organization and the Whatcom County Behavioral Health Program fund. Funding is included in the 2017 – 2018 budget and County Council approval is required.

Please contact Joe Fuller at extension 6045 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:** Joe Fuller  
**Contractor’s / Agency Name:** Northwest Educational Services District 189

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

**Is this a grant agreement?**  
Yes [] No [x]  
If yes, grantor agency contract number(s):  
**CFDA#:**

**Is this contract grant funded?**  
Yes [x] No []  
If yes, Whatcom County grant contract number(s):  
201704016

**Is this contract the result of a RFP or Bid process?**  
Yes [x] No []  
If yes, RFP and Bid number(s):  
**Contract Cost Center:** 677410

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

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

| $ | 121,000 |

**This Amendment Amount:**

| $ |

**Total Amended Amount:**

| $ |

**Summary of Scope:** The purpose of this contract is to provide substance use disorder prevention services within the school districts in Whatcom County in order to improve behavioral health outcomes.

**Term of Contract:** 1 Year  
**Expiration Date:** 8/31/2018

1. Prepared by: JT  
2. Attorney signoff: RB  
3. AS Finance reviewed: bbennett BB  
4. IT reviewed (if IT related):  
5. Contractor signed:  
6. Submitted to Exec.:  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:

**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.
CONTRACT FOR SERVICES AGREEMENT
Northwest Educational Service District 189 – Behavioral Health Services

Northwest Educational Service District 189, 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 11
Exhibit B (Compensation), pp. 12 to 13
Exhibit C (Certificate of Insurance), p. 14

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 September, 2017, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of August, 2018.

The general purpose or objective of this Agreement is to provide behavioral health services, 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 $121,000. 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 ___ day of ________________, 2017.

CONTRACTOR:
Northwest Educational Service District 189

Larry Francois, Superintendent

STATE OF WASHINGTON
COUNTY OF WHATCOM

On the ___ day of __________, 2017, before me personally appeared Larry Francois, to me known to be the Superintendent and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

___________________________
Marie Holloway

NOTARY PUBLIC in and for the State of Washington, residing at Skagit County. My commission expires 2/1/2019

Notary Public
State of Washington
MARIE MICHELLE HOLLOMAN
My Appointment Expires Feb 1, 2019
WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager  7/19/17
Date

Regina A. Delahunt, Director  7/24/17
Date

Approved as to form:

Royce Buckingham, Deputy Prosecuting Attorney  7/25/17
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:

Northwest Educational Service District 189
Larry Francois, Superintendent
1501 R Avenue
Anacortes, WA 98221
360-299-4003
lfrancois@mwead.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:
Contractor shall provide annual proof of insurance to County. Contractor shall provide proof of insurance at or prior to the beginning of the term of this agreement and thereafter provide annual proof of insurance to County by sending to the Contract Administrator identified under provision 37.1.

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 subcontracts 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:

Joe Fuller, Program Specialist
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
(360) 778-8045
JFuller@whatcomcounty.us
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: Not Applicable

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 instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

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

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

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

d. Arbitration: Not Applicable

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

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

45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
EXHIBIT "A"
(SCOPE OF WORK)

Background

The purpose of this contract is to ensure tax revenue from the sale of marijuana and cannabis products is used for substance use disorder prevention. Evidence-based and research-based programming will be delivered through school-based Prevention/Intervention (PI) services. PI services provide valuable school-based prevention and intervention services that support students. Benefits of efforts show reductions in substance use, being in trouble at school, skipping school, suspensions, hitting or hurting someone, being in a physical fight, and in being arrested.

PI Services will utilize Motivational Interviewing (MI) and Project SUCCESS. Motivational Interviewing is an approach that moves individuals away from indecision toward finding motivation to healthier goals, ones that include positive and healthy choices. MI is used throughout many types of behavioral health services. Project SUCCESS (Schools Using Coordinated Community Efforts to Strengthen Students) is a school-based intervention designed to prevent and reduce substance abuse among high-risk adolescents. Project SUCCESS counselors are placed in the schools to provide a range of substance use prevention and early intervention services. Counselors provide normative and prevention education; work with students to build resistance and social competency skills; and work with students, parents, and school administrators to change attitudes, behaviors, and school policies to help prevent and reduce substance use. Project SUCCESS was developed by Student Assistance Services (SAS) Corporation.

The services outlined in the statement of work will provide a response to the pressing needs of these students. The goal of the services is to mitigate behavioral health concerns for youth and their families and to promote increased functioning and success. Anticipated outcomes include improved reduced risk for substance use, especially for marijuana. Other benefits will include improved academic performance, decreased discipline problems, decreased absenteeism, decreased truancy, and decreased suspensions among the students served by this program.

Statement of Work

The Contractor will:

1. Provide behavioral health services to at least 150 students, ages 12 to 18 years, and their families as appropriate, during the contract period. Motivational Interviewing will be delivered through school-based Prevention/Intervention services, as well as through Project SUCCESS.

2. Provide Motivational Interviewing as part of prevention and intervention services and also through Project SUCCESS. The Project SUCCESS portion will be made up of the following five program components:

   A. Prevention Education Series: This is a series of eight discussion groups on alcohol, tobacco and other drug prevention conducted by the Project SUCCESS counselor with small groups of students.

   B. Individual and Group Counseling: Following participation in the Prevention Education Series, students are assessed for services. They may receive time-limited individual counseling or they may participate in one of seven counseling groups.

   C. School-Wide Awareness and Outreach Activities: Activities such as contests, assemblies and other activities in conjunction with national events such as the Great American Smoke Out help students to change their perceptions of substance use and increase school connectedness.

   D. Parent Programs: Parents are involved in Project SUCCESS through a series of parenting workshops. These workshops provide parents with prevention information and an opportunity to build social support.

   E. Referral: Students and parents who require treatment, more intensive counseling or other services are referred to the appropriate agencies in their community.
3. Provide services to students who are demonstrating "behaviors of concern" such as declining grades, discipline problems, truancy and absenteeism problems, suspensions, substance use, or related issues. Individuals can be referred by themselves, other students, school personnel, or family members.

4. Link students to appropriate in-school or community-based services and activities based on identified needs of the individual.

5. Refer identified students to appropriate mental health and chemical dependency treatment programs and additional support services, as appropriate.

6. Ensure consultation and coordination efforts comply with all state and federal laws regulating confidentiality and client record keeping.

7. Provide consultation and/or technical assistance to school district staff regarding youth with behavioral health issues.

8. Ensure all services are delivered by a qualified professional.

9. Participate in one provider meeting during each school year contract period, as arranged and convened by the Whatcom County Health Department.

10. Place a Prevention/Intervention Specialist in the Nooksack School District or at an alternative site identified in partnership with the County. Expand PI Services at two additional school districts where PI's are currently placed, as agreed upon by the County.

11. Participate in service tracking and outcome evaluation efforts. Service reporting will be done on a monthly basis with outcome reporting provided as data is available. New or existing tracking systems can be utilized that can collect and report the following information:

<table>
<thead>
<tr>
<th>Program/Strategy</th>
<th>Measures (process/outcomes)</th>
<th>Tool/Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevention/Intervention Services</td>
<td>Process</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• # of youth served</td>
<td>• OSPI Reporting System (or alternative)</td>
</tr>
<tr>
<td></td>
<td>• # of screenings or interventions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• # services provided/classes taught</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Outcomes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Decreased substance use rates</td>
<td>• Pre-post surveys</td>
</tr>
<tr>
<td></td>
<td>• Improved school success</td>
<td>• School Records</td>
</tr>
</tbody>
</table>

12. Motivational Interviewing (MI) will be a delivered service. Additional programming may be delivered from the evidence-based or research-based programs, or for promising programs as listed below:

**Evidence-Based & Research-Based Programs**

- a. Adolescent Community Reinforcement Approach (ACRA);
- b. Motivational Enhancement Therapy/Cognitive Behavioral Therapy (MET/CBT);
- c. **Motivational Interviewing (MI)**;
- d. Cognitive Behavioral Therapy (CBT);
- e. Functional Family Therapy (FFT);
- f. Multidimensional Family Therapy (MDFT);
- g. Multi-Systemic Therapy (MST) for substance abusing juvenile offenders;
- h. Contingency Management (CM);
- i. Family Behavior Therapy (FBT); or
- j. Family Support Network (FSN) for Adolescent Cannabis Users.
Promising Programs

a. Adolescent Cannabis Check Up (ACCU);
b. Brief Intervention (BI);
c. Brief Strategic Family Therapy (BFST);
d. Chestnut-Bloomington Outpatient Program (CBOP);
e. Culturally Informed and Flexible Family-Based Treatment for Adolescents (CIFTA) for Hispanic Youth;
f. Community Reinforcement and Family Training (CRAFT);
g. Dialectical Behavioral Therapy for Substance Use Disorder (DBT-S);
h. Motivational Enhancement Therapy (MET);
i. Motivational Enhancement Therapy/Cognitive Behavioral Therapy Aftercare (MET/CBT-A);
j. Multi-Systemic Therapy (MST); or
k. Seeking Safety for Adolescents (SSA).
The source of funding for this contract, in an amount not to exceed $121,000, is Dedicated Marijuana Account Funds from the North Sound Behavioral Health Organization and the Whatcom County Behavioral Health Program Fund.

The budget for behavioral health services is as follows:

<table>
<thead>
<tr>
<th>Contract Budget 9/1/2017 – 8/31/2018</th>
<th>Item</th>
<th>Invoice Documentation Required</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intervention/Prevention Specialist (including salary and benefits)</td>
<td>General Ledger Detail or Time &amp; Effort Form</td>
<td>$108,000</td>
<td></td>
</tr>
<tr>
<td>Program supplies, professional development/training, and travel</td>
<td>• General Ledger Detail or receipts for Supplies and Training (registration or training fees).&lt;br&gt;• Ground transportation, parking, coach airfare, and ferries will be reimbursed at cost when accompanied by receipts. Reimbursement requests for allowable travel must include name of staff member, dates of travel, starting point and destination, and a brief description of purpose.&lt;br&gt;• For mileage reimbursement, copies of mileage records, including the name of the staff member, date of travel, starting point and destination of travel, the number of miles traveled, the per mile reimbursement rate, and a brief description of the purpose of travel, for mileage reimbursement. Mileage will be reimbursed at the current Federal Rate.&lt;br&gt;• Lodging costs for training are not to exceed the U.S. General Services Administration Domestic Per Diem Rates (<a href="http://www.gsa.gov">www.gsa.gov</a>), specific to location.</td>
<td>$2,000</td>
<td></td>
</tr>
<tr>
<td>Indirect Costs</td>
<td>• Administration @ 10%</td>
<td>11,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>TOTAL</td>
<td>$121,000</td>
</tr>
</tbody>
</table>

The Contractor may transfer funds between budget line items with County prior approval; however, administration cannot exceed the identified rate.

**Invoicing**

1. The Contractor shall submit itemized invoices in a format approved by the County. Invoices must be submitted monthly. Monthly invoices must be submitted by the 10th day of the month following the month of service. No invoices will be accepted 60 days after the end of the month in which the service was provided.

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

   Business Office  
   Whatcom County Health Department  
   509 Girard St.  
   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. **Duplication 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 evidence is issued as a matter of information only and confers no rights upon the evidence holder. This evidence does not amend, extend or alter the coverage afforded by the coverage agreement below.

<table>
<thead>
<tr>
<th>Covered Member:</th>
<th>Coverage Afforded By:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northwest Educational Service District 189 1601 R Ave Anacortes, WA 98221</td>
<td>Washington Schools Risk Management Pool PO Box 88700 Tukwila, WA 98138-2700</td>
</tr>
</tbody>
</table>

This is to certify that the liability coverage listed below has been issued to the district member named above for the period indicated notwithstanding any requirement, term or condition of any contract or other document with respect to which this evidence may be issued or may pertain. The evidence afforded by the coverage agreement described herein is subject to all the terms, exclusions and conditions of such coverage agreement.

<table>
<thead>
<tr>
<th>Coverage Agreement #:</th>
<th>COV 2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage Period:</td>
<td>September 1, 2016 to August 31, 2017</td>
</tr>
<tr>
<td>Effective Date of Evidence of Coverage:</td>
<td>September 1, 2016</td>
</tr>
<tr>
<td>Expiration Date of Evidence of Coverage:</td>
<td>August 31, 2017</td>
</tr>
<tr>
<td>Limits of Liability Each Occurrence Bodily Injury and Property Damage Combined:</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Other Applicable Coverage:</td>
<td></td>
</tr>
</tbody>
</table>

Description of Operations/Locations/Vehicle:

Activities under the direct supervision of District personnel as respects coverage period September 1, 2015 through August 31, 2016.

Cancellation:
Should the above described coverage agreement be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the evidence of coverage holder named below.

<table>
<thead>
<tr>
<th>Evidence of Coverage Holder:</th>
<th>Issue Date: July 13, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>To Whom It May Concern</td>
<td></td>
</tr>
</tbody>
</table>

Authorized Signature
**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>JT</td>
<td>7/12/2017</td>
<td></td>
<td>8/8/2017</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Division Head:</td>
<td>AD</td>
<td>7/12/17</td>
<td></td>
<td>8/8/2017</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Dept. Head:</td>
<td>D4D</td>
<td>7/24/17</td>
<td></td>
<td>8/8/2017</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Prosecutor:</td>
<td>7.25.17</td>
<td></td>
<td></td>
<td>8/8/2017</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>7/25/17</td>
<td></td>
<td></td>
<td>8/8/2017</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Executive:</td>
<td>8.1.17</td>
<td></td>
<td></td>
<td>8/8/2017</td>
<td>Finance/Council</td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**
Contract between Whatcom County and Blaine School District.

**ATTACHMENTS:**
- Memo to County Executive
- Contract Information Sheet
- 2 Originals of Contract

**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.)
The purpose of this contract is to provide behavioral health services within the Blaine School 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.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt, Director
RE: Blaine School District, Behavioral Health Services, Amendment #2
DATE: July 20, 2017

Enclosed are two (2) originals of a contract amendment between Whatcom County and Blaine School District for your review and signature.

- Background and Purpose

The purpose of this contract is to provide behavioral health services within the Blaine School District in order to promote a greater ability for academic success for students who are challenged with mental health and substance abuse problems. The purpose of this amendment is to extend the agreement for an additional year, and to provide additional funding to establish a .5 FTE Mental Health Counseling position that is matched by School District funds.

- Funding Amount and Source

The source of funding for this amendment, in an amount not to exceed $113,400, is the Behavioral Health Program Fund. Funding for this amendment is included in the 2017 – 2018 budget. Council approval is required because funding exceeds 10% of the original contract amount.

Please contact Joe Fuller at extension 6045 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>Joe Fuller</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Blaine School District</td>
</tr>
<tr>
<td>Is this a New Contract?</td>
<td>Yes ☑ No ❏</td>
</tr>
<tr>
<td>If not, is this an Amendment or Renewal to an Existing Contract?</td>
<td>Yes ☑ No ❏</td>
</tr>
<tr>
<td>if Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:</td>
<td>201507023</td>
</tr>
<tr>
<td>Does contract require Council Approval?</td>
<td>Yes ☑ No ❏</td>
</tr>
<tr>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
<td></td>
</tr>
<tr>
<td>Is this a grant agreement?</td>
<td>Yes ☑ No ❏</td>
</tr>
<tr>
<td>If yes, grantor agency contract number(s):</td>
<td></td>
</tr>
<tr>
<td>CFDA#:</td>
<td></td>
</tr>
<tr>
<td>Is this contract grant funded?</td>
<td>Yes ☑ No ❏</td>
</tr>
<tr>
<td>If yes, Whatcom County grant contract number(s):</td>
<td></td>
</tr>
<tr>
<td>Contract Cost Center:</td>
<td>124100</td>
</tr>
<tr>
<td>Is this the result of a RFP or Bid process?</td>
<td>Yes ☑ No ❏</td>
</tr>
<tr>
<td>If yes, RFP and Bid number(s):</td>
<td></td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify?</td>
<td>Yes ☑ No ❏</td>
</tr>
<tr>
<td>If no, include Attachment D Contractor Declaration form.</td>
<td></td>
</tr>
</tbody>
</table>

If YES, indicate exclusion(s) below:

- ☐ Professional services agreement for certified/licensed professional.
- ☐ Contract work is for less than $100,000.
- ☐ Contract work is for less than 120 days.
- ☑ Interlocal Agreement (between Governments).
- ☐ 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:
  - $ 180,000
- This Amendment Amount:
  - $ 113,400
- Total Amended Amount:
  - $ 293,400

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 behavioral health services within the Blaine School District in order to promote a greater ability for academic success for students who are challenged with mental health and substance abuse problems.

## Term of Contract:

- 1 Year

<table>
<thead>
<tr>
<th>Contract Routing:</th>
<th>1. Prepared by</th>
<th>JT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Attorney signoff:</td>
<td>RB</td>
<td></td>
</tr>
<tr>
<td>3. AS Finance reviewed:</td>
<td>B</td>
<td></td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Contractor signed:</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>6. Submitted to Exec.:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Council approved (if necessary):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Executive signed:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expiration Date:</th>
<th>8/31/2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>6/13/17</td>
</tr>
<tr>
<td>Date:</td>
<td>7/11/17</td>
</tr>
<tr>
<td>Date:</td>
<td>7/29/17</td>
</tr>
<tr>
<td>Date:</td>
<td>7/11/17</td>
</tr>
<tr>
<td>Date:</td>
<td></td>
</tr>
</tbody>
</table>
WHATCOM COUNTY HEALTH DEPARTMENT CONTRACT EXTENSION

Whatcom County # 201507023

PARTIES:
Whatcom County
Whatcom County Courthouse
311 Grand Avenue
Bellingham, WA  98225

AND CONTRACTOR:
Blaine School District
770 Mitchell Street
Blaine, WA  98230

AMENDMENT NUMBER: 2
CONTRACT PERIODS:
Original: 09/01/2015 – 08/31/2016
Amendment #1 09/01/2016 – 08/31/2017
Amendment #2 09/01/2017 – 08/31/2018

THE CONTRACT 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. Extend the duration and other terms of this contract for 1 year, as per the original contract “General Terms, Section 10.2, Extension”.

2. Amend Exhibit B “Compensation” by adding $23,400 for additional Mental Health Counseling services.

3. Funding for this extended contract period (09/01/2017 - 08/31/2018) is not to exceed $113,400.

4. Funding for the total contract period (09/01/2015 – 08/31/2018) is not to exceed $293,400.

5. All other terms and conditions remain unchanged.

6. The effective start date of the extension is 09/01/2017.
ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT.

ALL PARTIES IDENTIFIED AS AFFECTED BY THIS EXTENSION HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS EXTENSION.

Signature is required below.

APPROVAL AS TO PROGRAM:  
Anne Deacon, Human Services Manager  
Date 7/20/17

DEPARTMENT HEAD APPROVAL:  
Regina A. Delahunt, Health Department Director  
Date 7/24/17

APPROVAL AS TO FORM:  
Royce Buckingham, Civil Deputy Prosecuting Attorney  
Date 7/25/17

FOR THE CONTRACTOR:

_ [Signature]_  
Print Name and Title  
Date 7/17/17

STATE OF WASHINGTON
COUNTY OF WHATCOM

On this 17th day of July, 2017, before me personally appeared [Name], to me known to be the Director 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 Bellingham

My Commission expires: July 31, 2019

FOR WHATCOM COUNTY:

Jack Louws, County Executive  
Date

STATE OF WASHINGTON
COUNTY OF WHATCOM

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

[Signature]

NOTARY PUBLIC in and for the State of Washington
Residing at

My Commission expires: 

HI_060117_Blaine_SD_Amend_#2 Page 2 of 3
The source of funding for this contract, in an amount not to exceed $113,400, is the Behavioral Health Program Fund.

The budget for mental health intervention and treatment services is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Invoice Documentation Required</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intervention/Prevention Specialist (including salary and benefits)</td>
<td>General Ledger Detail</td>
<td>$64,250</td>
</tr>
<tr>
<td>Mental Health Counselor (including salary and benefits)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program supplies, professional development/training, and travel</td>
<td>General Ledger Detail for supplies &amp; training For mileage reimbursement, copies of mileage records, including the name of the staff member, date of travel, starting point and destination of travel, the number of miles traveled, the per mile reimbursement rate, and a brief description of the purpose of travel, for mileage reimbursement. Mileage will be reimbursed at the current Federal Rate. Ground transportation, coach airfare, and ferries will be reimbursed at cost when accompanied by receipts. Reimbursement requests for allowable travel must include name of staff member, beginning and ending time and dates of travel, starting point and destination, and a brief description of purpose. Lodging and meal costs for training are not to exceed the U.S. General Services Administration Domestic Per Diem Rates (<a href="http://www.gsa.gov">www.gsa.gov</a>), specific to location. Receipts for meals are not required.</td>
<td>$17,230</td>
</tr>
<tr>
<td>Subcontracted services (e.g., alcohol and drug evaluations, case management, community presentations, parent and staff trainings, psychological evaluations)</td>
<td>Subcontractor invoicing showing subcontractor name, type of service, rate &amp; hours of service, student identifier</td>
<td>$19,960</td>
</tr>
<tr>
<td>Whatcom Discovery Mental Health Day Treatment Program ($238/child/day)</td>
<td>Student identifier &amp; dates of service</td>
<td>$4,760</td>
</tr>
<tr>
<td>Care Team member stipends plus benefits (Middle School and High School) $450/member/yr</td>
<td>Names of Care Team Members</td>
<td>$7,200</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$113,400</strong></td>
</tr>
</tbody>
</table>

The Contractor may transfer funds between budget line items with County prior approval.

The Contractor cannot exceed 40% of the total allocation during the first four months of service (September through December) without prior county approval.
This evidence is issued as a matter of information only and confers no rights upon the evidence holder. This evidence does not amend, extend or alter the coverage afforded by the coverage agreement below.

<table>
<thead>
<tr>
<th>Covered Member:</th>
<th>Coverage Afforded By:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blaine School District</td>
<td>Washington Schools Risk Management Pool</td>
</tr>
<tr>
<td>765 H Street</td>
<td>PO Box 88700</td>
</tr>
<tr>
<td>Blaine, WA 98230</td>
<td>Tukwila, WA 98138-2700</td>
</tr>
</tbody>
</table>

This is to certify that the liability coverage listed below has been issued to the district member named above for the period indicated notwithstanding any requirement, term or condition of any contract or other document with respect to which this evidence may be issued or may pertain. The evidence afforded by the coverage agreement described herein is subject to all the terms, exclusions and conditions of such coverage agreement.

<table>
<thead>
<tr>
<th>Coverage Agreement #:</th>
<th>COV 2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage Period:</td>
<td>September 1, 2016 to August 31, 2017</td>
</tr>
<tr>
<td>Effective Date of Evidence of Coverage:</td>
<td>September 1, 2016</td>
</tr>
<tr>
<td>Expiration Date of Evidence of Coverage:</td>
<td>August 31, 2017</td>
</tr>
<tr>
<td>Limits of Liability Each Occurrence Bodily Injury and Property Damage Combined:</td>
<td>$1,000,000---------------------------------</td>
</tr>
</tbody>
</table>

Other Applicable Coverage:

Description of Operations/Locations/Vehicle:

Activities under the direct supervision of District personnel as respects coverage period September 1, 2016 through August 31, 2017.

Cancellation:
Should the above described coverage agreement be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the evidence of coverage holder named below.

<table>
<thead>
<tr>
<th>Evidence of Coverage Holder:</th>
<th>Issue Date: August 1, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>To Whom It May Concern</td>
<td></td>
</tr>
</tbody>
</table>

Authorized Signature

© 2016 Washington Schools Risk Management Pool
**TITLE OF DOCUMENT:**
Contract between Whatcom County and Washington State Department of Early Learning

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

**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 agreement is to provide high quality home visiting services to high risk families using the Nurse Family Partnership program model for purposes of improving outcomes for participants and strengthening coordination of services.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

TO: Jack Louws, County Executive

FROM: Regina A. Delahunt, Director

RE: Washington State Department of Early Learning, Nurse Family Partnership Interlocal Agreement

DATE: July 20, 2017

Enclosed are two (2) originals of an Interlocal Agreement between Whatcom County and Washington State Department of Early Learning (DEL) for your review and signature.

- Background and Purpose
  In December of 2012, the Whatcom County Health Department began implementing the Nurse-Family Partnership program. The program is a nationally-recognized home visiting program focused on supporting low-income first-time mothers during pregnancy until the first child is two years of age. The Nurse-Family Partnership program is at the forefront of community health programs because the evidence-base of positive outcomes for children and families is so strong. The program matches each family with a nurse who provides ongoing support to the family focusing on health, child development, goal-setting and family self-sufficiency. To date, 153 families have been served by the program in Whatcom County.

- Funding Amount and Source
  This agreement provides $335,525.81 in funding for the NFP Program from the Home Visiting Services Account (HVSA) established in RCW 43.215.130 and is administered by DEL. Currently, approximately 50% of our total program is funded by the HVSA. These funds are included in the 2017 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Judy Ziels at extension #6130 if you have any questions regarding this agreement.

Encl.
<table>
<thead>
<tr>
<th>Contract or Grant Administrator:</th>
<th>Judy Ziets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Washington State Department of Early Learning</td>
</tr>
</tbody>
</table>

Is this a New Contract? Yes ☐ No ☒ If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☒ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: (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): 18-1054 CFDA#: ____________

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

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

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

If YES, indicate exclusion(s) below:

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

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

| $ | 335,525.81 |

**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 agreement is to provide high quality home visiting services to high risk families using the Nurse Family Partnership program model for purposes of improving outcomes for participants and strengthening coordination of services.

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

<table>
<thead>
<tr>
<th>Contract Routing:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prepared by: JT</td>
<td>7/19/2017</td>
</tr>
<tr>
<td>2. Attorney signoff:</td>
<td>7/26/17</td>
</tr>
<tr>
<td>3. AS Finance reviewed:</td>
<td>7/19/17</td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td></td>
</tr>
<tr>
<td>5. Contractor signed:</td>
<td></td>
</tr>
<tr>
<td>6. Submitted to Exec.:</td>
<td></td>
</tr>
<tr>
<td>7. Council approved (if necessary):</td>
<td></td>
</tr>
<tr>
<td>8. Executive signed:</td>
<td></td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td></td>
</tr>
</tbody>
</table>
INTERLOCAL AGREEMENT BETWEEN

STATE OF WASHINGTON
DEPARTMENT OF EARLY LEARNING

AND

WHATCOM COUNTY

THIS CONTRACT, pursuant to Chapter 39.34 RCW, is made and entered into by and between the State of Washington, acting by and through the Department of Early Learning, a department of Washington State government (hereinafter referred to as "DEL") located at PO Box 40970, Olympia WA 98504-0970 and Whatcom County, a Municipal Subdivision, doing business as Whatcom County Health Department, (hereinafter referred to as "Contractor"), located at 509 Girard St, Bellingham WA 98225.

IT IS THE PURPOSE OF THIS CONTRACT To provide high quality home visiting services to high risk families using the Nurse Family Partnership (NFP) program model for purposes of improving outcomes for participants and strengthening coordination of services.

THIS CONTRACT CONTRIBUTES TO THE FOLLOWING AGENCY GOALS:
Provide voluntary, high-quality early learning opportunities for children and families in Washington

THEREFORE, IT IS MUTUALLY AGREED THAT:

1. CONTRACT MANAGEMENT

1.1 The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

1.2 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing, properly addressed, and either emailed, delivered in person, or by a recognized courier service, or deposited within the United States Postal Service as first-class certified mail, postage prepaid, and return receipt requested, to the parties at the following addresses:

<table>
<thead>
<tr>
<th>CONTRACTOR BUSINESS ADDRESS</th>
<th>CONTRACTOR CONTRACT MANAGER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whatcom County</td>
<td>Judy Ziels</td>
</tr>
<tr>
<td>509 Girard St</td>
<td><a href="mailto:jziels@co.whatcom.wa.us">jziels@co.whatcom.wa.us</a></td>
</tr>
<tr>
<td>Bellingham WA 98225</td>
<td>Phone: (360) 778-6130</td>
</tr>
<tr>
<td>TIN: 91-6001383</td>
<td></td>
</tr>
<tr>
<td>UBI: 600-358-208</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DEL ADDRESS</th>
<th>DEL PROGRAM CONTRACT MANAGER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Early Learning</td>
<td>Rene Toolson</td>
</tr>
<tr>
<td>PO Box 40970</td>
<td><a href="mailto:rene.toolson@del.wa.gov">rene.toolson@del.wa.gov</a></td>
</tr>
<tr>
<td>Olympia WA 98504-0970</td>
<td>Phone: (360) 725-4398</td>
</tr>
</tbody>
</table>

1.3 Each party shall notify the other party in writing within ten days of any changes of the name and contact information regarding either party’s designated Contract Manager.

1.4 Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four calendar days after mailing or emailing. The notice address as provided herein may be changed by written notice given as provided above.
2. EXHIBITS AND ATTACHMENTS

Attached hereto and incorporated herein as though set forth in full are the following exhibits and attachments:
- Exhibit A - STATEMENT OF WORK
- Exhibit B - BUDGET
- Exhibit C - GENERAL TERMS AND CONDITIONS
- Exhibit D - Deliverables Schedule
- Attachment 1 - Certification of Data Disposition
- Attachment 2 - Statement Confidentiality and Nondisclosure
- Attachment 3 - Contract Monitoring, Compliance and Non-Compliance
- Attachment 4 - Data Collection Reporting Align Meas
- Attachment 5 - Continuous Quality Improvement
- Attachment 6 - Monthly Enrollment Data Report
- Attachment 7 - Quarterly Progress Report

The parties agree that the exhibits and attachments listed in this paragraph shall be enforceable against the parties and are a part of this Contract.

3. STATEMENT OF WORK

The parties agree that the Contractor shall perform the activities and obligations as set forth and described in Exhibit A, STATEMENT OF WORK, attached hereto and incorporated herein as though set forth in full. The Contractor shall also furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work as set forth and described in Exhibit A, STATEMENT OF WORK. The Contractor agrees to provide the services, products and activities at the costs set forth in this Contract.

4. PERIOD OF PERFORMANCE

Subject to Department of Enterprise Services (DES) approval requirements and the requirements of this Contract, the period of performance of this Contract shall commence on July 1, 2017 and be completed on or before July 31, 2018, unless terminated sooner as provided herein.

5. COMPENSATION

The parties have determined that the cost of accomplishing the work herein shall not exceed $335,525.81. Any additional authorized expenditures, for which reimbursement is sought, must be submitted as written documentation to the DEL Contract Manager for pre-approval by the DEL Director or the Director’s delegate as described in this Contract, and established by a written Contract Amendment. Exhibit B, BUDGET, attached and incorporated herein as though set forth in full is an actual budget of the costs associated with this Contract. If the Contractor reduces its prices for any of its services during the term of this Contract, DEL will have the immediate benefit of such lower prices for services following the price reduction. Compensation for services will be paid upon the timely completion of services as described in Exhibit A, STATEMENT OF WORK, and is contingent upon acceptance of relevant work products and approval of vouchers by DEL as described in this Contract.

6. BILLING PROCEDURE

6.1 The Contractor will submit, not more than semi-monthly, properly completed A-19 vouchers (the “voucher”), to one of the following:

The Department of Early Learning
Attn: Financial Office
P.O. Box 40970
6.2 Payment to the Contractor for approved and completed work shall be made by warrant or Electronic Funds Transfer by DEL and considered timely if made within 30 days of receipt of a properly completed voucher. Payment shall be sent to the address designated by the Contractor and set forth in this Contract. No payments in advance or in anticipation of goods or services to be provided under this Contract shall be made by the DEL.

6.3 Each voucher must clearly reference the DEL Contract Number and the Contractor’s Statewide Payee Registration number assigned by the Department of Enterprise Services (DES).

6.4 Properly completed vouchers and attachments completed by the Contractor must contain the information described in Exhibit A, STATEMENT OF WORK under section titled "Voucher Verification".

6.5 For Statewide Payee Registration: DES maintains a central contractor registration file for Washington State agencies to use for processing contractor payments. This allows many contractors to receive payments by direct deposit. The Contractor must be registered in the Statewide Payee Registration system, http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/statewideVendors.aspx, prior to submitting a request for payment under this Contract. No payment shall be made until the Statewide Payee Registration is complete.

6.6 Upon the expiration of this Contract, any claim or payment not already made shall be submitted to DEL no later than forty-five (45) days following the expiration date of this Contract. The final voucher shall certify that the Contractor has completed all requirements of this Contract.

7. SIGNATURES

THIS CONTRACT, including the exhibits and attachments described in Paragraph 2, is executed by the persons signing below who warrant they have read and understand this Contract and the exhibits and attachments. The persons signing below further represent that they have the authority to execute this Contract.

SIGNATURE: ____________________________ PRINTED NAME AND TITLE: Regina A. Delahunt, Director DATE SIGNED: 7/24/17

CONTRACTOR: ____________________________

DEL: ____________________________

DEL Contract Administrator

Contract Number: 18-1054 Printed Date: 7/18/2017 Page 3 of 32
WHATCOM COUNTY

JACK LOUWS  
County Executive

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  )

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

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

My Commission expires: __________________________

APPROVED AS TO FORM:

Royce Buckingham, Deputy Prosecuting Attorney  Date
1. DEFINITIONS. The following terms shall have the meanings set forth below:

1.1. **At-Risk Community** means a community for which indicators of risk are present in greater proportion than in Washington as a whole.

1.2. **At-Risk Family** means families residing in at-risk communities and the population receiving home visiting services provided through this contract.

1.3. **Benchmarks** means the federally or state required performance measures that will be implemented through this contract.

1.4. **Continuous Quality Improvement (CQI)** means a systematic approach to specifying the processes and outcomes of a program or set of practices through regular data collection and the application of changes that may lead to improvements in outcomes, process, and performance.

1.5. **DEL** means the Department of Early Learning.

1.6. **Direct Identifiable Information** means data or records that include names; postal address information (other than town or city, state and zip code); telephone numbers, fax numbers, e-mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators (URLs); internet protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

1.7. **Deliverable** means the daily delivery of home visiting services and/or a tangible work product resulting from this contract which is to be documented, described, reported and/or provided to the Contract Manager in the form and manner requested by this contract.

1.8. **DOH** means the Department of Health.

1.9. **DSA** means Data Sharing Agreement.

1.10. **DSHS** means the Temporary Assistance for Needy Families administered by the Department of Social and Health Services.

1.11. **ELRC** means Early Learning Regional Coalitions.

1.12. **Enhancements or Adaptations to home visiting model** means adaptations to programs include changes to the model that have not been tested with rigorous impact research but are determined by the Model Developer not to alter the core components related to program impacts.
1.13. **Enrollment** means a family is to be considered enrolled in a home visiting program as of the date of the first home visit during which the participant voluntarily consents to participate and signs a written participant agreement. All services must be voluntary. Active enrollment includes families who have received at least one home visit in the prior 90 day period.

1.14. **Evidence-based Home Visiting Models** means models having specific evidence standards and include Home visiting models approved by the federal Health Resources and Services Administration’s (HRSA) MIECHV program and selected by local implementing agencies for implementation through the HVSA.

1.15. **FERPA** means "Family Educational Rights and Privacy Act" that protects the privacy of student education records, with regulations found at 34 CFR Part 99.


1.17. **HRSA** means the United States Department of Health and Human Services: Health Resources and Services Administration.

1.18. **HV** means home visiting.

1.19. **HVSA** means the Home Visiting Services Account established in RCW 43.215.130.

1.20. **Implementation HUB** means the central administration of Implementation Science-informed supports, training, coaching, and technical assistance for home visiting services in Washington State as provided by Thrive Washington. Can also be referred to as 'The HUB.'

1.21. **IS** means Implementation Science, a framework to promote the full and effective use of evidence-based programs and evidence-informed innovations so that outcomes shown in research are achieved and sustained.

1.22. **LIA** means local implementing agencies funded through the HVSA contracts that provide direct home visiting services and tasked with establishing the local infrastructure necessary for successful implementation and provision of the selected evidence-based HV research based or promising programs.

1.23. **Memorandum of Understanding (MOU)** means an agreement, between Contractor and partners, organizations, individuals, agencies and/or other entities in the local service area to provide wraparound services, additional resources, in-kind services, and/or use of facilities to Contractor in order to best meet the goals of the Local HVSA Program. MOUs will serve to leverage community resources and address the existing service gaps and needs of participants and promote successful implementation and operation of the Local HVSA Program.

1.24. **MIECHV Program** means the Maternal, Infant and Early Childhood Home Visiting Program authorized through the federal government via HRSA.

1.25. **Model Developer** means an entity or its designee responsible for the development of an identified evidence-based HV model for defining and monitoring fidelity to the model.

1.27. **Potentially identifiable information** means information that includes indirect identifiers which may permit linking an individual to that person's health care information. Examples of potentially identifiable information include:

1.27.1. birth dates;

1.27.2. admission, treatment or diagnosis dates;

1.27.3. healthcare facility codes;

1.27.4. other data elements that may identify an individual. These vary depending on factors such as the geographical location and the rarity of a person's health condition, age, or other characteristic.

1.28. **Reflective Supervision**—Reflective supervision is a distinctive form of competency-based professional development provided to multidisciplinary early childhood home visitors that emphasizes relationship development between home visitor and supervisor, between home visitor and parent, and between parent and infant/toddler. Reflective supervision attends to the emotional content of their work and how reactions to the content affect the work.

1.29. **Service Area** means the geographical area defined by geographic boundaries where the at-risk community is located and where at-risk families reside or a specific people group who will be served by Contractor.

1.30. **State Model Lead** means the HV program model representative that provides contractors with HV services, supports and TTA in coordination with the Implementation HUB.

1.31. **SOW** means statement of work.

1.32. **TANF** means Temporary Assistance for Needy Families.

1.33. **Thrive Washington** means the private partner identified in RCW 43.215.130 the Washington Early Learning Fund doing business as Thrive Washington that is responsible for supporting the HVSA account by providing TTA through the Implementation Hub to LIAs.

1.34. **TTA** means Training and Technical Assistance and may include coaching and consultation activities.

1.35. **WorkFirst** means the program for TANF families who are required to participate in certain work-related activities.

2. **Background**

2.1. The Home Visiting Service Account (HVSA) is a legislatively mandated private-public partnership (RCW 43.215.130) that funds high quality home visiting programs so that:

2.1.1. Children are healthier and better prepared for school

2.1.2. Parent-child bonds are stronger

2.1.3. Abuse and neglect are less likely

2.2. The account prioritizes funding towards meeting the needs of Washington's diverse populations, particularly those families and communities demonstrating the highest needs.
2.3. Ultimately, the HVSA is working to ensure that home visiting services are embedded in and contribute towards comprehensive, high quality early childhood systems so that families have access to high quality information, services and supports prenatally through Kindergarten entry.

2.4. Programs funded through the HVSA administered by DEL aim to improve the health and well-being of at-risk families understanding there are windows of opportunity to influence family and child development that occur in the context of community and society. Contractor shall implement the HVSA-approved home visiting model with the intent of improving outcomes for participants and strengthening coordination of services.

3. Model Fidelity

3.1. The intent of this contract is for Contractor to maintain fidelity to the Nurse Family Partnership (NFP) program model. Model fidelity is defined as a program’s adherence to specified criteria and components on an on-going basis as described by the NFP Model Developer. For home visiting programs that are not evidence based, the promising practices Contractor will work with a DEL-authorized provider of technical assistance to establish model fidelity indicators in the first quarter of this contract and adhere to these requirements throughout the term of this contract.

3.1.1. National Model Standing: Contractor will ensure adherence to NFP program model standards for the duration of this contract, as indicated through a written letter with certification of good standing status and/or active, ready to implement status from the NFP National Service Office.

3.1.2. Enhancements or adaptations to home visiting model. Adaptations or enhancements are not allowed with this contract unless with prior written approval by the model developer and DEL.

4. Staffing, Supervision and Training

4.1. Staffing Plan: Contractor agrees to maintain staffing sufficient to fulfill project goals and objectives through adherence to the staffing plan outlined as follows:

<table>
<thead>
<tr>
<th>Staffing Plan by Position Type</th>
<th>a. HVSA-MIECHV Funded</th>
<th>b. HVSA-TANF Funded</th>
<th>c. HVSA-Other State Funded</th>
<th>e. HVSA Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Visitor FTE Total</td>
<td></td>
<td>2.10</td>
<td>2.10</td>
<td></td>
</tr>
<tr>
<td>Additional Direct Service Staff FTE Total</td>
<td></td>
<td>0.30</td>
<td>0.30</td>
<td></td>
</tr>
</tbody>
</table>

4.2. Home Visiting Supervisor and Home Visitor Qualifications: Contractor agrees to minimally adhere to the NFP program model home visitor supervisor and staffing qualification requirements; if no model requirements exist, Contractor will work with the DEL-authorized provider of technical assistance to establish qualifications in the first quarter of this contract, specify them in the model fidelity letter referenced in Section 3.1.1 and adhere to these requirements throughout the term of this contract. For a definition of DEL-authorized technical assistance, see Section 11.

4.3. Sub-Contracting: With prior approval from DEL, Contractor may hire directly or subcontract with clinical staff, other support staff, or consultants to provide topic-specific expertise or clinical support to home visiting staff. If Contractor hires clinical staff or contracts out for other support services, Contractor will be required to adhere to model requirements and provide periodic updates on the activities carried out by the clinical staff, consultant, and/or subcontract.

4.4. Background Checks: Due to the confidential nature of the client information that will be accessible to Contractor, Contractor shall conduct background checks on home visiting staff prior to performing work and maintain in employee files.
4.5. Supervision: Contractor agrees to adhere to NFP program model supervision requirements as follows:

4.5.1. Supervision Ratios: Contractor agrees to meet or exceed the NFP program model requirements for the ratio of supervisors to home visitors; if no model requirements exist, Contractor will work with a DEL-authorized provider of technical assistance to establish qualifications in the first quarter of this contract and adhere to these requirements throughout the term of this contract.

4.5.2. Supervision Schedule Hours: Contractor agrees to maintain or exceed the following supervision schedule:

4.5.2.1. Two (2) per month of individual reflective supervision for each home visitor working .5 FTE or more; and

4.5.2.2. One (1) hour per month of group supervision, case conferencing, or staff meetings for all home visitors;

4.5.2.3. Adequate monthly one-on-one administrative and clinical supervision; DEL recommends a minimum of one (1) hour per month to each home visitor working 0.5 FTE;

4.5.2.4. Contractor may come to hours mutual agreement with DEL for alternative supervision schedules, subject to written notification.

4.6. Staff Training and Ongoing Professional Development: Contractor will ensure that all home visitor and supervisor staff adhere to the training requirements established by the model developer and the HVSA. Upon request, Contractor will deliver documentation of the following:

4.6.1. All newly hired home visitors, supervisors, and coordinators completion of required model training before working independently with HVSA enrolled families.

4.6.2. All home visitors, supervisors and coordinators remain up-to-date in the professional development and continuing education required by the NFP model, and the HVSA—to include, but not limited to, data collection, Continuous Quality Improvement, the NEAR@Home Toolkit, and Facilitating Attuned Interactions (FAN).

4.7. HVSA Orientations and Meetings: Contractor agrees that, at a minimum, one lead staff person or the home visiting program manager will participate in all HVSA statewide meetings conducted in Washington State to include:

4.7.1. The DEL HVSA Orientation Webinar to occur in the first quarter of the contract period on a date to be determined.

4.7.2. At least two (2) full-day HVSA Semi-Annual Statewide Meetings held in Washington State in the greater Seattle/Tacoma area on dates to be determined;

4.7.3. Up to three (3) NFP Supervisor Meetings in locations and on dates to be determined;

4.8. Staff Retention Practices: To assure continuity of high quality service delivery, Contractor will develop and implement policies and practices to recruit and retain qualified staff in the home visitor and supervisor positions.

4.9. Staffing Vacancy Plans: In the event of short- and long-term vacancies, Contractor agrees to establish and implement vacancy plans to fill vacant home visitor and supervisor positions to ensure continuity of home visiting services, minimal client turnover, and adequate supervision.
5. Service Area and Recruitment of Priority Populations

5.1. Service Area: Contractor agrees to deliver home visiting services to at risk families, as defined in Section 5.2. below, who reside in the following counties or sub-county areas:

5.1.1. Whatcom County

5.2. Priority Population: Contractor agrees to sustain internal practices to serve participants from among the HVSA Priority Populations. Priority Populations are defined as eligible participants with multiple of the following characteristics:

5.2.1. Demographic Characteristics:

5.2.1.1. American Indian/Alaskan Native Non-Hispanic
5.2.1.2. Poverty/Low Income
5.2.1.3. Teen Parents
5.2.1.4. Non-English Speaking or Recent Immigrant
5.2.1.5. Enrolled in WorkFirst/TANF

5.2.2. Adverse Experiences

5.2.2.1. Prior Child Welfare System Involvement
5.2.2.2. Intimate Partner Violence
5.2.2.3. Familial History or current experience with Substance Use, including Tobacco
5.2.2.4. Parent Mental Illness
5.2.2.5. Current and Previously Incarcerated Parents
5.2.2.6. Homeless/Unstable Housing

5.2.3. Other Characteristics

5.2.3.1. Parents with Low Educational Attainment
5.2.3.2. Parents with Disabilities
5.2.3.3. Families currently or formerly in the Military
5.2.3.4. Children with Disabilities, especially those not linked with early intervention services

5.3. Contractor agrees to recruit at least 12 families who are part of the Lummi tribal community.

5.4. In alignment with model fidelity, Contractor agrees to create and implement an outreach plan to reach families to be served from among the priority populations. Contractor agrees to document outreach efforts and referral sources for potential and enrolled participant including those who decline services; outreach and referral sources will be recorded in the NFP model data system, currently Efforts to Outcomes (ETO). Contractor agrees to analyze whether outreach efforts are successfully reaching target populations and communicate via quarterly reports when barriers occur reaching the target population. Any proposals to adapt the priority population would need to be supported by community data and approved by DEL.
6. Participant Enrollment, Retention, and Caseload Maintenance

6.1. Plan for Recruitment of Participants: Contractor agrees to establish and implement a comprehensive plan aligned with the NFP program model for participant recruitment, engagement, and retention to ensure ongoing enrollment of priority populations specified in section 5.

6.2. Voluntary Services: Through program policies and procedures, Contractor will assure that home visiting services are provided on a voluntary basis. For every participant enrolled, Contractor must document via a consent form or participant agreement that expectant parents, parents or caregivers agree to voluntarily enroll in home visiting services. Consent forms or participant agreements must explicitly state that home visiting services are voluntary, and the consent must be signed and dated by the participant upon enrollment. Consent forms must be maintained in the participant file in paper or electronic form. Consent forms should be written in plain language and be available in multiple languages. When potential participants have barriers with literacy, the consent should be explained in the participant’s primary language, which may require interpretation. When interpretation is utilized, signatures should be obtained on the consent form from the interpreter, whenever possible. Sample consent form(s) for voluntary services and data sharing (9.4.2) are available at www.del.wa.gov/homevisiting.

6.3. Active Caseload Threshold: Contractor will build and maintain an active participant caseload in accordance with NFP model requirements. Throughout the duration of this contract, Contractor agrees to target an active Maximum Service Capacity of 52 families and maintain a minimum Active Enrollment Caseload of 85% of those families, or 44 families.

6.3.1. Maximum Service Capacity is defined as the highest number of families or households that could potentially be enrolled at any point in time if the program were operating with a full staff, as described in Section 4.1.

6.3.2. Active Enrollment Caseload is defined as including those enrolled with some enrollment time during the report period and have completed a home visit within 90 days of the end of the report period. Client may have entered or exited services within that report period.

6.3.3. Contractor’s Minimum Active Enrollment Caseload will be calculated each quarter using the number of families actively enrolled during the quarter divided by the total number of Maximum Service Capacity.

6.3.4. If Contractor’s Active Enrollment Caseload falls below 85% of the Maximum Service Capacity DEL will initiate the improvement process outlined in Attachment 3.

6.4. Policies and Procedures for Participant Enrollment, Disenrollment, Re-Enrollment, and Transfer: Contractor agrees to develop and maintain written policies and procedures in alignment with model fidelity for the following:

6.4.1. Enrollment and Disenrollment: Describing timeline and process for dis-enrolling families upon graduation as well as what measures are taken and the timeline when contact with a family is lost. If a model allows an alternative visit schedule, Contractor must have documented procedures for how alternative visit schedules are determined and approved.

6.4.2. Re-enrollment: Describing the process for responding to families who reapply for program participation to allow for re-enrollment in the program. Procedures should include an assessment of prior program participation, and upon re-enrolling, programs will have a system for determining if/how re-enrollment impacts timelines for program curriculum, assessment, and services as well as how families are re-oriented to program. Programs should allow for re-enrolling families when eligible by model and when appropriate.

6.4.3. Avoiding Dual Enrollment: Describing the processes to assess prior and current participation in home visiting services of families upon application for enrollment. If a family is currently enrolled in another HVSA funded program or model, in dialogue with the family, Contractor’s staff will determine which program is most appropriate to meet the
families circumstances and the family will remain in the previous program or seamlessly be transitioned into the new program. In general, if the family is meeting participation expectations in the original enrollment, enrollment should be maintained in the original program. When there is a clinical need or planned service transition for dual enrollment, Contractor will document this need in the client file and the plan for coordination of services. Contractor will develop and implement policies and procedures to seamlessly transfer enrolled families to alternate home visiting models if it best meets the interests and needs of the family and considers risks to disrupting an existing positive relationship between home visitor and family. When there are multiple HVSA funded contracted programs or models in the same service area, it is recommended that the Contractor develop a formal agreement with each program, such as a Memoranda of Understanding, to describe how the organizations will coordinate recruitment and enrollment of home visiting services.

7. Home Visits Frequency and Content

7.1. Frequency of Home Visits: Contractor agrees to deliver the number of home visits to families based on the NFP program model requirements. If there are no model requirements, Contractor will develop a definition of frequency with Thrive Washington and describe this in the model fidelity letter cited in Section 3.1.

7.1.1. As outlined in Attachment 4 Contractor agrees to work towards adhering to model expected dosage and administer at a minimum an average of 65% or higher of expected home visits per month for enrolled families.

7.2. Assessments, Service Content, and Referrals: Contractor will administer individualized assessments of participant families, and services will be provided in accordance with those individual assessments, families' strengths and needs, and ensuring compliance with the NFP model requirements.

7.2.1. Screenings: Contractor agrees to administer screenings with the frequency in fidelity to the NFP program model requirements and HVSA aligned measures.

7.2.2. Referrals: Contractor agrees to refer participants to services needed as identified by individual assessments and to document referrals and results of referrals in participant's file.

8. Systems Connections

8.1. Local Engagement and Collective Impact: Contractor agrees to participate in local and regional early learning coalitions and other initiatives to support, coordinate and build connections among local early childhood partners, early intervention, Early Supports for Infants and Toddlers, child welfare, economic support services, and the Community Wellness and Prevention Initiative. DEL recommends Contractor develop Memoranda of Understanding with the Early Supports for Infants and Toddlers (ESIT), early intervention service providers, Early Childhood Education and Assistance Program, child welfare services, other non-HVSA home visiting programs and early learning providers within the service area to describe the role of each partner in service coordination, referrals, information sharing, and family transitions.

9. Data Collection and Evaluation Requirements

9.1. Evaluation Purpose and Overview: The HVSA data collection and evaluation are designed to tell the story of home visiting in Washington State, understand how home visiting is working, and how it contributes to an early learning system that ensures all children start life with a solid foundation for
success. The HVSA also accounts to federal, state, and private funders for the impacts of these investments.

While DEL is the administrator of the HVSA, DEL contracts with the Department of Health to lead data collection, management, data sharing, quality assurance, reporting and supports for continuous quality improvement and overall HVSA evaluation efforts. DOH is the DEL-specified contractor for data management and reporting.

9.2. Data Collection: Contractor will ensure data collection that meets model requirements and the HVSA, as outlined in Attachment 4, for all families, adults and children enrolled in home visiting services, which include the measures summarized below and defined in Attachment 4:

9.2.1. Performance Measures:

9.2.1.1. System and Program Performance Indicators;

9.2.1.2. Enrollment and Service Utilization;

9.2.1.3. Demographic Information; and

9.2.1.4. Performance Payment Awards Performance Payment Measures.

9.3. Data Management: Contractor agrees that data will be collected and entered in NFP data system accurately, timely and stored with appropriate safeguards to ensure protection of client information according to the following standards:

9.3.1. Data Accuracy: Data should accurately represent the experience of the client; required screenings and assessments should be administered as designed. This includes assigning all clients a funding code as designated by DOH (see Section 9.4 for data share requirements).

9.3.2. Timely Data Collection: Data will be collected adhering to the Performance Measures requirements outlined in Attachment 4 and entered into NFP data system within five business days of data collection.

9.3.3. Data Security: Electronic and paper data should be maintained in secure locations and available only to those with a business need for the data; Contractor must maintain procedures that do not place individuals at risk of harm and comply with applicable confidentiality provisions, such as HIPAA and FERPA.

9.4. Data Sharing: Contractor agrees to share data necessary to meet data collection requirements specified in section 9.2 with DEL's contractor of record, DOH.

9.4.1. Data Sharing Agreement (DSA):
Contractor agrees to execute a data sharing agreement with DOH to share direct identifiable demographic information, enrollment, service utilization, program performance and staffing data on or before July 30, 2017. Additionally, Contractor will provide documentation of execution of data sharing with DOH to the NFP National Service Office by July 30, 2017.

9.4.2. Parental Consent: With consultation and support from DEL and DOH, Contractor will make every effort to seek Parental Consent to share direct identifiable data with DOH during the contract period; Contractor agrees to seek this consent from all currently enrolled families within the first six (6) weeks of the contract period and from all newly enrolled families within the first three home visits. Sample consent form(s) for voluntary services (Section 6.2) and data sharing (Section 9.4) are available at www.del.wa.gov/homevisiting.

9.4.2.1. Parental Consents for voluntary services and data sharing may be combined.
9.4.2.2. Families who do not provide consent to share identifiable data remain eligible to receive home visiting services.

9.4.2.3. For those participants who do not consent to share identifiable data, Contractor agrees to deliver to DOH a list of client IDs and required de-identified data.

9.5. Quality Assurance: the Contractor will make every effort to assure that data provided to DOH is complete and accurate. The Contractor will use DOH reports of Contractor's data completion to make corrections to data.

9.5.1. Contractor will respond to any requests from DOH to resolve any errors or missing data needed for performance measures within 15 business days.

9.5.2. Contractor will strive for less than five percent missing data of all data required in Section 9.2.

9.5.3. Contractor agrees to review data reports prepared by DOH to facilitate reflection and quality assurance and improvement efforts.

9.6. Evaluation: Contractor is required to participate in and cooperate with HVSA, DEL and DEL-specified evaluations. This will include responding to emerging and non-routinize data and evaluation requests from funders of the HVSA and working with DEL specified contractors. Evaluation activities include but are not limited to interviews, focus groups, observations and surveys and may involve:

9.6.1. The Home Visiting Workforce Study and its evaluation required by the MIECHV Innovation Grant, which focuses on recruiting and retaining a high quality home visiting workforce and includes working with DEL specified contractors, including but not limited to Portland State University and other vendors.

9.6.2. Completing all documentation required by the research projects within the timeframes provided; DEL will provide advanced notice to Contractor of additional requirements whenever possible.

9.7. Training and Technical Assistance on Data Collection and Evaluation: Contractor agrees to participate in and cooperate with training and technical assistance related to the topics listed below. Participation may include in-person and remote meetings, staff training, technical assistance opportunities, and reviews of data, reports and organizational policies/procedures. DOH is available to support Contractor in working towards and achieving contract milestones on numerous topics including, but not limited to the following:

9.7.1. Data sharing

9.7.2. Data collection

9.7.3. Reporting process

9.7.4. Analysis and interpretation of data

9.7.5. CQI planning and processes

9.7.6. Quality assurance

10. Continuous Quality Improvement (CQI)

10.1. Purpose: The purpose of Continuous Quality Improvement (CQI) is to improve outcomes for families engaged in home visiting services. CQI activities will be designed around home visiting teams' practices, utilize program data, and improve the program's quality and outcomes over time. CQI is prospective and inherently testing new strategies that may not always result in improved services.
Building CQI into regular practice may require Contractor to assess overall organizational culture for quality, and DEL recognizes this may be new to Contractor; therefore, DEL will not monitor Contractor for CQI outcomes but rather for progress on implementing the CQI Team and Plan as outlined in this Statement of Work.

10.2. Training and Technical Assistance: Contractor agrees to participate in ongoing training and technical assistance associated with CQI including quarterly phone calls lasting at least one hour and topic specific group bi-monthly calls lasting at least one hour. DEL-specified contractors providing this training and technical assistance include Thrive and DOH who will also support Contractor on development measures, quarterly data reports for the selected CQI measures, and CQI Toolkit for use in implementing the CQI Projects.

10.3. CQI Projects: Contractor agrees to develop and implement at least two (2) CQI Projects during this contract term. The CQI Project periods are July 1, 2017 through December 31, 2017 and January 1, 2018 through June 30, 2018. Each CQI Project will include the following:

10.3.1. CQI Team—establish an internal CQI staff team established by the Contractor to oversee, support, and implement CQI activities to assess program processes and outcomes; the CQI Team membership may change depending upon the focus of the CQI Project.

10.3.2. CQI Charter and Plan—implement, at minimum, the project SMART Aim, CQI Team Members, and the initial project plan, as defined in Attachment 5 and available at www.del.wa.gov/homevisiting. CQI Charter and Project 1 Plan are due to DEL on or before August 25, 2017, and CQI Charter and Project 2 Plan are due to DEL on or before February 25, 2018.

10.3.3. Improvement Cycles—implement at least two (2) Plan, Do, Study, Act (PDSA) cycles each project period.

10.3.4. CQI Topics—utilize one of the following four topics for each CQI Project, unless otherwise approved by DEL:

10.3.4.1. Maternal Depression Screening—completion of screening, referral and connection to appropriate services;

10.3.4.2. Intimate Partner Violence Screening—completion of screening, referral and/or connection to services;

10.3.4.3. Family Engagement—increasing length of participation or frequency of completed visits;

10.3.4.4. Parent Child Interaction—completion of assessment of positive parenting behaviors using a validated Parent-Child Interaction tool;

10.3.4.5. Other Topic—to be approved by DEL.

10.3.5. Reporting and Deliverable—report on the CQI Project progress and results using the CQI Quarterly Report Templates described in Attachment 5 and available at www.del.wa.gov/homevisiting; submit the reports to DEL with the Quarterly Progress Reports and share with DOH and Thrive for review and feedback during the quarterly CQI calls.

11. Technical Assistance

11.1. Technical Assistance (TA) is available to Contractor to assist in maintaining model fidelity, implementing best practices, and ensuring and improving quality of home visiting service delivery. DEL contracts with Thrive Washington (Thrive) to provide technical assistance for the HVSA. The Contractor agrees to work with DEL’s designated provider of technical assistance for support in achieving contract milestones including, but not limited to, the following areas:
11.1.1. Program model fidelity

11.1.2. Staff qualifications, and selection and onboarding of home visitors and supervisors

11.1.3. Reflective supervision process

11.1.4. Staff retention and vacancy planning

11.1.5. Participant outreach and recruitment

11.1.6. Model specific service delivery and case planning

11.1.7. Leadership development and organizational support for home visiting model

11.1.8. CQI planning, implementation and analysis

11.2. Technical Assistance Plan: Contractor agrees to collaborate with the DEL-specified contractor for technical assistance during the contract term to including development of a Technical Assistance Plan during quarter 1.

11.3. Technical Assistance and Coaching: Contractor agrees to participate at minimum in monthly one-hour Technical Assistance/Coaching calls and up to three (3) technical assistance site visits with the DEL-specified Technical Assistance provider.

12. Budget and Financial

12.1. Program-Funding Specific Budget: Contractor agrees that funds provided under this contract will be expended by June 30, 2018 as specifically itemized line by line in Exhibit B, and that transfers within expense categories of the budget in excess of 10% of the contract amount for each funding source (column) will not be made without prior written approval from DEL and may require a contract amendment.

12.2. Supplantation: Contractor shall ensure that HVSA funds received under this contract will be used to supplement and not supplant the amount of federal, state, and local funds otherwise expended for work performed under this Contract.

12.3. Travel: Contractor shall receive compensation only for lodging, per diem, and meal expenses at current state travel reimbursement rates and in accordance with the State of Washington Office of Financial Management Travel Regulations. Current rates for travel may be accessed at: http://www.ofm.wa.gov/resources/travel.asp. When the lowest available lodging rate exceeds the current state travel reimbursement rates, an exception may be made and when pre-approved in writing by Contractor’s fiscal authority, documented, and available for review. Travelers must be prudent when planning and conducting essential business travel, ensuring they select travel alternatives that are the most economical. Appropriate planning must take place to avoid unnecessary travel in the performance of work assignments, seeking alternatives such as teleconference calls, video and web collaboration and conferencing. Contractor’s travel policy is subject to review during ongoing or in-depth fiscal monitoring.

12.4. Indirect Costs: Contractor may either claim the indirect rate negotiated with its cognizant federal agency (also known as the federally approved cost allocation plan) or an indirect rate that does not exceed 10% of modified total direct costs.

12.4.1. If claiming the federally negotiated rate, Contractor must supply the documentation verifying the federally approved rate. Contractor’s indirect rate plan and procedure are subject to review during ongoing or in-depth fiscal monitoring.
12.4.2. Contractor’s indirect cost plan must comply with the CFR part 200.56.57 and 200.414 Certification of cost allocation plan or indirect (facilities & administrative (F&A)) cost rate proposal. The CFR can be found at the following link: http://www.ecfr.gov/cgi-bin/text-idx?SID=89e31f63d8c855ba9e4f7a6a7fd6fdea5&mc=true&node=se2.1.200_156&rgn=div8 and http://www.ecfr.gov/cgi-bin/text-idx?SID=89e31f63d8c855ba9e4f7a6a7fd6fdea5&mc=true&node=se2.1.200_1414&rgn=div8

12.5. Performance Payment Awards: During the term of this contract, Contractor will receive an additional $500 per quarter for achievement of each of the following Performance Milestones described in 12.5.4 below within that quarter.

12.5.1. DEL will review data provided by Contractor and DOH to confirm achievement of both milestone with Contractor prior to issuance of any Performance Payment Award.

12.5.2. Contractor may receive up to a total of $4,000 in Performance Payment Awards within the contract term as detailed in the Budget Exhibit B and distributed with reimbursements for invoices submitted for months 3, 6, 9, and 12.

12.5.3. Funds received for Performance Payment Awards must be used to advance the goals of the home visiting program in this contract.

12.5.4. Performance Milestone- Quarterly Enrollment: $500 per quarter, up to a total of $2,000 during the contract term, will be provided as a Performance Payment Award upon the fulfillment of the following performance measure:

12.5.4.1. Contractor maintains an average Active Enrollment Caseload of 90% or higher, of their Maximum Service Capacity during the quarter, as measured by the number of families actively enrolled on the 15th of Month 1, Month 2 and Month 3 of the quarter divided by the Maximum Service Capacity (total number of possible families), or 46.8 families.

12.5.5. Performance Milestone: Home Visiting Dosage: $500 per quarter, up to a total of $2,000 during the contract term, will be provided as a Performance Payment Award upon the fulfillment of the following performance measure:

12.5.5.1. Contractor maintains NFP dosage requirements for home visits for 70% of all clients as measured by the proportion of enrolled clients that met the model defined dosage expectation during the time the client was enrolled during report period. See Attachment 4 for model defined dosage expectation.

12.6. Financial Reporting and Documentation:

12.6.1. Contractor agrees to submit, at least monthly and not more often than semi-monthly, a properly completed A-19 Voucher accompanied by the following documentation of the actual expenses incurred during that period, as described below:

12.6.1.1. Monthly or Semi-monthly Expense Summary by fund source (e.g. State) as produced by Contractor’s accounting system and clearly detailing expenses incurred for each Pay Point in that period’s A-19 Voucher;

12.6.1.2. Contractor’s Monthly or Semi-monthly Payroll Summary by fund source (e.g. State) describing reimbursed hours for each staff person paid under the contract for that period; and

12.6.1.3. Documentation supporting all single expenses exceeding $5,000 by fund source (e.g. State).

12.6.2. Payment is based upon approval of financial expenditures using the billing submission procedure outlined in this contract, with the total payment not to exceed what is set forth in Exhibit B Budget.
12.6.3. In-Depth Financial Review: DEL will conduct an in-depth financial review annually of Contractor's expenditures charged to the contract. In preparation for the Annual Site Visit, Contractor agrees to provide, upon request, the financial documents listed below. Based upon this review, if questions arise, DEL may request additional data and documentation.

12.6.3.1. Contractor's most recent Annual Financial Audit/A-133 Audit;

12.6.3.2. Contractor's most recently submitted IRS Form 990;

12.6.3.3. At least one month, with the month specified by DEL, General Ledger detail for Substantiation Testing;

12.6.3.4. Detailed financial documentation including specified payroll/timesheets, travel, and major expense documentation upon request;

12.6.3.5. Other financial documentation and information, to be determined.

13. Publicity, Publication and Acknowledgements

13.1. DEL may include information on this Contract in their periodic public reports and may make information about this Contract public at any time in their web pages and as part of press releases, public reports, speeches, newsletters, and other public documents related to the Contract or the HVSA. DEL is obligated to Washington State public disclosure law (RCW 42.56) and to comply with regulations set forth in HIPAA and FERPA.

13.1.1. If Contractor wishes to issue a press release or public report announcing this contract, or otherwise use DEL's name or logo for purposes related to this Contract, Contractor agrees to contact the DEL Contract Manager, identified on page 1 of this Contract at least five (5) business days before the desired announcement or publication date to obtain advanced approval.

13.1.2. Contractor also agrees to include the name and logo of DEL and that the project is funded through the State of Washington, Washington Department of Early Learning Home Visiting Services Account in such media related to the project.

14. Contract Reporting, Monitoring, and Deliverables

14.1. The most current version of the following implementation elements and contractor requirements are further detailed in the HVSA Implementation Policies and Procedures Manual online at www.del.wa.gov/homevisiting. DEL will advise Contractor when updates to this manual are made at least 10 (ten) business days prior to their taking effect. Any mention of quarters one through four referenced in this document are defined as:

14.1.1. Quarter 1 – July 1, 2017 to September 30, 2017

14.1.2. Quarter 2 – October 1, 2017 to December 31, 2017

14.1.3. Quarter 3 – January 1, 2018 to March 31, 2018

14.1.4. Quarter 4 – April 1, 2018 to June 30, 2018

14.2. Reporting: Contractor agrees to submit program and expense reports, as well as perform all other requirements outlined in this Statement of Work, on or before the dates indicated in Exhibit D. Due dates may be adjusted at the discretion and approval of the DEL Contract Manager to accommodate the variable reporting structures associated with federal funding requirements. DEL reserves the right to aggregate, disaggregate, analyze, reproduce, and/or disseminate the data provided in Program
14.2.1. While this contract funding ends June 30, 2018, deliverables describing services rendered in the months of the contract term will be due no later than July 31, 2018 and will be submitted at no additional cost to DEL.

14.3. Monitoring: As described in Attachment 3, throughout the term of this contract, DEL will monitor compliance with contract requirements, model standing, progress toward completion of deliverables, enrollment performance, and financial activity through review of submitted reports, monthly phone calls, and meetings with Contractor.

14.3.1. Contractor agrees to participate in at least one monitoring site visit on a mutually agreed upon date.

14.3.2. If DEL (a) encounters non-compliance with the terms outlined in this contract on the part of Contractor, or (b) is not satisfied, in its sole discretion, with the quality of Contractor’s work, DEL will follow to make a reasonable attempt to assist Contractor with technical assistance to resolve issues that impede quality and compliance. In the event that compliance and/or quality issues are not resolved through standard technical assistance, Contractor will be engaged in corrective action through Implementation Improvement processes, as outlined in Attachment 3.

14.4. Summary Deliverables and Timelines

14.4.1. Monthly Reports: Contractor will submit Monthly Enrollment Data Reports no later than the 25th day following the month of service outlined in Attachment 6 and available at www.del.wa.gov/homevisiting.

14.4.2. At least monthly A-19 Invoice, accompanied by financial documentation detailed in Section 12.

14.4.3. Quarterly Reports: Contractor will submit four (4) Quarterly Progress Reports no later than 30 days following the end of each quarter outlined in Attachment 7 and available at www.del.wa.gov/homevisiting.

14.4.4. Annual Pre-Contract Questionnaire. Contractor agrees to complete and submit the HVSA Pre-Contract Questionnaire with the Q3 Report, detailing organizational summary, a program implementation plan and a budget for the subsequent contract year. The Pre-Contract Questionnaire Template will be available at www.del.wa.gov/homevisiting.

14.4.5. Table of Deliverables and Timelines. Exhibit D outlines the reporting timeline and deliverables presented in this statement of work according to their timeline. Some deliverables associated with this contract, including the HVSA Semi-Annual Statewide Meetings and Supervisor Meetings are not included in this table as the dates of these events will be determined after contract execution.
State Fiscal Year 2018 (July 1 2017 - June 30 2018):

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<td>2. STATE- Goods and Services</td>
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<td>3. STATE- Travel</td>
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<td>6. STATE- Performance Pay</td>
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<td>**Total:</td>
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<tr>
<td>**Contract Maximum:</td>
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</tr>
</tbody>
</table>

Contract Funding Source(s)

| State Funds | $335,525.81 |

Contract Number: 18-1054

Printed Date: 7/18/2017
Exhibit C - GENERAL TERMS AND CONDITIONS

1. AMENDMENTS

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

2. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred, delegated, or assigned by the Contractor without prior written consent of DEL.

3. ATTORNEY’S FEES

In the event of litigation or other action brought to enforce this Contract, each party agrees to bear its own attorney fees and costs.

4. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

If federal funds are the basis for this Agreement, the Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency. The Contractor further certifies that they will ensure that potential subcontractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions” include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed $25,000, and sub-awards to subrecipients for any amount. The Contractor may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking the “List of Parties Excluded from Federal Procurement and Non-Procurement Programs” provided on-line by the General Services Administration.

5. CHOICE OF LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought under this Contract shall be in the Superior Court for Thurston County.

6. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

6.1. Assurances

The Contractor agrees that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules, and regulations, including but not limited to the Public Records Act (chapter 42.56 RCW), the Freedom of Information Act (5 U.S.C. 522) and the Records Retention Act (chapter 40.14 RCW).

6.2. Child Health, Safety, And Well Being And Child Abuse Or Neglect

In the delivery of services under this Contract, children's health, safety, and well-being shall always be the primary concern of the Contractor. Contractors shall fully comply with the mandatory reporting requirements of RCW 26.44.030 pertaining to child abuse or neglect. In addition, pursuant this Contract, when the Contractor has reasonable cause to believe that a child has suffered abuse or neglect at the
hands of any person, the Contractor shall immediately report such incident to Child Protective Services (CPS) Intake at 1-866-ENDHARM.

6.3. Civil Rights Laws
6.3.1. During the performance of this Contract the parties shall comply with all federal and state nondiscrimination laws including, but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. § 12101 et seq., the Americans with Disabilities Act (ADA).

6.3.2. In the event of the Contractor's or its subcontractors' noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the DEL. The Contractor shall, however, be given a reasonable time in which to remedy this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

6.4. Conflict of Interest
6.4.1. Notwithstanding any determination by the Executive Ethics Board or other tribunal, the DEL may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by the DEL that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

6.4.2. In the event this Contract is terminated as provided above, the DEL shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the DEL provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the DEL makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

6.5. Licensing, Accreditation and Registration
The Contractor and its subcontractors shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this Contract.

7. DATA SHARE AND PROTECTION OF CONFIDENTIAL INFORMATION

7.1. Scope of Protection
This Section (Section 7) applies to data, information, or materials related to the subject matter of this Contract which is received, created, developed, revised, modified, or amended by the DEL, the Contractor, or subcontractors. Such data, information, and materials shall include but is not limited to all confidential information.

7.2. Use of Confidential Information
7.2.1. For data and confidential information collected, used, or acquired in connection with this Contract the parties shall comply with the following:
   7.2.1.1. All federal and state laws and regulations, as currently enacted or revised, regarding data and confidential information protection, security; and
   7.2.1.2. All federal and state laws and regulations, as currently enacted or revised, regarding the use, disclosure, modification or loss of data and confidential information.

7.2.2. The DEL does not warrant or guarantee the accuracy of the data or confidential information provided pursuant to this Contract. The Contractor understands all the risks and liabilities of the use and misuse of the information provided pursuant to this Contract.

7.3. Confidentiality Protection
7.3.1. To safeguard the confidentiality of all confidential information and in addition to the requirements contained in this Section (Section 7) the Contractor must:
   7.3.1.1. Ensure that the Contractor, the Contractor's staff, subcontractors, and the subcontractors' staff use confidential information solely for the purposes of accomplishing the services set forth in this Contract.
   7.3.1.2. Limit access to confidential information to the Contractor's staff and subcontractors' staff requiring access for performance of their assigned duties.
7.3.2. Require all Contractor's staff and subcontractors' staff with access to confidential information to sign a Statement of Confidentiality and Non-Disclosure Agreement consistent with Attachment 2 Statement of Confidentiality and Non-Disclosure agreement.

7.3.3. Require the Contractor will maintain records of the statement of confidentiality and non-disclosure agreements with signatures from all applicable staff. These records will be made available to DEL upon request.

7.3.4. Notify its staff person(s) and ensure its subcontractors notify the subcontractors' staff person(s) of the requirements of Section 6.1 (Assurances), and this Section (Section 7).

7.3.5. Ensure that personal information is not released, disclosed, published, modified, transferred, sold, or otherwise made known to unauthorized persons without the prior written consent of the individual named or as otherwise authorized by law.

7.3.6. Ensure that confidential information is protected from loss and from unauthorized physical or electronic access.

7.3.7. Destroy all confidential information so that it cannot be accessed by unauthorized individuals and cannot be recovered when the confidential information is no longer used for providing services under this Contract, and retention is no longer required by the Records Retention Act (chapter 40.14 RCW) or Section 26 (Records Maintenance), whichever is longer. Unless the Washington State Office of the Chief Information Officer IT Standards require a different method for the destruction of confidential information, confidential information required to be destroyed under this section must be destroyed as follows:

7.3.7.1. For paper documents containing data, but not confidential information, a contract with a paper shredding firm is acceptable, provided the contract ensures that the confidentiality of the data will be protected. Such documents may also be destroyed by on-site shredding, pulping, or incineration.

7.3.7.2. For paper documents containing Confidential Information requiring special handling (e.g., Protected Client Information) the documents must be destroyed by on-site shredding, pulping, or incineration.

7.3.7.3. If data or confidential information has been contained on optical discs (e.g., CDs or DVDs), the Contractor shall either destroy by incineration the disc(s), shredding the discs, or completely deface the readable surface with a coarse abrasive.

7.3.7.4. If data or confidential information has been stored on magnetic tape(s), the Contractor shall destroy the data or confidential information by degaussing, incinerating or crosscut shredding.

7.3.7.5. If data or confidential information has been stored on server or workstation data hard drives or similar media, the Contractor shall destroy the data or confidential information by using a "wipe" utility which will overwrite the data or confidential information at least three (3) times using either random or single character data, degaussing sufficiently to ensure that the data or confidential information cannot be reconstructed, or physically destroying disk(s).

7.3.7.6. If data or confidential information has been stored on removable media (e.g., floppies, USB flash drives, portable hard disks, or similar disks), the data recipient shall destroy the data or confidential information by using a "wipe" utility which will overwrite the data or confidential information at least three (3) times using either random or single character data, degaussing sufficiently to ensure that the data or confidential information cannot be reconstructed, or physically destroying disk(s).

7.3.8. Within fifteen calendar days after the completion of the requirements contained in Section 7.3.6 the Contractor shall complete and deliver to the DEL a signed Certification of Data Disposition (Attachment 1).

7.3.9. Paper records must be protected by storing the records in a secure area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

7.3.10. Shall immediately notify the DEL after becoming aware of any potential, suspected, attempted or actual breaches of security including, but not limited to, unauthorized access, use or disclosure. The Contractor shall take all necessary steps to mitigate the harmful effects of such breach of security. The Contractor agrees to defend, protect and hold harmless the DEL for any
damages related to a breach of security by their officers, directors, employees, subcontractors or agents.

7.4. Confidentiality Breach
In the event of a breach by the Contractor of this Section (Section 7 and in addition to all other rights and remedies available to the DEL, the DEL may elect to do any of the following:

7.4.1. Terminate the Contract;

7.4.2. Require that the Contractor return all confidential information to the DEL that was previously provided to the Contractor by the DEL;

7.4.3. Require that the Contractor destroy all confidential information so it cannot be accessed by unauthorized individuals and cannot be recovered; or

7.4.4. Suspend the Contractor's on-line access to accounts and other information.

7.5. Public Disclosure
7.5.1. Either party to this Contract may designate certain Confidential Information as "Confidential Information/Notice Requested." This designation shall be made by clearly stamping, watermarking, or otherwise marking each page of the Confidential Information. The party who owns the data is responsible for informing the other party what it considers confidential.

7.5.2. If a third party requestor seeks information that has been marked "Confidential Information/Notice Requested," notice shall be given to the marking party prior to release of the information. Such notice shall be provided to the program contact no less than five business days prior to the date of the disclosure, to allow the party objecting to disclosure to seek a protective order from the proper tribunal.

7.6. Access to Data
7.6.1. In compliance with RCW 39.26.180, the Contractor shall provide access to data generated under this Contract to DEL, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes, but is not limited to, access to all information that supports the findings, conclusions and recommendations of the Contractor's reports, including computer models and methodology for those models.

7.7. Definitions
As used throughout this Contract, the following terms shall have the meanings set forth below:

7.7.1. "Confidential Information" means information that may be exempt from disclosure under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, personal information, agency source code or object code, and agency security data.

7.7.2. "Converted Data" means the data which has been successfully converted by the Contractor for processing by the DEL's computer system.

7.7.3. "Data" means the DEL's records, files, forms, data, information and other documents in electronic or hard copy form, including but not limited to Converted Data.

7.7.4. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, e-mail addresses, credit card information, law enforcement records or other identifying numbers or Protected Health Information, any financial identifiers, and other information that may be exempt from disclosure under either chapter 42.56 RCW or other state and federal statutes.

7.8. Licensing, Accreditation and Registration
The Contractor and its subcontractors shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this Contract.

7.9. Noncompliance with Laws, Regulations, or Policies
The Contractor shall be responsible for and shall pay any fines, penalties, or disallowances imposed on the State or Contractor arising from any noncompliance with the laws, regulations, policies, guidelines
and Collective Bargaining Agreements that affect the Services or Deliverables that are to be provided or that have been provided by Contractor, its Subcontractors or agents.

7.10. Registration with Department of Revenue and Payment of Taxes
The Contractor must pay all taxes including, but not limited to, sales and use taxes, Business & Occupation taxes, other taxes based on the Contractor's income or gross receipts, or personal property taxes levied or assessed on the Contractor's personal property. The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

8. CONTINUED PERFORMANCE
If the DEL, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, the DEL may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at the DEL's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

9. COPYRIGHT

9.1 Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the DEL. The DEL shall be considered the author of such Materials. In the event the Materials are not considered "works for hire," under the U.S. Copyright Laws, the Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the DEL effective from the moment of creation of such Materials.

9.2 "Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

10. DISALLOWED COSTS
The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

11. DISPUTES
In the event that a dispute arises under this Contract, it shall be determined by a Dispute Board in the following manner: Each party to this Contract shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Contract terms, applicable statutes and rules, and make a determination of the dispute. The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding concerning the Contract. The Dispute Board shall precede any action in judicial or quasi-judicial tribunal. The cost of resolution will be borne as allocated by the Dispute Board.

12. DUPLICATE PAYMENT
DEL shall not pay the Contractor if the Contractor has charged or will charge the State of Washington, or any other party under any other contract or agreement, for the same services or expenses.

13. ENTIRE CONTRACT
This Contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof or to bind any of the parties to this Contract.

14. EXPENSES
All expenses not provided for specifically in this Contract shall be the responsibility of the Contractor unless otherwise mutually agreed upon by the parties.

15. FEDERAL FUNDING REQUIREMENTS

15.1. Covenant Against Contingent Fees. If this Contract is funded, in whole or in part, with federal funds, the Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for securing business. DEL shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

15.2. Single Audit Requirements. If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) 2 Code of Federal Regulations C.F.R. §200, the Contractor shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance (CFDA) Numbers. The Contractor shall make the Contractor's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DEL, and the Washington State Auditor's Office. The Contractor shall incorporate OMB 2 C.F.R. §200 audit requirements into all contracts between the Contractor and its Subcontractors who are subrecipients. The Contractor shall comply with any future amendments to OMB 2 C.F.R. §200 and any successor or replacement Circular or regulation.

15.3. If the Contractor expends $750,000 or more in federal awards from any and/or all sources in any fiscal year ending after December 26, 2014, the Contractor shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the Contractor shall submit to DEL's Contract Manager the data collection form and reporting package specified in OMB 2 C.F.R. §200, and any reports required by the program-specific audit guide (if applicable).

15.4. Certification of cost allocation plan or indirect (facilities & administrative (F&A)) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

15.4.1. A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

15.4.2. Unless the non-Federal entity has elected the option under OMB 2 C.F.R. §200.414 Indirect (F&A) costs, paragraph (f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

15.5. Certifications by non-profit organizations as appropriate that they did not meet the definition of a major nonprofit organization as defined in OMB 2 C.F.R. §200.414 Indirect (F&A) costs, paragraph (a).

15.6. See also OMB 2 C.F.R. §200.450 Lobbying for another required certification.

16. FUNDING CONTINGENCY
16.1. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to completion of the work in this Contract, the DEL may:

16.1.1. Terminate this Contract with ten (10) days advance notice. If this Contract is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Contract prior to the effective date of termination;

16.1.2. Renegotiate the terms of the Contract under the new funding limitations and conditions;

16.1.3. After a review of project expenditures and deliverable status, extend the end date of this Contract and postpone deliverables or portions of deliverables; or

16.1.4. Pursue such other alternatives as the parties mutually agree to in writing.

17. HEADINGS

The headings throughout this Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

18. INDEMNIFICATION

18.1. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

18.2. The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform under the Contract. The Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

18.3. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

19. INDEPENDENT CAPACITY

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

20. INSURANCE

20.1 Insurance Required

If the Contractor is currently covered under an insurance risk pool. Sections 20.5, 20.6, and 20.7 shall only apply if the Contractor terminates coverage under the insurance risk pool and obtains a different form of insurance consistent with this section (Section 20). The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect DEL should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractors, or agents of either, while performing under the terms of this Contract.

20.2 Eligible Insurance Companies

The insurance required by this Contract shall be issued by an insurance company/ies authorized to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the DEL Risk Manager, or the Risk Manager for the State of Washington, before the contract is accepted.

20.3 Cancellation
The Contractor shall instruct the insurers to give DEL thirty (30) calendar days advance written notice of any insurance cancellation or non-renewal.

20.4 Certificate of Insurance
The Contractor shall submit to the DEL within fifteen (15) calendar days of the Contract effective date, a certificate of insurance that outlines the coverage and limits defined in the Insurance section, herein. The Contractor shall submit renewal certificates as appropriate during the term of the Contract.

20.5 Subcontractors
Subject to Section 20.1, the Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit the Contractor’s liability or responsibility.

20.6 Additional Insured
Subject to Section 20.1, the State of Washington, DEL, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies.

20.7 Primary Insurance
Subject to Section 20.1, all insurance provided in compliance with this Contract shall be primary to any other valid and collectable insurance or self-insurance programs afforded to or maintained by the State of Washington.

20.8 Insurance Coverage Limits
By requiring insurance herein, DEL does not represent that coverage and limits will be adequate to protect the Contractor, and such coverage and limits shall not limit the Contractor’s liability under the indemnitees and reimbursements granted to DEL in this Contract.

20.9 The Contractor shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:

20.9.1 Commercial General Liability Insurance Policy. The Contractor shall maintain Commercial General Liability ("CGL") insurance, including contractual liability, and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 per each occurrence. If such CGL Insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit.

20.9.2 Automobile Liability Policy. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000 per accident, using a Combined Single Limit for bodily injury and property damage.

20.9.3 Professional Liability Policy. If services delivered pursuant to this Contract, either directly or indirectly, involve or require providing professional services, than professional liability insurance shall be required. Such coverage shall cover injury or loss resulting from the Contractor's rendering of or failing to render professional services and shall be no less than $1,000,000 per incident, loss, or person, as applicable. If defense costs are paid within the limit of liability, the Contractor shall maintain limits of $2,000,000 per incident, loss, or person, as applicable. If the policy contains a general aggregate or policy limit, it shall be at least twice the incident, loss or person limit. If professional liability insurance is written on a "claims made" basis, the policy shall provide full coverage for prior acts or include a retroactive date that precedes the effective date of this Contract. The Contractor is required to buy professional liability insurance for a period of 24 months after completion of this Contract. This requirement may be satisfied by the continuous purchase of commercial insurance or an extended reporting period.

20.9.4 Industrial Insurance Policy. The Contractor shall comply with the provisions of Title 51 RCW (Industrial Insurance). If the Contractor fails to provide industrial insurance coverage to statutory limits or fails to pay premiums or penalties on behalf of its employees as may be required by law, DEL may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. DEL may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by DEL under this Contract, and transmit the deducted amount to the Department of Labor and
Industries (L&I) Division of Insurance Services. This provision does not waive any of L&I's right to collect from the Contractor.

20.9.5 Employers Liability ("Stop Gap") Insurance. The Contractor shall buy employers liability insurance with limits of not less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee for bodily injury caused by disease.

21. MONITORING

21.1. DEL has the right to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide a right of access to its facilities to DEL, personnel authorized by DEL, or to any other authorized agent or official of the State of Washington or the federal government at all reasonable times in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

21.2. Monitoring activities may include, but are not limited to:

21.2.2. Intensive on-site program reviews to monitor Contract compliance, scheduled in advance with the Contractor.
21.2.3. Site visits to review records, observe implementation of services or follow up on compliance issues. These visits may be unannounced.
21.2.4. Review of the Contractor's compliance with Section 11 Confidentiality of Personal Information.

22. NEUTRAL AUTHORSHIP

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

23. ORDER OF PRECEDENCE

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

23.1.1. Applicable Federal statutes, regulations, and policies;
23.1.2. Applicable State of Washington statutes and regulations;
23.1.3. Terms and Conditions as contained in this basic Contract instrument but not contained in exhibit A, exhibit B, or exhibit C, of this Contract;
23.1.4. Exhibit C: General Terms And Conditions;
23.1.5. Exhibit B: Budget;
23.1.6. Exhibit A: Statement of Work; and
23.1.7. Any other exhibit or attachment, provision, term or material incorporated herein by reference or otherwise.

24. PUBLICITY

24.1. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by DEL and shall not be so construed by Contractor in any advertising or publicity materials.

24.2. All publications funded, in whole or in part, under this Contract will use the DEL logo and will acknowledge credit as either providing "funding in partnership with" or "funded by" the DEL. The full-color or black-and-white DEL logo, provided by the DEL Contract Manager, shall appear in its entirety, without modification.

25. RECAPTURE

25.1. In the event that the Contractor fails to expend funds under this contract in accordance with state laws and/or the provisions of this contract, the DEL reserves the right to recapture state funds in an
amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

25.2. Such right of recapture shall exist for a period not to exceed six years following contract termination. Repayment by the Contractor of funds under this recapture provision shall occur within 30 days of demand. In the event that the DEL is required to institute legal proceedings to enforce the recapture provision, the DEL shall be entitled to its costs thereof.

26. RECORDS MAINTENANCE

1.1. The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the DEL, personnel duly authorized by the DEL, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

1.2. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

27. REMEDIES

Except for remedies designated specifically as exclusive, no remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

28. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

29. SITE SECURITY

While on the DEL’s premises, the Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

30. SUBCONTRACTING

30.1. As used throughout this Contract, the following terms shall have the meanings set forth below:

30.1.1. "Subcontractor" means one not in the employment of a party to this Contract, who is performing all or part of those services under this Contract under a separate contract with a party to this Contract. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier, and the subcontractors’ directors, officers, employees, and agents.

30.1.2. "Staff" or "staff person" means the Contractor’s subcontractors, directors, officers, employees, and agents who provide goods or services on behalf of the Contractor. The term "staff" or "staff person" also means the subcontractors’ directors, officers, employees, and agents who provide goods or services on behalf of the subcontractor and Contractor.

30.2. Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of DEL. All subcontracts must be in writing and in effect before Subcontractor services begin. "Subcontractor" shall mean one who is not employed by the Contractor, but who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms “Subcontractor” and “Subcontractors” mean Subcontractors in any tier. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to DEL for any breach in the performance of the Contractor’s duties. The Contractor is responsible to DEL for the performance and monitoring of the Subcontractor to ensure
compliance with the terms, conditions, assurances, and certifications of this Contract. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

30.3. Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this Contract are carried forward to any subcontracts.

31. TERMINATION FOR CAUSE

31.1. In the event DEL determines the Contractor is in default, DEL has the right to immediately suspend or terminate this Contract. Before suspending or terminating the Contract, the DEL may, in DEL’s sole discretion, elect to notify the Contractor in writing of the need to take corrective action and offer the Contractor the opportunity to take corrective action before the Contract is suspended or terminated.

31.2. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract (e.g., cost of the competitive bidding, mailing, advertising and staff time). DEL may also declare the Contractor ineligible for further contracts with DEL.

31.3. DEL reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of any alleged breach, or during any pending corrective action by the Contractor or pending a decision by DEL to terminate the Contract.

31.4. If it is later determined that: (1) the Contractor was not in default, or (2) Contractor’s failure to perform was outside the Contractor’s control, fault, or negligence, the termination shall be considered a Termination for Convenience.

31.5. The rights and remedies of DEL provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

32. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, DEL may terminate this Contract, in whole or in part, by giving the Contractor ten (10) calendar days written notice. Termination becomes effective ten (10) calendar days from the second day after mailing the notice. If this Contract is so terminated, DEL shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

33. TERMINATION PROCEDURE

33.1. Upon termination of this Contract, DEL, in addition to any other rights provided in this Contract, may require the Contractor to deliver to DEL any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of Section 34, the “Treatment of Assets” clause, shall apply in such property transfer.

33.2. DEL shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by DEL, and the amount agreed upon by the Contractor and DEL for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by DEL, and (iv) the protection and preservation of property, unless the termination is for default, in which case DEL shall determine the extent of the liability of DEL.

33.3. DEL may withhold from any amounts due the Contractor such sum as DEL determines to be necessary to protect DEL against potential loss or liability arising from the Contractor’s performance of the Contract. The rights and remedies of DEL provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

33.4. After receipt of a notice of termination, and except as otherwise directed by DEL, the Contractor shall:
33.4.1. Stop work under the Contract on the date, and to the extent specified, in the notice;

33.4.2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;

33.4.3. Assign to DEL, in the manner, at the times, and to the extent directed by DEL, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case DEL has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

33.4.4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DEL to the extent DEL may require, which approval or ratification shall be final for all the purposes of this clause;

33.4.5. Transfer title to DEL and deliver in the manner, at the times, and to the extent directed by DEL any property which, if the Contract had been completed, would have been required to be furnished to DEL;

33.4.6. Complete performance of such part of the work as shall not have been terminated by DEL; and

33.4.7. Take such action as may be necessary, or as DEL may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which DEL has or may acquire an interest.

34. TREATMENT OF ASSETS

34.1. Title to all property furnished by DEL shall remain in DEL. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in DEL upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in DEL upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by DEL in whole or in part, whichever first occurs.

34.2. Any property of DEL furnished to the Contractor shall, unless otherwise provided herein or approved by DEL, be used only for the performance of this Contract.

34.3. The Contractor shall be responsible for any loss or damage to property of DEL that results from the negligence of the Contractor or that results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

34.4. If any DEL property is lost, destroyed, or damaged, the Contractor shall immediately notify DEL and shall take all reasonable steps to protect the property from further damage.

34.5. The Contractor shall surrender to DEL all property of DEL prior to settlement upon completion, termination, or cancellation of this Contract.

34.6. All reference to the Contractor under this clause shall also include the Contractor’s employees, agents, or Subcontractors.

35. WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by an authorized representative of DEL.

36. WARRANTY

36.1. The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which the DEL intends to use said services and deliveries as expressed in Exhibit A.
36.2. In the performance of services under this Contract, the Contractor and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of service. All obligations and services of the Contractor hereunder shall be performed diligently and completely according to such professional standards.

36.3. If the Contractor intends to rely on information or data supplied by the DEL, other DEL contractors or other generally reputable sources without independent verification, such intent shall be brought to the attention of the DEL.

37. WITHHOLDING PAYMENTS

The DEL may withhold payment to the Contractor for any services/deliverables not performed as required hereunder until such time as the Contractor modifies or delivers services/deliverables to the satisfaction of the DEL.
Exhibit D Deliverables

The following Deliverables Table outlines the reporting timeline and deliverables presented in Exhibit A Statement of Work according to their timeline. Some deliverables associated with this contract, including the HVSA Semi-Annual Statewide Meetings and Supervisor Meetings are not included in this table as the dates of these events will be determined after contract execution.

<table>
<thead>
<tr>
<th>July 2017</th>
<th>August 2017</th>
<th>September 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>July 15:</strong></td>
<td><strong>August 25:</strong></td>
<td><strong>September 25:</strong></td>
</tr>
<tr>
<td>Current Insurance Certificate*</td>
<td>July’s Monthly Enrollment Data Report</td>
<td>August’s Monthly Enrollment Data Report</td>
</tr>
<tr>
<td><strong>July 30:</strong></td>
<td>CQI Charter</td>
<td><strong>September 30:</strong></td>
</tr>
<tr>
<td>Executed DSA with DOH</td>
<td><strong>August 31:</strong></td>
<td>August’s Monthly Invoice and</td>
</tr>
<tr>
<td>Documented approval of DSA</td>
<td>Most recent independent</td>
<td>Financial Report</td>
</tr>
<tr>
<td>with DOH submitted to Program</td>
<td>Financial Audit**</td>
<td>Schedule Annual Monitoring Site</td>
</tr>
<tr>
<td>National Service Office</td>
<td><strong>August 30:</strong></td>
<td>Visit</td>
</tr>
<tr>
<td></td>
<td>July’s Monthly Invoice and</td>
<td>Client data for nonconsenting</td>
</tr>
<tr>
<td></td>
<td>Financial Report</td>
<td>participants shared with DOH</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>October 2017</th>
<th>November 2017</th>
<th>December 2017</th>
</tr>
</thead>
<tbody>
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<td><strong>October 25:</strong></td>
<td><strong>November 25:</strong></td>
<td><strong>December 27:</strong></td>
</tr>
<tr>
<td>September’s Monthly Enrollment Data Report</td>
<td>October’s Monthly Enrollment Data Report</td>
<td>November’s Monthly Enrollment Data Report</td>
</tr>
<tr>
<td><strong>October 30:</strong></td>
<td><strong>November 30:</strong></td>
<td><strong>December 30:</strong></td>
</tr>
<tr>
<td><strong>October 30:</strong></td>
<td>CQI Quarter 1 Report</td>
<td>Client data for nonconsenting</td>
</tr>
<tr>
<td>July - September’s Quarterly Progress Report</td>
<td>Financial Report</td>
<td>participants shared with DOH</td>
</tr>
<tr>
<td>January 2018</td>
<td>February 2018</td>
<td>March 2018</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td><strong>January 25:</strong></td>
<td><strong>February 25:</strong></td>
<td><strong>March 25:</strong></td>
</tr>
<tr>
<td>December’s Monthly Enrollment Data Report</td>
<td>January’s Monthly Enrollment Data Report</td>
<td>February’s Monthly Enrollment Data Report</td>
</tr>
<tr>
<td><strong>January 30:</strong></td>
<td>CQI Charter</td>
<td><strong>March 30:</strong></td>
</tr>
<tr>
<td>October - December’s Quarterly Progress Report including Model Fidelity Letter and CQI Quarter 2 Report</td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>April 2018</th>
<th>May 2018</th>
<th>June 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>April 25:</strong></td>
<td><strong>May 25:</strong></td>
<td><strong>June 25:</strong></td>
</tr>
<tr>
<td>March’s Monthly Enrollment Data Report</td>
<td>April’s Monthly Enrollment Data Report</td>
<td>May’s Monthly Enrollment Data Report</td>
</tr>
<tr>
<td><strong>April 30:</strong></td>
<td><strong>May 30:</strong></td>
<td><strong>June 30:</strong></td>
</tr>
<tr>
<td>January - March’s Quarterly Progress Report and CQI Quarter 3 Report</td>
<td></td>
<td>Annual Site Visit Completed (sometime in prior 6 months)</td>
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<tr>
<td>FY19 Pre Contract Questionnaire and Proposed FY19 Budget</td>
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<td>Client data for nonconsenting participants shared with DOH</td>
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</table>

<table>
<thead>
<tr>
<th>July 2018</th>
<th></th>
<th></th>
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<tbody>
<tr>
<td><strong>July 25:</strong></td>
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<td></td>
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<tr>
<td>June’s Monthly Enrollment Data Report</td>
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<tr>
<td><strong>July 30:</strong></td>
<td></td>
<td></td>
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<tr>
<td>June’s Monthly Invoice and Financial Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April - June’s Quarterly Progress/Year-End Report and CQI Quarter 4 Report</td>
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<td></td>
</tr>
</tbody>
</table>

*An updated Insurance Certificate will need to be submitted when the insurance policy is renewed.

**A more current Independent Financial Audit, if one exists, will need to be submitted as part of the in-depth financial monitoring.
**TITLE OF DOCUMENT:**
Amendment to Contract for Services for benefit consultant for the self-insured medical program – Kibble & Prentices, a USI Company

**ATTACHMENTS:**
1. Memorandum to Executive Louws
2. Amendment to Contract for Services (#201405015) with Kibble & Prentice

**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 continues the agreement with Kibble & Prentice as benefits consultant for a three-year period with adjustments to the annual compensation.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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

**Originating Department:** Administrative Services  
**Division/Program:** (i.e. Dept. Division and Program) Human Resources  
**Contract or Grant Administrator:** Karen Goens, HR Manager  
**Contractor’s / Agency Name:** Kibble & Prentice, a USI Company

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>If Not, is this an Amendment or Renewal to an Existing Contract?</th>
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<tbody>
<tr>
<td>Is this a New Contract?</td>
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<td>☐</td>
<td>(per WCC 3.08.100 (a))</td>
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</table>

<table>
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<tr>
<th>Question</th>
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<th>No</th>
<th>If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #</th>
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<tbody>
<tr>
<td>Does contract require Council Approval?</td>
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<td>☐</td>
<td>If No, include WCC:</td>
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</table>

<table>
<thead>
<tr>
<th>Question</th>
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<th>No</th>
<th>If yes, grantor agency contract number(s):</th>
<th>CFDA#:</th>
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<td>Is a grant agreement?</td>
<td>☒</td>
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<td>If yes, Whatcom County grant contract number(s):</td>
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<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>If yes, RFP and Bid number(s):</th>
<th>RFP 14-22</th>
<th>Cost Center:</th>
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<tbody>
<tr>
<td>Is this the result of a RFP or Bid process?</td>
<td>☒</td>
<td>☐</td>
<td>If no, include Attachment D Contractor Declaration form.</td>
<td></td>
<td>507340</td>
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</tbody>
</table>

If YES, indicate exclusion(s) below:

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

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

- $56,175 in 2018  
- $59,000 in 2019  
- $59,000 in 2020

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.

**Term of Contract:** 3 years + up to 3 year renewal  
**Expiration Date:** December 31, 2020

**Contract Routing:**

1. Prepared by: Nan Kallunki for Karen S. Goens  
2. Attorney signoff: Daniel Z. Gibson  
3. AS Finance reviewed:  
4. IT reviewed (if IT related): N/A  
5. Contractor signed: Todd C. McMahon, CCO/VP  
6. Submitted to Exec.:  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  

**V2.0**
Enclosed are two (2) originals of an amendment to the Contract for Services for benefits consulting between Whatcom County and Kibble & Prentice for your review and signature.

**Background and Purpose**
The State Office of Risk Management requires local government entities that self-insure to acquire actuarial services to project reserves and plan pricing. Many entities engage a plan broker whose charges are typically based on a percentage of plan cost. Because Human Resources staff monitor key elements and work directly with the plan's third party administrator, Healthcare Management Administrators, Inc. (HMA), Whatcom County has successfully engaged outside expertise as part of a fixed rate agreement. In addition to actuarial services, Kibble & Prentice presents plan information to the Medical Advisory Committee prior to renewal, bids the coverage for stop-loss insurance, assists the County in its periodic RFP process for plan administrator, and provides guidance about plan compliance and other technical administrative matters.

Martin "Marty" Andrews of Kibble & Prentice has brought continuity and credibility to sometimes difficult messages as we have developed and managed the multiple plan choices offered to employees. The amendment before you would continue service on January 1, 2018 and run through December 31, 2020.

**Funding Amount and Source**
The self-insured medical program is funded through contributions collected internally from departments per eligible employee. The budgeted plan cost in 2017 is $7,416,146 and consultant costs are $53,500. Consultant costs will be $56,175 in 2018; $59,000 in 2019; and $59,000 in 2020.

**Differences from Previous Agreement**
This service agreement continues previous services.

Please contact me at extension 5305 if you have any questions or concerns regarding the terms of this agreement.
CONTRACT BETWEEN WHATCOM COUNTY AND KIBBLE & PRENTICE, A USI COMPANY

THIS AMENDMENT to Whatcom County Contract #201405015 is made this _____ day of ________, 2017, between Whatcom County and Kibble & Prentice, a USI Company, for the purpose of continuing provision of benefits consultation for the County’s self-insured medical program.

1. TERM. This amendment extends the duration of the Agreement for three years (January 1, 2018 - December 31, 2020).

2. COMPENSATION. Effective January 1, 2018, the annual rate for services shall be adjusted by approximately 5% for 2018 and 2019 and shall remain flat for 2020 as set forth more fully in “Exhibit B-1.”

3. OTHER. Unless specifically amended by this agreement, all other terms and conditions of the original contract shall remain in full force and effect.

IN WITNESS WHEREOF, Whatcom County and Kibble & Prentice have executed this Amendment on the date and year written above.

CONTRACTOR:

BY: [Signature]

Todd C. McMahon, CCO/SVP
Kibble & Prentice, a USI Company

STATE OF WASHINGTON
COUNTY OF KING ss.

On this 17th day of July, 2017, before me personally appeared Todd C. McMahon, known to be the CCO/SVP of Kibble & Prentice, a USI Company, 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:

BY: [Signature]

Jack Louws, County Executive

STATE OF WASHINGTON ss.
COUNTY OF WHATCOM

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

APPROVED AS TO FORM:

[Signature]

Daniel L. Gibson, Chief Civil Deputy Prosecutor
EXHIBIT "B-1"
(COMPENSATION)

As consideration for services outlined in Exhibit "A" (Scope of Work), the County agrees to compensate the Contractor:

$56,175 in 2018
$59,000 in 2019
$59,000 in 2020

The County will make quarterly payments each year in four equal parts for services covered under the flat annual rate and will pay invoices by the end of the first month of each quarter.
# 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>Division Head:</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Dept. Head:</td>
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<tr>
<td>Prosecutor:</td>
<td></td>
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<tr>
<td>Purchasing/Budget:</td>
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<tr>
<td>Executive: (X)</td>
<td></td>
<td>8/1/17</td>
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**TITLE OF DOCUMENT:**
Contract for 2017-2020 Children’s Representation in Dependency Proceedings

**ATTACHMENTS:**
Contract for service between Whatcom County and Scott Mawson, Margaret Mawson, Geraldine Coleman, and Penny Henderson in children’s dependency representation cases.

<table>
<thead>
<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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</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes ( X ) NO</td>
<td>Requested Date:</td>
<td></td>
</tr>
</tbody>
</table>

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

Whatcom County Superior Court provides legal representation for all children involved in dependency proceedings, with the exception of youth who have been legally free for adoption for more than six months.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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<tr>
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</table>

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

TO: Jack Louws, County Executive
FROM: David Reynolds, Director
DATE: June 26, 2017

Enclosed are two (2) originals of the contract for children’s dependency representation for Scott and Margaret Mawson, Geraldine Coleman, and Penny Henderson, who will take overflow cases when caseload limits are met.

▪ Background and Purpose

Whatcom County Superior Court provides legal representation for all children involved in dependency proceedings, with the exception of youth who have been legally free for adoption for more than six months.

Funding Amount and Source

Funding is through current expense and an approved expenditure in the 2017-18 budgets.

▪ Differences from Previous Contract

Contract now provides for a full time caseload as dependency cases have continued to increase significantly. Ms. Henderson will handle cases beyond the caseload standards established by the Office of Public Defense. There is a slight vendor rate increase in cost per cases as well. The previous rate had been frozen for several years.

Please contact me at extension 5495 if you have any questions or concerns regarding the terms of this agreement,

Encl.
<table>
<thead>
<tr>
<th>Field</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originating Department:</td>
<td>Superior Court Administration</td>
</tr>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Juvenile Court</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>David Reynolds, Director</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Geraldine Coleman, Scott Mawson, Margaret Mawson, and Penny Henderson</td>
</tr>
<tr>
<td>Is this a New Contract?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If not, is this an Amendment or Renewal to an Existing Contract?</td>
<td>Yes ☐ No ☒</td>
</tr>
<tr>
<td>If Amendment or Renewal, (per WCC 3.08.100 (a) Original Contract #:</td>
<td></td>
</tr>
<tr>
<td>Does contract require Council Approval?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If No, include WCC: (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
<td></td>
</tr>
<tr>
<td>Is this a grant agreement?</td>
<td>Yes ☐ No ☒</td>
</tr>
<tr>
<td>If yes, grantor agency contract number(s):</td>
<td>CFDA#:</td>
</tr>
<tr>
<td>Is this contract grant funded?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If yes, Whatcom County grant contract number(s):</td>
<td></td>
</tr>
<tr>
<td>Is this contract the result of a RFP or Bid process?</td>
<td>Contract Cost Center: 17-43</td>
</tr>
<tr>
<td>If yes, RFP and Bid number(s):</td>
<td></td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify?</td>
<td>No ☐ Yes ☒</td>
</tr>
<tr>
<td>If no, include Attachment D Contractor Declaration form.</td>
<td></td>
</tr>
<tr>
<td>If YES, indicate exclusion(s) below:</td>
<td></td>
</tr>
<tr>
<td>☒ Professional services agreement for certified/licensed professional.</td>
<td></td>
</tr>
<tr>
<td>□ Contract work is for less than $100,000.</td>
<td>□ Contract for Commercial off the shelf items (COTS).</td>
</tr>
<tr>
<td>□ Contract work is for less than 120 days.</td>
<td>□ Work related subcontract less than $25,000.</td>
</tr>
<tr>
<td>□ Interlocal Agreement (between Governments).</td>
<td>□ Public Works - Local Agency/Federally Funded FHWA.</td>
</tr>
<tr>
<td>Contract Amount: (sum of original contract amount and any prior amendments):</td>
<td>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 $10,000 or 10% of contract amount, whichever is greater, except when:</td>
</tr>
<tr>
<td>$ 103,996.80 (each year)</td>
<td>1. Exercising an option contained in a contract previously approved by the council.</td>
</tr>
<tr>
<td>This Amendment Amount:</td>
<td>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.</td>
</tr>
<tr>
<td>$</td>
<td>3. Bid or award is for supplies or equipment included approved in the budget.</td>
</tr>
<tr>
<td>Total Amended Amount:</td>
<td>4. Contract is for manufacturer’s technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.</td>
</tr>
<tr>
<td>$ 103,996.80 (each year)</td>
<td></td>
</tr>
<tr>
<td>Summary of Scope: Attorneys will provide legal representation to children in dependency proceedings.</td>
<td></td>
</tr>
<tr>
<td>Term of Contract: 3 years</td>
<td>Expiration Date: June 30, 2020</td>
</tr>
<tr>
<td>2. Attorney signoff: KNF</td>
<td>Date: 6/30/2017</td>
</tr>
<tr>
<td>3. AS Finance reviewed: M Caldwell</td>
<td>Date: 6/29/17</td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td>Date: 7/3/17</td>
</tr>
<tr>
<td>5. Contractor signed:</td>
<td>Date: 7-20-17</td>
</tr>
<tr>
<td>6. Submitted to Exec.:</td>
<td></td>
</tr>
<tr>
<td>7. Council approved (if necessary):</td>
<td></td>
</tr>
<tr>
<td>8. Executive signed:</td>
<td></td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td></td>
</tr>
</tbody>
</table>
CONTRACT FOR SERVICES AGREEMENT
SCOTT AND MARGARET MAWSON, GERALDINE COLEMAN,
AND PENNY HENDERSON

| SCOTT MAWSON, MARGARET MAWSON, GERALDINE COLEMAN, PENNY HENDERSON, hereinafter called Contractors, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 4 to 9,
Exhibit A (Scope of Work), pp. 10 to 10,
Exhibit B (Compensation), pp. 11 to 11,
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1 day of July, 2017, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2018 regardless of the date of signatures. The contract shall automatically be renewed on a year to year basis for two (2) additional years unless either party services written notice upon the other party of it's intention to cancel at least 30 days in advance of the termination of the first year or during any yearly renewal period thereof. In no event will this agreement be renewed more than two times and the maximum life of this agreement is three (3) years.

The general purpose or objective of this Agreement is 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 Contractor attorneys certify he/she is qualified to perform the services indicated in the Contractor's bid proposal, said qualifications being those for the type of case identified in the Washington Defender Association Standard Fourteen Qualifications of Attorneys

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 3rd day of July, 2017.

CONTRACTORS:

[Signature]

SCOTT MAWSON

STATE OF WASHINGTON

) ss.

COUNTY OF WHATCOM

On this 3rd day of July, 2017, before me personally appeared SCOTT MAWSON, to me known to be an Attorney At Law, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

MARGARET MAWSON

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  )

July 13, 2019, before me personally appeared MARGARET MAWSON, to me known to be an Attorney At Law, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

GERALDINE COLEMAN

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  )

July 13, 2019, before me personally appeared GERALDINE COLEMAN, to me known to be an Attorney At Law, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

PENNY HENDERSON

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  )

July 13, 2019, before me personally appeared PENNY HENDERSON, to me known to be an Attorney At Law, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.
WHATCOM COUNTY:
Recommended for Approval:

Department Director Date

Approved as to form:

Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

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

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

______________________________ My commission expires _____________________.
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 at a time, and for a total of no longer than three years.

10.3 Uncompleted Cases:
In the event the Independent Contractor is assigned clients under this agreement whose cases are incomplete at the termination of this agreement, the Independent Contractor agrees to continue representation of any such client beyond the termination of this agreement and the County agrees to pay the independent contractor for such services under the terms and conditions stated herein, except, however, that the Independent Contractor expresesly reserved the right to renegotiate the hourly rate of reimbursement for any services rendered after the termination of this agreement involving any cases referred to the Independent Contractor during the term of this agreement. It is agreed and understood that this reservation of the right to negoiate the rate of reimbursement for services rendered after the termination of this agreement shall in no manner be construed to lessen or diminish the quality of representation or diligence with which the Independent Contractors performs services for those clients or in those cases which may be the subject of such renegotiation while any such negotiations may be in progress. If the Independent Contractor and Whatcom County are unable to agree to a new rate of payment, the rate of payment shall be set by the Presiding Judge of the Whatcom County Superior Court.

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 terminated 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 terminated 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 state and federal requirements, as applicable, 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 on a Schedule C, 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.

30.4 Licensing:
The contractor agrees that he or she will remained licensed to practice law in the State of Washington and abide by the Code of Professional Responsibility during the term of the contract.

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--$500,000.00 per occurrence
- General Liability & Property Damage for bodily injury--$1,000,000.00 per occurrence

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.
In addition, the Contractor shall carry professional liability insurance for the duration of this agreement in the amount of $300,000.00 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.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

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, 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, 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, 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 subcontracts 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, 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:

David Reynolds, Director
Whatcom County Superior Court Administration
311 Grand Avenue #301
Bellingham, WA 98225

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.

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: Not applicable
c. Detailed Claim: Not applicable
d. Arbitration: Not applicable

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

44.1 **Survival:**
The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.1, 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"
Services

- Contractor agrees to provide professional legal services in performing all Superior Court representation of children involved in dependency proceedings, but not subject to representation pursuant to Senate Bill 6126.

- Contractor shall provide effective legal representation of an assigned client from the date of notice of assignment through all stages of the case to ultimate disposition.

- Contractor must have personal contact with the client and must maintain regular contact during the course of representation.

- Contractor must provide direct representation to clients.

- Contractor must maintain a secure and private office accessible to clients where mail is received and process is served and confidentiality preserved. The Contractor must maintain a phone with answering service or equipment so they are accessible to clients.

- In the event the contractor believes they cannot represent the child, the contractor shall by bringing specific situations before the court on a motion to withdraw.

Ms. Coleman's caseload is 32 youth

Scott and Margaret Mawson's combined caseload is 48 youth.

Penny Henderson shall carry overflow and conflict cases as needed.
EXHIBIT "B"
Consideration

In consideration for the services described in "Exhibit "A ", the County agrees to pay to the order of the individual Contractor's law firm performing such services as follows:

Ms. Coleman shall be paid $3,466.56 per month for representation of a caseload up to 32 youth.

Scott and Margaret Mawson shall be paid $ 5,199.84 per month for representation of a caseload up to 48 youth.

Overflow or conflict cases shall be paid $108.33 per month.
LAWYERS PROFESSIONAL LIABILITY INSURANCE POLICY DECLARATIONS

NOTICE: THE POLICY IS A CLAIMS MADE AND REPORTED POLICY. NO COVERAGE EXISTS UNDER THE POLICY FOR A CLAIM WHICH IS FIRST MADE AGAINST THE INSURED OR FIRST REPORTED TO THE COMPANY BEFORE OR AFTER THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE UNDER THE POLICY WITH YOUR INSURANCE ADVISOR.

POLICY NUMBER: ALPS19355-1

Item 1 – Named Insured: Mawson & Mawson, Attorneys at Law
Address: 103 E. Holly Street, Suite 508
Bellingham, WA 98225

Item 2 – Name of Each Insured Attorney:
Mawson, Margaret
Mawson, Richard Scott

Item 3 – Policy Period:
Effective Date: 08/12/2016
Expiration Date: 08/12/2017
Loss Inclusion Date: 08/12/2004

12:01 AM at the address stated in Item 1.

Item 4 – Limit of Liability:
$500,000 *Each Claim
$1,000,000 Aggregate
*This means “all claims arising out of the same, related or continuing professional services.”

Item 5 – Deductible:
$5,000 Each Claim

Item 6 – Annual Premium:
$3,153

Item 7 – Endorsements attached at inception of the policy form: LPL STD (07-14)

Signature Page WA Amendatory

All current and previously submitted application forms delivered to the Company are made a part of the policy. The Named Insured may obtain a copy of all application forms by submitting a written request to the Company.

Countersigned by: ___________________________ Date: _______________
Authorized Representative

ALPS DEC LPL (06-13)
**TITLE OF DOCUMENT:**
Presentation regarding WC Conservation District Firewise Program

**ATTACHMENTS:**
2016-2017 Firewise Program Info

**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 past year Whatcom Conservation District provided a Firewise program to the residents of Whatcom County. Funding was through the State Conservation Commission.

**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.
2016-17 Firewise Program for Whatcom County

This past year Whatcom Conservation District (WCD) provided a Firewise program to the residents of Whatcom County. Funding was through the State Conservation Commission. The program was very successful.

**Accomplishments** (one half-time position):

- Firewise Program support to 5 rural communities in Whatcom County.
- **Assistance Included:**
  - Firewise Coaching: organize Firewise Committees, plan Firewise events, apply for fuels reduction funding and receive Firewise Communities USA recognition.
  - Wildfire risk assessments and assistance in developing Firewise action plans.
  - Delivery of Firewise information and education outreach program including social media, displays, presentations and events.
  - Educational and outreach materials specifically customized for each community.

**Testimonials:**

"Our community has benefited greatly by the help we received from the Whatcom Conservation District . . ." Our fuels reduction "Chipping Event" was a great success with a large amount of community participation. “ (Paradise Lakes Country Club)

"Thank you on behalf of the Glenroads Community for helping us to participate in a two day chipping event for Firewise activities. We feel that this was a great success for a first time event and to educate the homeowners in the Firewise program to help them to create a defensible space around their home and to eliminate items and debris that could cause damage to their home in case of a fire in our community. “

It is not a question of "if" wildfires will occur but "when" they will occur.

**Opportunities and Challenges:**

There is a great need for the Firewise program to address the potential risk of wildfire in rural Whatcom County communities. However, there is **no** current funding for Firewise in Whatcom County.

Seven additional communities have expressed interest in the Firewise Program and in receiving WCD Firewise support.
Preparing for Wildfire in Whatcom County

Glenroads Community
Firewise Chipping Event

Reduce your risk of wildfire!
Help reduce hazardous forest fuels around your home and...

Signup for free wood chipping.
Chipping will be done by a licensed contractor.
Your chipping pile must be ready by May 30th.

The goal is to create a "defensible space" around your home by reducing fuels on the ground and limbing trees to eliminate branches that could carry a fire into tree tops and to your house.

Please call to get a signup form and information about participation in the event.

Sponsored by:
Glenroads Board of Directors & Whatcom Conservation District
FOR INFORMATION and to signup call: 425-359-8705

Hillside Community of Sudden Valley
Firewise Chipping Event
Free Chipping To Reduce Wildfire Risk
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to:
---|---|---|---|---|---
Division Head: | JPR | 6/29/17 | | 7/25/2017 | Council - Hearing
Prosecutor: | 6/29/17 | | | |
Purchasing/Budget: | | 6.29.17 | | |
Executive: | |

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

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

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

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:

COUNCIL ACTION:
7/11/2017: Introduced 7-0
7/25/2017: Held in Committee

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

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

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM: ( ) Approved ( ) Denied

Daniel L. Gibson
Civil Deputy Prosecutor

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

Dear Mr. Rutan,

Re: Northshore Road speed limit reduction

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,

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.*

---

**Name (please print):**

1. Randy Elsbree
2. Julie Elsbree
3. Jocelyn O'Keefe
4. Mary Hayd
5. Kayla Petrin
6. Keith McCrean
7. Richard Vanderweiden
8. Jane Vanderweiden
9. Molly Doring
10. Mark Doring
11. Hardy Van Gelder
12. Min VAN WAGENBACH
13. Jessica Libby
14. Jeffery Johnson
15. Patrick Hendrie

**Signature:**

1. 
2. 
3. 
4. 
5. 
6. 
7. 
8. 
9. 
10. 
11. 
12. 
13. 
14. 
15. 

**Address:**

1. 2970 Northshore Rd B'ham 98226
2. 2970 Northshore Rd B'ham 98226
3. 3330 Kay St. 98225
4. 910 E Magnolia St. 98225
5. 410 E Magnolia St. 98225
6. 22 Magnolia Dr Unit 1 Bellingham 98229
7. 53 Magnolia Dr. Unit 1 Bellingham 98229
8. 301 Lakeshore Rd B’ham 98226
9. 301 Lakeshore Rd B’ham 98226
10. 35 Horseshoe Cir B’ham
11. 
12. 
13. 830 Kenwood Way Lynnwood WA 98034
14. 431 31st St Bellingham
15. 3442 Erdenwood Ct, Bellingham

* 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:

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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.*

* Source-Whatcom County Parks & Recreation/Trail Plan - Lookout Mountain Forest Preserve and Lake Whatcom Park Recreational Trail Plan, June 2016
PUBLIC HEARING NOTICE

Whatcom County Council will have a public hearing, consider adopting, and may amend the following at its July 25, 2017, meeting, or at a later date:

ORDINANCE REGARDING ESTABLISHMENT OF SPEED LIMIT ON A PORTION OF NORTH SHORE ROAD (AB2017-196A): This ordinance sets the speed limit on North Shore Road, from the intersections of Y Road to the east end of the road, to 35 miles per hour.

Council introduced the above at its July 11 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 July 12

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis
Clerk of the Council

Barry Buchanan
Council Chair

Publish July 15
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
<th>Initial</th>
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<td>6.6.17</td>
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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?**

- (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 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
- 7/25/2017: Discussed and amended

**COUNCIL ACTION:**

- 6/13/2017: Introduced 6-0, Donovan Absent
- 7/11/2017: Referred to the Council’s Planning and Development Committee

**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
       Mark Personius, AICP, Assistant Director

THROUGH: J.E. "Sam" Ryan
          Director

DATE: July 31, 2017

SUBJECT: Impervious Surface Code Amendments

At the July 25 Planning and Development Committee meeting, PDS staff presented options for a cumulative impervious surface threshold in the Residential Rural (RR) and Rural (R) zones (see staff's July 25 memorandum for a summary). The committee asked staff to develop a new option based on the Planning Commission recommendation of 35% of parcel size with a 10,000 square foot (sf) floor and 45,000 sf ceiling, but changing the ceiling to 45,000 sf or 5% of parcel size whichever is greater. The chart below shows a new Option 1A, identical to Option 1 except that parcels larger than 20.6 acres would see a gradual increase in the cumulative threshold while in Option 1 the ceiling remains a constant 45,000 sf.
A draft ordinance with the revised threshold is attached and scheduled for introduction at the August 8, 2017 County Council meeting. The revision is at the top of page 8 of Exhibit A. Another revision discussed by the committee, pertaining to parcels where stormwater is effectively managed by a farm plan, is on page 6.

Staff has calculated the theoretical maximum coverage for this option on RR and R parcels based on the proposed threshold and finds the revision would increase the theoretical maximum impervious surface coverage from 14.16% to 14.90% (see attached calculations comparing the Planning Commission and modified Planning Commission options).

As a reminder, the proposed code amendment to the stormwater regulations would place in the "high intensity" use category any project that causes the total impervious surface on a parcel to exceed the cumulative threshold. All high intensity uses require the project to adhere to the Department of Ecology stormwater manual, which requires the services of an engineer.

Projects that do not cause the total impervious surface to exceed the cumulative threshold would still be subject to existing stormwater standards. All projects within the NPDES II permit area and stormwater special districts are, like all high intensity uses, required to comply with the stormwater manual. About one third of the land located within the RR and R districts and the affected watersheds is within the NPDES II permit area or a stormwater special district.

For projects that do not cause the total impervious surface to exceed the cumulative threshold, and are defined as low or medium intensity uses (e.g. single family residences, agricultural buildings, and short subdivisions), WCC section 20.80.630(1)(d) establishes a set of "minimum requirements," though it does not require full compliance with the manual. These requirements are applied based on the project size and whether it is of low or medium intensity, and consist of:

- Stormwater site plan
- Construction stormwater pollution prevention plan (SWPPP)
- Source control
- Preservation of natural drainage
- On-site stormwater management
- Treatment
- Flow control
- Wetlands protection
- Operation and maintenance agreement

If you have any questions, please call Gary Davis, Senior Planner, at extension 5931.

Attachments:
- Maximum impervious surface threshold calculations for Planning Commission and modified Planning Commission options
- Draft ordinance with revised threshold (45,000 sf or 5% ceiling)
## Option 1: Planning Commission Recommendation

10,000 sq ft; 35%; 45,000 sq ft

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<th>Max Impervious Surface</th>
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**Grand Total**

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Excludes Campbell River, Point Roberts, and Samish watersheds.
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<tr>
<td>MIDDLE FORK NOOKSACK</td>
<td>42,203,398</td>
<td>6,405,264</td>
<td>15.18%</td>
</tr>
<tr>
<td>NORTH FORK NOOKSACK</td>
<td>365,806,736</td>
<td>57,265,436</td>
<td>15.65%</td>
</tr>
<tr>
<td>SILVER/NOOKSACK CHANNEL &amp; DELTA</td>
<td>212,843,317</td>
<td>34,794,415</td>
<td>16.35%</td>
</tr>
<tr>
<td>SOUTH FORK NOOKSACK</td>
<td>105,018,130</td>
<td>13,619,612</td>
<td>12.97%</td>
</tr>
<tr>
<td>SQUALICUM</td>
<td>364,623,721</td>
<td>56,485,624</td>
<td>15.49%</td>
</tr>
<tr>
<td>SUMAS RIVER</td>
<td>360,702,400</td>
<td>39,064,107</td>
<td>10.83%</td>
</tr>
<tr>
<td>TEN MILE</td>
<td>721,157,401</td>
<td>102,017,426</td>
<td>14.15%</td>
</tr>
<tr>
<td>UPPER MAINSTEM NOOKSACK</td>
<td>378,381,088</td>
<td>49,447,211</td>
<td>13.07%</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td>5,214,523,978</td>
<td>777,123,300</td>
<td>14.90%</td>
</tr>
</tbody>
</table>

Excludes Campbell River, Point Roberts, and Samish watersheds
PROPOSED BY: __________________
INTRODUCTION DATE: ____________

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.

Page 1 of 3
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: ____________________________
EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 20 ZONING

Chapter 20.32
RESIDENTIAL RURAL (RR) DISTRICT

20.32.656 Drainage. (Adopted by reference in WCC-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 WCC-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>
<tr>
<td>MR5 On-Site Stormwater</td>
<td>• Property ≥ 2 acres meeting MR1, provide dispersion • Property &lt; 2 acres meeting MR1 where soils are suitable</td>
</tr>
</tbody>
</table>
**Within Special Stormwater Districts – Modified Thresholds for Stormwater Management Table**

<table>
<thead>
<tr>
<th>Minimum Requirement (MR)</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
surface,” “land disturbing activity,” “project,” “site,” and “replaced hard surface”:

**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>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low</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>
</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>≥ 7,000 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>
</tr>
<tr>
<td>MR6 Treatment</td>
<td>Not required</td>
</tr>
<tr>
<td>MR7 Flow Control</td>
<td>Not required</td>
</tr>
<tr>
<td>MR8 Wetlands</td>
<td>≥ 7,000 sq. ft. of new</td>
</tr>
</tbody>
</table>

¹ The Table is based on minimum requirements (MR) as per the referenced manual.
² Land Use Intensity levels are categorized as Low, Medium, and High.
³ Per manual indicates that the requirement is determined by the referenced manual.
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>
</tr>
</thead>
<tbody>
<tr>
<td>Protection</td>
<td>Low plus replaced hard surface, or ≥ 14,000 sq. ft. land disturbing activity</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.

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 to the standards equivalent to an NPDES Phase II permit.

(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 the threshold set below) is
subject to the thresholds for “high intensity” land uses.

<table>
<thead>
<tr>
<th>Low</th>
</tr>
</thead>
</table>
| - 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).  

<table>
<thead>
<tr>
<th>Medium</th>
</tr>
</thead>
</table>
| - 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.  

<table>
<thead>
<tr>
<th>High</th>
</tr>
</thead>
</table>
| - 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 2.95 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  

7
In the Rural and Residential Rural districts, any project on a parcel of 2.95 acres or larger that results in the parcel having a cumulative impervious surface exceeding 45,000 square feet or 5% of gross parcel size, whichever is greater.

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.

EXHIBIT B
Whatcom Comprehensive Plan
AMENDMENTS

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—referred to 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;
I.a 20.69.655—Drainage, Rural—Industrial and 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 WCCP 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 WCCP Policy 2DD-2.C.4 reflect this change.

In addition, the proposed WCCP 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 WCCP 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 45,000 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.
Therefore, it is imperative that local governments manage stormwater with policies, regulations and incentive programs (e.g. Low Impact Development) to reduce and treat stormwater runoff."

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=ml8osIB9mgEGcXY6TS1x_490a2SoxoqUvNrW1RmwKojGdLdeAH89S2nfA5eIl_eDPgL7WZNDb7Fiuotc038FFw


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 (W CCP) 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
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, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael Knapp, Kelvin Barton, Andy Rowlson, Atul Deshmane
David Hunter in attendance at 6:34

Staff Present: Mark Personius, Ryan Ericson, Gary Davis, Becky Boxx

Department Update
Mark Personius updated the commission on the following:

- Mr. Personius presented Kate Blystone who was chosen to fill the vacancy on the Planning Commission. She will begin serving at the February 9, 2017 meeting.
- Mr. Personius thanked Jerry Vekved and presented him with a plaque for his years of service on the commission.
- The upcoming Planning Commission schedule.
- Updates from County Council.

Open Session for Public Comment
Carole Perry, Whatcom County: Thanked Commissioner Vekved for his work on the commission. She commented on the Planning Commission meeting that had taken place regarding dog kennels. That meeting was a disaster because not all of the commissioners were at the meeting. Because lot of the members were not at the meeting the truth didn’t really come out. She asked if there is some sort of code stating who a Planning Commissioner member should be or who they should represent. She would like to know how they are chosen. (Staff will supply her with the information.)

Commissioner Comments
Commissioner Honcoop thanked Commissioner Vekved for his service on the commission.
Commission Deshmane also thanked Commissioner Vekved.
Commission Hunter also thanked Commissioner Vekved.

File #PLN2016-00013: Proposed amendments to the Whatcom County Code Title 20 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 confirmation 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 Rowlson 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
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
March 9, 2017

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: Nicole Oliver, Gary Honcoop Michael Knapp, David Hunter, Kelvin Barton
  Natalie McClendon in attendance at 6:38
  Atul Deshmane in attendance at 6:40
Absent: Andy Rowlson, 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 Honcoop 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

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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 Residenial 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.
Regular Meeting

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 6:30 p.m.

Roll Call
Present: Natalie McClendon, Gary Honcoop, Nicole Oliver, Michael Knapp, Andy Rowison, Kate Blystone
Atul Deshmume 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

- MR1 Stormwater Site Plan
- MR2 Construction SWPPP
- MR3 Source Control
- MR4 Preserve Natural Drainage
- MR5 On-Site Stormwater Management
- MR6 Treatment
- MR7 Flow Control
- MR8 Wetlands Protection

Current and Proposed:

<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.”
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
March 23, 2017

Regular Meeting

1 The hearing was opened to the public.

2 Carole Perry, Whatcom County: Why has this subject come up again? Is it in relation
3 to the Hirst case?

4 Mr. Davis stated the Hirst decision touched upon both water quality and water
5 quantity. The GMHB found that the county’s rural land use regulations did not protect
6 water resources, either in terms of water quantity, which is the well issue, or water
7 quality which is stormwater and impervious surfaces. In their decision, which was
8 upheld by the Supreme Court, they listed a number of measures that the county could
9 take in order to properly address those things. Placing limits on total impervious
10 surface was one of those things. At the first meeting, regarding this issue, the proposal
11 that staff brought forward was to place limits on impervious surface in the Rural and
12 Residential Rural zones. Originally the proposal stated 25% of your property, under 3
13 acres or 35,000 square feet if over 3 acres. The Planning Commission asked staff to
14 increase those numbers so they went up to 35% if under 3 acres and 45,000 square
15 feet if over 3 acres. The big change was that instead of being a cap, it was now a
16 cumulative threshold over which you could go but it would mean there would be extra
17 work in terms of making sure that the water stayed on site. There is no way to know if
18 this will pass with the GMHB. Some of the other things they suggested the county has
19 already done.

20 Loren VanderYacht, Whatcom County: The stormwater degradation is coming off of the
21 roads, it is not coming off of the individual residential properties. The largest single
22 owner of impervious surface, in rural Whatcom County, is Whatcom County. There are
23 not many projects being done by Whatcom County to improve their stormwater
24 quality. The burden is being placed on the private owners, who are not, at this point,
25 contributing to poor stormwater quality. In most cases stormwater in infiltrated on site
26 and in most cases is not running off of the property. The studies the county reference,
27 as to why this needs to be done, were done in King County and urban settings, on
28 glacial till soils, not glacial outwash soils. This is completely different from what we
29 have here. We don’t have any studies or data showing that the stormwater, in rural
30 Whatcom County, is not of good quality. The county is jumping to regulations to
31 potentially satisfy the state. We don’t even know if this will work. Why doesn’t the
32 county go back to them with the things they have implemented to see if that satisfies
33 them before taking this further.

34 Brad Radder, Whatcom County: Why is this necessary? As a member of the farming
35 community they would like to see the water go back into the soil on the property so
36 they can use it. Why move it to another parcel? Berries are not an easy crop to grow
37 and they feel like they are swimming upstream and fighting a battle they shouldn’t
38 have to be fighting. With these types of regulations it is one thing after another. The
39 farmers are very disappointed that things have come to this. Was any due diligence
40 done to know the cost of this and what it could cost the industry? Did anyone think to
41 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 Dhaliwal, 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.
Regular Meeting  
March 23, 2017

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 Deshmone 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.

Commissioner 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 Rowlson 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 Rowlson 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
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

1
2
3
4 Nicole Oliver, Chair

Becky Boxx, Secretary
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
April 27, 2017

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 Rowison, Atul Deshmane
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 14th
meeting of the Point Roberts Community...

Commissioner Rowison moved to approve as amended. Commission Deshmane
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 countywide 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 Rowlson 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 Rowlson 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 Deshmante 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
true. 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 Deshaner 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.
Commissioner Rowlson asked if it would make sense to add some version of Option 4 to the mix.

Mr. Davis stated the smaller parcels are the ones they are most concerned about, not the large parcels.

Commissioner Rowlson asked if the farms in the rural zones are typically large or small.

Mr. Davis stated there are some large farms in the rural areas.

Commissioner Blystone moved to amend the motion to add: Application of the stormwater manual is not required where a county, state or federally approved farm plan, or equivalent document demonstrates stormwater is already being effectively managed to the standards equivalent to an NPDES Phase II permit.

Mr. Ericson suggested it read: NPDES “area” instead of “permit”. He also suggested it read: equivalent to the standards in the stormwater manual.

Commissioner Blystone agreed with the second part of Mr. Ericson’s suggestion. The language was too vague as it was originally written.

The motion failed for lack of a second.

Roll Call Vote on the main motion: Ayes-Barton, Blystone, Deshmune, Honcoop, Hunter, Knapp, McClendon, Oliver, Rowlson; Nays-0; Abstain-0; Absent-0. The motion carried.

Unfinished Business

Commissioner Rowlson stated Boarding of Horses can be removed from the Pending Business Items as it has been taken care of.

The meeting was adjourned at 8:46 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

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 Deshmante, Gary Honcoop, David Hunter, Michael Knapp, Natalie McClendon, Nicole Oliver, and Andy Rowison.

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]

- 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.

Minimum Requirements For Wetlands Do Not Reflect Application of Best Available Science and Fail to Protect Against A Net Loss in the Functions and Values of the Critical Area and The Ecosystem In Which It Is Located. DOE rules begin on page 121 here: [http://www.ecy.wa.gov/programs/wq/stormwater/2012to2014SWMWMWRedlines.pdf]

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
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: July 11, 2017

SUBJECT: Impervious Surface Code Amendments

Proposed amendments involving impervious surface standards were discussed at the June 13 Planning and Development Committee meeting, and are scheduled for a public hearing at the July 11 County Council meeting. Staff's memorandum of June 30, 2017 discusses the draft amendments recommended by the Planning Commission following four public hearings between late January and late April (page 164 in the July 11 agenda packet). In the past few days Futurewise and the attorney for the “Hirst” petitioners have submitted to the County Council their first comments and suggestions (July 10 and 7, respectively). One of the Hirst petitioners, Wendy Harris, individually submitted a comment before the last Planning Commission hearing (page 228 of the packet). Staff would like to respond to the recent comments.

These comments suggest different actions. The Futurewise comment (p. 2) suggests limiting impervious surfaces to 20% of a lot, while the Hirst petitioners (including the individual Harris comment) suggest allowing no more than 10% impervious surface over the watershed area.

As staff discussed with the Planning Commission, staff did not suggest an across-the board percentage for several reasons. First, on larger rural parcels, permissible impervious surface would be very high. For example, 10% of a 40 acre parcel would be four acres; 20% would be eight acres. Second, on smaller lots like those developed in the higher density Residential Rural (RR) zone or nonconforming small lots in the Rural (R) zone, the permissible impervious surface would be very
restrictive. At 10%, for example, on a 1/3 acre lot, a house, garage, driveway, and patio could not total more than 1,452 square feet in total area.

As discussed on June 13, when impervious surface limits were first discussed in 2012, staff studied aerial photos of 24 sample rural lots to estimate what level of impervious surface is common in the rural area (see June 13 presentation, attached). The percentages ranged from 6% to 36%, with the smaller lots – three acres or less – typically seeing the highest percentages. This is why staff proposed a “sliding scale” threshold, allowing for established rural residential development patterns, but applying a ceiling so larger parcels would not be allowed an excessively high amount of impervious surface. Another reason staff suggested the sliding scale is that it corresponds with the sliding scale regulations for lot coverage (structures) in the R and RR zones, which was reduced to 20% with a ceiling of 25,000 square feet in 2012.

The Hirst comment (page 6) quotes Gary Davis at the January 26 Planning Commission meeting discussing the Booth study. He was referring to the following passage in the study (emphasis added):

Hydrologically and biologically, there are no truly negligible amounts of clearing or watershed imperviousness, even though our perception of, and our tolerance for, many of the associated changes in downstream channels appear to undergo a relatively abrupt transition. Almost every increment of cleared land, and of constructed pavement, is likely to result in some degree of resource degradation or loss. The decision of how much is ‘acceptable’ is as thus as much a social decision as a hydrologic one.¹

The 5% - 10% may originate with wording from the 1997 May study, referring to a range within which conditions changed most rapidly:

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 measures generally changed most rapidly during the initial phase of the urbanization process as %TIA above the 5-

¹ Derek B. Booth, “Forest Cover, Impervious-Surface Area, and the Mitigation of Urbanization Impacts in King County, Washington, 2000, p. 15
10% range. As urbanization progressed, the rate of degradation of habitat and biologic integrity usually became more constant.  

Lacking a clear threshold below which water quality is certainly protected, and above which it is not, staff and the Planning Commission, through the public process, developed standards that reflect established development patterns but prevent excessive impervious surface on large lots that would be allowed by straight-line percentages. These thresholds are part of a larger effort to bolster the County’s water quality protection measures, which includes recent adoption of low impact development standards and expansion of stormwater regulations (Ord. 2016-045).

The Hirst comment’s contention that “this ordinance will allow much more than 35% of the Rural area to be covered by impervious surfaces” is incorrect. For parcels larger than three acres, the 45,000 square foot ceiling would not allow impervious surfaces to cover 35% without use of the stormwater manual. As staff mentioned in its presentation on June 13 (slide 11, attached presentation), staff calculated the maximum cumulative effect of the proposed thresholds in the R and RR zones countywide. The maximum theoretical impervious surface that could be permitted without use of the stormwater manual is about 14%, though within some watersheds where smaller lots exist, the potential was higher than the county average, but still well below 35% (see calculation totals, attached). Lots in rural commercial zones are not affected by the proposed impervious surface standards, but all rural and urban commercial development is considered a “high impact” use in 20.80.630 (p. 175 of the packet) and is therefore subject to the requirements of the stormwater manual.

Regarding the comments made by Mark Personius according to the Planning Commission minutes (p. 7 of the Hirst comment), in the context of the March 9 meeting Mr. Personius was responding to a general question about whether changes to impervious surface standards would satisfy the hearings board, and whether other options have been considered. On the recording, after Mr. Davis responded that staff can’t predict the outcome of a hearings board ruling, Mr. Personius said, referring to the option of imposing impervious surface limits in general, “To follow up on your question Mr. Knapp, this case has been going on for so long, a couple of years now. We had some discussions with the appellants, a

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couple of years ago about a potential settlement options on water quality and this is what they said would satisfy them.”

The minutes of the March 23 meeting condensed Mr. Personius’ comments on the Supreme Court ruling. On the recording, in response to a question on what happens if the county does not move forward with the impervious surface proposal, he said:

The GMHB, in the original decision on Hirst, on the water quality stuff, was pretty specific about pointing out things, in particular, that the county was not doing a good enough job at which was protecting water quality in rural areas. That included, for example, the County Health Department’s on-site septic self-inspection system. They pointed out, specifically, in this case, impervious surface limitations and suggested putting a cap on impervious surfaces, which other counties have done, based on certain parcel sizes and certain zones. Through our discussions that evolved into getting rid of the cap and just saying if you get to a point where you have, like in this case, a number of 45,000 square feet then you would have to do a level of stormwater review and design. That is two different ways of addressing the same problem. They simply pointed out that these are things the county could do to get into compliance. When the county appealed that decision to the Court of Appeals they did not make any ruling on the water quality portion of the decision. They sent it back to the board. When the appellants appealed the decision to the Supreme Court they said the same thing: they made their decision on water quantity issues, on the permit exempt wells, but the water quality stuff they just kicked back to the GMHB. We did not get any additional guidance either from the Court of Appeals or Supreme Court. Because the courts did not speak directly to water quality there has been no discussions or bills proposed at the legislature to address the water quality portion. It has all been about the exempt well issues. If we don’t do anything the threat is the GMHB may find we have not done enough. If they feel we haven’t then we stay out of compliance and get an order to go back and do it again.

The Hirst comment (p. 5) says the amendment to Comprehensive Plan Policy 2DD-2.C.4 (bottom of p. 177 in the packet) removes references to water quality measures of the zoning code. It would not have that effect. The policy would still adopt by reference WCC 20.80.630-.635, the stormwater standards. Zoning code sections 20.32.656, 20.36.656 and others would only be references to 20.80.630-.635 (p. 169-170 in the packet). It would not be necessary for the Comprehensive Plan to adopt those sections by reference, as long as it adopts the actual stormwater regulations in 20.80.630-.635. If the County Council wishes to clarify that all these code sections are adopted into the Comprehensive Plan, Policy 2DD-2.C.4.a.-I could be retained.

Finally, the Hirst comment (bottom p. 5) points out that applying the 45,000 square foot ceiling on parcels 3 acres or larger (top of p. 176 in the packet) results in a
situation where parcels slightly smaller than three acres would have a threshold of up to 45,738 square feet (1.64% higher than 45,000). Mathematically it is true that the parcel size where 35% of the parcel equals 45,000 square feet is 2.95159386 not 3 acres. In the draft code amendment, staff rounded the number up to 3 acres for clarity, but if the Council wishes to change that acreage amount to 2.95159386 to correct this error, or adopt alternative wording, staff would not oppose.

If you have any questions, please call Gary Davis, Senior Planner, at extension 5931.

Attachments:

Maximum impervious surface threshold calculation
June 3, 2017 presentation
<table>
<thead>
<tr>
<th>Row Labels</th>
<th>Parcel Size</th>
<th>Max Impervious Surface per Proposed Threshold</th>
<th>Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sum of SQF</td>
<td>Sum of MAX IMP SFC</td>
<td></td>
</tr>
<tr>
<td>BELLINGHAM BAY</td>
<td>123,752,057</td>
<td>28,911,505</td>
<td>23.4%</td>
</tr>
<tr>
<td>BIRCH BAY</td>
<td>364,083,279</td>
<td>46,458,966</td>
<td>12.8%</td>
</tr>
<tr>
<td>DRAYTON HARBOR</td>
<td>1,070,651,194</td>
<td>125,374,771</td>
<td>11.7%</td>
</tr>
<tr>
<td>LAKE WHATCOM</td>
<td>303,301,413</td>
<td>75,401,171</td>
<td>24.9%</td>
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<tr>
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<tr>
<td>LUMMI BAY</td>
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</tr>
<tr>
<td>LUMMI PENINSULA/PORTAGE ISLAND</td>
<td>91,007,377</td>
<td>11,273,007</td>
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<td>LYNDEN NORTH</td>
<td>78,393,320</td>
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<tr>
<td>MIDDLE FORK NOOKSACK</td>
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<td>6,283,541</td>
<td>14.9%</td>
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<tr>
<td>NORTH FORK NOOKSACK</td>
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<tr>
<td>SILVER/NOOKSACK CHANNEL &amp; DELTA</td>
<td>212,843,317</td>
<td>32,852,744</td>
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<tr>
<td>SOUTH FORK NOOKSACK</td>
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<tr>
<td>SQUALICUM</td>
<td>364,623,721</td>
<td>55,101,661</td>
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<tr>
<td>SUMAS RIVER</td>
<td>360,702,400</td>
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</tr>
<tr>
<td>TEN MILE</td>
<td>721,157,401</td>
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<tr>
<td>UPPER MAINSTEM NOOKSACK</td>
<td>378,381,088</td>
<td>46,223,759</td>
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<tr>
<td><strong>Grand Total</strong></td>
<td><strong>5,214,523,978</strong></td>
<td><strong>738,528,544</strong></td>
<td><strong>14.2%</strong></td>
</tr>
</tbody>
</table>
Impervious Surface Amendments

June 13, 2017
“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.”

GMBH Case No. 12-2-0013 FDO June 7, 2013
Draft Ordinance:

- WCC 20.80.630: In Rural (R) and Residential Rural (RR) zones only, the “high” intensity category, requiring use of stormwater manual, would include projects that result in the parcel having an cumulative impervious surface exceeding 10,000 sf or 35% of gross parcel size, whichever is greater (less than 3 acres) or exceeding 45,000 square feet (3 acres or more) – packet p. 133-134

- Stormwater manual not required with farm plan or equivalent – note 3, p. 132

- Clarifying language for Lake Whatcom Watershed – packet p. 128-129

- WCC 20.32.656, 20.36.656: References to 20.80.630 for stormwater requirements in R and RR zone chapters – p. 127

- Updates to references in Comprehensive Plan Policy 2DD-2.C – p. 135
Option 1: Apply 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.
Whatcom County Rural Element
Lot Coverage and Impervious Surface Estimates

### Exhibit 1

<table>
<thead>
<tr>
<th>Parcel Number</th>
<th>Lot GIS Ac</th>
<th>Lot sf</th>
<th>Imp Sfc sf 1</th>
<th>Imp Sfc %</th>
<th>Lot Cov sf 2</th>
<th>Lot Cov %</th>
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<td>4.68</td>
<td>203,861</td>
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<td>7%</td>
<td>7,082</td>
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<td>C</td>
<td>390324314495</td>
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<td>220,414</td>
<td>16,000</td>
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<tr>
<td>D</td>
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<td>6.46</td>
<td>281,398</td>
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<td>10%</td>
<td>6,328</td>
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<tr>
<td>E</td>
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<td>213,444</td>
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<td>6,169</td>
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<tr>
<td>F</td>
<td>390324350423</td>
<td>3.29</td>
<td>143,312</td>
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<th>Lot GIS Ac</th>
<th>Lot sf</th>
<th>Imp Sfc sf 1</th>
<th>Imp Sfc %</th>
<th>Lot Cov sf 2</th>
<th>Lot Cov %</th>
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<td>G</td>
<td>380209098032</td>
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<td>162,043</td>
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</tr>
<tr>
<td>H</td>
<td>380209146019</td>
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<td>83,200</td>
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<tr>
<td>I</td>
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<tr>
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<td>49,360</td>
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<tr>
<td>K</td>
<td>380216179489</td>
<td>1.04</td>
<td>45,302</td>
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<tr>
<td>L</td>
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<th>Imp Sfc sf 1</th>
<th>Imp Sfc %</th>
<th>Lot Cov sf 2</th>
<th>Lot Cov %</th>
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</thead>
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<td>M</td>
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<td>N</td>
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<td>48,787</td>
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<tr>
<td>O</td>
<td>400332240205</td>
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<td>P</td>
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<td>131,551</td>
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<td>20%</td>
<td>11,211</td>
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<td>2.29</td>
<td>99,752</td>
<td>16,000</td>
<td>16%</td>
<td>4,412</td>
</tr>
<tr>
<td>R</td>
<td>400332249117</td>
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<td>43,124</td>
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### Exhibit 4

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<th>Imp Sfc %</th>
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<th>Lot Cov %</th>
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</thead>
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<td>S</td>
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<td>T</td>
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<td>84,942</td>
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<td>13%</td>
<td>2,811</td>
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<td>U</td>
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<td>5.83</td>
<td>253,955</td>
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<td>10%</td>
<td>9,518</td>
</tr>
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<td>V</td>
<td>400332531326</td>
<td>1.26</td>
<td>54,886</td>
<td>16,000</td>
<td>29%</td>
<td>4,499</td>
</tr>
<tr>
<td>W</td>
<td>400332531308</td>
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<td>57,935</td>
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<td>36%</td>
<td>5,086</td>
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<tr>
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<td>2.09</td>
<td>91,040</td>
<td>24,000</td>
<td>26%</td>
<td>4,932</td>
</tr>
</tbody>
</table>

1. Rough estimate by PDS staff using GIS area calculation tool on 2010 aerial imagery
2. From Assessor improvement data, excluding second stories and basements, including decks
Impervious Surface

- May, Horner, Karr, Mar, Welch (1997):
  - “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.”

Impervious Surface

Booth (2000):

"Hydrologically and biologically, there are no truly negligible amounts of clearing or watershed imperviousness, even though our perception of, and our tolerance for, many of the associated changes in downstream channels appear to undergo a relatively abrupt transition. 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 thus as much a social decision as a hydrologic one."
July 7, 2017

Whatcom County Council
311 Grand Ave.
Bellingham, Washington 98225
Be email to council@co.whatcom.wa.us

Re: Whatcom County Agenda Bill 2017-195, “Ordinance amending the Whatcom County Code Title 20 Zoning and the Whatcom County Comprehensive Plan relating to cumulative impervious surface coverage standards.”

Dear Chair Buchanan and Whatcom County Council Members:

Introduction

The Washington State Supreme Court upheld the Growth Management Hearings Board’s ("Board’s") determination that the County’s Comprehensive Plan (“CP”) fails to meet the Growth Management Act (“GMA”) requirement to “include measures that apply to rural development and protect the rural character of the area, as established by the county, by . . . [p]rotecting surface water and groundwater resources.” RCW 36.70A.070(5)(c).

The Court specifically “affirm[ed] the Board’s ruling that the County’s rural element fails to comply with the requirement to protect water quality.” The Board emphasized that “[l]ocal land use plans and regulations must seek to avoid groundwater contamination as well as managing surface water runoff to prevent pollution of Puget Sound.” Hirst et al. v. Whatcom County, Case No. 12-2-0013, Final Decision and Order, June 7, 2013 (“FDO”) at 22-23.

The Board found substantial evidence of water pollution resulting from the absence of effective land use planning containing measures to protect water resources. FDO at 34-35. It provided the County with the relevant scientific standard for limiting impervious surfaces in the Puget Sound, quoting a Washington Department of Fish and Wildlife report that states: “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.” (For citations, see Section II, where the Board’s discussion is set forth at greater length.)

Despite the County’s very severe pollution problems, and in complete disregard of the scientific studies quoted by the Board in the FDO (set forth in Section I, below), the ordinance before you imposes no limit on impervious surfaces in the Rural area. In an ill-defined provision applicable only to residential zones in the Rural area, the Ordinance provides for stormwater mitigation
only after 35% of a “parcel” – or more, if 35% of the parcel is smaller than the threshold of 45,000 square feet – has been covered by impervious surfaces.

This proposal is unsupported by science. It is admittedly based on “social considerations” (see Section III, below) rather than on the well-established fact that impervious surfaces adversely affect water quality. In the year 2017, it was stunning to read minutes indicating that the Planning Commission entertained arguments that Whatcom County – uniquely on the planet – is a place where increased impervious surfaces somehow have no effect on water resources.

This unfounded belief directly conflicts with the Board’s clear finding, following an extensive discussion of relevant literature, that “current science-based studies conclude that most water resource degradation in the Puget Sound region and Whatcom County in particular can be attributed to land use and land development practices.” FDO at 34.

Even if you decide to disregard all of the evidence about the effects of impervious surfaces on water resources stacked up over the decades, from western Washington State, the United States, and the rest of the world, please bear in mind that the Hearings Board quoted evidence specific to Whatcom County. This evidence included (but is not limited to) the following:

“In the 2006 Bertrand Creek: State of the Watershed Report, the County and other cooperating organizations documented land use changes in the Bertrand Creek Watershed which include ‘loss of water-retention capacity of wetlands and the increase in pavement, rooftops, and other hard surfaces resulting in a “flashy watershed.”” Such watersheds mean these areas reach flood stage quickly, have more pollution potential, and dwindle down to extremely low flow during the driest months.” FDO at 27.

The effect of increased impervious surfaces on water quality and water resources is not limited to King County. Whatcom County is not somehow immune.

The Board further found:

“Whatcom County is listed with ‘impaired water bodies’ in the 2010 State of the Watershed Report, which is the U.S. Environmental Protection Agency’s report on the status of Section 303(d) of the Clean Water Act. Since 2000, Whatcom County’s “impaired water bodies” have increased from 47 to 77. Of those, only 6 water bodies have been analyzed and have had standards established for allowable total allowable pollution (Total Maximum Daily Loads (TMDLs)). The standards and policies derived from these TMDLs have not been adopted by reference as measures governing land use in the Rural Element and do not appear to be addressed in the development regulations for affected rural areas in the Ordinance No. 2012-032 amendments. In Butler v. Lewis County, the Western Board found the County was aware of an Ecology TMDL Study with recommendations for water management practices. The Board ruled the County’s failure to adopt any policies into its land use plan violated RCW 36.70A.070(1). While Butler was decided under the GMA’s mandatory provisions for the land use element, the requirements for “measures” in the Rural Element are no less specific.
The Ordinance does not address the standards and policies derived from TMDLs, and no effort was made to establish that the Ordinance would address the causes of pollution in impaired water bodies.

We ask you not to approve the attached ordinance, but instead to pay heed to the Board and to the science of watersheds, which has long recognized that increased impervious surfaces will only exacerbate Whatcom County’s existing severe water quality and quantity problems. If the County decides to allow more than the 5-10% impervious surface limit that the Board emphasized in its FDO, it should be able to support the increase with best available science. No science supports increasing impervious surfaces throughout the Rural area by well over 35%.

Our remaining comments are set forth in three sections:

- **Section I** includes some of the most directly pertinent evidence quoted by the Board in its FDO. We additionally encourage you to read the Board’s insightful and evidence-supported analysis of the County’s water resource problems, and of the measures that the County can and should take to protect water resources.

- **Section II** contains comments on the provisions of the proposed Ordinance.

- **Section III** includes comments and corrections to Planning Commission materials, as provided with the proposed ordinance.

**SECTION I**

Excerpt from the Board’s FDO, Case No. 12-2-0013 (June 7, 2013) at pp. 31-33: This discussion states as follows, with emphasis (language underlined) that the Board included in the original FDO. I have emphasized additional language in **bold**:

“Further information about land use planning and water resources, comes from the Washington State Department of Fish and Wildlife’s (WDFW) report “Land Use Planning for Salmon, Steelhead and Trout.” This guide recommends various land use planning strategies to assist local governments to meet salmon recovery and land use planning laws. Specifically, on urban and rural growth, the report explains:

Development in rural and urban areas is often located in low-gradient areas.... Urban growth in these riparian environments can alter land surface, soil, vegetation and hydrology by increasing the area of impervious surface. Impervious surface area is strongly correlated with adverse impacts on stream conditions including extensive changes in basin hydrology, channel morphology, and physio-chemical water quality (May et al. 1996; Booth 2000; R2 Resource Consultants et al. 2000)....

Implementing land use planning for salmon, steelhead and trout can avoid many impacts associated with urban and rural growth by maintaining estuarine, wetland and riparian habitats, and adjacent upland habitats, among others. For example, limiting impervious
surface in the watershed and locating development away from riparian systems (using native vegetation buffers) would improve salmonid habitat function and hence survival (May 2003; May 2009).119 120

Further information on stormwater management shows the link between impervious surfaces and water quality degradation:

"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 (http://www.psd.wa.gov/stormwater.php). Therefore, it is imperative that local governments manage stormwater with policies, regulations and incentive programs (e.g., Low Impact Development (LID) to reduce and treat stormwater runoff. 20 (Emphasis added [by the Board])

Finally, the WDFW report touches on the causes of water pollution with the following analysis and suggestions:

While climate change may influence water quality over the long-term, most water quality degradation can be attributed to land use development practices. Development removes native vegetation, increases water temperatures, and compromises water quality by causing excessive runoff and stormwater discharge which washes nutrients, contaminants, and toxic materials from impervious surfaces into waterways (R2 Resource Consultants et al. 2000). Though these changes are most noticeable in streams draining highly urbanized watersheds (May et al. 1996), smaller scale development impacts are also important in less urbanized watersheds. (Emphasis added [by the Board].)
SECTION II.
Comments on the Ordinance

Overall:

The Ordinance only addresses the R and RR zones. In Rural zoning designations that are not addressed by the proposed ordinance, far greater coverage by impervious surfaces is permitted. For example, 85% of a “site” may be covered by “buildings, structures, hard surfacing, parking areas and other impervious surfaces” in the Neighborhood Commercial zone. Title 20, Ch. 20.60., section 20.60.500.

- It does not appear that any analysis has been conducted of the cumulative effect of development under these standards, which are even less limiting of impervious surfaces.
- The fact that the other Rural zoning designations allow a very high coverage by impervious surfaces should result in designations that require less than 10%, based on the scientific evidence in the record.

Page 1: Elimination of incorporation by reference into the Land Use Element: Is there a reason to remove these provisions from the Land Use Element? Perhaps the removal recognizes that the ordinance would not meet the GMA requirements for the Land Use Element, which must “review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound . . .” Without incorporation to the Land Use Element, however, it seems likely that the Land Use Element entirely fails to comply with this requirement.

Page 6: The Ordinance includes a broad, poorly-drafted provision that should be deleted or revised:

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.

The Ordinance does not define either “equivalent document” or “effectively managed.” No goal is provided for “effective management,” which may not be the same for the farm plan as for the GMA’s requirement to protect of rural character by protecting water quantity and water quality. It must be presumed, therefore, that the planner at the desk will exempt any application if a “document” is produced that includes the term “stormwater” or “management.” This loophole fails to protect water resources.

Page 6: The Ordinance states that “Any project that results in new hard surface . . .” The terms “project” is not defined. A “project” is not the same as a parcel.

Page 7. Please provide scientific support for the provision allowing 45,738 square feet of impervious surface to be constructed on 3-acre parcels (that is 35% of 3 acres, a larger figure than the 45,000 square feet allowed on parcels over 3 acres).
Page 8. The Ordinance states that, “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.” Please provide scientific support for the conclusion that roadways or driveways in public rights-of-way or easements are not impervious surfaces, or do not contribute equally with other roadways or driveways to the degradation of water resources. If no such support is available, this loophole should be eliminated.

Page 9: The deletion of all references to drainage measures in the various zoning districts removes measures to protect water quality and quantity from the CP. It is not clear why the County wants to remove these “measures” from the CP.

SECTION III
Comments and Corrections on Planning Commission Materials

Planning Commission staff report:

Page 2, lines 7-8 (Gary Davis): “These amendments would add maximum limits on impervious in the Residential Rural 8 (RR) and Rural (R) zones.”

- This statement may refer to an earlier draft, but does not accurately describe the proposed ordinance. The proposed amendments include no maximum limits on impervious surfaces.
- The amendments only require mitigation under the stormwater manual when impervious surfaces exceed 35% of the lot in some circumstances (excluding some impervious surfaces and all areas under some sort of “document” that shows that stormwater is “effectively managed”).

Planning Commission Minutes, January 26th

Page 2, lines 31-37 (Gary Davis): “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... The decision about how much is acceptable is as much a social decision as a hydrologic one.”

- If this statement was intended to refer to the WDFW publication quoted in the Board’s order, it misrepresents the report. Nowhere does the report state that, once an area has greater than 10% impervious surfaces, it does not need to limit impervious surfaces because the relationship between land use policies and impacts on water quality are a “judgment call” or a “social decision.”
- As noted above and quoted by the FDO, the report emphasizes that “it is imperative that local governments manage stormwater with policies, regulations and incentive programs (e.g., Low Impact Development (LID)) to reduce and treat stormwater runoff.”
- The reason that this is “imperative” is that “[i]mpervious surface area is strongly correlated with adverse impacts on stream conditions including extensive changes in basin hydrology, channel morphology, and physio-chemical water quality.” (Quoted in the FDO.)
Planning Commission Minutes, March 9, 2017

Page 5, Lines 1-2 (Mark Personius): “Mr. Personius stated the county had conversations with the appellants and they stated this proposal would satisfy them.”

- This statement is incorrect. The County has stated that it was developing an ordinance that would limit impervious surfaces, but did not describe this proposal, nor did we say that it would comply with the GMA.

Planning Commission Minutes, March 23, 2017

Page 6, Lines 18-19 (Mr. Personius): “The Supreme Court only rules on the water quantity issue, not the quality issue.”

- This statement is incorrect. The Supreme Court did rule on the water quality issue. After a discussion of evidence and arguments, the Court “affirm[ed] the Board’s ruling that the County’s rural element fails to comply with the requirement to protect water quality.”

CONCLUSION

This Ordinance will allow much more than 35% of the Rural area to be covered by impervious surfaces. As you know, the Rural area is larger than the County’s Agricultural area. Covering more than a third of this very large area will harm, not help, water quality and quantity. It will ensure further stress on endangered salmon species. It will reduce recharge of aquifers, exacerbating the County’s water shortage problems.

Please adopt measures that will protect the County’s rural character, now and into a future in which we will face climate change, increasing population, and even greater strains on our water resources.

Sincerely,

Jean O. Melious
Attorney for Eric Hirst, Laura Leigh Brakke, Wendy Harris, and David Stalheim

cc: County Executive Jack Louws
Ms. Karen Frakes
Mr. Mark Personius
Mr. Gary Davis
Mr. Tim Trohimovich
July 10, 2017

Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, Washington 98225

Dear County Council Members:

Subject: Comments on Amending the Whatcom County Code Title 20 Zoning and the Whatcom County Comprehensive Plan Relating to Cumulative Impervious Surface Coverage Standards.
Sent via email to: council@co.whatcom.wa.us; pds@co.whatcom.wa.us; kfrikes@co.whatcom.wa.us

Thank you for the opportunity to comment on the amendments to the Whatcom County Code Title 20 Zoning and the Whatcom County Comprehensive Plan Relating to Cumulative Impervious Surface Coverage Standards. We urge the County to limit impervious surfaces in rural areas. As will be explained below, this is supported by scientific research conducted in Western Washington.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable, and opportunity-rich communities, and that protect our most valuable farmlands, forests and water resources. Futurewise has members across Washington State, including Whatcom County.

The science shows impervious surface limits are needed

For well over a decade now, the scientific literature shows that constructed storm water facilities alone will not protect water quality.1 Rather impervious surface area and clearing regulations are needed too.2 The Booth article, enclosed, considered storm water controls in analyzing whether they alone can effectively protect water quality.3 The evidence is they cannot.4

In discussing the impacts of development on water quality, the Stormwater Management Manual for Western Washington states:

> There is some agreement that preserving a high percentage (possibly 65 to 75%) of the land cover and soils in an undisturbed state is necessary. To achieve these high percentages in urban, urbanizing, and suburban watersheds, a dramatic reduction is

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1 Derek B. Booth, David Hartley, and Rhett Jackson, Forest Cover, Impervious-Surface Area, and the Mitigation of Stormwater Impacts 38 JOURNAL OF THE AMERICAN WATER RESOURCES ASSOCIATION 835, 838 – 43 (2002). The Journal of the American Water Resources Association is a peer-reviewed scientific journal. The Journal of the American Water Resources Association (JAWRA) Instructions for Authors pp. 2 – 4 accessed on July 7, 2017 at: http://www.awra.org/jawra/JAWRA%20Instructions%20for%20Authors.pdf and both the article and the instructions are enclosed with this letter.

2 Derek B. Booth, David Hartley, and Rhett Jackson, Forest Cover, Impervious-Surface Area, and the Mitigation of Stormwater Impacts 38 JOURNAL OF THE AMERICAN WATER RESOURCES ASSOCIATION 835, 844 (2002).

3 Id. at 838 – 43.

4 Id.
necessary in the amount of impervious surfaces and artificially landscaped areas to accommodate our preferred housing, play, and work environments, and most significantly, our transportation choices.5

Requiring compliance with the storm water manual when impervious surfaces exceed 35 percent is not supported by the science

The proposal’s approach, requiring compliance with the storm water manual when impervious surfaces exceed 35 percent, will not effectively protect water quality for three reasons. First, the approach is not tied to the total impervious surfaces in a basin, they are just flat impervious surface area limits below which compliance with the storm water manual is not required and above which compliance is required. There is no consideration of existing impervious surfaces or the impact of the development on total impervious surfaces.

Second, as was documented above, storm water controls, alone, will not protect water quality. It will also not protect water quantity. According to the Washington State Department of Ecology, the Nooksack Watershed is experiencing “diminishing surface water supplies” and “declining groundwater levels in some areas during peak use periods ….6” Limiting impervious surfaces and requiring infiltration when possible will help maintain water resources available for farms, homes, businesses, and fish.

Third, it does not include any provisions to maintain native vegetation in rural areas. As was documented by the Stormwater Management Manual for Western Washington this is necessary to maintain water quality and aquatic habitats.7

Adopting science-based impervious surface limits addresses these problems

These problems can be solved by adopting reasonable impervious surface limits. Limiting impervious surfaces 20 percent of a lot in rural Whatcom County combined with infiltrating storm water where possible will address the problems identified above.8 Clearing and excavations should be limited to maintain 65 percent native vegetation with undisturbed soils.9 We would support

provisions to allow a larger impervious surface and clearing limit for lots 2.5 acres and smaller to assure that there is adequate buildable land on lot.

Thank you for considering our comments. If you require additional information, please contact me at telephone (206) 343-0681 Ext. 118 or email tim@futurewise.org.

Very Truly Yours,

Tim Trohimovich, AICP
Director of Planning & Law

Enclosures
Reference material can be found:

Online at:

https://wa-whatcomcounty.civicplus.com/DocumentCenter/View/29430

OR

In the County Council Regular Meeting Linked Agenda.

Hard copy can be viewed in the Council Office
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: July 25, 2017
SUBJECT: Impervious Surface Code Amendments

At the July 11 County Council meeting, PDS staff presented the Planning Commission’s recommendation on the proposed zoning code amendments that would establish a cumulative impervious surface threshold in the Residential Rural (RR) and Rural (R) zones. The County Council referred the amendment back to the Planning and Development Committee for additional discussion. Councilmembers expressed interest in considering a lower cumulative impervious surface threshold than that recommended by the Planning Commission.

In staff’s presentation at both the July 11 public hearing and the June 13 Committee discussion, staff presented its calculation that the Planning Commission’s recommended threshold of 35% of total parcel size (with a 10,000 square foot (sq ft) floor and 45,000 sq ft ceiling) would theoretically allow up to 14.2% of the RR and R districts inside the Nooksack River basin\(^1\) to be covered by impervious surfaces if all lots’ impervious surfaces were equal to the threshold.

Staff has now done the same calculation on the original staff recommendation of 25% (with a 7,000 sq ft floor and 35,000 sq ft ceiling), and a third “hybrid” option of 25% (with a 10,000 sq ft floor and 45,000 sq ft ceiling). The theoretical maximum impervious surface coverage for these two options is 10.9% and 13.3%, respectively. See the chart below and the attached tables for comparison of the three options.

---

\(^1\) Refers to the portion of the Nooksack basin described in the Department of Ecology’s November 14, 2016 letter listing areas potentially affecting instream flows. These areas exclude the Campbell River, Samish, and Point Roberts areas. Also excluded is Lummi Island, which has no R or RR zoning.
The proposed code amendment would establish a cumulative impervious surface threshold in the stormwater regulations of WCC 20.80.630. Under existing regulations, projects defined as high intensity uses\textsuperscript{2} require compliance with the Department of Ecology stormwater manual. The amendment would add to the definition of “high intensity” uses in 20.80.630(1)(e) any project that causes the total impervious surface to exceed the cumulative threshold in the RR and R districts, making those projects subject to the stormwater manual.

Projects that do not cause the total impervious surface to exceed the cumulative threshold would still be subject to existing 20.80.630 standards. All projects within the NPDES II permit area and stormwater special districts\textsuperscript{3} are, like all high intensity uses, required to comply with the stormwater manual. For projects that do not cause the total impervious surface to exceed the cumulative threshold, and are defined as low or medium intensity uses, 20.80.630(1)(d) sets minimum

\textsuperscript{2} Per 20.80.630(1)(e), high intensity uses include: (1) 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; (2) Subdivisions of land into more than four lots; (3) Commercial, industrial, institutional, multifamily uses; and (4) All uses on parcels bisected by the NPDES Phase II permit area boundary.

\textsuperscript{3} Stormwater special districts are the Drayton Harbor watershed, Lake Samish watershed, Birch Bay watershed, and the Lake Padden watershed. Application of the stormwater manual these special districts is modified in 20.80.630(1)(c). Stormwater regulations for the Lake Whatcom watershed are contained in WCC Chapter 20.51, per 20.80.630(1)(b).
requirements, though it does not require not full compliance with the manual. These requirements are applied based on the project size and whether it is of low or medium intensity, and consist of:

- Stormwater site plan
- Construction stormwater pollution prevention plan (SWPPP)
- Source control
- Preservation of natural drainage
- On-site stormwater management
- Treatment
- Flow control
- Wetlands projection
- Operation and maintenance agreement

If you have any questions, please call Gary Davis, Senior Planner, at extension 5931.

Attachment:
Maximum impervious surface threshold calculations for three options
### Option 1: Planning Commission Recommendation

<table>
<thead>
<tr>
<th>Watershed</th>
<th>Parcel Size</th>
<th>Max Impervious Surface</th>
<th>% Max Imp Sfc</th>
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<td>BELLINGHAM BAY</td>
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<td>LAKE WHATCOM</td>
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**Grand Total**

|               | 5,214,523,978 | 738,528,544 | 14.16% |

Excludes Campbell River, Point Roberts, and Samish watersheds.
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<td><strong>Grand Total</strong></td>
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Excludes Campbell River, Point Roberts, and Samish watersheds
### Option 3: Hybrid

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**Grand Total**

|                          | 5,214,523,978 | 691,743,630 | 13.27% |

Excludes Campbell River, Point Roberts, and Samish watersheds
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
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES
Originator: Cliff Strong
Division Head: Mark Pertonius
Deputy Head: Sam Ryan
Prosecutor: Royce Buckingham
Purchasing/Budget: Jack Louna
Executive: Jack Louna

TITLE OF DOCUMENT:
2016 Critical Areas Ordinance Update
- Review of certain questions, comments, and suggestions by Council members

ATTACHMENTS: (all current and past materials provided to the Council can be found at http://www.whatcomcountywa.gov/Council-Review)

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.
2016 Critical Areas Ordinance Update

Review of certain questions, comments, and suggestions by Council members

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<th>Assigned to</th>
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**COMMITTEE ACTION:**

6/27/2017: Discussed and Amended
7/11/2017: Discussed and Amended
7/25/2017: Discussed and amended

**COUNCIL ACTION:**
Memorandum

TO: The Honorable County Council
Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner

THROUGH: Mark Personius, Asst. Director

DATE: July 18, 2017

SUBJECT: 2016 Critical Areas Ordinance Update
County Council Review Workshop on August 8, 2017

On August 8th 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 2, Administrative Provisions
  - Article 6, Wetlands
  - Article 7, Habitat Conservation Areas
  - Article 8, Conservation Program on Agriculture Lands
  - Article 9, Definitions

To prepare for this meeting, please review this memo. Yellow highlighting in the text indicates a Councilperson’s proposed amendments.

Attachments
A – Other Jurisdictions’ Definitions of Agricultural Land & Ongoing Agriculture
B – DOE Well Data, analyzed by the Whatcom Conservation District
C – Nooksack-Abbotsford-Sumas Transboundary Study Info
D – State Mechanisms for Groundwater Protection
E – PL1-85-004Z CPAL – Animal Threshold, Resource Priority
ITEM 1 (Originally Issues 152 & 153)

Though Council has discussed section 16.16.830 in relation to the ongoing ag issue (and resolved it with the motion on 7/25/17 to revert all previous changes back to “ongoing ag”), some of the proposals in the same section have not been acted on. Based on your discussion, 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 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 may authorize:
   1. Filling, draining, grading, or clearing activities within critical areas or buffers:
      a. Only-Except on ongoing agricultural land 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.

Staff supports all these changes.

Definition of “Ongoing Agriculture”

ITEM 2 (Originally Issue 171)

16.16.900 Definitions. (Browne’s proposal)
“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. Unless the idle land is registered in a federal or state soils conservation program 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 it meets the criteria for Abandonment under the Food
Security Act (7 CFR Section 12.33 (c)), and the criteria for receiving an exemption under the Food Security Act § 12.5(b)(1)(i)(ii) has not been met, then such land is considered to be abandoned when the land meets the wetland criteria of the Food Security Act § 12.31 unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

Staff Response: At your 7/25/17 workshop Council moved to revert all the substitutions you made for “ongoing ag” with “history of legal agriculture” back to “ongoing ag.” However, Council also wanted to work on the definition of “ongoing ag” seemingly wanting to normalize it with state and federal definitions. As requested by CM Browne, Attachment A to this memo provides various definitions of agriculture from state and federal regulations. We’ve also added other cities’ and counties’ definitions of “ongoing agriculture” in this version.

Staff does not recommend CM Browne’s proposed changes (shown above) for several reasons. First, as mentioned in the workshop, tying this definition to the Food Security Act only addresses wetlands, not other critical areas for which we are also responsible.

Secondly, we advise against tying any of our code to federal codes. Our authority comes from state code, and we recommend that our codes align with those instead. Federal codes can be extremely complicated and are interpreted though a different court system. We would not want to put our staff in the position of having to interpret and enforce a federal regulation.

To Attachment A in this version we’ve added other cities’ and counties’ definitions of “ongoing agriculture.” Though each varies slightly, the minimum common themes in all include:

1. Done on lands defined in RCW 84.34.080(2) (meaning the property has to be enrolled in the Open Space/Ag Taxation to qualify at agricultural)
2. Allows standard farming practices & maintenance
3. Activities that bring a non-agricultural area into agricultural use are not part of an ongoing operation.
4. An operation ceases to be ongoing when the area on which it is conducted is converted to a non-agricultural use or has lain idle for more than five years.

Our existing definition, which has been in place since the adoption of our first CAO in 1992, meets these minimum common themes with the exception of having to be on lands defined in RCW 84.34.080(2) (and therefore applies more broadly in Whatcom than in these other jurisdictions.)

We understand Council’s concern that sometimes farmers get in a bind and might not be able to work their land for a period of time, and Council seems to be concerned that 5 years might not be enough. However, the reason all these definitions as well as the Open Space/Ag Taxation Act has a five year sunset date is to encourage productive farmland be kept in farming. It has been common practice for developers to buy ag land and keep or put it in the Open Space/Ag Taxation program so as to reduce taxes while they’re holding it for development. This has the effect of both removing land from ag production and reducing a jurisdiction’s revenue (or rather, spreading the tax burden to all other property owners). The five year period was a negotiated timeframe that the state and ag community agreed upon as reasonable.

For all these reasons, staff recommends that we stick with our existing definition.
CAO Monitoring & Baseline Data

ITEM 3 (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 (staffing/consultants/funding), and a proposed funding mechanism/source.

Staff Response: There is no statutory 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 for consideration by the Wildlife Advisory Committee.)

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>
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<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>
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</tbody>
</table>
| Development Permit Mitigation Monitoring Program Review (adaptive management, on-going review every 2 years) | • Internal assessment of program consistency (Permit issuance + Mitigation)  
• Review WDFW High Resolution Change Detection data | 10A-2, 10K-15, 10M-4, 10L-17 |               |               |
| Countywide Ecosystem Functions and Values Study (initial study) | • 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 (scession 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 | 10A-2, 10K-15, 10K-16, 10M-4, 10L-17, 10L-18 | 0.25 | $250,000 – $400,000 |
| Countywide Baseline Ecosystem Functions and Values Monitoring Program (adaptive management, on-going review every 5-years) | • Complete Rapid Habitat Assessments  
• Laboratory Analysis  
• Internal assessment of program consistency (Permit issuance + Mitigation)  
• Wetland Prediction Model Maintenance  
• Citizen Scientist Workshops | 10A-2, 10K-15, 10K-16, 10M-4, 10L-17, 10L-18 | 0.25 | $100,000 (data management and consultant) |
| Additional (potential) Programs | • If we start a mitigation bank  
• If we start/participate in an in-lieu fee program |               |                | .75            |
Using CPAL to Address Nitrates in the Aquifer

ITEM 4

Is Having High Concentrations of Nitrates in Groundwater a Significant Health Issue?

According to the literature, having high concentrations$^1$ of nitrates in drinking water (primarily from groundwater and wells in rural areas) may cause methemoglobinemia$^2$, generally in infants under 6 months old. We say “may” because more current studies call in to question whether it is caused by high nitrate concentrations or bacteria:

“The link between nitrate and the occurrence of methaemoglobinemia was based on studies conducted in the 1940s in the midwest of the USA. In part, these studies related the incidence of methaemoglobinemia 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 methaemoglobinemia,” 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 methaemoglobinemia) developed in infants, the wells were situated near barnyards and pit privies.” There was an absence of methaemoglobinemia when formula milk replacements were made with tap water. Re-evaluation of these original studies indicate that cases of methaemoglobinemia 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 methaemoglobinemia, 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$^3$, 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

$^1$ The Environmental Protection Agency (EPA) has set the Maximum Contaminant Level (MCL) of nitrate as nitrogen (NO3-N) at 10 mg/L (or 10 parts per million) for the safety of drinking water.

$^2$ 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.

$^3$ Always recommended by the WCHD
system\textsuperscript{4} 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 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.

\textsuperscript{4} Also recommended by the WCHD
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 Agassi, BC.

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

Please see the attached WCD 2016 report of accomplishments (provided in your 7/11/17 memo). It describes the breadth of activities taken to protect surface and groundwater.

Whatcom County Health Department

Well Testing
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 (e.g., nitrate) is detected above the Maximum Contaminant Level (MCL) they require mitigation. If a MCL 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.

OSS Self-Certification Process
On-site sewage systems (OSS) must be evaluated regularly in order to work properly. State and local regulations require gravity OSS be evaluated every three years and all other system types annually. The OSS owner is responsible for properly operating, monitoring, maintaining their OSS. Whatcom County Health Department (WCHD) licenses operation and maintenance (O&M) specialists that can provide this service to OSS owners. WCHD also allows homeowners to perform their own OSS evaluation. Homeowners can perform their
own evaluation after attending an in-person WCHD sponsored homeowner workshop or completing the on-line homeowner training. Once a property owner has been certified, they complete the evaluation and submit a report to WCHD. The following items must be included, or the report will not be accepted:

- Photos of exposed septic tank and outlet baffle
- Site sketch of OSS if no permit is on file
- Certification form
- Must be submitted within 30 days of evaluation

Staff performs audit inspections of homeowner evaluations that are submitted to verify completeness and accuracy. If during the audit process an OSS owner is found to have not completed the evaluation or misrepresented an OSS failure, the OSS owner’s certification is revoked and all subsequent evaluations must be completed by a licensed professional. Homeowners are not eligible to conduct evaluations for the following:

1. OSS with proprietary components
2. Community drainfields
3. Nonconforming replacement OSS installed as a result of a failing system
4. Food establishment
5. Property transfers

Washington State Department of Health
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
In addition to agriculture there is a multitude of potential sources of nitrate in the groundwater. These include onsite septic systems, nutrient management practices in the Lower Fraser River Valley of B.C., residential lawn fertilizers, and the natural environment. An onsite septic system (OSS) can generate between 6 and 17 grams of total nitrogen (N) per person per day (2002 EPA study). The calculated loss of N for residences in the Yakima Ground Water Management Are 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 the EPA identified Red Alder as a significant source of nitrate in two Oregon coastal river systems. (See [https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=230765](https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=230765)). These are mentioned to perhaps temper the expectation that we can be successful in achieving the desired quality of groundwater in a piecemeal manner.

Conclusion
It is important to note that the latest overall nitrate trend in well data from 2010 (31 wells) to 2016 (20 wells) monitored by Ecology has dropped and remained below the 10ppm MCL, though some individual wells near Lynden are still of concern. Of the 2016 data, only 5 of 20 wells are above 10 ppm and trending up. Four additional wells are slightly below 10 ppm. (See Attachment B)

Two conclusions flow from this. First, the current program of regulatory compliance, monitoring, education, outreach, and technical assistance must have some palpable efficacy to see this kind of improvement. Second,
there is opportunity for improvement but most likely focused on the limited geographic areas in the north County where the nitrate issue is most acute.

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 173-1005. 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.

- **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

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5 See Attachment D – *State Mechanisms for Groundwater Protection*
water, and to reduce other 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.

**Lahar Hazard Zones**

**ITEM 5**

The Mount Baker Bibleway Camp (whose property is shown in Figure 1) submitted comment letters to Council dated 7/14/17 and 7/24/17 regarding concerns with the proposed lahar regulations. The County Executive and Mark Personius met with them to allay their fears, explaining that the more specific regulations of 16.16.350 (Volcanic hazard areas – Standards) would trump the general standards of 16.16.320 (Geologically hazardous areas – General standards). However, given that 16.16.350(B)(2) says “Subject to WCC 16.16.320(A, B, and C)” the Camp is still concerned that staff could use that section to minimize risks, avoid impacts, protect human life, or worse case, deny a project, contrary to Council’s intent, and requests that Council amend the language as shown below. They were told staff would raise this issue with Council.

Staff is concerned with removing the “subject to...” language, as there are many properties in the lahar zone where these could be implemented without affecting someone’s ability to use their property and make for a safer development. And were the Camp to expand, staff really doesn’t see a problem with applying 16.16.320(A) or (C): the County should be able to condition a permit to reduce hazards (such as adoption of an emergency evacuation plan), and if someone owns a large enough property to build out of the hazard area, then logic dictates that option should be evaluated. The Camp seems to be more concerned with the last sentence of 16.16.320(B), “For some geologic hazards, impact avoidance may mean no development will be permitted on a property,” fearing that staff would use this to deny an expansion of their Camp (even though 16.16.350(B)(2)(a) says that expansion of legal nonconforming uses is allowed).

To address this concern, staff recommends the following minor revisions (shown underlined):

**16.16.320 Geologically hazardous areas – General standards.**

In addition to the applicable general protective measures found in WWC 16.16.265, the following requirements shall apply to all activities in geologically hazardous areas:

A. **Generally.** New developments shall be located and/or engineered and constructed to reduce risks to life, health, safety, and buildings, and not increase potential for landslides or erosion that could impact either other properties, public resources, or other critical areas. The County may impose conditions on development activity in a geologically hazardous area as needed to:

1. Protect human life and safety; and
2. Minimize the potential for property damage related to seismic events, erosion and/or landslides;
3. Minimize the need for stream or river bank or coastal bluff stabilization in the future;
4. Reduce public liabilities for damages associated with geologic hazards.
5. Protect slope stability and minimize erosion, seismic, and/or landslide hazard risks;
6. Maintain natural sediment and erosion processes that are integral to the health and sustainability of freshwater and marine ecosystems as well as minimizing impacts to stream, river, and coastal processes such as channel infill, channel migration, sediment transport, or flooding;

B. Impact Avoidance. Impact avoidance measures shall include, but not be limited to, locating the use/development outside of the hazard area, reducing the number, size or scale of buildings, driveways and other features; altering the configuration or layout of the proposed development; implementing special engineering methods for construction, drainage, runoff management etc.; foregoing construction of accessory structures; preserving native vegetation; and other feasible protective measures as determined by an alternatives analysis. For some geologic hazards, except for lahar hazard zones, impact avoidance may mean no development will be permitted on a property.

C. Location of Alterations. New development shall be directed toward portions of a parcel or parcels under contiguous ownership that are not subject to, or at risk from, geological hazards and/or are outside any setback or buffer established by this Chapter.

16.16.350 Volcanic hazard areas – Standards.

B. Lahar Hazard Zones.

1. Subject to WCC 16.16.320(A, B, and C) and WCC 16.16.265, the following uses are allowed in any volcanic hazard areas:
   b. Accessory structures not involving human occupancy.
   c. Sewer collection facilities, communication facilities, and other utilities that are not likely to cause harm to people or the environment if inundated by a lahar. Underground utilities such as pipelines shall be allowed if demonstrated through a geotechnical analysis to be sufficiently buried as to not likely be damaged by scour caused by a lahar.
   d. Agricultural and forestry uses not including human habitation.

2. Subject to WCC 16.16.320(A, B, and C) and WCC 16.16.265 (except subsection (D) when located wholly within a lahar hazard zone), the following uses may be allowed in volcanic hazard areas subject to the submittal and approval of a Volcanic Hazard Emergency Management Plan meeting the requirements of subsection (B)(3); however, this requirement may be waived for properties located in an area with an estimated lahar arrival time of more than 60 minutes. The County will maintain travel time projection maps to estimate lahar approach times.
   b. All other uses allowed per the property’s zoning district.

3. Where required by subsection (B)(2), a Volcanic Hazard Emergency Management Plan shall be submitted for approval and meet the following requirements:
   a. Is consistent with and integrated into a community emergency plan maintained by the Sheriff’s Office of Emergency Management.
   b. Includes an emergency evacuation plan.
   c. Is required to be updated every 5 years.
   d. Evacuation route maps must be posted on the premises.

The Camp is also concerned with 16.16.265(D) (Critical areas protective measures), in particular the requirement to have a building setback from a geohazard setback.

16.16.265 Critical areas protective measures.
When an impact to critical area or a buffer will occur due to 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:
D. **Building Setback.** The County shall require buildings and other structures to be set back a minimum distance of 10 feet from the edge of a geological hazard setback, a critical area buffer, or from the critical area where no buffer is required. The following uses are allowed in the building setback:

1. Landscaping;
2. Uncovered decks;
3. Building overhangs 18 inches or less;
4. Impervious surfaces such as driveways, parking lots, roads, and patios; provided, that such surfaces conform to the applicable water quality standards and that construction equipment does not enter or damage the buffer or critical area;
5. Clearing and grading;
6. Wells.

The reason for a 10-foot setback from a critical area buffer is to give homeowners room to maintain their structures without having to disturb the buffer. For example, if a home was built right up to a wetland buffer, then when it was time to paint, the ladder and all the painting equipment would need to be placed in the buffer and vegetation would probably need to be disturbed or removed to access it. The point of this section is to protect the buffer from future impacts. In this update the term "geological hazard setback" was inserted in 16.16.265(D) because in Article 3, geohazard "buffer" was changed to "setback" (the geologists arguing that it's not a buffer per se, as we're not trying to protect the geohazard as we are with other critical areas, but rather life and property). The existing code still refers to geohazard buffers, so the language in WCC 16.16.265(D) still applies to geohazards. It's just a matter of semantics.

The Camp was told that where an entire property falls within a lahar hazard zone there wouldn't be a geological hazard setback, and thus this 10-foot setback wouldn't be applied. Nonetheless, staff suggests adding that specification to WCC 16.16.350(8)(2), as shown above.
Figure 1. Property of the Mt. Baker Bibleway Camp in relation to the lahar hazard zone.
CM Brenner’s Additional CAO Issues Submitted 7/21/17

ITEM 6 (Issue 173) (Brenner)

In 16.16.270(B)(2)(k), remove "...utilities (exclusive of septic systems), and all lawn and landscaping..."

16.16.270 Reasonable use exceptions.

B. Reasonable Use Standards.

   2. To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:
      k. For single-family residences, the maximum impact area may be no larger than 4,000 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages, decks, driveways, and parking utilities (exclusive of an on-site septic system), and all lawn and landscaping, with the following exceptions: ...

Staff Response: Staff does not recommend this amendment. The language mimics that of our Shoreline Management Program, of which the CAO is a part, adopted by reference. The amount of habitat disturbance allowed is based on total disturbance, not just the hardscape (yes, even landscaping alters habitat). Furthermore, Council has already increased the amount of disturbance allowed from 2,500 sf to 4,000 sf.

ITEM 7 (Issue 174) (Brenner)

In 16.16.610(D), remove Category IV from requirement of 1,000 square feet and restore to 4,356 sq. ft.


D. All wetlands shall be regulated regardless of size; provided, that hydrologically isolated Category IV wetlands less than 1,000 square feet in size may be adversely impacted when all of the following criteria are met: ...

Staff Response: Staff does not recommend this amendment. Council has already acted on this proposal on 4/18/17, wherein CM Brenner’s motion failed.

ITEM 8 (Issue 175) (Brenner)

Section 16.16.620 (Wetlands-General Standards) needs to provide for temporary impacts associated with utilities. It is necessary for franchise utility companies, PUD, and various districts and associations.

Staff Response: This section already accounts for utilities (utility lines in subsection (B); domestic wells in subsection (F); stormwater management facilities in subsection (G); on-site sewage disposal systems in subsection (J); and phosphorus reducing BMP structures in subsection (K)). Staff is unsure what other utilities CM Brenner might be thinking of.
ITEM 9 (Issue 176) (Brenner)

In 16.16.620(G) change, "may be permitted within the outer 50% of a Category II, III, or IV wetland buffer" to "may be permitted as close to the wetland as possible in order to have the smallest footprint with the least amount of impact".

16.16.620 – Wetlands-General Standards.

G. Stormwater management facilities.

1. Stormwater management facilities, limited to detention/retention/treatment ponds, media filtration facilities, and lagoons or infiltration basins, or bio-retention cells (engineered or raingardens) may be permitted as close to the wetland as possible in order to have the smallest footprint with the least amount of impact within the outer 50% of a Category II, III, or IV wetland buffer; provided, that:

Staff Response: Staff does not recommend this change. For one, we’re not sure how getting “as close to a wetland as possible” would “have the smallest footprint with the least amount of impact.” Keeping it out of the buffer would do this. Allowing stormwater facilities in the outer 50% of the buffer (existing language, we might add) is already a compromise between environmental protection and development.

ITEM 10 (Issue 177) (Brenner)

In 16.16.630(A), remove "legally established" since the rest of the sentence allows for all substantial developed surface, which would include all roads, whether legally established or not.

16.16.630 Wetland buffer widths.

The technical administrator shall have the authority to require buffers from the edges of all wetlands (in addition to the building setback required by 16.16.265(D)) in accordance with the following:

A. Wetland buffers shall be established to protect the integrity, functions and values of the wetland. Wetland buffers shall be measured horizontally from a perpendicular line established by the wetland boundary based on the base buffer width identified in Table 1

Staff Response: Staff recommends against this change. The term “existing, legally established” refers to both roads and other substantial developed surfaces, not just roads. This term was added because there have been instances of people illegally installing driveways, roads, and other development in buffers in order to take advantage of this section and reduce their buffer requirement. All such development is supposed to be permitted, and if found to impact a wetland or its buffer, mitigate for those impacts. Other sections allow for intrusion into a buffer (or wetland for that matter) if there is no other way to access a property.

Note: Since Items 11-16 all deal with 16.16.670, we’re providing the entire text here for Council’s reference:

16.16.670 Review and reporting requirements.

A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration may contain or abut wetlands or wetland buffers, the technical administrator may require a site evaluation (field investigation) by a qualified professional to determine whether or not a regulated wetland is present and, if so, its relative location in relation to the proposed project area or site. If the technical administrator determines that a wetland is more likely than not present, the technical
administrator shall require a wetland assessment report pursuant to WCC 16.16.255 and subsection B of this section. If no regulated wetlands are present, then wetland review will be considered complete.

B. A wetland assessment report describes the characteristics of the subject property and adjacent areas and must be consistent with WCC 16.16.255. The assessment shall include the occurrence, distribution, delineation, and determination of the wetland category and standard wetland buffers as set forth in WCC 16.16.630. The investigation shall also include field identification and a complete delineation of all wetland boundaries (with delineations field flagged and left in the field for County verification), and may include analysis of historical aerial photos, and review of public records. Assessment reports shall include the following site- and proposal-related information unless the technical administrator determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

1. Location information (legal description, parcel number, and address);

2. A qualitative written assessment and accompanying maps of wetlands and buffers within 300 feet of the site and an estimate of the existing acreage for each. For on-site wetlands, the assessment shall include the dominant and subdominant plant species; soil type, color and texture; sources of hydrology (patterns of surface and subsurface water movement, precipitation, etc.); topography; and other pertinent information. The assessment of off-site wetlands shall be based on available information and shall not require accessing off-site properties;

3. Existing wetland functions and values and a detailed description of the effects of the proposed development on wetland and buffer function and value, including the area of direct wetland disturbance; area of buffer reduction or averaging including documentation that functions and values will not be adversely affected by the reduction or averaging; effects of stormwater management; proposed hydrologic alteration including changes to natural drainage or infiltration patterns; effects on fish and wildlife species and their habitats; clearing and grading impacts; temporary construction impacts; and effects of increased noise, light or human intrusion;

4. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;


6. Wetland Determination and Mapping. The exact location of all wetland boundaries shall be determined through the performance of a field investigation by a qualified wetland professional applying the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987 Edition, and the Western Mountains, Valleys, and Coast Region supplement (Version 2.0) 2010 or as revised . The wetland boundary shall be marked in the field and surveyed. The surveyed wetlands areas shall be mapped showing location and size of all wetlands. The Technical Administrator may request verification of the wetland delineation by the Army Corps of Engineers when a high degree of accuracy is necessary to determine applicable regulations and requirements.

7. Wetland Delineation Requirements. The following are required components of a wetland delineation report.

   a. The report shall be prepared by a qualified professional for wetlands, who meets the minimum requirements as defined in this chapter

   b. Maps. The wetland delineation report shall include the following maps:

      i. Vicinity map.

      ii. Parcel map, with scale, showing all wetlands within 300 feet of the development footprint unless access is denied in writing by the adjacent property owner. Parcel map shall include all streams and drainages (Type S, F, Np, or Ns streams), shorelines, floodplains, flood prone areas and critical habitat for threatened and endangered species within 150 feet of the development footprint.

      iii. Topographic map based on city or surveyed data.
iv. Map of development proposal with accurate scale.

c. Wetland Analysis. A wetland delineation report shall provide an analysis of all wetlands and buffers (to the extent they can be legally accessed) including, at a minimum, the following information:

i. Wetland delineation.

ii. The wetland boundaries shall be surveyed by a licensed surveyor or using an equivalent method with an accuracy of plus or minus one foot of a survey.

iii. Determination of each wetland size.

iv. Description of each wetland class and category.

v. Description of overall water sources and drainage patterns on site.

vi. Description of vegetation, hydrologic conditions, and soil and substrate conditions.

vii. Description of wildlife and habitat.

viii. Topographic elevation, at two-foot contours.

ix. Functional assessment of the wetland and adjacent buffer using a local or state agency-recognized method and including the reference of the method and all data sheets.

x. Standard buffer requirements for each wetland.

xi. Site plan that includes scale, and wetlands and associated buffers and proposed development.

C. For single-family building permits, the applicant may hire a qualified professional to prepare the assessment report or may request that the County assess the regulated wetland(s) and buffers and determine the impacts associated with the project, subject to the following:

a. Field investigation by County staff shall be at the discretion of the technical administrator and subject to workload and scheduling constraints.

b. Fees for County staff services shall be in accordance with the unified fee schedule.

D. If a regulated wetland buffer from a neighboring property extends onto a proposed development site for which review under this chapter is required, the technical administrator shall have the authority to require that deterrent devices be placed at the edge of the buffer in accordance with WCC 16.16.265. The applicant shall provide written documentation that no buffer encroachment will occur. The documentation shall be in the form of a letter or similar affidavit.

ITEM 11 (Issue 178) (Brenner)

In 16.16.670(B) clarify that property owners of all properties involved, including adjacent property owners if the wetlands occur on more than one landowner’s property, shall be involved in providing the delineations report.

Staff Response: Staff recommends against this proposal. If one person sharing a common wetland proposes to develop their property, but the others aren’t, we’re not sure how we can, or that we should, make the other property owners pay for a delineation. The one proposing development would only be responsible for delineating the portion of the wetland on their property. Were others to subsequently develop, they would delineate their portion.

ITEM 12 (Issue 179) (Brenner)

In 16.16.670(B) add a time limit in which county verification happens so time and elements can’t cause problems with flagging.

Staff Response: Staff recommends against this proposal. It is a level of detail that does not belong in code, but rather in departmental administrative procedures, if even necessary. As it is staff is usually out in the field within a day or two of receiving a delineation.
ITEM 13 (Issue 180) (Brenner)

Delete 16.16.670(B)(4), since existing improvements have nothing to do with the presence of wetlands.

**Staff Response:** Staff recommends against this proposal. While existing improvements might not have anything to do with the presence of wetlands, they inform decisions on development and mitigation plans. One of the first steps in any planning process is to figure out what one has before deciding what one can do.

ITEM 14 (Issue 181) (Brenner)

In 16.16.670(B)(6) remove all mention of wetland boundary being surveyed. It hasn't been required in the past for single family and/or small properties due to the expense. How much will this requirement add to the cost of a house? Surveying is a major expense. What is gained?

**Staff Response:** Staff does not recommend this amendment. The GMA references the use of the U.S. Army Corps of Engineers wetland delineation manual in determining wetland boundaries, and it requires a survey of them. However, it does not reference the detail of the survey, and staff has always tailored the scope of the survey to that of the project, i.e., we do not require the same level of detail in a survey for a Single Family Residence as we do for a Major Development, for instance. What is gained is knowing the location of the wetland boundary so that an adequate analysis can be performed.

ITEM 15 (Issue 182) (Brenner)

Remove 16.16.670(B)(7)(c)(viii), "Topographic elevation, at two-foot contours" unless the County will provide GIS topography service. How much would this requirement add to the cost of a home?

**Staff Response:** Staff does not recommend this amendment. Using 2-foot contours is the norm for most jurisdictions these days, and most engineers/surveyors already have those GIS layers. Furthermore, once Whatcom County obtains the forthcoming new LiDAR data, PDS plans on creating a 2-foot contour layer that will be made readily available to the public.

ITEM 16 (Issue 183) (Brenner)

In regards to 16.16.670(B)(7)(c)(ix), why do we need a "functional assessment of wetland and buffer" in a delineation report? Why not leave this under mitigation plan requirements? This will also increase the cost of a home, unless they allow the rating form to serve as a functional assessment tool. Make wetland delineation reports reflect "existing conditions" only, and Mitigation Plans reflect "proposed conditions." It will save money and assist applicants and consultants in streamlining the process.

**Staff Response:** Realize that the delineation report is a part of the Critical Area Assessment. We need such assessment up front (prior to the mitigation plan being developed) to assess whether mitigation is even needed. In many cases we don’t require mitigation (e.g., if impacts are avoided), but we do need the functional assessment in order to determine this.
ITEM 17 (Issue 184) (Brenner)

In regards to 16.16.680 (Wetland mitigation), what happens to adjacent properties when mitigation sites cause buffers to extend onto adjacent properties?

Staff Response: Nothing. The typical replanting of a buffer does not cause the buffer to enlarge; that distance is a set number of feet from the wetland boundary. The only instance where a mitigation site could extend a buffer onto an adjacent property is where new wetland area is created, and this is rare, generally only occurring on Major Developments where there’s enough property to create new wetlands internal to the projects’ boundaries.

ITEM 18 (Issue 185) (Brenner)


16.16.680 Wetland mitigation.

E. The technical administrator shall have the authority to adjust the replacement ratios when one or more of the following apply:

1. When a combination of mitigation approaches is proposed. In such cases, the area of altered wetland shall be replaced at a 1:1 ratio through reestablishment or creation, and the remainder of the area needed to meet the ratio can be replaced by enhancement or rehabilitation using [Error! Reference source not found.]...

2. When the project proponent has a demonstrated ability, based on past performance, to successfully design, construct, monitor and maintain wetland mitigation projects/sites.

3. When use of the guidance for Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington [Department of Ecology Publication #10-06-011, as amended] results in a lower mitigation ratio than the standard ratios.

Staff Response: Yes, that is a DOE reference manual, and staff supports inserting a reference to it. Thanks for catching that.

ITEM 19 (Issue 186) (Brenner)

In 16.16.680(G), remove “in perpetuity.” The life of the mitigation should correspond to the life of the development causing the impact, plus time to restore the original critical area.

16.16.680 Wetland mitigation.

G. All mitigation areas shall be protected and managed to prevent degradation and ensure permanent protection of critical area functions and values. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.

Staff Response: Staff is ok with substituting “in perpetuity” with “permanent protection,” which is the term used in all DOE and USACE guidance documents.
ITEM 20 (Issue 187) (Brenner)

*In 16.16.680(H), define the word "feasible," because it needs to be reasonable. Or just replace the word with "reasonable."

**Staff Response:** The term “feasible” is already defined in 16.16.900 (Definitions) as:

“Feasible” means an action, such as a development project, mitigation, or preservation requirement that meets all of the following conditions:

a. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

b. The action provides a reasonable likelihood of achieving its intended purpose; and,

c. The action does not physically preclude achieving the project’s primary intended legal use.

In cases where this chapter requires certain actions, unless they are infeasible, the burden of proving infeasibility is on the applicant/proponent. In determining an action’s infeasibility, the county may weigh the action’s relative costs and public benefits, considered in the short- and long-term time frames.

This definition comes from the Shoreline Management Act.

ITEM 21 (Issue 188) (Brenner)

*In 16.16.690(A)(2)(h), remove "in perpetuity" for the same reason as 16.16.680(G).*

**16.16.690 Compensatory wetland mitigation plan.**

A. In addition to meeting the requirements of WCC 16.16.260(B), a compensatory mitigation plan for wetland and wetland buffer impacts shall meet the following requirements:

2. The plan shall contain sufficient information to demonstrate that the proposed activities are logistically feasible, constructible, ecologically sustainable, and likely to succeed. Specific information to be provided in the plan shall include:

   h. A demonstration that the site will have adequate buffers sufficient to permanently protect the wetland functions in perpetuity.

**Staff Response:** Staff is ok with substituting “in perpetuity” with “permanent protection,” which is the term used in all DOE and USACE guidance documents.

ITEM 22 (Issue 189) (Brenner)

*Could 16.16.700 (Purpose), subsection (B), conflict with the Shoreline Management Program? If so, it might need to be removed.*

**16.16.700 Purpose.**

The purposes of this article are to:

A. Protect, restore, and maintain native fish and wildlife populations by protecting and conserving fish and wildlife habitat and protecting the ecological processes, functions and values, and biodiversity that sustain these resources.

B. Protect marine shorelines, valuable terrestrial habitats, lakes, ponds, rivers, and streams and their associated riparian areas, and the ecosystem processes on which these areas depend.

C. Regulate development so that isolated populations of species are not created and habitat degradation and fragmentation are minimized.
D. Maintain the natural geographic distribution, connectivity, and quality of fish and wildlife habitat and ensure no net loss of such important habitats, including cumulative impacts.

**Staff Response:** No. In fact, it's there to help implement the Shoreline Management Program (SMP). If you'll recall, after the courts ruled that the CAO doesn't apply in the shoreline jurisdiction, the solution was that jurisdictions would either need to have separate critical areas regulations in their SMP or have their CAO cover the shoreline and adopt it as part of the SMP. Whatcom County chose the latter. This is why the proposed adopting ordinance for the CAO update (provided to you in September 2016) includes an amendment to the SMP: to update the reference to the controlling CAO's date.

**ITEM 23 (Issue 190) (Brenner)**

*Add to 16.16.700 (Purpose) a new subsection (E) to read, "Protecting HCAs will also consider landowner needs and property rights."*

**Staff Response:** Staff recommends against this proposal. That statement of purpose is already included in 16.16.100 (Purpose and intent), subsection (C)(9), which reads, "Protect property rights, while allowing for economic development, including agriculture, and allowing for the development and maintenance of adequate and appropriate public services and essential public facilities." That statement covers and governs the entire CAO.

**ITEM 24 (Issue 191) (Brenner)**

16.16.710 (Habitat conservation areas) needs to be clarified. The way it is written it could be any land in Whatcom County. It needs better wording and more specific criteria to prevent overreaching.

**Staff Response:** Staff is unclear whether CM Brenner is referring to the entirety of 16.16.710 or just a portion of it. In either case, 16.16.710 seems to be pretty specific in its listing of HCAs (subsections (C)(1-12)).

**ITEM 25 (Issue 192) (Brenner)**

Does 16.16.710(C)(1)(b) mean natural water courses that "convey natural streams existing prior to human alteration"? If not, it could be used to regulate every stormwater conveyance system in Whatcom County.

16.16.710 Habitat conservation areas – Designation, mapping, and classification.

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

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

**Staff Response:** Yes, 16.16.710(C)(1)(b)(i) means exactly that. Subsections (i) – (iii) are the criteria WDFW uses in determining whether a waterway is regulated or not. And though some waterways that some people might
believe to be ditches fall within these categories, manmade stormwater conveyance systems would not meet these criteria.

ITEM 26 (Issue 193) (Brenner)

In 16.16.710(C)(2) remove "have a primary association with" because it is too ambiguous.

Staff Response: Staff recommends against this proposal. The term “have a primary association with” is used by WDFW, DOE, USFW, etc., in determining whether a particular habitat is critical to a listed or priority species. Nor is it ambiguous; it is defined in 16.16.900.

ITEM 27 (Issue 194) (Brenner)

In 16.16.710(C)(7), better clarify "or manmade ponds...under 20 acres in size and created prior to September 30, 2005" so it doesn’t include little manmade landscape ponds, koi ponds, etc. that would now be considered a critical area necessitating a 50' buffer.

16.16.710 Habitat conservation areas – Designation, mapping, and classification.
C. Habitat conservation areas shall include all of the following:
7. Naturally occurring ponds or manmade ponds and lakes under 20 acres in size and created prior to September 30, 2005, excluding agricultural, fire protection, and stormwater facilities.

Staff Response: Staff recommends against this proposal. Between the language of subsection (7) and the definition of “pond” in 16.16.900 (below), staff doesn’t believe there would be confusion in what it applies to.

“Pond” means an open body of water, generally equal to or greater than 6.6 feet deep, that persists throughout the year and occurs in a depression of land or expanded part of a stream and has less than 30% aerial coverage by trees, shrubs, or persistent emergent vegetation. Ponds are generally smaller than lakes. Farm ponds, ponds built for the primary purpose of combating fires, stormwater facilities, and beaver ponds less than two years old are excluded from this definition.

ITEM 28 (Issue 195) (Brenner)

16.16.720 – Habitat conservation areas – General Standards
Can Whatcom County legally require regulation by WDFW?

Staff Response: Staff is unclear on the question given the text of 16.16.720. There is nothing in that section requiring regulation by WDFW; it’s only a listing of what types of activities are allowed in HCAs and their buffers and under what conditions. If CM Brenner is referring to the phrase, “any applicable Washington Department of Fish and Wildlife management recommendations have been applied” found in the (unlettered) preface, that is only one of the conditions one must meet to do one of these activities. Whatcom County (and most other jurisdictions) uses the WDFW management recommendations since most of us have not developed our own management recommendations for all the various species and habitats found in our jurisdictions.
ITEM 29 (Issue 196) (Sidhu/Brenner)

Exempting Agricultural Youth Club Activities from the CPAL Program
At your workshop of 7/25/17 CM Sidhu raised the issue of exempting activities done for agricultural youth clubs (e.g., 4H, FFA, etc.) from the CPAL (and possibly other) requirements. CM Brenner says she raised this as well. However, staff is not sure what it is Council’s asking for.

If Council is asking that we exempt people that only have an animal or two on their property, that is already covered by PDS Policy PL1-85-004Z CPAL – Animal Threshold, Resource Priority (Attachment E). This policy deprioritizes landowners that do not exceed the number of animals set forth below, have at least three grazable acres, and manage their animals to avoid a direct discharge of sediment or fecal matter to surface waters.

<table>
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<td>Chickens</td>
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This policy could be codified, if that’s Council’s intent. If so, we would suggest adding the following to the code:

16.16.814 Exemptions.
The following are exempt from having to obtain a Conservation Farm Plan:

A. Landowners that do not have critical areas on their property.
B. Landowners that keep agricultural activities out of the standard critical area buffers.
C. Landowners that do not exceed the number of animals set forth below, have at least three grazable acres, and manage their animals to avoid a direct discharge of sediment or fecal matter to surface waters.
   (i) Indicators of direct discharge can include de-vegetated riparian area, unfenced access to a stream, or animal confinement areas adjacent to surface waters.
   (ii) There is no multiplier for acreage; this is not an animal per acre threshold. Even if the animals are grazed on 100 acres, they are most often fed, sheltered, and cared for in one central location.
   (iii) Grazable acres include both pasture and hayland, as described in the Whatcom County Standard Farm Conservation Planning Workbook.

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State Definitions

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 sititied 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.
Commercial Agriculture — Those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for commercial trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five (5) years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.

County & City Definitions

Skagit County

Ongoing agriculture: the continuation of any existing agricultural activity on Agricultural—Natural Resource lands or Rural Resource—Natural Resource lands, including crop rotations; provided, however, that for lands in RRC-NRL that are subject to the provisions of SCC 14.24.120, any property owner who applies for and receives CaRD approval under SCC 14.18.300 through 14.18.330 shall, at the time of CaRD approval, automatically be subject to the buffer requirements of SCC 14.24.530 and shall no longer be subject to the provisions of SCC 14.24.120. Activities undertaken for the first time after May 13, 1996, the date Skagit County adopted Ordinance 16156, the Critical Areas Ordinance, do not constitute “ongoing agriculture”; provided, that any lands that were fallow on May 13, 1996, but had been in agricultural production within 5 years prior to May 13, 1996, shall be considered “ongoing agriculture” for purposes of this definition. Activities that bring an area into agricultural use are not considered ongoing agriculture. In addition, in order for parcels of land under 20 acres to qualify under this definition, they must meet the criteria of RCW 84.34.020(2)(b) and (c).

City of Pasco

Existing and Ongoing Agriculture. Those activities conducted on lands defined in RCW 84.34.080(2), and those existing activities involved in the production of crops or livestock. Activities may include the operation and maintenance of farm and stock ponds or drainage ditches; operation and maintenance of existing ditches or irrigation systems; changes from one type of agricultural activity to another agricultural activity; normal maintenance, repair, and operation or existing serviceable structures, facilities, or improved areas. Activities that bring a non-agricultural area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a non-agricultural use or has lain idle for more than five years.

City of Poulsbo

“Existing and ongoing agriculture” includes those activities conducted on lands defined in RCW 84.34.020(2) or defined as agricultural practices in this chapter, for example, the operation and maintenance of existing farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, such as rotating
crops or grasses used for grazing, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas; provided, that alteration of the contour of wetlands or streams by leveling or filling—other than that which results from normal cultivation—or draining of wetlands shall not be considered normal or necessary farming or ranching activities.

Clallam County

"Existing, ongoing agriculture" means agriculture that is both: (a) on land located within the agricultural retention zoning district and/or on land that meets the criteria and are enrolled in the Washington State open space and agricultural current use program per RCW 84.34.020(2)(b) and (c); and (b) is on land that has been used for agriculture since June 16, 1992, and not ceased use for agriculture for more than five consecutive years at any one time. Changing the type of agricultural activities being conducted is not considered new or expansion of existing agricultural activity. Agriculture that meets the definition of existing, ongoing agriculture on farmed wetlands, farmed wetland pastures, and prior converted wetlands is allowed to continue subject to the provisions of CCC 27.12.037.

Federal Definitions

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.
Groundwater Management Areas

RCW Chapter 90.44 Regulation of Public Groundwaters

RCW 90.44.400 Groundwater management areas—Purpose—Standards—Identification—Designation. (1) This legislation is enacted for the purpose of identifying groundwater management procedures that are consistent with both local needs and state water resource policies and management objectives; including the protection of water quality, assurance of quantity, and efficient management of water resources to meet future needs.

In recognition of existing water rights and the need to manage groundwater aquifers for future use, the department of ecology shall, by rule, establish standards, criteria, and a process for the designation of specific groundwater areas or sub-areas, or separate depth zones within such area or sub-area, and provide for either the department of ecology, local governments, or groundwater users of the area to initiate development of a groundwater management program for each area or sub-area, consistent with state and local government objectives, policies, and authorities. The department shall develop and adopt these rules by January 1, 1986.

(2) The department of ecology, in cooperation with other state agencies, local government, and user groups, shall identify probable groundwater management areas or sub-areas. The department shall also prepare a general schedule for the development of groundwater management programs that recognizes the available local or state agency staff and financial resources to carry out the intent of RCW 90.44.400 through 90.44.420. The department shall also provide the option for locally initiated studies and for local government to assume the lead agency role in developing the groundwater management program and in implementing the provisions of RCW 90.44.400 through 90.44.420. The criteria to guide identification of the groundwater areas or sub-areas shall include but not be limited to, the following:

(a) Aquifer systems that are declining due to restricted recharge or over-utilization;
(b) Aquifer systems in which over-appropriation may have occurred and adjudication of water rights has not yet been completed;
(c) Aquifer systems currently being considered for water supply reservation under chapter 90.54 RCW for future beneficial uses;
(d) Aquifers identified as the primary source of supply for public water supply systems;
(e) Aquifers designated as a sole source aquifer by the federal environmental protection agency; and
(f) Geographical areas where land use may result in contamination or degradation of the groundwater quality.

(3) In developing the groundwater management programs, priority shall be given to areas or sub-areas where water quality is imminently threatened.

RCW 90.44.410 Requirements for groundwater management programs—Review of programs.

(1) The groundwater area or sub-area management programs shall include:
(a) A description of the specific groundwater area or sub-areas, or separate depth zones within any such area or sub-area, and the relationship of this zone or area to the land use management responsibilities of county government;

(b) A management program based on long-term monitoring and resource management objectives for the area or sub-area;

(c) Identification of water resources and the allocation of the resources to meet state and local needs;

(d) Projection of water supply needs for existing and future identified user groups and beneficial uses;

(e) Identification of water resource management policies and/or practices that may impact the recharge of the designated area or policies that may affect the safe yield and quantity of water available for future appropriation;

(f) Identification of land use and other activities that may impact the quality and efficient use of the groundwater, including domestic, industrial, solid, and other waste disposal, underground storage facilities, or storm water management practices;

(g) The design of the program necessary to manage the resource to assure long-term benefits to the citizens of the state;

(h) Identification of water quality objectives for the aquifer system which recognize existing and future uses of the aquifer and that are in accordance with department of ecology and department of social and health services drinking and surface water quality standards;

(i) Long-term policies and construction practices necessary to protect existing water rights and subsequent facilities installed in accordance with the groundwater area or sub-area management programs and/or other water right procedures;

(j) Annual withdrawal rates and safe yield guidelines which are directed by the long-term management programs that recognize annual variations in aquifer recharge;

(k) A description of conditions and potential conflicts and identification of a program to resolve conflicts with existing water rights;

(l) Alternative management programs to meet future needs and existing conditions, including water conservation plans; and

(m) A process for the periodic review of the groundwater management program and monitoring of the implementation of the program.

(2) The groundwater area or sub-area management programs shall be submitted for review in accordance with the state environmental policy act.

**RCW 90.44.420 Groundwater management programs—Consideration by department of ecology—Public hearing—Findings—Adoption of regulations, ordinances, and programs.**

The department of ecology shall consider the groundwater area or sub-area management plan for adoption in accordance with this chapter and chapter 90.54 RCW.

Upon completion of the groundwater area or sub-area management program, the department of ecology shall hold a public hearing within the designated groundwater management area for the purpose of taking public testimony on the proposed program. Following the public hearing, the department of ecology and affected local governments shall (1) prepare findings which either provide for the subsequent adoption of the program as proposed or identify the revisions necessary to ensure that the program is consistent with the intent of this
chapter, and (2) adopt regulations, ordinances, and/or programs for implementing those provisions of the groundwater management program which are within their respective jurisdictional authorities.

RCW 90.44.430 Groundwater management programs—Guidance to local governments and certain departments.
The department of ecology, the department of social and health services, and affected local governments shall be guided by the adopted program when reviewing and considering approval of all studies, plans, and facilities that may utilize or impact the implementation of the program.

RCW 90.44.440 Existing rights not affected.
RCW 90.44.400 through 90.44.430 shall not affect any water rights existing as of May 21, 1985.

RCW 90.44.445 Acreage expansion program—Authorization—Certification.
In any acreage expansion program adopted by the department as an element of a groundwater management program, the authorization for a water right certificate holder to participate in the program shall be on an annual basis for the first two years. After the two-year period, the department may authorize participation for ten-year periods. The department may authorize participation for ten-year periods for certificate holders who have already participated in an acreage expansion program for two years. The department may require annual certification that the certificate holder has complied with all requirements of the program. The department may terminate the authority of a certificate holder to participate in the program for one calendar year if the certificate holder fails to comply with the requirements of the program.

RCW 90.44.450 Metering or measuring groundwater withdrawals—Reports.
The department of ecology may require withdrawals of groundwater to be metered, or measured by other approved methods, as a condition for a new water right permit. The department may also require, as a condition for such permits, reports regarding such withdrawals as to the amount of water being withdrawn. These reports shall be in a form prescribed by the department.
WAC Chapter 173-100 GROUNDWATER MANAGEMENT AREAS AND PROGRAMS

WAC Sections
173-100-010 Purpose.
173-100-020 Authority.
173-100-030 Overview.
173-100-040 Definitions.
173-100-050 Probable groundwater management areas.
173-100-060 General schedule.
173-100-070 Designation of groundwater management areas for program planning purposes.
173-100-080 Lead agency responsibilities.
173-100-090 Groundwater advisory committee.
173-100-100 Groundwater management program content.
173-100-110 SEPA review.
173-100-120 Hearings and implementation.
173-100-130 Designation of groundwater areas.
173-100-140 Intergovernmental agreements.
173-100-150 Appeals.
173-100-160 Regulation review.

173-100-010 Purpose.
The purpose of this chapter is to establish guidelines, criteria, and procedures for the designation of groundwater management areas, subareas, or zones, and to set forth a process for the development of groundwater management programs for such areas, subareas, or zones, in order to protect groundwater quality, to assure groundwater quantity, and to provide for efficient management of water resources for meeting future needs while recognizing existing water rights. The intent of this chapter is to forge a partnership between a diversity of local, state, tribal, and federal interests in cooperatively protecting the state’s groundwater resources.

173-100-020 Authority.
This chapter is promulgated by the department of ecology pursuant to RCW 90.44.400, 90.44.410, 90.44.420, 90.44.430 and 90.44.440.

173-100-030 Overview.
This regulation establishes a process for the identification and designation of groundwater management areas and for the development of comprehensive groundwater management programs. From a general schedule of probable groundwater management areas, the department of ecology, in cooperation with local government, will designate specific groundwater management areas, subareas, or depth zones within such areas and will appoint a lead agency to develop a groundwater management program and an advisory committee to oversee the development of the program for each designated area. Following completion of the program and a public hearing to be held by the department of ecology, the program must be certified to be consistent with the intent of this chapter. The program will then be implemented through state regulations and local ordinances. The programs must thereafter be periodically reviewed.
173-100-040 Definitions.
For the purposes of this chapter the following definitions shall apply:

(1) "Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(2) "Department" means the Washington state department of ecology.

(3) "Groundwater" means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

(4) "Groundwater advisory committee" means a committee appointed by the department to assist in the development of a groundwater management program.

(5) "Groundwater area or subarea" means a geographic area designated pursuant to RCW 90.44.130.

(6) "Groundwater management area" means a specific geographic area or subarea designated pursuant to this chapter for which a groundwater management program is required.

(7) "Groundwater management program" means a comprehensive program designed to protect groundwater quality, to assure groundwater quantity and to provide for efficient management of water resources while recognizing existing groundwater rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated groundwater management area or subarea and developed pursuant to this chapter.

(8) "Groundwater management zone" means any depth or stratigraphic zone separately designated by the department in cooperation with local government for groundwater management purposes within a groundwater management area. Groundwater management zones may consist of a specific geologic formation or formations or other reasonable bounds determined by the department consistent with the purposes of this chapter.

(9) "Groundwater right" means an authorization to use groundwater established pursuant to chapter 90.44 RCW, state common or statutory law existing prior to the enactment of chapter 90.44 RCW, or federal law.

(10) "Groundwater user group" means an established association of holders of groundwater rights located within a proposed or designated groundwater management area.

(11) "Lead agency" means the agency appointed by the department to coordinate and undertake the activities necessary for the development of a groundwater management program. Either the department or an agency of local government may be the lead agency.

(12) "Local government" means any county, city, town, or any other entity having its own incorporated government for local affairs including, but not limited to, a metropolitan municipal corporation, public utility district, water district, irrigation district, and/or sewer district.

(13) "Local government legislative authority" means the city or town council, board of county commissioners, special district commission, or that body assigned such duties by a city, county or district charter as enacting ordinances, passing resolutions, and appropriating funds for expenditure.

(14) "Probable groundwater management area" means a specific geographic area identified by the department, in cooperation with other state agencies, local government and groundwater user groups, as a candidate area for designation as a groundwater management area pursuant to this chapter.
173-100-050 Probable groundwater management areas.
The department, in cooperation with local government and groundwater user groups, shall identify probable
groundwater management areas.

(1) Probable groundwater management areas may be proposed for identification at any time by the
department upon its own motion or at the request of other state agencies, local government, or
groundwater user groups.

(2) Probable groundwater management area boundaries shall be delineated so as to enclose one or more
distinct bodies of public groundwater as nearly as known facts permit. Probable groundwater management
subareas shall be delineated so as to enclose all or any part of a distinct body of public groundwater.
Boundaries shall be based on hydrogeologic properties such as limits to lateral extent of aquifers, major
perennial rivers, and regional groundwater divides or as deemed appropriate by the department to most
effectively accomplish the purposes of this chapter.

(3) The criteria to guide identification of probable groundwater management areas shall include, but not be
limited to, the following:

(a) Geographic areas where groundwater quality is threatened;
(b) Aquifers that are declining due to restricted recharge or over-utilization;
(c) Aquifers in which over-appropriation may have occurred and adjudication of water rights has not yet
been completed;
(d) Aquifers reserved or being considered for water supply reservation under chapter 90.54 RCW for future
beneficial uses;
(e) Aquifers identified as the primary source of supply for public water supply systems;
(f) Aquifers underlying a critical water supply service area where the coordinated water system plan
established pursuant to chapter 70.116 RCW has identified a need for a groundwater management
program;
(g) Aquifers designated as sole source aquifers by the federal Environmental Protection Agency;
(h) Geographic areas where the groundwater is susceptible to contamination or degradation resulting from
land use activities;
(i) Aquifers threatened by seawater intrusion; or
(j) Aquifers from which major groundwater withdrawals have been proposed or appear imminent.

(4) The state agency, local government, or groundwater user group requesting probable groundwater
management area identification shall provide sufficient information for the department to determine if the
area should be so identified. The department and other affected state and local governments and user
groups may cooperate in preparing the request for identification.

(a) The request for identification shall be presented in a concise, factual report form and shall consider the
guidelines and criteria set forth in subsections (2) and (3) of this section as they relate to the proposed
area. It shall also contain: (i) Supporting data as to the need for such identification; (ii) a general
description of and rationale for the proposed groundwater management area boundary; (iii) goals and
objectives for the proposed groundwater management area; (iv) an estimated cost of developing the
groundwater management program and potential funding sources; (v) recommendations for agencies,
organizations and groups to be represented on the groundwater management area advisory committee;
and (vi) a recommendation for the lead agency, taking into consideration the responsibilities contained
in WAC 173-100-080.
(b) The recommendation for lead agency shall first be submitted to the county or counties with jurisdiction for written concurrence. Such written concurrence shall be included with the information required in (a) of this subsection. If such concurrence cannot be obtained, the department shall attempt to mediate an agreement between the parties.

(c) The agency or groundwater user group initiating the request for identification shall hold at least one public meeting for the purpose of receiving comments from the public, affected local, state, and tribal agencies and groundwater user groups.

(d) Upon completion, the request for identification shall be submitted to the department and other affected state and local agencies and groundwater user groups for their review and comment. Comments shall be submitted to the department.

(5) If the department is proposing an area for identification, the department shall prepare a report containing the information in subsection (4)(a) of this section, hold a public meeting, and submit the report to affected state and local agencies and groundwater user groups for their review and comment.

(6) Based upon review of the request for identification together with any comments received and a finding that the proposed area meets the guidelines and criteria of subsections (2) and (3) of this section, the department shall identify the proposed area as a probable groundwater management area, establish the general planning boundaries and appoint a lead agency. When a probable groundwater management area is included within only one county and that county indicates its desire to assume lead agency status, the department shall appoint the county as lead agency. The department shall notify affected state and local agencies, groundwater user groups, tribal governments, and local news media of such identification.

173-100-060 General schedule.
The department shall establish a general schedule for the designation of specific groundwater management areas. The general schedule shall guide the department in the designation of specific groundwater management areas and in the allocation of the department's available water resources funding and staffing.

(1) The general schedule for designation of groundwater management areas shall identify the relative priority of each of the probable groundwater management areas. The relative priority of the probable groundwater management areas shall be based upon:

(a) The availability of local or state agency resources to develop and implement a groundwater management program;

(b) The significance, severity, or urgency of the problems or potential problems described in the request for identification submitted for each area, with the highest priority given to areas where the water quality is imminently threatened;

(2) The department shall revise the general schedule as needed to comply with the intent of this chapter. After each revision the general schedule shall be published in the news media and the Washington State Register. A public hearing will be held in June of each year to receive public comment on the general schedule.

173-100-070 Designation of groundwater management areas for program planning purposes.
The department shall designate groundwater management areas by order of the department in accordance with the general schedule. The department shall hold a public hearing within the county or counties containing the probable groundwater management area prior to such designation. The order shall be issued to the lead agency as well as the agency or groundwater user group originally requesting identification of the areas, with copies sent to other affected state agencies, local governments, tribal governments and those parties recommended
for groundwater advisory committee membership. Copies of the order shall be published by the department in newspapers of general circulation within the area. The order shall contain a general description of the planning boundary for the groundwater management area and shall state that the department, in cooperation with the lead agency and local government, intends to appoint a groundwater advisory committee to oversee the development of a groundwater management program for the area.

**173-100-080 Lead agency responsibilities.**
The lead agency shall be responsible for coordinating and undertaking the activities necessary for development of the groundwater management program. These activities shall include collecting data and conducting studies related to hydrogeology, water quality, water use, land use, and population projections; scheduling and coordinating advisory committee meetings; presenting draft materials to the committee for review; responding to comments from the committee; coordinating SEPA review; executing interlocal agreements or other contracts; and other duties as may be necessary. The lead agency shall also prepare a work plan, schedule, and budget for the development of the program that shows the responsibilities and roles of each of the advisory committee members as agreed upon by the committee. Data collection, data analysis, and other elements of the program development may be delegated by the lead agency to other advisory committee members.

**173-100-090 Groundwater advisory committee.**
(1) The groundwater advisory committee shall be responsible for overseeing the development of the groundwater management program; reviewing the work plan, schedule, and budget for the development of the program; assuring that the program is technically and functionally sound; verifying that the program is consistent with this chapter and with the respective authorities of the affected agencies; and formulating and implementing a public involvement plan.

(2) The membership of each groundwater advisory committee shall represent a broad spectrum of the public in order to ensure that the groundwater is protected and utilized for the greatest benefit to the people of the state. The committee shall include, but not be limited to, representation from the following groups:

(a) Local government legislative authorities within the designated area;
(b) Planning agencies having jurisdiction within the designated area;
(c) Health agencies having jurisdiction within the designated area;
(d) Groundwater user groups within the designated area, including domestic well owners;
(e) The department;
(f) Department of social and health services;
(g) Other local, state, and federal agencies as determined to be appropriate by the department;
(h) Tribal governments, where a groundwater management program may affect tribal waters;
(i) Public and special interest groups such as agricultural, well drilling, forestry, environmental, business, and/or industrial groups within the area, as determined to be appropriate by the department.

(3) The department shall appoint, by letter, members and alternates to the groundwater advisory committee after seeking nominations from the groups listed above. Members and alternates shall serve until the groundwater management program for the area is certified. The department may appoint replacement members or alternates upon request of the appointee or the groundwater advisory committee.

(4) The lead agency shall hold the first meeting of the groundwater advisory committee within sixty days of the appointment of the committee. Public notice shall be given for each meeting. The lead agency shall chair the
first meeting, during which the advisory committee shall determine, by general agreement, rules for conducting business, including voting procedures, and the chairperson of the advisory committee.

**173-100-100 Groundwater management program content.**
The program for each groundwater management area will be tailored to the specific conditions of the area. The following guidelines on program content are intended to serve as a general framework for the program, to be adapted to the particular needs of each area. Each program shall include, as appropriate, the following:

1. An area characterization section comprised of:
   a. A delineation of the groundwater area, subarea or depth zone boundaries and the rationale for those boundaries;
   b. A map showing the jurisdictional boundaries of all state, local, tribal, and federal governments within the groundwater management area;
   c. Land and water use management authorities, policies, goals and responsibilities of state, local, tribal, and federal governments that may affect the area's groundwater quality and quantity;
   d. A general description of the locale, including a brief description of the topography, geology, climate, population, land use, water use and water resources;
   e. A description of the area's hydrogeology, including the delineation of aquifers, aquitards, hydrogeologic cross-sections, porosity and horizontal and vertical permeability estimates, direction and quantity of groundwater flow, water-table contour and potentiometric maps by aquifer, locations of wells, perennial streams and springs, the locations of aquifer recharge and discharge areas, and the distribution and quantity of natural and man-induced aquifer recharge and discharge;
   f. Characterization of the historical and existing groundwater quality;
   g. Estimates of the historical and current rates of groundwater use and purposes of such use within the area;
   h. Projections of groundwater supply needs and rates of withdrawal based upon alternative population and land use projections;
   i. References including sources of data, methods and accuracy of measurements, quality control used in data collection and measurement programs, and documentation for and construction details of any computer models used.

2. A problem definition section that discusses land and water use activities potentially affecting the groundwater quality or quantity of the area. These activities may include but are not limited to:
   - Commercial, municipal, and industrial discharges
   - Underground or surface storage of harmful materials in containers susceptible to leakage
   - Accidental spills
   - Waste disposal, including liquid, solid, and hazardous waste
   - Stormwater disposal
   - Mining activities
   - Application and storage of roadway deicing chemicals
   - Agricultural activities
   - Artificial recharge of the aquifer by injection wells, seepage ponds, land spreading, or irrigation
   - Aquifer over-utilization causing seawater intrusion, other contamination, water table declines or depletion of surface waters
- Improperly constructed or abandoned wells
- Confined animal feeding activities

The discussion should define the extent of the groundwater problems caused or potentially caused by each activity, including effects which may extend across groundwater management area boundaries, supported by as much documentation as possible. The section should analyze historical trends in water quality in terms of their likely causes, document declining water table levels and other water use conflicts, establish the relationship between water withdrawal distribution and rates and water level changes within each aquifer or zone, and predict the likelihood of future problems and conflicts if no action is taken. The discussion should also identify land and water use management policies that affect groundwater quality and quantity in the area. Areas where insufficient data exists to define the nature and extent of existing or potential groundwater problems shall be documented.

(3) A section identifying water quantity and quality goals and objectives for the area which (a) recognize existing and future uses of the aquifer, (b) are in accordance with water quality standards of the department, the department of social and health services, and the federal environmental protection agency, and (c) recognize annual variations in aquifer recharge and other significant hydrogeologic factors;

(4) An alternatives section outlining various land and water use management strategies for reaching the program's goals and objectives that address each of the groundwater problems discussed in the problem definition section. If necessary, alternative data collection and analysis programs shall be defined to enable better characterization of the groundwater and potential quality and quantity problems. Each of the alternative strategies shall be evaluated in terms of feasibility, effectiveness, cost, time and difficulty to implement, and degree of consistency with local comprehensive plans and water management programs such as the coordinated water system plan, the water supply reservation program, and others. The alternative management strategies shall address water conservation, conflicts with existing water rights and minimum instream flow requirements, programs to resolve such conflicts, and long-term policies and construction practices necessary to protect existing water rights and subsequent facilities installed in accordance with the groundwater management area program and/or other water right procedures.

(5) A recommendations section containing those management strategies chosen from the alternatives section that are recommended for implementation. The rationale for choosing these strategies as opposed to the other alternatives identified shall be given;

(6) An implementation section comprised of:
(a) A detailed work plan for implementing each aspect of the groundwater management strategies as presented in the recommendations section. For each recommended management action, the parties responsible for initiating the action and a schedule for implementation shall be identified. Where possible, the implementation plan should include specifically worded statements such as model ordinances, recommended governmental policy statements, interagency agreements, proposed legislative changes, and proposed amendments to local comprehensive plans, coordinated water system plans, basin management programs, and others as appropriate;
(b) A monitoring system for evaluating the effectiveness of the program;
(c) A process for the periodic review and revision of the groundwater management program.
173-100-110 SEPA review.
The proposed groundwater management program shall be subject to review pursuant to the State Environmental Policy Act, chapter 43.21C RCW, as required under the applicable implementing regulations.

173-100-120 Hearings and implementation.
(1) Upon completion of the groundwater area management program, the department shall hold a public hearing within the designated groundwater management area for the purpose of taking public testimony on the proposed program. Local governments are encouraged to hold joint hearings with the department to hear testimony on the proposed management program. Following the public hearing, the department and each affected local government shall prepare findings on the groundwater management program within ninety days. This period may be extended by the department for an additional ninety days. The findings shall evaluate the program’s technical soundness, economic feasibility, and consistency with the intent of this chapter and other federal, state and local laws. The findings shall identify any revisions necessary before the program can be certified and shall contain a statement of the agency’s concurrence, indicating its intent to adopt implementing policies, ordinances, and programs if required, or a statement of nonconcurrence with the program if such be the case.

(2) The lead agency will consolidate the findings and present them to the advisory committee. Statements of nonconcurrence shall be resolved by the committee and the program revised if necessary.

(3) The program shall then be submitted by the groundwater advisory committee to the department which shall certify that the program is consistent with the intent of this chapter.

(4) Following such certification, state agencies and affected local governments shall adopt or amend regulations, ordinances, and/or programs for implementing those provisions of the groundwater management program which are within their respective jurisdictional authorities.

(5) The department, the department of social and health services, and affected local governments shall be guided by the adopted program when reviewing and considering approval of all studies, plans and facilities that may utilize or impact the implementation of the groundwater management program.

173-100-130 Designation of groundwater areas.
The procedures provided in RCW 90.44.130 may be utilized by the department to designate groundwater areas, subareas, or zones for the purposes described therein either in conjunction with the procedures of this chapter or independently thereof.

173-100-140 Intergovernmental agreements.
In order to fully implement this chapter, the department may negotiate and enter into cooperative agreements with Indian tribal governments, adjacent states, and Canadian governmental agencies when a groundwater management area is contiguous with or affects lands under their jurisdiction. Such cooperative agreements shall not affect the jurisdiction over any civil or criminal matters that may be exercised by any party to such an agreement. Intergovernmental agreements shall further the purposes of this chapter, and shall serve to establish a framework for intergovernmental coordination, minimize duplication, and efficiently utilize program resources to protect groundwater resources.
173-100-150 Appeals.
All final written decisions of the department pertaining to designation of groundwater management areas, certification of groundwater management programs, permits, regulatory orders, and related decisions pursuant to this chapter shall be subject to review by the pollution control hearings board under chapter 43.21B RCW.

173-100-160 Regulation review.
The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.
Aquifer Protection Areas

RCW Chapter 36.36 Aquifer Protection Areas

Sections
36.36.010 Purpose.
36.36.020 Creation of aquifer protection area—Public hearing—Ballot proposition.
36.36.030 Imposition of fees—Ballot proposition to authorize increased fees or additional purposes.
36.36.035 Reduced fees for low-income persons.
36.36.040 Use of fee revenues.
36.36.045 Lien for delinquent fees.
36.36.050 Dissolution of aquifer protection area—Petition—Ballot proposition.

NOTES:
Assessments and charges against state lands: Chapter 79.44 RCW.

36.36.010 Purpose.
The protection of subterranean water from pollution or degradation is of great concern. The depletion of subterranean water is of great concern. The purpose of this chapter is to allow 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. Pollution and degradation of subterranean drinking water supplies, and the depletion of subterranean drinking water supplies, pose immediate threats to the safety and welfare of the citizens of this state.

36.36.020 Creation of aquifer protection area—Public hearing—Ballot proposition.
The county legislative authority of a county may create one or more aquifer protection areas for the purpose of funding the protection, preservation, and rehabilitation of subterranean water.

When a county legislative authority proposes to create an aquifer protection area it shall conduct a public hearing on the proposal. Notice of the public hearing shall be published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the proposed aquifer protection area. The public hearing may be continued to other times, dates, and places announced at the public hearing, without publication of the notice. At the public hearing, the county legislative authority shall hear objections and comments from anyone interested in the proposed aquifer protection area.

After the public hearing, the county legislative authority may adopt a resolution causing a ballot proposition to be submitted to the registered voters residing within the proposed aquifer protection area to authorize the creation of the aquifer protection area, if the county legislative authority finds that the creation of the aquifer protection area would be in the public interest. The resolution shall: (1) Describe the boundaries of the proposed aquifer protection area; (2) find that its creation is in the public interest; (3) state the maximum level of fees for the withdrawal of water, or on-site sewage disposal, occurring in the aquifer protection area, or both; and (4) describe the uses for the fees.
An aquifer protection area shall be created by ordinances of the county if the voters residing in the proposed aquifer protection area approve the ballot proposition by a simple majority vote. The ballot proposition shall be in substantially the following form:

"Shall the . . . (insert the name) aquifer protection area be created and authorized to impose monthly fees on . . . (insert "the withdrawal of water" or "on-site sewage disposal") of not to exceed . . . (insert a dollar amount) per household unit for up to . . . (insert a number of years) to finance . . . (insert the type of activities proposed to be financed)?

Yes . . . . .

No . . . . . ."

If both types of monthly fees are proposed to be imposed, maximum rates for each shall be included in the ballot proposition.

An aquifer protection area may not include territory located within a city or town without the approval of the city or town governing body, nor may it include territory located in the unincorporated area of another county without the approval of the county legislative authority of that county.

36.36.030 Imposition of fees—Ballot proposition to authorize increased fees or additional purposes.
Aquifer protection areas are authorized to impose fees on the withdrawal of subterranean water and on on-site sewage disposal. The fees shall be expressed as a dollar amount per household unit. Fees imposed for the withdrawal of water, or on-site sewage disposal, other than by households shall be expressed and imposed in equivalents of household units. If both types of fees are imposed, the rate imposed on on-site sewage disposal shall not exceed the rate imposed for the withdrawal of water.

No fees shall be imposed in excess of the amount authorized by the voters of the aquifer protection area. Fees shall only be used for the activity or activities authorized by the voters of the aquifer protection area. Ballot propositions may be submitted to the voters of an aquifer protection area to authorize a higher maximum level of such fees or to authorize additional activities for which the fees may be used. Such a ballot proposition shall be substantially in the form of that portion of the proposition to authorize the creation of an aquifer protection district that relates to fees or activities, as provided in RCW 36.36.020. Approval of the ballot proposition by simple majority vote shall authorize the higher maximum level of fees or additional activities for which the fees may be used.

A county may contract with existing public utilities to collect the fees, or collect the fees itself.

36.36.035 Reduced fees for low-income persons.
A county may adopt an ordinance reducing the level of fees, for the withdrawal of subterranean water or for on-site sewage disposal, that are imposed upon the residential property of a class or classes of low-income persons.

36.36.040 Use of fee revenues.
Aquifer protection areas may impose fees to fund:

(1) The preparation of a comprehensive plan to protect, preserve, and rehabilitate subterranean water, including groundwater management programs adopted under chapter 90.44 RCW. This plan may be prepared as a portion of a county sewerage and/or water general plan pursuant to RCW 36.94.030;
(2) The construction of facilities for: (a) The removal of waterborne pollution; (b) water quality improvement; (c) sanitary sewage collection, disposal, and treatment; (d) storm water or surface water drainage collection, disposal, and treatment; and (e) the construction of public water systems;

(3) The proportionate reduction of special assessments imposed by a county, city, town, or special district in the aquifer protection area for any of the facilities described in subsection (2) of this section;

(4) The costs of monitoring and inspecting on-site sewage disposal systems or community sewage disposal systems for compliance with applicable standards and rules, and for enforcing compliance with these applicable standards and rules in aquifer protection areas created after June 9, 1988; and

(5) The costs of: (a) Monitoring the quality and quantity of subterranean water and analyzing data that is collected; (b) ongoing implementation of the comprehensive plan developed under subsection (1) of this section; (c) enforcing compliance with standards and rules relating to the quality and quantity of subterranean waters; and (d) public education relating to protecting, preserving, and enhancing subterranean waters.

36.36.045 Lien for delinquent fees.
The county shall have a lien for any delinquent fees imposed for the withdrawal of subterranean water or on-site sewage disposal, which shall attach to the property to which the fees were imposed, if the following conditions are met:

(1) At least eighteen months have passed since the first billing for a delinquent fee installment; and

(2) At least three billing notices and a letter have been mailed to the property owner, within the period specified in subsection (1) of this section, explaining that a lien may be imposed for any delinquent fee installment that has not been paid in that period.

The lien shall otherwise be subject to the provisions of chapter 36.94 RCW related to liens for delinquent charges. The county shall record liens for any delinquent fees in the office of the county auditor. Failure on the part of the county to record the lien does not affect the validity of the lien.

36.36.050 Dissolution of aquifer protection area—Petition—Ballot proposition.
A county legislative authority may dissolve an aquifer protection area upon a finding that such dissolution is in the public interest.

A ballot proposition to dissolve an aquifer protection district shall be placed on the ballot for the approval or rejection of the voters residing in an aquifer protection area, when a petition requesting such a ballot proposition is signed by at least twenty percent of the voters residing in the aquifer protection area and is filed with the county legislative authority of the county originally creating the aquifer protection area. The ballot proposition shall be placed on the ballot at the next general election occurring sixty or more days after the petition has been filed. Approval of the ballot proposition by a simple majority vote shall cause the dissolution of the aquifer protection area.
Planning and Development Services Policy

Subject/Title: Conservation Program on Agriculture Land (CPAL) – Animal Threshold, Resource Priority

Number: PL1-85-004Z

Effective Date: 05/06/10

Submitted By: Peter Gill, Senior Planner

Reviewed By: Natural Resources/Long Range Planning

Approved By: David Stalheim, Director

Statement:

This Administrative Procedure describes livestock operations that are deprioritized for farm conservation planning. This procedure applies to landowners that do not exceed the number of animals set forth below, have at least three grazable acres, and manage their animals to avoid a direct discharge of sediment or fecal matter to surface waters.

(1) Cow, or
(1) Horse, or
(2) Sheep or lamb, or
(2) Alpacas, or
(2) Non-breeding Pigs, or
(2) Goats, or
(20) Ducks or Geese, or
(30) Chickens. Rationale:

Experience implementing farm plans has shown that with very few animals the anticipated impacts to critical areas are so negligible that a farm plan may not be necessary to protect existing functions and conditions. If there is a direct discharge to surface waters, a farm plan is required regardless of the number of livestock on the property. Indicators of direct discharge can include de-vegetated riparian area, unfenced access to a stream, animal confinement area adjacent to surface waters. There is no multiplier for acreage; this is not an animal per acre threshold. Even if the animals are grazed on 100 acres, they are most often fed, sheltered, and cared for in one central location. Grazable acres include both pasture and hayland, as described in the Whatcom County Standard Farm Conservation Planning Workbook.

A land owner that does not have critical areas on their property does not require a farm plan.

A property owner that keeps agricultural activities out of the standard Critical Area buffers does not require a farm plan.
State Definitions

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)(iii), (iii), or (iv) of this subsection.
Commercial Agriculture – Those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for commercial trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a non-agricultural use or has lain idle for more than five (5) years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.

County & City Definitions

Skagit County

Ongoing agriculture: the continuation of any existing agricultural activity on Agricultural—Natural Resource lands or Rural Resource—Natural Resource lands, including crop rotations; provided, however, that for lands in RRC-NRL that are subject to the provisions of SCC 14.24.120, any property owner who applies for and receives CaRD approval under SCC 14.18.300 through 14.18.330 shall, at the time of CaRD approval, automatically be subject to the buffer requirements of SCC 14.24.530 and shall no longer be subject to the provisions of SCC 14.24.120. Activities undertaken for the first time after May 13, 1996, the date Skagit County adopted Ordinance 16156, the Critical Areas Ordinance, do not constitute “ongoing agriculture”; provided, that any lands that were fallow on May 13, 1996, but had been in agricultural production within 5 years prior to May 13, 1996, shall be considered “ongoing agriculture” for purposes of this definition. Activities that bring an area into agricultural use are not considered ongoing agriculture. In addition, in order for parcels of land under 20 acres to qualify under this definition, they must meet the criteria of RCW 84.34.020(2)(b) and (c).

City of Pasco

Existing and Ongoing Agriculture. Those activities conducted on lands defined in RCW 84.34.080(2), and those existing activities involved in the production of crops or livestock. Activities may include the operation and maintenance of farm and stock ponds or drainage ditches; operation and maintenance of existing ditches or irrigation systems; changes from one type of agricultural activity to another agricultural activity; normal maintenance, repair, and operation or existing serviceable structures, facilities, or improved areas. Activities that bring a non-agricultural area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a non-agricultural use or has lain idle for more than five years.

City of Poulsbo

“Existing and ongoing agriculture” includes those activities conducted on lands defined in RCW 84.34.020(2) or defined as agricultural practices in this chapter, for example, the operation and maintenance of existing farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, such as rotating
crops or grasses used for grazing, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas; provided, that alteration of the contour of wetlands or streams by leveling or filling—other than that which results from normal cultivation—or draining of wetlands shall not be considered normal or necessary farming or ranching activities.

Clallam County

"Existing, ongoing agriculture" means agriculture that is both: (a) on land located within the agricultural retention zoning district and/or on land that meets the criteria and are enrolled in the Washington State open space and agricultural current use program per RCW 84.34.020(2)(b) and (c); and (b) is on land that has been used for agriculture since June 16, 1992, and not ceased use for agriculture for more than five consecutive years at any one time. Changing the type of agricultural activities being conducted is not considered new or expansion of existing agricultural activity. Agriculture that meets the definition of existing, ongoing agriculture on farmed wetlands, farmed wetland pastures, and prior converted wetlands is allowed to continue subject to the provisions of CCC 27.12.037.

Federal Definitions

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 till ing 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**
DOE EIM Well Data

Analyzed 6/11/2017

Data set from ongoing study.
Average of All Wells

Nitrate-N (ppm) (mg/L)

- Trend line Down
- Recent Trend Down
- Below 10ppm Yes

10 ppm
BCS966

Trend line: Up
Recent Trend: Up
Below 10ppm: Yes

Nitrate-N (ppm)
(mg/L)

BCS973

Trend line
Down

Recent Trend
Up

Below 10ppm
No

Nitrate-N
(ppm)
(mg/L)

BCS968

Trend line: Up
Recent Trend: Up
Below 10ppm: No

Nitrate-N (ppm) (mg/L)


Graph shows a trend line that indicates an increase from 2008 to 2017, with a recent trend showing a sharp increase after 2014, exceeding the 10 ppm limit.
BCS965

Trend line: Up
Recent Trend: Up
Below 10ppm: No

Nitrate-N (ppm) (mg/L)


0 5 10 15 20 25

10 ppm
BCS972

Trend line: Down
Recent Trend: Up
Below 10ppm: Yes

Nitrate-N
(ppm)
(mg/L)


10 ppm
BCS969

Trend line
Up

Recent Trend
Up

Below 10ppm
No

Nitrate-N (ppm) (mg/L)


16  14  12  10  8  6  4  2  0

10 ppm
BCS960

Trend line
Down

Recent Trend
Up

Below 10ppm
No

Nitrate-N
(ppm)
(mg/L)


10 ppm
BCS959

Trend line: Up
Recent Trend: Up
Below 10ppm: Yes

Nitrate-N (ppm) (mg/L)

Trend line: Up

Recent Trend: Down

Below 10ppm: Yes
BCS961

Trend line: Down
Recent Trend: Down
Below 10ppm: Yes

Nitrate-N (ppm) (mg/L)

BCS962

Trend line Down
Recent Trend Down
Below 10ppm Yes

Nitrate-N (ppm) (mg/L)


10 ppm
BCS951

Trend line
Up

Recent Trend
Down

Below 10ppm
Yes

Nitrate-N
(ppm)
(mg/L)


0 1 2 3 4 5 6 7 8 9 10

10 ppm
BCS956

Trend line: Down
Recent Trend: Down
Below 10ppm: Yes

Nitrate-N (ppm) (mg/L)

BCS954

Trend line
Up

Recent Trend
Down

Below 10ppm
Yes

Nitrate-N
(ppm)
(mg/L)
AGF141

Trend line: Flat
Recent Trend: Down
Below 10ppm: Yes

Nitrate-N (ppm) (mg/L)


14
12
10
8
6
4
2
0
BES971

Trend line: Down
Recent Trend: Down
Below 10ppm: Yes
Nooksack-Abbotsford-Sumas Transboundary Study: Developing a nitrogen assessment to support nitrogen management

We need your help make this a successful project!

What is this project about?

The Nooksack-Abbotsford-Sumas Transboundary Study is a North American pilot demonstration of a global initiative. It gathers stakeholders to work together to understand and address problems and opportunities associated with modern beneficial uses of nitrogen (N) for food and manufacturing. The Nooksack-Abbotsford-Sumas region includes a diverse set of fairly well-organized stakeholders in a relatively small, transnational watershed. This diversity and scale provides a unique opportunity to work collaboratively with stakeholders to better understand and manage nitrogen.

The issues we struggle with are common to many other parts of the world. For example, excess nitrate concentrations in the aquifer shared by Canada and the USA affect thousands of wells and households in both countries. Concentrations in some water supply wells often exceed U.S., Canadian, and international drinking water standards and guidelines of 10 ppm nitrate-N that were set to safeguard human health (especially infants). High concentrations have been observed since the 1970s.

What is Nitrogen?

Nitrogen (N) is an essential element that is found in all living things. It builds the proteins that do the cellular work that keeps all organisms alive. Ironically, while we are surrounded by N (it makes up 78% of Earth’s atmosphere), it is in a biologically unavailable form necessary for plant growth, including for agriculture.

People have added this essential nutrient to increase crop production through use of legumes, recycling animal manures and plant residues, and industrial production of fertilizer. Ready access to cheap and abundant plant available N has contributed greatly to the abundance of affordable food in many parts of the world. Excess nitrogen use in some areas contributes to water pollution, in surface and groundwater. Biologically available nitrogen is also made as a byproduct of burning fossil fuels for energy generation, industrial processes, and transportation. In such cases, it can be an important contributor to air pollution, such as haze or smog. The challenge society now faces is how to exploit nitrogen for its benefits in a sustainable manner without harming air, water, and soil. The health and well being of future generations is at stake.
Nitrogen has environmental impacts, and high concentrations can degrade surface water quality and may harm fish in the river. It can also contribute to localized ocean pollution, promoting toxic algal blooms or acidification. In addition to the shared aquifer and surface waters, our region shares an airshed. Emissions into the atmosphere of certain nitrogen forms, such as ammonia and nitrogen oxides from transportation, agriculture, and metropolitan areas, including Vancouver, add to the regional nitrogen surplus. These forms of nitrogen in the atmosphere contribute to smog, poor visibility, and respiratory ailments in humans, and eventually are deposited back on the earth where they acidify both soil and water, and can be re-emitted in a new form that contributes to global warming.

How will this project help and inform the local community?

1. Create a comprehensive inventory of N inputs from many sources (including natural sources, inputs from urban land, emissions, and agricultural inputs).

2. Identify voluntary approaches and best practices to reducing nitrate losses to the environment.

3. Provide a website containing a spatial database on N loading and related air and water quality information to be accessed by local stakeholders.
The goals of the project are to:

1. **Create a nitrogen inventory**: Trace and quantify the sources and movement of nitrogen, both inside and outside our study area. The first step in the project is to gather all of the currently available qualitative (who and what) and quantitative (how much) information on nitrogen sources and uses including inputs and outputs. Next would be to quantify effects of different nitrogen types on resources (i.e., air, surface water, groundwater, soil, etc.), and to identify knowledge gaps.

2. **Share among stakeholders**: Bring together stakeholders in the study region to share the information collected in Step 1 and collect their input, knowledge and concerns. This second step aims to find out what kinds of information or management tools would be most useful to different stakeholders. Anyone affected by nitrogen in some way is a stakeholder who is welcome to participate, adding your information, knowledge, and perspective, such as:
   a. People *living here, using and working* with the land, air and water resources,
   b. Groups/entities *supporting* stakeholder deliberations by providing objective information and scientific understanding, and
   c. Governmental representatives who might later on be responsible for *supporting implementation* of any strategies that are agreed upon by stakeholders.

3. **Identify and evaluate solutions**: Work with all stakeholders to develop a menu of strategies for dealing with regional nitrogen issues, along with pros and cons. The goal of this third step is to find ways to work together to protect local food production, the economy, and natural resources, including air and water. Gathering and presenting a common set of biophysical facts and viewing them from multiple socioeconomic perspectives can help everyone to understand the problems and to identify the preferred potential solutions to a variety of nitrogen-related issues.
Who are the parties involved?
An international team of scientists and natural resource professionals from Canada, the United States, the Lummi Nation and the Nooksack Indian Tribe are collaborating in this project to develop a regional nitrogen assessment for the Nooksack-Abbotsford-Sumas Transboundary Region. So far, about 50 individuals from a diverse array of agencies, organizations, tribes, and institutions have participated in initial meetings and correspondence. In addition to a small amount of financial support from the National Science Foundation and the Environmental Protection Agency, stakeholders donate their time and resources. Additional funding is being sought.

How do I interact with the project?
In order to make a successful and effective model of nitrogen use and cycling, we need the most current and accurate information we can gather. This will require stakeholders, individual land users and industries to assist us by providing data relevant and representative to their individual nitrogen use activities, including recommendations for best management practices based on local ideas. If approached for information, please consider working with us. The highest quality discussions about possible management strategies—which we want to encourage—will only happen if we have highest quality information to work with.

What do you plan to do with the data collected?
Locally, we hope to work with stakeholders to provide information that can be used to develop lasting nitrogen management solutions that benefit everyone in the Nooksack-Abbotsford-Sumas Transboundary Region. This may include promotion of successful nitrogen management practices, suggestions to modify current activities to reduce nitrogen losses, and looking to the future to reduce potential nitrogen losses. Our intent is to inform the public and stakeholders about nitrogen cycling in the project area with the hope that different sectors can use it to modify and promote behaviors as appropriate. Our intent is not to use the data for regulatory purposes.

Internationally, the data, and the ways in which we use them, will serve as the North American demonstration project for the International Nitrogen Management System (http://www.inms.international/), a program of the Global Environmental Facility and the International Nitrogen Initiative. Other demonstration projects are being developed in Latin America, Africa, Western Europe, Eastern Europe, Asia, and Australia.

Will the data/results be used in a regulatory context?
If no, how can you ensure that? If yes, how does that affect me?
Our intent is to provide scientifically sound, objective information that can be used by local stakeholders to identify common regional goals and practical, comprehensive, and sustainable solutions where everyone, including people and their livelihoods, and the environment, benefits. More regulation should be the last and least preferable resort.
Who is involved?

Western Washington University
University of Washington – Vancouver
University of British Columbia
Northwest Indian College
University of Maryland
Colorado State University
Washington Department of Health
Whatcom Conservation District
Natural Resource Marketplace Working Group
Northwest Straits Commission
Washington State Department of Ecology
Washington State Department of Agriculture
Washington State Department of Health
British Columbia Ministry of Agriculture
British Columbia Ministry of Environment
Lummi Nation
Nooksack Indian Tribe
U.S. Geological Survey
U.S. Environmental Protection Agency
USDA Natural Resource Conservation Agency
National Park Service
National Oceanic and Atmospheric Administration
Environment and Climate Change Canada
Agriculture and Agri-Food Canada
International Nitrogen Initiative
International Nitrogen Management System

For more information please check our webpage or contact:

https://drive.google.com/drive/u/0/folders/0B7CVzzwALo12NTI4dkc1Q3dHamM

Jill Baron, U.S. Geological Survey, International Nitrogen Initiative (jill_baron@usgs.gov)
David Hooper, Western Washington University (david.hooper@wwu.edu)
Jana Compton, U.S. Environmental Protection Agency (Compton_jana@epa.gov)
Shabtai Bitman, Agriculture and Agri-Food Canada (shabtai.bittman@agr.gc.ca)
Nichole Emberton, Whatcom Conservation District (Nemberton@whatcomcd.org)
George Boggs, Whatcom Conservation District (GBoggs@whatcomcd.org)
Groundwater Management Areas

RCW Chapter 90.44 Regulation of Public Groundwaters

RCW 90.44.400 Groundwater management areas—Purpose—Standards—Identification—Designation.

(1) This legislation is enacted for the purpose of identifying groundwater management procedures that are consistent with both local needs and state water resource policies and management objectives; including the protection of water quality, assurance of quantity, and efficient management of water resources to meet future needs.

In recognition of existing water rights and the need to manage groundwater aquifers for future use, the department of ecology shall, by rule, establish standards, criteria, and a process for the designation of specific groundwater areas or sub-areas, or separate depth zones within such area or sub-area, and provide for either the department of ecology, local governments, or groundwater users of the area to initiate development of a groundwater management program for each area or sub-area, consistent with state and local government objectives, policies, and authorities. The department shall develop and adopt these rules by January 1, 1986.

(2) The department of ecology, in cooperation with other state agencies, local government, and user groups, shall identify probable groundwater management areas or sub-areas. The department shall also prepare a general schedule for the development of groundwater management programs that recognizes the available local or state agency staff and financial resources to carry out the intent of RCW 90.44.400 through 90.44.420. The department shall also provide the option for locally initiated studies and for local government to assume the lead agency role in developing the groundwater management program and in implementing the provisions of RCW 90.44.400 through 90.44.420. The criteria to guide identification of the groundwater areas or sub-areas shall include but not be limited to, the following:

(a) Aquifer systems that are declining due to restricted recharge or over-utilization;

(b) Aquifer systems in which over-appropriation may have occurred and adjudication of water rights has not yet been completed;

(c) Aquifer systems currently being considered for water supply reservation under chapter 90.54 RCW for future beneficial uses;

(d) Aquifers identified as the primary source of supply for public water supply systems;

(e) Aquifers designated as a sole source aquifer by the federal environmental protection agency; and

(f) Geographical areas where land use may result in contamination or degradation of the groundwater quality.

(3) In developing the groundwater management programs, priority shall be given to areas or sub-areas where water quality is imminently threatened.

RCW 90.44.410 Requirements for groundwater management programs—Review of programs.

(1) The groundwater area or sub-area management programs shall include:
(a) A description of the specific groundwater area or sub-areas, or separate depth zones within any such area or sub-area, and the relationship of this zone or area to the land use management responsibilities of county government;
(b) A management program based on long-term monitoring and resource management objectives for the area or sub-area;
(c) Identification of water resources and the allocation of the resources to meet state and local needs;
(d) Projection of water supply needs for existing and future identified user groups and beneficial uses;
(e) Identification of water resource management policies and/or practices that may impact the recharge of the designated area or policies that may affect the safe yield and quantity of water available for future appropriation;
(f) Identification of land use and other activities that may impact the quality and efficient use of the groundwater, including domestic, industrial, solid, and other waste disposal, underground storage facilities, or storm water management practices;
(g) The design of the program necessary to manage the resource to assure long-term benefits to the citizens of the state;
(h) Identification of water quality objectives for the aquifer system which recognize existing and future uses of the aquifer and that are in accordance with department of ecology and department of social and health services drinking and surface water quality standards;
(i) Long-term policies and construction practices necessary to protect existing water rights and subsequent facilities installed in accordance with the groundwater area or sub-area management programs and/or other water right procedures;
(j) Annual withdrawal rates and safe yield guidelines which are directed by the long-term management programs that recognize annual variations in aquifer recharge;
(k) A description of conditions and potential conflicts and identification of a program to resolve conflicts with existing water rights;
(l) Alternative management programs to meet future needs and existing conditions, including water conservation plans; and
(m) A process for the periodic review of the groundwater management program and monitoring of the implementation of the program.

(2) The groundwater area or sub-area management programs shall be submitted for review in accordance with the state environmental policy act.

RCW 90.44.420 Groundwater management programs—Consideration by department of ecology—Public hearing—Findings—Adoption of regulations, ordinances, and programs.
The department of ecology shall consider the groundwater area or sub-area management plan for adoption in accordance with this chapter and chapter 90.54 RCW.

Upon completion of the groundwater area or sub-area management program, the department of ecology shall hold a public hearing within the designated groundwater management area for the purpose of taking public testimony on the proposed program. Following the public hearing, the department of ecology and affected local governments shall (1) prepare findings which either provide for the subsequent adoption of the program as proposed or identify the revisions necessary to ensure that the program is consistent with the intent of this
chapter, and (2) adopt regulations, ordinances, and/or programs for implementing those provisions of the groundwater management program which are within their respective jurisdictional authorities.

RCW 90.44.430 Groundwater management programs—Guidance to local governments and certain departments.
The department of ecology, the department of social and health services, and affected local governments shall be guided by the adopted program when reviewing and considering approval of all studies, plans, and facilities that may utilize or impact the implementation of the program.

RCW 90.44.440 Existing rights not affected.
RCW 90.44.400 through 90.44.430 shall not affect any water rights existing as of May 21, 1985.

RCW 90.44.445 Acreage expansion program—Authorization—Certification.
In any acreage expansion program adopted by the department as an element of a groundwater management program, the authorization for a water right certificate holder to participate in the program shall be on an annual basis for the first two years. After the two-year period, the department may authorize participation for ten-year periods. The department may authorize participation for ten-year periods for certificate holders who have already participated in an acreage expansion program for two years. The department may require annual certification that the certificate holder has complied with all requirements of the program. The department may terminate the authority of a certificate holder to participate in the program for one calendar year if the certificate holder fails to comply with the requirements of the program.

RCW 90.44.450 Metering or measuring groundwater withdrawals—Reports.
The department of ecology may require withdrawals of groundwater to be metered, or measured by other approved methods, as a condition for a new water right permit. The department may also require, as a condition for such permits, reports regarding such withdrawals as to the amount of water being withdrawn. These reports shall be in a form prescribed by the department.
WAC Chapter 173-100 GROUNDWATER MANAGEMENT AREAS AND PROGRAMS

WAC Sections
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173-100-130 Designation of groundwater areas.
173-100-140 Intergovernmental agreements.
173-100-150 Appeals.
173-100-160 Regulation review.

173-100-010 Purpose.
The purpose of this chapter is to establish guidelines, criteria, and procedures for the designation of groundwater management areas, subareas, or zones, and to set forth a process for the development of groundwater management programs for such areas, subareas, or zones, in order to protect groundwater quality, to assure groundwater quantity, and to provide for efficient management of water resources for meeting future needs while recognizing existing water rights. The intent of this chapter is to forge a partnership between a diversity of local, state, tribal, and federal interests in cooperatively protecting the state’s groundwater resources.

173-100-020 Authority.
This chapter is promulgated by the department of ecology pursuant to RCW 90.44.400, 90.44.410, 90.44.420, 90.44.430 and 90.44.440.

173-100-030 Overview.
This regulation establishes a process for the identification and designation of groundwater management areas and for the development of comprehensive groundwater management programs. From a general schedule of probable groundwater management areas, the department of ecology, in cooperation with local government, will designate specific groundwater management areas, subareas, or depth zones within such areas and will appoint a lead agency to develop a groundwater management program and an advisory committee to oversee the development of the program for each designated area. Following completion of the program and a public hearing to be held by the department of ecology, the program must be certified to be consistent with the intent of this chapter. The program will then be implemented through state regulations and local ordinances. The programs must thereafter be periodically reviewed.
173-100-040 Definitions.
For the purposes of this chapter the following definitions shall apply:
(1) "Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs.
(2) "Department" means the Washington state department of ecology.
(3) "Groundwater" means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.
(4) "Groundwater advisory committee" means a committee appointed by the department to assist in the development of a groundwater management program.
(5) "Groundwater area or subarea" means a geographic area designated pursuant to RCW 90.44.130.
(6) "Groundwater management area" means a specific geographic area or subarea designated pursuant to this chapter for which a groundwater management program is required.
(7) "Groundwater management program" means a comprehensive program designed to protect groundwater quality, to assure groundwater quantity and to provide for efficient management of water resources while recognizing existing groundwater rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated groundwater management area or subarea and developed pursuant to this chapter.
(8) "Groundwater management zone" means any depth or stratigraphic zone separately designated by the department in cooperation with local government for groundwater management purposes within a groundwater management area. Groundwater management zones may consist of a specific geologic formation or formations or other reasonable bounds determined by the department consistent with the purposes of this chapter.
(9) "Groundwater right" means an authorization to use groundwater established pursuant to chapter 90.44 RCW, state common or statutory law existing prior to the enactment of chapter 90.44 RCW, or federal law.
(10)"Groundwater user group" means an established association of holders of groundwater rights located within a proposed or designated groundwater management area.
(11)"Lead agency" means the agency appointed by the department to coordinate and undertake the activities necessary for the development of a groundwater management program. Either the department or an agency of local government may be the lead agency.
(12)"Local government" means any county, city, town, or any other entity having its own incorporated government for local affairs including, but not limited to, a metropolitan municipal corporation, public utility district, water district, irrigation district, and/or sewer district.
(13)"Local government legislative authority" means the city or town council, board of county commissioners, special district commission, or that body assigned such duties by a city, county or district charter as enacting ordinances, passing resolutions, and appropriating funds for expenditure.
(14)"Probable groundwater management area" means a specific geographic area identified by the department, in cooperation with other state agencies, local government and groundwater user groups, as a candidate area for designation as a groundwater management area pursuant to this chapter.
173-100-050 Probable groundwater management areas.
The department, in cooperation with local government and groundwater user groups, shall identify probable
groundwater management areas.
(1) Probable groundwater management areas may be proposed for identification at any time by the
department upon its own motion or at the request of other state agencies, local government, or
groundwater user groups.
(2) Probable groundwater management area boundaries shall be delineated so as to enclose one or more
distinct bodies of public groundwater as nearly as known facts permit. Probable groundwater management
subareas shall be delineated so as to enclose all or any part of a distinct body of public groundwater.
Boundaries shall be based on hydrogeologic properties such as limits to lateral extent of aquifers, major
perennial rivers, and regional groundwater divides or as deemed appropriate by the department to most
effectively accomplish the purposes of this chapter.
(3) The criteria to guide identification of probable groundwater management areas shall include, but not be
limited to, the following:
   (a) Geographic areas where groundwater quality is threatened;
   (b) Aquifers that are declining due to restricted recharge or over-utilization;
   (c) Aquifers in which over-appropriation may have occurred and adjudication of water rights has not yet
       been completed;
   (d) Aquifers reserved or being considered for water supply reservation under chapter 90.54 RCW for future
       beneficial uses;
   (e) Aquifers identified as the primary source of supply for public water supply systems;
   (f) Aquifers underlying a critical water supply service area where the coordinated water system plan
       established pursuant to chapter 70.116 RCW has identified a need for a groundwater management
       program;
   (g) Aquifers designated as sole source aquifers by the federal Environmental Protection Agency;
   (h) Geographic areas where the groundwater is susceptible to contamination or degradation resulting from
       land use activities;
   (i) Aquifers threatened by seawater intrusion; or
   (j) Aquifers from which major groundwater withdrawals have been proposed or appear imminent.
(4) The state agency, local government, or groundwater user group requesting probable groundwater
management area identification shall provide sufficient information for the department to determine if the
area should be so identified. The department and other affected state and local governments and user
groups may cooperate in preparing the request for identification.
   (a) The request for identification shall be presented in a concise, factual report form and shall consider the
guidelines and criteria set forth in subsections (2) and (3) of this section as they relate to the proposed
area. It shall also contain: (i) Supporting data as to the need for such identification; (ii) a general
description of and rationale for the proposed groundwater management area boundary; (iii) goals and
objectives for the proposed groundwater management area; (iv) an estimated cost of developing the
groundwater management program and potential funding sources; (v) recommendations for agencies,
organizations and groups to be represented on the groundwater management area advisory committee;
and (vi) a recommendation for the lead agency, taking into consideration the responsibilities contained
in WAC 173-100-080.
(b) The recommendation for lead agency shall first be submitted to the county or counties with jurisdiction for written concurrence. Such written concurrence shall be included with the information required in (a) of this subsection. If such concurrence cannot be obtained, the department shall attempt to mediate an agreement between the parties.

(c) The agency or groundwater user group initiating the request for identification shall hold at least one public meeting for the purpose of receiving comments from the public, affected local, state, and tribal agencies and groundwater user groups.

(d) Upon completion, the request for identification shall be submitted to the department and other affected state and local agencies and groundwater user groups for their review and comment. Comments shall be submitted to the department.

(5) If the department is proposing an area for identification, the department shall prepare a report containing the information in subsection (4)(a) of this section, hold a public meeting, and submit the report to affected state and local agencies and groundwater user groups for their review and comment.

(6) Based upon review of the request for identification together with any comments received and a finding that the proposed area meets the guidelines and criteria of subsections (2) and (3) of this section, the department shall identify the proposed area as a probable groundwater management area, establish the general planning boundaries and appoint a lead agency. When a probable groundwater management area is included within only one county and that county indicates its desire to assume lead agency status, the department shall appoint the county as lead agency. The department shall notify affected state and local agencies, groundwater user groups, tribal governments, and local news media of such identification.

173-100-060 General schedule.
The department shall establish a general schedule for the designation of specific groundwater management areas. The general schedule shall guide the department in the designation of specific groundwater management areas and in the allocation of the department's available water resources funding and staffing.

(1) The general schedule for designation of groundwater management areas shall identify the relative priority of each of the probable groundwater management areas. The relative priority of the probable groundwater management areas shall be based upon:

(a) The availability of local or state agency resources to develop and implement a groundwater management program;

(b) The significance, severity, or urgency of the problems or potential problems described in the request for identification submitted for each area, with the highest priority given to areas where the water quality is imminently threatened;

(2) The department shall revise the general schedule as needed to comply with the intent of this chapter. After each revision the general schedule shall be published in the news media and the Washington State Register. A public hearing will be held in June of each year to receive public comment on the general schedule.

173-100-070 Designation of groundwater management areas for program planning purposes.
The department shall designate groundwater management areas by order of the department in accordance with the general schedule. The department shall hold a public hearing within the county or counties containing the probable groundwater management area prior to such designation. The order shall be issued to the lead agency as well as the agency or groundwater user group originally requesting identification of the areas, with copies sent to other affected state agencies, local governments, tribal governments and those parties recommended.
for groundwater advisory committee membership. Copies of the order shall be published by the department in newspapers of general circulation within the area. The order shall contain a general description of the planning boundary for the groundwater management area and shall state that the department, in cooperation with the lead agency and local government, intends to appoint a groundwater advisory committee to oversee the development of a groundwater management program for the area.

**173-100-080 Lead agency responsibilities.**
The lead agency shall be responsible for coordinating and undertaking the activities necessary for development of the groundwater management program. These activities shall include collecting data and conducting studies related to hydrogeology, water quality, water use, land use, and population projections; scheduling and coordinating advisory committee meetings; presenting draft materials to the committee for review; responding to comments from the committee; coordinating SEPA review; executing interlocal agreements or other contracts; and other duties as may be necessary. The lead agency shall also prepare a work plan, schedule, and budget for the development of the program that shows the responsibilities and roles of each of the advisory committee members as agreed upon by the committee. Data collection, data analysis, and other elements of the program development may be delegated by the lead agency to other advisory committee members.

**173-100-090 Groundwater advisory committee.**
(1) The groundwater advisory committee shall be responsible for overseeing the development of the groundwater management program; reviewing the work plan, schedule, and budget for the development of the program; assuring that the program is technically and functionally sound; verifying that the program is consistent with this chapter and with the respective authorities of the affected agencies; and formulating and implementing a public involvement plan.

(2) The membership of each groundwater advisory committee shall represent a broad spectrum of the public in order to ensure that the groundwater is protected and utilized for the greatest benefit to the people of the state. The committee shall include, but not be limited to, representation from the following groups:
   (a) Local government legislative authorities within the designated area;
   (b) Planning agencies having jurisdiction within the designated area;
   (c) Health agencies having jurisdiction within the designated area;
   (d) Groundwater user groups within the designated area, including domestic well owners;
   (e) The department;
   (f) Department of social and health services;
   (g) Other local, state, and federal agencies as determined to be appropriate by the department;
   (h) Tribal governments, where a groundwater management program may affect tribal waters;
   (i) Public and special interest groups such as agricultural, well drilling, forestry, environmental, business, and/or industrial groups within the area, as determined to be appropriate by the department.

(3) The department shall appoint, by letter, members and alternates to the groundwater advisory committee after seeking nominations from the groups listed above. Members and alternates shall serve until the groundwater management program for the area is certified. The department may appoint replacement members or alternates upon request of the appointee or the groundwater advisory committee.

(4) The lead agency shall hold the first meeting of the groundwater advisory committee within sixty days of the appointment of the committee. Public notice shall be given for each meeting. The lead agency shall chair the
first meeting, during which the advisory committee shall determine, by general agreement, rules for conducting business, including voting procedures, and the chairperson of the advisory committee.

173-100-100 Groundwater management program content.
The program for each groundwater management area will be tailored to the specific conditions of the area. The following guidelines on program content are intended to serve as a general framework for the program, to be adapted to the particular needs of each area. Each program shall include, as appropriate, the following:

(1) An area characterization section comprised of:
   (a) A delineation of the groundwater area, subarea or depth zone boundaries and the rationale for those boundaries;
   (b) A map showing the jurisdictional boundaries of all state, local, tribal, and federal governments within the groundwater management area;
   (c) Land and water use management authorities, policies, goals and responsibilities of state, local, tribal, and federal governments that may affect the area’s groundwater quality and quantity;
   (d) A general description of the locale, including a brief description of the topography, geology, climate, population, land use, water use and water resources;
   (e) A description of the area’s hydrogeology, including the delineation of aquifers, aquitards, hydrogeologic cross-sections, porosity and horizontal and vertical permeability estimates, direction and quantity of groundwater flow, water-table contour and potentiometric maps by aquifer, locations of wells, perennial streams and springs, the locations of aquifer recharge and discharge areas, and the distribution and quantity of natural and man-induced aquifer recharge and discharge;
   (f) Characterization of the historical and existing groundwater quality;
   (g) Estimates of the historical and current rates of groundwater use and purposes of such use within the area;
   (h) Projections of groundwater supply needs and rates of withdrawal based upon alternative population and land use projections;
   (i) References including sources of data, methods and accuracy of measurements, quality control used in data collection and measurement programs, and documentation for and construction details of any computer models used.

(2) A problem definition section that discusses land and water use activities potentially affecting the groundwater quality or quantity of the area. These activities may include but are not limited to:
   • Commercial, municipal, and industrial discharges
   • Underground or surface storage of harmful materials in containers susceptible to leakage
   • Accidental spills
   • Waste disposal, including liquid, solid, and hazardous waste
   • Stormwater disposal
   • Mining activities
   • Application and storage of roadway deicing chemicals
   • Agricultural activities
   • Artificial recharge of the aquifer by injection wells, seepage ponds, land spreading, or irrigation
   • Aquifer over-utilization causing seawater intrusion, other contamination, water table declines or depletion of surface waters
• Improperly constructed or abandoned wells
• Confined animal feeding activities

The discussion should define the extent of the groundwater problems caused or potentially caused by each activity, including effects which may extend across groundwater management area boundaries, supported by as much documentation as possible. The section should analyze historical trends in water quality in terms of their likely causes, document declining water table levels and other water use conflicts, establish the relationship between water withdrawal distribution and rates and water level changes within each aquifer or zone, and predict the likelihood of future problems and conflicts if no action is taken. The discussion should also identify land and water use management policies that affect groundwater quality and quantity in the area. Areas where insufficient data exists to define the nature and extent of existing or potential groundwater problems shall be documented.

(3) A section identifying water quantity and quality goals and objectives for the area which (a) recognize existing and future uses of the aquifer, (b) are in accordance with water quality standards of the department, the department of social and health services, and the federal environmental protection agency, and (c) recognize annual variations in aquifer recharge and other significant hydrogeologic factors;

(4) An alternatives section outlining various land and water use management strategies for reaching the program’s goals and objectives that address each of the groundwater problems discussed in the problem definition section. If necessary, alternative data collection and analysis programs shall be defined to enable better characterization of the groundwater and potential quality and quantity problems. Each of the alternative strategies shall be evaluated in terms of feasibility, effectiveness, cost, time and difficulty to implement, and degree of consistency with local comprehensive plans and water management programs such as the coordinated water system plan, the water supply reservation program, and others. The alternative management strategies shall address water conservation, conflicts with existing water rights and minimum instream flow requirements, programs to resolve such conflicts, and long-term policies and construction practices necessary to protect existing water rights and subsequent facilities installed in accordance with the groundwater management area program and/or other water right procedures.

(5) A recommendations section containing those management strategies chosen from the alternatives section that are recommended for implementation. The rationale for choosing these strategies as opposed to the other alternatives identified shall be given;

(6) An implementation section comprised of:
   (a) A detailed work plan for implementing each aspect of the groundwater management strategies as presented in the recommendations section. For each recommended management action, the parties responsible for initiating the action and a schedule for implementation shall be identified. Where possible, the implementation plan should include specifically worded statements such as model ordinances, recommended governmental policy statements, interagency agreements, proposed legislative changes, and proposed amendments to local comprehensive plans, coordinated water system plans, basin management programs, and others as appropriate;
   (b) A monitoring system for evaluating the effectiveness of the program;
   (c) A process for the periodic review and revision of the groundwater management program.
173-100-110 SEPA review.
The proposed groundwater management program shall be subject to review pursuant to the State Environmental Policy Act, chapter 36.70C RCW, as required under the applicable implementing regulations.

173-100-120 Hearings and implementation.
(1) Upon completion of the groundwater area management program, the department shall hold a public hearing within the designated groundwater management area for the purpose of taking public testimony on the proposed program. Local governments are encouraged to hold joint hearings with the department to hear testimony on the proposed management program. Following the public hearing, the department and each affected local government shall prepare findings on the groundwater management program within ninety days. This period may be extended by the department for an additional ninety days. The findings shall evaluate the program’s technical soundness, economic feasibility, and consistency with the intent of this chapter and other federal, state and local laws. The findings shall identify any revisions necessary before the program can be certified and shall contain a statement of the agency’s concurrence, indicating its intent to adopt implementing policies, ordinances, and programs if required, or a statement of nonconcurrency with the program if such be the case.

(2) The lead agency will consolidate the findings and present them to the advisory committee. Statements of nonconcurrency shall be resolved by the committee and the program revised if necessary.

(3) The program shall then be submitted by the groundwater advisory committee to the department which shall certify that the program is consistent with the intent of this chapter.

(4) Following such certification, state agencies and affected local governments shall adopt or amend regulations, ordinances, and/or programs for implementing those provisions of the groundwater management program which are within their respective jurisdictional authorities.

(5) The department, the department of social and health services, and affected local governments shall be guided by the adopted program when reviewing and considering approval of all studies, plans and facilities that may utilize or impact the implementation of the groundwater management program.

173-100-130 Designation of groundwater areas.
The procedures provided in RCW 90.44.130 may be utilized by the department to designate groundwater areas, subareas, or zones for the purposes described therein either in conjunction with the procedures of this chapter or independently thereof.

173-100-140 Intergovernmental agreements.
In order to fully implement this chapter, the department may negotiate and enter into cooperative agreements with Indian tribal governments, adjacent states, and Canadian governmental agencies when a groundwater management area is contiguous with or affects lands under their jurisdiction. Such cooperative agreements shall not affect the jurisdiction over any civil or criminal matters that may be exercised by any party to such an agreement. Intergovernmental agreements shall further the purposes of this chapter, and shall serve to establish a framework for intergovernmental coordination, minimize duplication, and efficiently utilize program resources to protect groundwater resources.
173-100-150 Appeals.
All final written decisions of the department pertaining to designation of groundwater management areas, certification of groundwater management programs, permits, regulatory orders, and related decisions pursuant to this chapter shall be subject to review by the pollution control hearings board under chapter 43.21B RCW.

173-100-160 Regulation review.
The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.
Aquifer Protection Areas

RCW Chapter 36.36 Aquifer Protection Areas

Sections
36.36.010 Purpose.
36.36.020 Creation of aquifer protection area—Public hearing—Ballot proposition.
36.36.030 Imposition of fees—Ballot proposition to authorize increased fees or additional purposes.
36.36.035 Reduced fees for low-income persons.
36.36.040 Use of fee revenues.
36.36.045 Lien for delinquent fees.
36.36.050 Dissolution of aquifer protection area—Petition—Ballot proposition.

NOTES:
Assessments and charges against state lands: Chapter 79.44 RCW.

36.36.010 Purpose.
The protection of subterranean water from pollution or degradation is of great concern. The depletion of subterranean water is of great concern. The purpose of this chapter is to allow 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. Pollution and degradation of subterranean drinking water supplies, and the depletion of subterranean drinking water supplies, pose immediate threats to the safety and welfare of the citizens of this state.

36.36.020 Creation of aquifer protection area—Public hearing—Ballot proposition.
The county legislative authority of a county may create one or more aquifer protection areas for the purpose of funding the protection, preservation, and rehabilitation of subterranean water.

When a county legislative authority proposes to create an aquifer protection area it shall conduct a public hearing on the proposal. Notice of the public hearing shall be published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the proposed aquifer protection area. The public hearing may be continued to other times, dates, and places announced at the public hearing, without publication of the notice. At the public hearing, the county legislative authority shall hear objections and comments from anyone interested in the proposed aquifer protection area.

After the public hearing, the county legislative authority may adopt a resolution causing a ballot proposition to be submitted to the registered voters residing within the proposed aquifer protection area to authorize the creation of the aquifer protection area, if the county legislative authority finds that the creation of the aquifer protection area would be in the public interest. The resolution shall: (1) Describe the boundaries of the proposed aquifer protection area; (2) find that its creation is in the public interest; (3) state the maximum level of fees for the withdrawal of water, or on-site sewage disposal, occurring in the aquifer protection area, or both; and (4) describe the uses for the fees.
An aquifer protection area shall be created by ordinances of the county if the voters residing in the proposed aquifer protection area approve the ballot proposition by a simple majority vote. The ballot proposition shall be in substantially the following form:

"Shall the . . . (insert the name) aquifer protection area be created and authorized to impose monthly fees on . . . (insert "the withdrawal of water" or "on-site sewage disposal") of not to exceed . . . (insert a dollar amount) per household unit for up to . . . (insert a number of years) to finance . . . (insert the type of activities proposed to be financed)?

Yes . . . . . .

No . . . . . ."

If both types of monthly fees are proposed to be imposed, maximum rates for each shall be included in the ballot proposition.

An aquifer protection area may not include territory located within a city or town without the approval of the city or town governing body, nor may it include territory located in the unincorporated area of another county without the approval of the county legislative authority of that county.

36.36.030 Imposition of fees—Ballot proposition to authorize increased fees or additional purposes.
Aquifer protection areas are authorized to impose fees on the withdrawal of subterranean water and on on-site sewage disposal. The fees shall be expressed as a dollar amount per household unit. Fees imposed for the withdrawal of water, or on-site sewage disposal, other than by households shall be expressed and imposed in equivalents of household units. If both types of fees are imposed, the rate imposed on on-site sewage disposal shall not exceed the rate imposed for the withdrawal of water.

No fees shall be imposed in excess of the amount authorized by the voters of the aquifer protection area. Fees shall only be used for the activity or activities authorized by the voters of the aquifer protection area. Ballot propositions may be submitted to the voters of an aquifer protection area to authorize a higher maximum level of such fees or to authorize additional activities for which the fees may be used. Such a ballot proposition shall be substantially in the form of that portion of the proposition to authorize the creation of an aquifer protection district that relates to fees or activities, as provided in RCW 36.36.020. Approval of the ballot proposition by simple majority vote shall authorize the higher maximum level of fees or additional activities for which the fees may be used.

A county may contract with existing public utilities to collect the fees, or collect the fees itself.

36.36.035 Reduced fees for low-income persons.
A county may adopt an ordinance reducing the level of fees, for the withdrawal of subterranean water or for on-site sewage disposal, that are imposed upon the residential property of a class or classes of low-income persons.

36.36.040 Use of fee revenues.
Aquifer protection areas may impose fees to fund:

(1) The preparation of a comprehensive plan to protect, preserve, and rehabilitate subterranean water, including groundwater management programs adopted under chapter 90.44 RCW. This plan may be prepared as a portion of a county sewerage and/or water general plan pursuant to RCW 36.94.030;
(2) The construction of facilities for: (a) The removal of waterborne pollution; (b) water quality improvement; (c) sanitary sewage collection, disposal, and treatment; (d) storm water or surface water drainage collection, disposal, and treatment; and (e) the construction of public water systems;

(3) The proportionate reduction of special assessments imposed by a county, city, town, or special district in the aquifer protection area for any of the facilities described in subsection (2) of this section;

(4) The costs of monitoring and inspecting on-site sewage disposal systems or community sewage disposal systems for compliance with applicable standards and rules, and for enforcing compliance with these applicable standards and rules in aquifer protection areas created after June 9, 1988; and

(5) The costs of: (a) Monitoring the quality and quantity of subterranean water and analyzing data that is collected; (b) ongoing implementation of the comprehensive plan developed under subsection (1) of this section; (c) enforcing compliance with standards and rules relating to the quality and quantity of subterranean waters; and (d) public education relating to protecting, preserving, and enhancing subterranean waters.

36.36.045 Lien for delinquent fees.
The county shall have a lien for any delinquent fees imposed for the withdrawal of subterranean water or on-site sewage disposal, which shall attach to the property to which the fees were imposed, if the following conditions are met:

(1) At least eighteen months have passed since the first billing for a delinquent fee installment; and

(2) At least three billing notices and a letter have been mailed to the property owner, within the period specified in subsection (1) of this section, explaining that a lien may be imposed for any delinquent fee installment that has not been paid in that period.

The lien shall otherwise be subject to the provisions of chapter 36.94 RCW related to liens for delinquent charges. The county shall record liens for any delinquent fees in the office of the county auditor. Failure on the part of the county to record the lien does not affect the validity of the lien.

36.36.050 Dissolution of aquifer protection area—Petition—Ballot proposition.
A county legislative authority may dissolve an aquifer protection area upon a finding that such dissolution is in the public interest.

A ballot proposition to dissolve an aquifer protection district shall be placed on the ballot for the approval or rejection of the voters residing in an aquifer protection area, when a petition requesting such a ballot proposition is signed by at least twenty percent of the voters residing in the aquifer protection area and is filed with the county legislative authority of the county originally creating the aquifer protection area. The ballot proposition shall be placed on the ballot at the next general election occurring sixty or more days after the petition has been filed. Approval of the ballot proposition by a simple majority vote shall cause the dissolution of the aquifer protection area.
Planning and Development Services Policy

Subject/Title: Conservation Program on Agriculture Land (CPAL) – Animal Threshold, Resource Priority
Number: PL1-85-004Z
Effective Date: 05/06/10
Submitted By: Peter Gill, Senior Planner
Reviewed By: Natural Resources/Long Range Planning
Approved By: David Stalheim, Director

Statement:
This Administrative Procedure describes livestock operations that are deprioritized for farm conservation planning. This procedure applies to landowners that do not exceed the number of animals set forth below, have at least three grazable acres, and manage their animals to avoid a direct discharge of sediment or fecal matter to surface waters.

(1) Cow, or
(1) Horse, or
(2) Sheep or lamb, or
(2) Alpacas, or
(2) Non-breeding Pigs, or
(2) Goats, or
(20) Ducks or Geese, or
(30) Chickens.

Experience implementing farm plans has shown that with very few animals the anticipated impacts to critical areas are so negligible that a farm plan may not be necessary to protect existing functions and conditions. If there is a direct discharge to surface waters, a farm plan is required regardless of the number of livestock on the property. Indicators of direct discharge can include de-vegetated riparian area, unfenced access to a stream, animal confinement area adjacent to surface waters. There is no multiplier for acreage; this is not an animal per acre threshold. Even if the animals are grazed on 100 acres, they are most often fed, sheltered, and cared for in one central location. Grazable acres include both pasture and hayland, as described in the Whatcom County Standard Farm Conservation Planning Workbook.

A land owner that does not have critical areas on their property does not require a farm plan.

A property owner that keeps agricultural activities out of the standard Critical Area buffers does not require a farm plan.
TITLE OF DOCUMENT: A Resolution Vacating a Portion of Chets Road

ATTACHMENTS: 1. Cover Memo
2. Resolution
3. Neighboring Land Owner's Petition
4. Map of Site
5. Engineer's Report
6. Comparative Market Analysis

SEPA review required? ( ) Yes (X) NO
SEPA review completed? ( ) Yes ( ) NO
Should Clerk schedule a hearing? (X) Yes ( ) NO
Requested Date: 7-11-17

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

The attached Resolution Vacating a Portion of Chets Road is submitted per RCW 36.87 and WCC 12-20.

The County Engineer has examined the petition for vacation, determined that the Public will not benefit from approval of the vacation and thus is not in favor of this vacation petition. County Engineer does not recommend approval of this resolution.

COMMITTEE ACTION:

COUNCIL ACTION:
6/27/2017: Introduced 7-0

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:
AB 2017-051

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.
SPONSORED BY: __________
PROPOSED BY: __________ Public Works
INTRODUCTION DATE: __________

RESOLUTION NO. __________

A RESOLUTION VACATING A PORTION OF CHETS ROAD

WHEREAS, on September 17, 2016, Robert Woods and Petra Tode-Woods submitted a petition for the vacation of a portion of Chets Road lying within the unincorporated area of Whatcom County, accompanied by the penal sum of $790.00; and,

WHEREAS, as described in RCW 36.87.010, when a county road or any part thereof is considered useless, the Whatcom County Council may declare by resolution its intention to formally consider vacation; and

WHEREAS, the County Council voted 7-0 on January 24, 2017, to consider this vacation request and directed the County Engineer’s office to report; and

WHEREAS, the County Engineer’s office has reviewed the portion of the street which is a Class B-2 right-of-way, wherein no public expenditures were made or they are non-ascertainable from records, and part or all lies within a platted subdivision, and in the exercise of his judgment has determined that the public will not benefit from said vacation; and

WHEREAS, it is unknown if there are public utilities located within the portion of the right-of-way to be vacated, but an easement for said utilities will be retained by the County, and

WHEREAS, the fair market value has been determined to be $7.80 per square foot for the approximately 4,800 square feet included within this portion of Chets Road, making the total value of the area to be vacated $37,440.00; and

WHEREAS, the County Engineer has reviewed said compensation and determined it to be fair value; and

WHEREAS, the petitioner has met all of the petition requirements, as set forth by Chapter 12.20 Whatcom County Code, and all other applicable laws; and

WHEREAS, the applicant has six calendar months from the date of the Preliminary Order of Vacation to pay any remaining fees to the Whatcom County Council office, which checks should be made payable to the Whatcom County Treasurer, prior to the vacation becoming effective, including but not limited to the appraised value of the area sought to be vacated; and

WHEREAS, this vacation does not become effective until the fees are paid and the Final Order and Resolution are recorded with the County Auditor;

NOW, THEREFORE, BE IT RESOLVED that it is the intention of the Whatcom County Council to vacate the following described right of way:


The North 20.00 feet of Chets Road abutting Lot 44 and the South 20.00 feet of said Road abutting Lot 43, all lying West of Claire Lane in the Plat of Boundary Heights, according to the plat thereof, recorded in Volume 10 of Plats, Page 44, records of Whatcom County, Washington.

SUBJECT TO and/or together with all easements, covenants, restrictions, and/or agreements of record or otherwise; and

SUBJECT TO an easement retained by the County in respect to the vacated portion of right-of-way for the construction, repair, and maintenance of any and all public utilities and services, now located on or in the vacated portion.

BE IT FURTHER RESOLVED that upon applicants’ completion of payment for the property and of all other fees, a Final Order of Vacation shall be prepared by Council Staff, signed by the appropriate parties, and recorded with the County Auditor; and

BE IT FURTHER RESOLVED that if the conditions set forth above are not fulfilled within six months from the date of the passage of this Resolution, the Preliminary Order of Vacation which is hereby authorized shall be withdrawn, and the right-of-way shall not be deemed to have been vacated.

APPROVED this _____ day of ______________, 2017

ATTEST:
WASHINGTON

Dana Brown-Davis, County Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY,

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Chief Civil Deputy Prosecutor
CHETS ROAD VACATION
PORTION OF NW 1/4, NW 1/4 & GOVT LOT 1, SECTION 12,
TOWNSHIP 40 NORTH, RANGE 3 WEST OF W.M.
POINT ROBERTS, WHATCOM COUNTY, WASHINGTON

ROBERT WOODS & PETRA TONDE-WOODS
7,194 SF
89°41'26"E 120.00'

NORTH 20' CHETS RD. TO BE VACATED TO LOT 44
2,400 SF

S 89°41'26"W 120.00'

CHETS ROAD

SOUTH 20' CHETS RD. TO BE VACATED TO LOT 43
2,400 SF

S 89°41'26"W 120.00'

ROBERT WOODS & PETRA TONDE-WOODS
7,198 SF
89°41'26"W 120.00'

SET CAPPED REBAR
MARKED "NW & GPS" LS.49276 & 50982"
(TYPICAL)

FOUND 3/4" BARE IRON PIPE (TYPICAL)

SCALE: 1 INCH = 60 FEET
MEMORANDUM

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

Through: Jon Hutchings, Director

From: Andrew Hester, Real Estate Coordinator

Date: June 12, 2017

Re: A Resolution Vacating a Portion of Chets Road

The attached petition asks for vacation of approximately 4,800 square feet of right of way, more or less, of Chets Road.

Based on a Fair Market Valuation (FMV) of surrounding comparable properties, the estimated value of the area to be vacated is approximately $37,440.

Recommended Action
The County Engineer’s report has been prepared and is being submitted as not in favor of this road vacation. It is recommended that the County Council set a hearing date for the requested vacation request, publish the vacation request and direct County staff to post the appropriate public notices.

Please contact me at extension 6216 if you have any questions regarding this action.

Encl.
BEFORE THE WHATCOM COUNTY COUNCIL

IN THE MATTER OF VACATION OF
THE COUNTY ROAD KNOWN AS

CHETS ROAD (WEST) )

PETITION FOR VACATION
OF PLATTED ROAD )

(RCW 58.17 AND 36.87) )

Petitioned for by:

ROBERT WOODS
et.al.

E-MAIL bpwoods@shaw.ca

Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, the undersigned and those
signing attached petition, which bears signatures and property descriptions of five land owners residing in
the vicinity of said road, request vacation of the county road hereinafter described, and agree with the
statements below:

1. Petitioners are residents of Whatcom County and owners of real property in the vicinity of the road
sought to be vacated.

2. The road sought to be vacated is legally described as follows: All that portion of Chets Road abutting lots 44+43 Boundary Heights.

3. The pertinent facts in support of this petition are:

4. The road to be vacated is useless as a part of the County road system and the public will benefit by its
vacation and abandonment.

5. Petitioners will pay all costs and expenses incurred by the County in examination, report, notice and
proceedings pertaining to this petition.

6. A bond in the penal sum of $790.00, payable to Whatcom County Treasurer, accompanies this petition.

7. The application fee accompanies this petition.

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a
hearing take place on this report, and that an order be entered vacating and abandoning said road.

CONTACT PERSON:

ROBERT WOODS
699 CLARELACE
PT. ROBERTS, W.A.
Ph # 1-604-887-5340

Signed this 17 day of SEPTEMBER 2016

Page 1 of 2
WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road. (NOTE: A minimum of five signatures is required by law; see statement near the beginning of page 1).

<table>
<thead>
<tr>
<th>NAME</th>
<th>Lot #</th>
<th>Ph #</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. Goecha</td>
<td>42</td>
<td>360 945-1651</td>
</tr>
<tr>
<td>Roy Hubbard</td>
<td>18</td>
<td>360 945 4268</td>
</tr>
<tr>
<td>Raymond Loper</td>
<td>10</td>
<td>360 945 1674</td>
</tr>
<tr>
<td>Ludmila Tam</td>
<td>38</td>
<td>360 356 1331</td>
</tr>
<tr>
<td>Christopher Carpenter</td>
<td>37</td>
<td>303-587-5565</td>
</tr>
<tr>
<td>Robert C. Weeks</td>
<td>43</td>
<td>1-604 585 5340</td>
</tr>
<tr>
<td>Pelzer Tode-Week</td>
<td>44</td>
<td>1-604 760 3706</td>
</tr>
</tbody>
</table>

A map of the road proposed to be vacated and surrounding properties, with each of the above signed petitioners properties indicated thereon, shall be attached to this petition in order for it to be accepted in the County Council Office.
WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road. (NOTE: A minimum of five signatures is required by law; see statement near the beginning of page 1).

PETITIONERS’ NAMES: Property owned by petitioner (part of sec. or name of plat, see (lot), TWP. (Blk) Range):

DEAR SIR/MADAM,

WE (the petitioners) ONE REQUESTING THE PURCHASE OF THE WEST HALF OF CHETS ROAD AS OUTLINED ON ENCLOSED MAP. WE ASK THAT THIS BE GRANTED TO US FROM THE COUNTY SUBJECT TO A 20 FOOT EASEMENT IN FAVOR OF THE UTILITY COMPANIES AND FIRE DEPARTMENT ACCESS.

CHETS ROAD HAS NEVER BEEN IMPROVED AS A PUBLIC ROAD ACCESS AND AS SUCH IS REDUNDANT AS A PART OF THE COUNTY ROAD SYSTEM AND WE BELIEVE NEVER WILL BE. IT IS 60 FOOT WIDE AND 170 FEET LONG ENDING AT A 40 ACRE PROPERTY AND IS IN ITS OWN NATURAL STATE. AS ADJOINING OWNERS WE RECEIVED A TRAIL PERMIT FROM THE COUNTY AND CLEARED A 20 FOOT WIDE STRIP OF CHETS ROAD TO GAIN VEHICULAR ACCESS TO OUR PROPERTY.

WE OWN PROPERTIES ON BOTH SIDES OF CHETS ROAD FOR ITS TOTAL LENGTH.

ENCLOSED PLEASE FIND MAP OF ROAD (MARKED) AND SIGNATURES OF PETITIONERS AND THEIR PROPERTIES INDICATED.

THANKS FOR YOUR CONSIDERATION IN THIS MATTER.

[Signature]

A map of the road proposed to be vacated and surrounding properties, with each of the above signed petitioners properties indicated thereon, shall be attached to this petition in order for it to be accepted in the County Council Office.
Supplement to application

Simply put we wish for a “vacation “ of the property to us with the provision that we put in a road which is capable of ensuring access for Water , Fire , Power and Ambulance to the 40 acres west of our properties. We also acknowledge your reference to a possible requirement for any kind of drainage. This 20ft road will be maintained in good order by ourselves and the owners of the 40 acres on an ongoing basis.

We have contacted and thoroughly discussed the proposal with the owners of the adjacent 40 acre property and they are in agreement with and support the application.
Agreement

The owners of all properties surrounding the County property known as Chets Road jointly are making application to Whatcom County to purchase the County property known as Chets Road. The proposal is to relocate the roadway access to the 40 acres via a private road access of 20 foot width and provide a municipal services and fire truck corridor within this private road. The remainder of the property would be created into a titled privately held property in favor of the north and south properties owned by Robert Woods and Petra Tode-Woods.

The property is depicted on the previous information supplied in the application.

Signed and agreed:

/ 

"Jimmy" S H Lee Date: Oct 18, 2016

Elizabeth Tanea Date: Oct 18, 2016
AFFIDAVIT OF POSTING

IN THE MATTER OF VACATING A WHATCOM COUNTY ROAD KNOWN AS A portion of Chets Road, filed in the Whatcom County Council Office under AB2017-215:

I, ____________________________, on the ____ day of __________, 2017 posted two notices of hearing concerning the proposal to vacate a road as described above.

The notices were posted at the following locations:

1. 

2. 

Signature: ______________________________

*Please return original to the Council Office when completed.*
REPORT OF THE COUNTY ENGINEER
(Whatcom County Code 12.20.050)

IN THE MATTER OF THE VACATION OF A COUNTY ROAD Portion of Chets Road lying West of Claire Lane

COUNTY ENGINEER'S REPORT

PETITIONED BY Robert Woods et al.

I, the undersigned County Engineer of Whatcom County, State of Washington, being duly directed by the Whatcom County Council to examine and report on County Road

The North 20.00 feet of Chets Road Abutting Lot 44 and the South 20.00 feet of said Road Abutting Lot 43, all lying West of Claire Lane in the Plat of Boundary Heights, Point Roberts, Whatcom County, Washington Proposed for vacation by the petition of: Robert Woods et al.

did examine said road and report as follows:

<table>
<thead>
<tr>
<th>IN FAVOR</th>
<th>NOT IN FAVOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Said road should be vacated.</td>
<td>Said road should not be vacated.</td>
</tr>
<tr>
<td>Fair Market Value (12.20.060 E) 0.11ac + - (4,800sf + -) acres @ $37,440</td>
<td>Said road is not in use as a County road. 1. It will be advisable to preserve this road. The public will not be benefited by this vacation.</td>
</tr>
</tbody>
</table>

2. Classification (12.20.060 F)

<table>
<thead>
<tr>
<th>Class A</th>
<th>Public expenditures made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class B</td>
<td>X No public expenditures made or non-ascertainable from records</td>
</tr>
<tr>
<td>Class 1</td>
<td>No part thereof lies in any plat</td>
</tr>
<tr>
<td>Class 2</td>
<td>X Part or all lies within a platted subdivision</td>
</tr>
<tr>
<td>Class 3</td>
<td>Did not remain unopened for public use for five or more years after the order made or authority granted for opening it.</td>
</tr>
<tr>
<td>Class 4</td>
<td>Remained unopened for public use for five or more years after the order made or authority granted for opening it.</td>
</tr>
<tr>
<td>Class 5</td>
<td>Is contained within that portion of a plat which is to be replatted</td>
</tr>
<tr>
<td>Class 6</td>
<td>Abandoned in fact due to relocation of right-of-way</td>
</tr>
<tr>
<td>Class 7</td>
<td>Informalities exist in the records of title which are construed to invalidate and divest the public of any right, title, or interest in the right-of-way.</td>
</tr>
</tbody>
</table>

The public will be benefited by this vacation. yes ___ no ___

[Signature]
Whatcom County Engineer

5/3/12
Date
COMPARATIVE MARKET ANALYSIS – CHETS ROAD VACATION PETITION

PETITIONER: Roberts Wood and Petra Tode-Woods
PROPERTY LOCATION: Portion of Chets Road
OWNER NAME: Whatcom County
CURRENT USE: Access/Driveway (unopened right-of-way)
AREA ZONING: Rural Residential Island

BACKGROUND:
Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, Robert Woods and Petra Tode-Woods are petitioning the County to vacate an area of approximately 4,800 square feet, more or less, consisting of the north and south 20 feet of the 60 foot Chets Road right-of-way within the Boundary Heights Plat adjacent to Lots 44 and 43.

SALES RELIED ON:
Six comparable land sales were used to prepare this market evaluation of the subject property and they sold between July 2012 to September 2015. Sale prices ranged from $6.25 to $9.31 per square foot.

Comparative #1 is located on Claire Lane and is adjacent to the subject property. It is approximately 0.17 acres and was vacant land at the time of the sale. It sold on July 10, 2012 for $61,000 or $8.47 per square foot.

Comparative #2 is located on 728 Claire Lane and is approximately 350 feet south of the subject property. It is approximately 0.17 acres and is vacant land. It sold on March 27, 2015 for $56,000 or $7.78 per square foot.

Comparative #3 is located on Claire Lane and is across the road from the subject property. It is approximately 0.17 acres and is vacant land. It sold on May 28, 2015 for $55,000 or $7.64 per square foot.

Comparative #4 is located on Claire Lane and is adjacent to the subject property. It is approximately 0.17 acres and is vacant land. It sold on June 19, 2015 for $53,000 or $7.36 per square foot.

Comparative #5 is located on Claire Lane and is 150 feet south of the subject property. It is approximately 0.17 acres and is vacant land. It sold on July 8, 2015 for $67,000 or $9.31 per square foot.

Comparative #6 is located on 747 Clair Lane and is 500 feet south of the subject property. It is approximately 0.17 acres and is vacant land. It sold on September 1, 2015 for $45,000 or $6.25 per square foot.

While the six comparable sales are not recent they are within the same plat of the subject property and they are very close to the subject property. In addition to that they are all vacant properties and the size and site conditions are essentially the same as the subject property. After reviewing the assessed value of the comparable properties at the time of the sales with the current assessed value of the comparable properties.

322 N. Commercial Avenue, Suite 110, Bellingham, WA 98225

469
and reviewing other sales in the area it would appear that the market for vacant lots has remained fairly stagnant. Averaging those six sales arrives at a price per square foot of $7.80 and is relied on most heavily for the Fair Market Value.

RECOMMENDED COMPENSATION TO COUNTY for 4,800 net square feet X $7.80 PSF = $37,440.00

Prepared By: Andrew Hester, Real Estate Coordinator
Whatcom County Public Works

Date: 5-8-17

This market analysis does not constitute an appraisal as defined by USPAP.
Memorandum

TO: Joe Rutan, Whatcom County Engineer
FROM: Amy Keenan, Senior Planner, PDS
THROUGH: Sam Ryan, Director, PDS
DATE: July 18, 2017
SUBJECT: Petition to Vacate Chets Road (AB2017-215)

Planning and Development Services (PDS) was asked to submit a recommendation to the Whatcom County Council regarding a petition of vacate the western portion of Chets Road in Point Roberts, Washington. PDS has reviewed the petition and zoning of adjacent properties for future development potential.

Point Roberts is considered a limited area of more intense rural development (LAMRID) and is designated as Rural Community in the Whatcom County Comprehensive Plan. The area is zoned for additional development subject to existing lot sizes and utility availability.

The properties north and south of the Chets Road vacation request were created in 1969 by the Boundary Heights subdivision and are zoned Rural Residential (RR1). The Boundary Heights lots are not eligible for subdivision; however, single family residences can be built on vacant lots within this subdivision.

The property to the west of the proposed Chets Road vacation is a 40 acre parcel zoned Transitional (TZ) owned by Mr. Lee (see Attachment A). The TZ zone allows for a subdivision at one unit per acre with open space requirements. A 40 lot subdivision on the parcel is a possibility in the future and the western portion of Chets Road to Claire Lane would likely be used for vehicular, utility, pedestrian and emergency access.

Furthermore, the property to the west of Mr. Lee's property has recently received final approval for a 58 lot subdivision known as the Cottages at Seabright Farms (see Attachment A). Through the subdivision process PDS and Public Works required the applicant to dedicate public road right-of-way for a potential connection through the adjacent 40 acre parcel to Chets Road.

At this time, PDS does not recommend granting the petition to vacate the western portion of Chets Road. The right-of-way may be necessary for future development of the adjacent 40 acre parcel for access, utility, emergency and/or pedestrian access purposes including a link to Lily Point Marine Park. Chets Road would likely provide a significant connection for future development.
Ordinance Granting Mobility, LLC a non-exclusive franchise for provision of telecommunications services.

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County rights-of-way. This is a new franchise allowing for use and presence in the County rights-of-way in order to provide telecommunications services.

6/27/2017: Introduced 7-0

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,
    Honorable Members of the Whatcom County Council

THROUGH: Jon Hutchings, Director

FROM: Andrew Hester, Public Works Real Estate Coordinator

RE: Franchise for Mobilitie, LLC

DATE: June 12, 2017

• Requested Action
  Adopt an ordinance that grants a franchise to Mobilitie, LLC, allowing it to use and
  be present in County Rights of Way in order to provide telecommunication services
  per the terms of the franchise Agreement, under RCW 36.55 and § 9.30 of the
  Home Rule Charter.

• Background and Purpose
  Mobilitie, LLC has applied for a new franchise agreement for the purposes of
  utilizing County rights of way to provide telecommunications services.

  Please contact Dan Gibson at extension 5756 if you have any questions or concerns
  regarding the terms of this agreement.

Encl.
GRANTING MOBILITIE, LLC, A NON-EXCLUSIVE FRANCHISE FOR THE PROVISION OF
TELECOMMUNICATIONS SERVICES

WHEREAS, Mobilitie, LLC, ("Grantee") has applied to Whatcom County ("County") for a
non-exclusive franchise for the right of entry, use, and occupation of those public Rights-of-Way
within the County, expressly to install, construct, erect, operate, maintain, repair, relocate and
remove Grantee Facilities in, on, upon, along and/or across those Rights-of-Way for purposes of
offering and providing Telecommunications Services utilizing said Grantee Facilities ("Grantee
Services"); and

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom
County Code Chapter 12.24 address the requirements pertaining to the granting of franchises
by the County; and

WHEREAS, said application has come on regularly to be heard by the County Council on
the ___ day of ____________, 2017, and notice of this hearing has been duly published on
the ___ day of ____________, 2017, and the ___ day of ____________, 2017, in the
Bellingham Herald, a daily newspaper published in Whatcom County having county-wide
circulation; and

WHEREAS, from information presented at such public hearing, and from facts and
circumstances developed or discovered through independent study and investigation, the
County Council now deems it appropriate and in the best interest of the County and its
inhabitants that a franchise be granted to Grantee.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a non-
exclusive franchise set forth in the language herein below, Sections 1 through 24, is hereby
granted to Mobilitie, LLC for a period of twenty five (25) years in order that it may, subject to
the terms of this ordinance and other pertinent requirements of law, install, construct, erect,
operate, maintain, repair, relocate and remove Grantee Facilities in, on, upon, along and/or
across those Rights-of-Way for purposes of offering and providing Telecommunications Services
utilizing said Grantee Facilities.
Section 1. Grant of Franchise Right to Use Franchise Area.

A. Subject to the terms and conditions stated herein, County hereby grants to Grantee a franchise as set forth in this Ordinance (this “Franchise”), including permission to enter, use and occupy those Rights-of-Way within unincorporated Whatcom County as now or hereafter constituted (the “Franchise Area”).

B. Grantee is authorized, subject to other applicable requirements of law, to install, remove, construct, erect, operate, maintain, relocate and repair the facilities necessary or convenient for Grantee Services and all appurtenances thereto (collectively, “Grantee Facilities”) in, along, under, and across the Franchise Area.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities and Grantee Services as provided herein, and it extends no right or privilege relative to any facilities or services of any type, including Grantee Facilities and Grantee Services, on private property within County. This Franchise does not authorize the Grantee to provide “cable services” (as such term is defined in federal law), and if Grantee or anyone using Grantee Facilities desires to offer “cable services” in the future, a further agreement with the County will be required prior to providing such service.

D. This Franchise is non-exclusive and does not prohibit County from entering into other agreements, including other franchises, impacting the Franchise Area, unless County determines that entering into such agreements interferes with Grantee’s rights set forth herein.

E. Except as explicitly set forth herein, this Franchise does not waive any rights that County has or may hereafter acquire with respect to the Franchise Area or any other County roads, Rights-of-Way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, Grantee acknowledges its use of the Franchise Area shall have no value.

F. County reserves the right to change, regrade, relocate, abandon, or vacate any Right-of-Way within the Franchise Area. If, at any time during the term of this Franchise, County vacates any portion of the Franchise Area containing Grantee Facilities, County shall reserve an easement for public utilities within that vacated portion within which Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

G. Grantee agrees that its use of Franchise Area shall at all times be subordinate and subject to County’s and the public’s need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.
Section 2. Notices.

A. Written notices to the parties shall be sent by certified mail to the following addresses, unless a different address shall be designated in writing and delivered to the other party.

County: County Executive
Whatcom County Courthouse
311 Grand Ave., Suite 108
Bellingham, WA 98225

Grantee: Mobilitie, LLC
Attn: Legal Department
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660

With copies to:

Mobilitie, LLC
Attn: Asset Management
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660

B. Any changes to the Grantee’s information shall be sent to County’s Public Works Director referencing the title of this agreement.

C. The Grantee’s voice number, 877-244-7889 (Operations Center), shall be staffed at least during normal business hours, at least from 8:00 a.m. to 5:00 p.m., Pacific Time Zone.

In all cases, “normal business hours” must also include some evening hours at least one night per week and/or some weekend hours.

Section 3. Term of Franchise.

A. This Franchise shall run for a period of twenty five (25) years from the date of execution specified in Section 5.

B. If the parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the obligations and privileges of this Franchise shall nonetheless continue in full force and effect until renewed or otherwise terminated by either party through written notice to that effect.
Section 4. Definitions.

For the purpose of this Franchise:

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Emergency" means a condition of imminent danger to the health, safety and welfare of persons or property located within County including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

"Grantee Facilities" means such poles, antenna, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related wireline and wireless property or equipment as may be necessary or appurtenant to Grantee's telecommunications system.

"Franchise Area" means those public Rights-of-Way located within the unincorporated area of the County.

"Grantee Services" means Telecommunications Services and services ancillary thereto provided by Grantee to its wireless carrier customers.

"Gross Revenues" means all revenues received by Grantee from the operation of the Grantee Facilities within the Rights-of-Way, including, but not limited to all rents, payments, fees and other amounts actually collected from any third party and received by Grantee and allocable to the period within the Term pursuant to any sublease, sublicense or other agreement for telecommunications services provided with respect to Grantee Facilities, but exclusive of:

1. any payments, reimbursements or pass-throughs from the third party to Grantee:
   a. for utility charges, taxes and other pass-through expenses, or
   b. in connection with Maintenance work performed or equipment installed by Grantee;
2. site acquisition, construction management or supervision fees related to the installation of the Grantee Facilities; and
3. contributions of capital by any third party to reimburse Grantee in whole or in part for the installation of the Grantee Facilities.

"Maintenance" or "Maintain" means examining, testing, inspecting, repairing, maintaining and replacing the existing Grantee Facilities or any part thereof, including as required and necessary for safe operation.
“Person” means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Washington, and includes any natural person.

“Relocation” means permanent movement of Grantee Facilities required by County, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

“Right-of-Way” (pluralized as “Rights-of-Way”) means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public properties and in the Franchise Area.

“State” means the State of Washington.

“Telecommunications Service” has the same meaning as “Telecommunications service” as defined under 47 U.S.C. § 153 (2012).

Section 5. Acceptance of Franchise.

A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the Whatcom County Council the Statement of Acceptance, attached hereto as Exhibit A (the “Franchise Acceptance”). The date that the Franchise Acceptance is filed with the County Council shall be the effective date of this Franchise.

B. Should Grantee fail to file the Franchise Acceptance with the County Council within 30 days after the effective date of this ordinance, the Franchise will automatically terminate and shall be null and void.

Section 6. Construction and Maintenance.

A. Grantee shall apply for, obtain, and comply with the terms of all permits required under Whatcom County Code 12.16, 12.24, 12.27, 12.28, 12.30, 20.13 and any other pertinent provisions of law as may now or hereafter apply, for any work done on, or to install Grantee Facilities. Grantee shall comply with all applicable County, State, and federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner consistent with the standards of the telecommunications industry. Modifications shall not be subject to additional approval hereunder (except such permitting as is required by applicable law) to the extent that: (i) such modification to Grantee Facilities involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of Grantee Facilities, as approved by County; or (ii) such modification involves replacement of Grantee Facility with a facility that is the same, or
smaller in weight and dimensions as the approved Facility. Grantee will notify County of any such modification within fifteen (15) days after modification is made.

B. Grantee agrees to use commercially reasonable efforts to coordinate its activities with County and all other affected utilities located within the Franchise Area.

C. County expressly reserves the right to prescribe in a reasonable manner how and where Grantee Facilities shall be installed within the Franchise Area and may from time to time, pursuant to the applicable sections of this Franchise, direct in writing the removal, Relocation and/or replacement thereof as required by the public interest and safety at the expense of Grantee. Grantee shall have no less than 60 days following receipt of such written direction to complete the removal, Relocation, and/or replacement of Grantee Facilities, provided that Grantee shall have such extended period of 30 days as may be required beyond the initial 60 days if Grantee commences removal, Relocation, and/or replacement of Grantee Facilities within the initial 60 day period and thereafter continuously and diligently pursues such required performance to completion.

D. Upon prior written approval of County and in accordance with County ordinances, Grantee shall have the authority, but not the obligation, to reasonably trim trees upon and overhanging streets, Rights-of-Way and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, County may, at its sole discretion, remove such debris and charge Grantee for the cost thereof. This section does not in any instance grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land clearing permit.

E. Consistent with Sections 12.16, 12.24, 12.27, 12.28, and 12.30 of the Whatcom County Code, in case of any disturbance of any road, pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping or surface, promptly and in as good condition as before said work was commenced and in accordance with standards for such work set by the County and the County Code. If Grantee fails, neglects or refuses to make restorations as required under this Section, then the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.

F. Grantee shall maintain all above-ground improvements that it places on County Rights-of-Way pursuant to this franchise. In order to avoid interference with the County’s ability to maintain its roads and associated Rights-of-Way, Grantee shall provide a clear zone of five feet on all sides of such improvements. For these purposes, “clear zone” means an area that is mowed or otherwise maintained so that the Grantee Facilities are readily visible to County maintenance operations. The foregoing obligations shall not apply to above-ground, pole-mounted antenna but shall apply to any poles or other structures at ground level erected
or managed by Grantee hereunder. If Grantee fails to comply with this provision, and by its failure property is damaged, then Grantee shall be responsible for all damages caused thereby.

G. Grantee shall maintain a minimum underground horizontal separation of five (5) feet from County water facilities and ten (10) feet from above-ground County water facilities; provided, that for development of new areas, County, together with Grantee and other utility purveyors or authorized users of Rights-of-Way, will develop and follow the Public Works Director’s determination of a consensus for guidelines and procedures for determining specific utility locations, subject additionally to this Franchise.

H. Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee’s operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee. A complete set of reference notes for monuments and other ties shall be filed with the County Engineer’s Office.

Section 7. Repair and Emergency Work.

In the event of an Emergency, Grantee may commence such repair and Emergency response work as required under the circumstances, provided that Grantee shall notify the County Public Works Director in writing as promptly as possible, before such repair or Emergency work commences, or as soon thereafter as possible, if advance notice is not practical. County may act, at any time, without prior written notice in the case of Emergency, but shall notify Grantee in writing as promptly as possible under the circumstances.

Section 8. Damages to County and Third-Party Property.

Grantee agrees that should any of its actions under this Franchise materially impair or damage any County property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, said property to a safe condition. Such repair work shall be performed and completed to the reasonable satisfaction of the County Engineer.

Section 9. Location Preference.

Any structure, equipment, appurtenance or tangible property of a utility, other than Grantee’s, which was installed, constructed, completed or in place prior in time to Grantee’s application for a permit to construct Grantee Facilities under this Franchise shall have
preference as to positioning and location with respect to Grantee Facilities. However, to the extent that Grantee Facilities are completed and installed prior to another utility’s submittal of a permit for new or additional structures, equipment, appurtenances or tangible property, then Grantee Facilities shall have priority. These rules governing preference shall continue in the event of the necessity of relocating or changing the grade of any County road or Right-of-Way. A relocating utility shall not necessitate the relocation of another utility that otherwise would not require Relocation. This Section shall not apply to any County facilities or utilities that may in the future require the Relocation of Grantee Facilities. Such Relocations shall be governed by Section 11.

Section 10. Grantee Information.

A. Grantee agrees to supply, at no cost to County, any information reasonably requested by the Director of Public Works to coordinate municipal functions with Grantee’s activities and fulfill any municipal obligations under State law. Said information shall include, at a minimum, as-built drawings of Grantee Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within County. Said information may be requested either in hard copy and/or electronic format, if reasonably possible in a format compatible with County’s database system, as now or hereinafter existing, including County’s Geographic Information Service (GIS) data base. Grantee shall use commercially reasonable efforts to keep the Public Works Director informed of its long-range plans for coordination with County’s long-range plans.

B. The parties understand that Washington law limits the ability of County to shield from public disclosure any information given to County. Accordingly, the County will endeavor in good faith to provide Grantee reasonable notice of any request for public disclosure of information of Grantee to allow Grantee to take such actions as Grantee may determine and at Grantee’s sole cost and expense to prevent or limit such disclosure. Grantee shall indemnify and hold harmless County for any loss or liability for costs and for attorneys’ fees because of non-disclosures requested by Grantee under Washington’s open public records law, provided reasonable notice and opportunity to defend was given to Grantee or Grantee is made aware of a pending request or claim.

Section 11. Relocation of Grantee Facilities.

A. Except as otherwise so required by law, Grantee agrees to Relocate, remove, or reroute Grantee Facilities as reasonably ordered by the County Engineer at no expense or liability to County, the time frame for which shall be reasonably determined by the County Engineer and which shall in no event be less than sixty (60) days following the date of written notice of such order, provided that Grantee shall have such extended period of 30 days as may be required beyond the initial 60 days if Grantee commences removal, Relocation, and/or replacement of Grantee Facilities within the initial 60 day period and thereafter continuously and diligently pursues such required performance to completion. Any determination to require the Relocation of Grantee Facilities shall be made in a reasonable, uniform and non-
discriminatory manner. Any County funds used to reimburse costs incurred by any Person in connection with any relocation shall be allocated in a reasonable, uniform and non-discriminatory manner. Pursuant to the provisions of Section 14, Grantee agrees to protect and save harmless County from any customer or third-party claims for service interruption or other losses in connection with any such change, Relocation, abandonment, or vacation of public property.

If Grantee fails, neglects or refuses to remove or relocate Grantee Facilities as directed by the County; or in emergencies or where public health and safety or property is endangered, the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee. If Grantee fails, neglects or refuses to remove or relocate Grantee Facilities as directed by another franchisee or utility with authority to so direct Grantee, that franchisee or utility may do such work or cause it to be done, and if Grantee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

B. If a readjustment or Relocation of Grantee Facilities is necessitated by a request to Grantee from a Person other than County, that party shall pay Grantee the actual costs thereof.

C. Grantee and the County acknowledge and commit to fully comply with their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (Underground Utilities Locator Statute) or any other law applicable to determining the location of utility facilities. Thus, before commencing any work within the Franchise Area, Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

D. Design locate marks will be placed in the same three (3) day time frame as construction locate marks.

Section 12. Abandonment and or Removal of Grantee Facilities.

A. Within one hundred and eighty (180) days of Grantee’s permanent cessation of use of Grantee Facilities, or any portion thereof, Grantee shall, at County’s discretion, either abandon in place or remove the affected facilities.

B. The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise.

Section 13. Undergrounding.

A. The parties agree that this Franchise does not limit County’s authority under federal law, State law, or local ordinance, to require the undergrounding of utilities.
B. Whenever County requires the undergrounding of aerial utilities in the Franchise Area, Grantee shall underground Grantee Facilities in the manner specified by the County Engineer to the extent practical and recognizing that wireless antenna cannot be undergrounded, with payment therefor consistent with the provisions of RCW 36.88.410 et ff. Where other utilities are present and involved in the undergrounding project, Grantee shall be required to pay only its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 14. Indemnification and Hold Harmless.

A. Grantee shall defend, indemnify and hold the County and its officers, officials, agents, employees, and volunteers harmless from any and all claims, demands, suits, actions, costs and expenses, including but not limited to attorney’s fees, made against it by any third party on account of injury or damage to the person or property of another, but only to the extent such injury or damage is caused by the negligence or breach of Grantee, its agents, servants or employees of this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the County, the County shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. Notwithstanding the foregoing, if damages to another or others result from concurrent negligence of Grantee and the County, Grantee and the County shall each be responsible for and this indemnification provision shall be operative so that each party bears the proportionate share attributable to its own negligence. In case judgment which is not appealed shall be rendered against the County in such suit or action, Grantee shall fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined. Upon Grantee’s failure to satisfy said judgment within ninety (90) days, the County may elect to terminate this Franchise pursuant to the terms of Section 19 herein. The provision for reimbursement of the County shall survive the termination of this Franchise.

B. County shall defend, indemnify and hold Grantee harmless from any liability arising out of or in connection with any damage or loss to Grantee Facilities caused by the willful misconduct or gross negligence of County, except to the extent any such damage or loss is directly caused by the negligence of Grantee, or its agents.

C. Grantee acknowledges that neither County nor any other public agency with responsibility for firefighting, Emergency rescue, public safety or similar duties within County has the capability to provide trench, close trench or confined space rescue. Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit
for the provision of such services. Grantee shall hold County harmless from any liability arising
out of or in connection with any damage or loss to Grantee for County’s failure or inability to
provide such services, and, pursuant to the terms of Section 14(A), Grantee shall indemnify
County against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities
based on County’s failure or inability to provide such services.

D. Acceptance by County of any work performed by Grantee shall not be grounds
for avoidance of this section.

Section 15. Insurance.

A. Grantee shall procure and maintain for the duration of this Franchise, insurance
against claims for injuries to persons or damage to property which may arise from or in
connection with the performance of the work hereunder by Grantee, its agents,
representatives, or employees in the amounts and types set forth below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and
leased vehicles with a minimum combined single limit for bodily injury and property damage of
$1,000,000 per accident.

2. Commercial General Liability insurance with limits no less than
$1,000,000 each occurrence, $2,000,000 general aggregate and a $2,000,000 products-
completed operations aggregate limit. Coverage shall cover liability arising from premises,
operations, independent contractors, products-completed operations, stop gap liability, and
personal injury and advertising injury and liability assumed under an insured contract. County
shall be named as an additional insured under Grantee’s Commercial General Liability insurance
policy with respect to the work performed under this Franchise.

3. Workers’ Compensation coverage as required by the Industrial Insurance
laws of the State of Washington.

B. Grantee’s insurance coverage shall be primary and non-contributory insurance
as respects County. Any insurance, self-insurance, or insurance pool coverage maintained by
County shall be in excess of Grantee’s insurance and shall not contribute to or with it to
satisfying any claim or judgment covered hereunder. Grantee’s insurance shall also waive any
rights of subrogation against the County and its agents as it pertains to the scope of this
agreement.

C. Grantee shall furnish County with certificates of the foregoing insurance
coverage with a copy of amendatory endorsements, including but not necessarily limited to the
additional insured endorsement.
D. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by County, and in the event such approval is not obtained, Grantee shall carry such coverage as is herein provided.

E. Grantee’s maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit County’s recourse to any remedy to which County is otherwise entitled at law or in equity.


Grantee shall provide County with a surety bond in the amount of Fifty Thousand Dollars ($50,000) running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to County. In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from the principal and any surety of such surety bond any damages suffered by County as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Grantee specifically agrees that its failure to comply with the terms of Section 19 shall constitute damage to County in the monetary amount set forth therein. Such a financial guarantee shall not be construed to limit Grantee’s liability to the guarantee amount, or otherwise limit County’s recourse to any remedy to which County is otherwise entitled at law or in equity.

Section 17. Successors and Assignees.

A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns of, and independent contractors of Grantee, and all rights and privileges, as well as all obligations and liabilities of Grantee shall inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever Grantee is mentioned.

B. This Franchise shall not be leased, assigned or otherwise alienated, except to an Affiliate of Grantee, without the express consent of County by ordinance, which approval shall not be unreasonably withheld, conditioned, or delayed. Approval shall not be required for mortgaging purposes or if a transfer of interest is from Grantee to (i) another person or entity controlling, controlled by, or under common control with Grantee or (ii) another person or entity purchasing all or substantially all of the assets or stock of Grantee. Within 30 days of the lease, assignment, or other alienation of this Franchise for which prior County approval is not hereunder required, Grantee shall provide reasonable notice to County, including all information with respect to the assignee or transferee that is reasonably required by County of an applicant for a Franchise.
C. To the extent County’s approval is required under Section 17(B), Grantee and any proposed assignee or transferee shall provide and certify the following to County not less than sixty (60) days prior to the proposed date of transfer: (a) complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) all information reasonably required by County of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (c) an application fee which shall be reasonably set by County, plus any other costs actually and reasonably incurred by County in processing and investigating the proposed assignment or transfer.

D. Prior to County’s consideration of a request by Grantee to consent to a Franchise assignment or transfer pursuant to subpart C hereto, the proposed assignee or transferee shall file with County a written promise to unconditionally accept all terms of this Franchise, effective upon such transfer or assignment of this Franchise. County is under no obligation to undertake any investigation of the transferor’s state of compliance and failure of County to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

E. Notwithstanding the forgoing or anything to the contrary in this Ordinance, Grantee may provide capacity across Grantee Facilities to a third party without the consent required under this Section, so long as Grantee retains control over and remains solely responsible for, such communications facilities. The use of Grantee Facilities by third parties (including, but not limited to, leases of dark fiber) that involves no additional attachment and no expanded occupation of the right-of-way is not considered a sublicense to a third party subject to the provisions of this Section.

Section 18. Dispute Resolution.

A. In the event of a dispute between County and Grantee arising by reason of this Franchise, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Franchise. The officers or representatives shall meet within thirty (30) calendar days of either party’s request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Franchise, the parties specifically understand and agree that venue shall be exclusively in Whatcom County, Washington.

Section 19. Enforcement and Remedies.
A. If Grantee shall materially violate or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, County shall provide Grantee with written notice specifying with reasonable particularity of the nature of any such material breach and Grantee shall undertake all commercially reasonable efforts to cure such material breach within thirty (30) days of receipt of notification. If County reasonably determines the material breach cannot be cured within (30) thirty days, County shall specify a longer cure period, and condition the extension of time on Grantee’s submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the material breach is not cured within the specified time, or Grantee does not comply with the specified conditions, County may, at its discretion, either (1) revoke this Franchise with no further notification, or (2) claim damages of One Thousand Dollars ($1,000.00), or actual damages if demonstrably greater, against the financial guarantee set forth in Section 16.

B. Should County reasonably determine that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities and Grantee Services, then, following the expiration of the cure period specified in subpart A of this Section, County reserves the right to cancel this Franchise and require Grantee to apply for, obtain, and comply with all applicable County permits, franchises, or other County permissions for such actions, and if Grantee’s actions are not allowed under applicable federal and state or County laws, to compel Grantee to cease such actions.

Section 20. Compliance with Laws and Regulations.

A. This Franchise is subject to, and Grantee shall comply with all applicable Federal and State or County laws, regulations and policies, including all applicable elements of County’s comprehensive plan, in conformance with federal laws and regulations, affecting performance under this Franchise. Furthermore, notwithstanding any other terms hereof to the contrary, Grantee shall be subject to the police power of County to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

Section 21. Amendments.

A. The parties shall amend this Franchise as reasonably required to accommodate, ensure compliance with, and/or conform to any existing or hereafter enacted, amended, or adopted federal, state, or local statute, ordinance, or regulation, or County ordinance enacted pursuant thereto, or any binding judicial or governmental agency interpretations thereof (including, but not limited to, actions by the Federal Communications Commission or its successor agency) that govern any aspect of the rights or obligations of the parties under this Franchise. In the event that a party seeks such amendment, that party may provide the other party with written notice identifying and setting forth the full text of the desired amendment, and the reason(s) for it. A representative of Grantee and a representative of County, each who have authority to bind
their respective parties, shall meet, in person or telephonically if travel is impractical for either party, no later than thirty (30) days following such written notice. During such meeting, the parties shall in good faith negotiate and execute an amendment to the Franchise to provide for the necessary change, and shall do so within 90 calendar days following such written notice. If the parties do not reach agreement as to the terms of the amendment within 90 days of commencing negotiations, the parties promptly shall mutually agree upon a third-party, neutral arbiter, who shall determine the terms of any such amendment after each party presents to the arbiter their proposed amendment language.

B. Any other amendments to this Franchise must be in writing and executed by authorized representatives of the County and the Grantee.

Section 22. Consideration.

A. As consideration for this Franchise, Grantee commits to pay a County franchise fee of six percent (6%) on Gross Revenues.

B. Grantee’s franchise fee payments to the County shall be computed quarterly for the preceding calendar quarter, with quarters ending March 31, June 30, September 30 and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates. Payments shall be made to the Whatcom County Treasurer, Whatcom County Courthouse, Suite 104, 311 Grand Avenue, Bellingham, WA 98225, unless otherwise specified by the County in writing.

C. No acceptance of any payment shall be construed as an accord by the County that the amount paid is in fact the correct amount, nor shall any acceptance of payments be construed as a release of any claim the County may have for further or additional sums payable or for the performance of any other obligation of Grantee.

D. Each payment shall be accompanied by a written report to the County verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in reasonable detail, of Grantee’s Gross Revenues and the computation of the payment amount. Grantee shall, no later than sixty (60) days after the end of each calendar year, furnish to the County a statement of gross revenues and all payments, deductions and computations for the year just ended. Such statement shall be reviewed and approved by an authorized representative of Grantee prior to submission to the County.

E. During the term of this Agreement, and for a period of one (1) year thereafter, the County may retain (on a non-contingent fee basis) an independent auditor to conduct a reasonable review and audit of Grantee’s relevant records to confirm the performance of payment obligations under this Agreement upon thirty (30) days prior written notice. Each party shall provide a list of two (2) auditors, one (of the four) of whom thereafter must be mutually agreed to by the parties. Such audit shall: (a) be subject to Grantee’s reasonable security and confidentiality requirements; (b) occur no more than once per year and not during the first or last three (3) weeks of a calendar quarter; and (c) transpire during Grantee’s normal
business hours. If the audit shows an underpayment to the County for any period of time, then Grantee shall, within thirty (30) days after completion of such audit, pay such underpaid amounts to the County. If the audit shows an overpayment to the County for any period of time, then the County shall, within thirty (30) days after completion of such audit or by deduction from the next scheduled quarterly payment owed by Grantee, pay such overpaid amounts to Grantee. Any underpayment will also include interest at the maximum allowed rate provided under State law, calculated from the date of the underpayment or overpayment. All expenses associated with such audit shall be paid by the County unless the audit reveals an underpayment of more than ten percent (10%) in payments required hereunder in which case Grantee shall reimburse the County for the reasonable costs of such audit, not to exceed Five Thousand Dollars ($5,000).

F. Any claim arising as a result of such an audit against Grantee must be made in writing within sixty (60) days of the County’s completion of the audit. All information reviewed by the County or its auditor pursuant to any audit shall be deemed to be “Confidential Information” subject to the terms of Section 10 herein and shall be treated as such by the County in accordance with applicable law.

G. No more than once per year, Grantee agrees to meet with a representative of the County upon written request to review Grantee’s methodology of record-keeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of which the County reasonably deems necessary for reviewing reports and records that are relevant to the enforcement of this Agreement.

H. In the event any payment is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay, in addition to the payment or sum due, interest on the amount due at the maximum allowed rate as provided under State law from the date the payment was due until the date the County receives the payment.

I. If this Agreement terminates for any reason, the Grantee shall file with the County, within sixty (60) calendar days of the date of the termination, a financial statement showing the gross revenues received by the Grantee since the end of the previous fiscal year. Within thirty (30) days of the filing of the certified statement with the County, Grantee shall pay any unpaid amounts as indicated. If the Grantee fails to satisfy its remaining financial obligations as required in this Agreement, the County may do so by utilizing the funds available in any security provided by the Grantee.

Section 23. Consequential Damages Limitation.

Notwithstanding any other provision of this Franchise, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 24. Severability.
If any portion of this Franchise is deemed invalid, the remainder portions shall remain in effect.

Section 25.  Titles.

The section titles used herein are for reference only and should not be used for the purpose of interpreting this Franchise.

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:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

__________________________  ________________________
Daniel L. Gibson  Jack Louws, County Executive
Chief Civil Deputy Prosecutor  ( ) Approved  ( ) Denied

Date Signed: _______________
### TITLE OF DOCUMENT:
Appointment of one Councilmember to Serve on the BHAC

### ATTACHMENTS:

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

| 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.)

Appointment of one councilmember to serve on the Behavioral Health Advisory Committee

### 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.
EXHIBIT A

Chapter 2.44

BEHAVIORAL HEALTH PROGRAM*

Sections:
2.44.010 Department responsibilities.
2.44.020 Contracts.
2.44.030 Behavioral health advisory committee is created.
2.44.040 Severability.
2.44.050 References to state law.

*Prior legislative history: Ord. 2012-042 repealed Ch. 2.44. Ords. 87-79, 88-9, 96-032 and 96-061 were formerly codified in the chapter.

2.44.010 Department responsibilities.
A. Administration of Funding. The health department shall administer the behavioral health program under the authority of the county executive. The department shall administer funds for behavioral health programs, including substance abuse and mental health services. This administration will include state and federal funds, local sales and use tax (Chapter 82.14 RCW), local property tax (Chapter 71.20 RCW), and local two percent liquor profits and excise taxes (Chapter 71.24 RCW).

B. Compliance with Federal and State Regulations. The health department shall adhere to all federal and state laws for the administration and coordination of behavioral health services and funding (Chapters 71.24, 82.14, and 71.20 RCWs).

C. Behavioral Health Services. The health department shall plan and prioritize programs and services for people with behavioral health disorders. The health department shall ensure, to the extent allowed by state and federal laws, a system of integrated and coordinated behavioral health care.

D. Cooperation and Coordination with Other Entities. The health department may enter into contracts with and/or receive money from public and private entities to carry out behavioral health services. The department will work with state, regional, and local entities which provide services or funding to assure a reasonable system of care for people with behavioral health disorders.

2.44.020 Contracts.
All previous contracts, agreements, rights, claims and obligations shall continue in full force.

2.44.030 Behavioral health advisory committee is created.
A. The Whatcom county behavioral health advisory committee is created to serve in an advisory capacity to the county executive via the health department on matters of general priorities for behavioral health programs, including substance abuse and mental health services.

B. To ensure advice, implementation and evaluation, the county council authorizes the county executive to appoint ten (10) members of an eleven (11) member advisory committee consisting of one representative from each of the following areas: PeaceHealth Hospital, the judicial branch of Whatcom County government, the Whatcom County sheriff or designee, the Chief of Corrections or designee, and the Whatcom County Public Health Director or designee. The remaining five executive appointed positions shall include two people that are advocates of mental health recovery, two people that are advocates of substance use disorder recovery, and one behavioral health professional. The behavioral health advisory committee shall also include a County Council member appointed by the County Council. The priorities and framework of the advisory committee include the following:
1) Provide advice regarding the planning and development of a continuum of care to effectively provide prevention, intervention, treatment and aftercare services at a capacity that will benefit residents who are impacted by mental illness, emotional disturbances, and substance use disorders.

2) Ensure the local sales and use tax (Chapter 82.14 RCW), property tax (Chapter 71.20 RCW), and two percent liquor profits and excise taxes (Chapter 71.24 RCW) are directed to the intended purpose as outlined by state statute and county code.

3) Ensure an ongoing evaluation process is established and implemented to assure quality of behavioral health programs and services provided to residents.

4) Ensure that a report is provided to County Council no less than once annually that highlights programs funded by sales tax monies.

The term of office for the advocacy and behavioral health professional positions appointed by the executive shall be three years. In order to stagger the terms of office on the initial board:

1. Two members shall be appointed to serve for three years.

2. Two members shall be appointed to serve for two years.

3. One member shall be appointed to serve for one year.

The term of office for the member appointed by the county council shall be for one year. The council member’s term extends from the time of the council’s reorganization meeting in January to the next such meeting in the following year.

C. At their initial meeting or as soon as possible, the advisory committee shall elect officers and adopt a charter. The committee shall adopt rules and regulations of procedure as needed for the conduct of their business.

D. The behavioral health advisory committee may advise the health department about nominees to act as representatives on other county, regional, and state advisory boards and committees.

2.44.040 Severability.
If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected.

2.44.050 References to state law.
Any and all reference to state statutes are in effect as referenced above or as hereinafter amended by state authority.
### WHATCOM COUNTY COUNCIL AGENDA BILL

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<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
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<td>Council</td>
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**TITLE OF DOCUMENT:**
Receipt applications for Board of Equalization representing District 2

**ATTACHMENTS:**
Application

**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.)
Receipt of applications for the Whatcom County Board of Equalization, representing District 2, term ending 1/31/2020. Applicant: John Bruton. The Board ensures that all properties are valued at 100% of market value. The Board may equalize property values by either lowering or raising land/building assessments. Members receive $75 per diem for attending hearings.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
7/25/2017: Introduced 6-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

From: noreply@civicplus.com
Sent: Wednesday, July 05, 2017 12:55 PM
To: Ben Glassett; Jill Nixon; Suzanne Mildner; Kristi Felbinger; Dana Brown-Davis; Executive; NaDean Hanson
Subject: Online Form Submittal; Board and Commission Application

Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement
THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

| First Name | John       |
| Last Name  | Bruton     |
| Date       | 7/5/2017   |
| Street Address | 2311 Huron St |
| 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 | 360-671-0700 |
| Secondary Telephone | 3602241345 |
| Email Address     | taxoffice@msn.com |

Step 2
1. Name of Board or Committee | Board of Equalization

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: | I was on the Board of Equalization for I believe two years in the 1980’s

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

9. Please describe your occupation (or former occupation if retired), qualifications, | I am the senior partner in an accounting firm here in Bellingham. Bruton, Nissen & Schellberg, 119 N. Commercial St Suite 990, Bellingham, WA 98225

Field not completed.
professional and/or community activities, and education

10. Please describe why you’re interested in serving on this board or commission

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<td>When I last served on the Board many years ago I enjoyed the experience. Unfortunately I was also running a full time business and had to resign after only two years. I am about to retire and would be able to devote as much time as necessary to the position.</td>
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References (please include daytime telephone number):

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<tbody>
<tr>
<td>Tim Douglas 676-8530 Roger Despain 820-9121</td>
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</tbody>
</table>

Signature of applicant: John W. Bruton

Place Signed / Submitted: Bellingham, WA

Email not displaying correctly? View it in your browser.
NaDean Hanson

From: NaDean Hanson
Sent: Thursday, July 06, 2017 11:50 AM
To: 'John Bruton'
Subject: RE: Board of Equalization

Thank you for your response. Whatcom County has five districts now, and after checking with the Auditor’s office your address of 2311 Huron Street is in the new County Council District 2. The vacancy on the Board of Equalization is in District 2, and will be submitted to the Council for review.

NaDean Hanson
Whatcom County Council Office
311 Grand Avenue, Suite 105
Bellingham, WA 98225
Main line 360-778-5010
Direct line 360-778-5018

NOTICE: All emails, and attachments, sent to and from Whatcom County are public records and may be subject to disclosure pursuant to the Public Records Act (RCW 42.56)

From: John Bruton [mailto:taxoffice@msn.com]
Sent: Thursday, July 06, 2017 11:30 AM
To: NaDean Hanson
Subject: Board of Equalization

To: N. Hanson

Turns out I am in Council District 2 after all. Although my voters registration card says district 1.

Thank you

John Bruton, EA
Bruton, Nissen & Schellberg Inc PS

This electronic message contains information belonging to Bruton & Schellberg, Inc PS which is confidential and /or privileged information. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this message is strictly prohibited. Please notify us immediately by replying to this message or telephoning us if you have received this message by mistake. Thank you.
TITLE OF DOCUMENT:
Proposed Amendment to WCC 8.13, Solid Waste Disposal District, Regarding the Solid Waste Excise Privilege Tax

ATTACHMENTS:
Draft amendment to 8.13, Solid Waste Disposal District

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.)

Amend WCC 8.13, Solid Waste Disposal District regarding the existing solid waste excise privilege tax, as per RCW 36.58, Solid Waste Disposal, to include levy of the solid waste excise tax upon solid wastes disposed by self-haulers, in addition to the existing levy of the tax upon solid wastes disposed only by certificated and franchised haulers.

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
DATE: July 25, 2017

SUBJECT: Proposed Amendment to WCC 8.13, Solid Waste Disposal District, Regarding the Solid Waste Excise Privilege Tax

Please find attached a proposed amendment to WCC 8.13, Solid Waste Disposal District, regarding the Solid Waste Excise Privilege Tax for review and introduction for public hearing.

Background and Purpose

WCC 8.13.140, Annual review of tax requirements states that 'The executive committee shall annually review the tax requirements to fund the solid waste disposal programs and advise the county council of their findings (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 14).' Additionally, recommendation 9.1.F of the approved 2016 Comprehensive Solid and Hazardous Waste Management Plan states 'Review the adequacy of the existing excise tax levy and exemptions to address recent state funding reductions.

Prior to 1997, as per Ordinance 90-1, solid waste management statutory obligations and programmatic requirements were funded by a $9.00 per ton solid waste surcharge that applied to all solid waste generated in the county. Due to a 1997 solid waste legal arbitration ruling, the surcharge was repealed and replaced by an excise tax. Ordinance 97-41 amended WCC 8.13.030, Excise privilege tax levied, and implemented a solid waste excise tax, not to exceed $8.50 per ton, excluding recyclable materials, that applies only to solid waste collected by certificated and franchised solid waste haulers, as per WCC 8.11.030, rather than to all solid wastes.

Due to subsequent increases, over time, in allowed exemptions to mandatory collection by certificated and franchised haulers, as per WCC 8.11.030, the excise tax has been applied to an ever decreasing percentage of solid waste generated in the county. In 2016, only 65% of the total solid waste disposed in the county was subject to the excise tax. This has resulted in decreased revenues to fund solid waste services.

Additionally, state grant funding for solid waste services was reduced by 38% in 2015, and reduced further by another 36% in 2017, resulting in a current $230,000 annual reduction of state grant funding used to fund the Disposal of Toxics and illegal dumping compliance enforcement programs.

The combined reductions in excise tax and state grant revenue have resulted in levels of funding that are currently inadequate to maintain solid waste statutory obligations and programmatic requirements.
Recommendation

To continue funding solid waste statutory obligations and programmatic requirements, the solid waste excise tax and state grant funding reductions must be replaced with another source of revenue. Additionally, a guiding premise of existing solid waste enabling ordinances is that all users of county solid waste system infrastructure and programs should *equitably* share costs.

As approved by both the Solid Waste Advisory Committee and Solid Waste Executive Committee, it is the staff recommendation that the excise tax also be *levied on solid waste transported by residential and commercial self-haulers*, as per RCW 36.58.140, *rather than only on solid waste transported by certificated and franchised haulers*, as per Exhibit A attached. Levying the excise tax, equitably, at the current established rate of $8.50 per ton would cover the above combined reductions and generate an estimated $422,000 in additional revenue for solid waste services.

As per WCC 8.13.140, *Annual review of tax requirements*, the actual excise tax rate would be reviewed annually and adjusted as appropriate.

Please call Jeff Hegedus at x6044 if there are any questions. Thank you.

Encl.
ORDINANCE NO. ________

AMENDMENT TO WHATCOM COUNTY CODE (WCC) 8.13, SOLID WASTE DISPOSAL DISTRICT REGARDING THE SOLID WASTE EXCISE PRIVILEGE TAX

WHEREAS, solid waste management statutory obligations and programmatic requirements such as closed landfill monitoring and maintenance, Disposal of Toxics facility operations, waste reduction and recycling education, illegal dumping and litter control, compliance enforcement and comprehensive planning require adequate funding mechanisms; and,

WHEREAS, the approved Whatcom County 2016 Comprehensive Solid and Hazardous Waste Management Plan recommends that the adequacy of the existing solid waste excise tax levy to fund solid waste services be reviewed; and,

WHEREAS, WCC 8.13.030, Excise privilege tax levied, levies a solid waste excise tax, currently established at $8.50 per ton, excluding recyclable materials, that applies only to solid waste collected by certificated and franchised solid waste haulers, rather than to all solid wastes, to fund solid waste services; and,

WHEREAS, due to subsequent increases, over time, in allowed exemptions to mandatory curbside collection services, as provided by certificated and franchised haulers, the excise tax has been applied to an ever decreasing percentage of solid wastes, with only 65% of the total solid waste disposed in the county in 2016 being subject to the excise tax, resulting in decreased revenues to fund solid waste services; and,

WHEREAS, additionally, state funding for solid waste services was reduced by 38% in 2015, and reduced further by another 36% in 2017, resulting in a current $230,000 annual reduction of total revenue used to fund solid waste services; and,

WHEREAS, the combined reductions in revenue have resulted in levels of funding that are currently inadequate to maintain solid waste statutory obligations and programmatic requirements; and,

WHEREAS, further, it is not considered equitable that only customers of certificated and franchised solid waste haulers fund solid waste services that are utilized by all; and,

WHEREAS, adequate and equitable funding for solid waste statutory obligations and programmatic requirements must be provided; and,
WHEREAS, as per WCC 8.13.140, Annual review of tax requirements, the Solid Waste Executive Committee has reviewed and recommended the proposed amendment.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that WCC 8.13, Solid Waste Disposal District is hereby amended as shown in Exhibit A attached hereto.

ADOPTED this ____ day of __________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

__________________________
Dana Brown-Davis, Clerk of the Council

__________________________
Barry Buchanan, Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

__________________________
Civil Deputy Prosecutor

__________________________
Jack Louws, County Executive

(  ) Approved   (  ) Denied

Date Signed: ____________________
EXHIBIT A

Chapter 8.13
SOLID WASTE DISPOSAL DISTRICT

Sections:
8.13.010 District formed – Findings and determinations.
8.13.020 Definitions.
8.13.030 Excise privilege tax levied.
8.13.040 Tax collection.
8.13.050 Administration by county treasurer.
8.13.060 Failure to make timely payment.
8.13.065 Records required.
8.13.070 Application of tax – Appeal.
8.13.080 Tax exemptions and special conditions.
8.13.090 Penalties for nonpayment of tax.
8.13.100 Management of operations.
8.13.110 Use of revenues.
8.13.120 Effective date.
8.13.130 Severability.
8.13.140 Annual review of tax requirements.

8.13.010 District formed – Findings and determinations.
The Whatcom County solid waste disposal district ("district") is hereby formed to provide a sound financial basis for support of the objectives of the county’s updated comprehensive solid waste management plan, including a high level of waste reduction and recycling; to construct transfer stations; to maintain closed solid waste landfills in Whatcom County; to provide such other solid waste disposal systems and services as are in the public interest; and to secure a healthful environment for all citizens of Whatcom County. The district shall include all unincorporated and incorporated areas of Whatcom County. Incorporated areas are included within the district pursuant to interlocal agreements executed with Whatcom County, copies of which are attached to the ordinance codified in this chapter and incorporated herein as Appendix A. The county council in forming the district determines and finds:

A. State and federal law and regulation have placed increased responsibility on local governments to manage solid waste disposal systems in a manner that protects public health and safety;

B. Properly designed, operated, and maintained landfills and other solid waste disposal facilities are essential public utilities serving broad public interests, by protecting public health and safety;

C. Federal and state standards for solid waste disposal, including requirements for recycling and waste reduction, have greatly increased the cost of solid waste disposal systems;

D. The transfer and other handling of solid wastes generated by residents of the district, whether generated at their homes or elsewhere in the district, imposes cost burdens on the district;

E. All residences and businesses within the district receive substantial and essential public service by having the operational availability on a continuing basis healthful, safe and reliable solid waste disposal facilities and systems;
F. In order to safely maintain closed landfills, the county must expend substantial sums of money including the cost of ongoing monitoring, to protect the public health and welfare and to meet regulatory standards;

G. The cost of acquiring, developing, operating, maintaining and closing facilities and providing for long-term compliance with regulatory standards cannot be financed solely on a “fee for service” basis;

H. Repealed by Ord. 97-041;

I. Pursuant to Chapter 8.11 WCC, the county concurrently created a solid waste collection district pursuant to Chapter 36.58A RCW for the purpose of imposing mandatory collection in unincorporated areas which will match ordinances in incorporated areas, which enforce mandatory collection;

J. A stable funding program consisting of a district excise tax is required to provide a broad and sound financial basis to provide safe disposal facilities and systems, to meet the objectives of the plan, and to support the management of solid waste programs in compliance with applicable state and federal laws;

K. Waste reduction and recycling measures contemplated by the plan promote the health, safety and welfare of county residents, by reducing the degradation created by incineration and landfill facilities used to dispose of solid wastes;

L. Recycling and waste reduction do not generate sufficient revenues to become self supporting;

M. Imposition of the solid waste excise tax (the “tax”) provided for by this chapter will promote the county’s ability to meet all the plan’s solid waste management objectives.

N. Repealed by Ord. 97-041. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 1).

8.13.020 Definitions.
As used in this chapter, the following terms shall be defined as follows:

A. “Business or institution” shall include all properties in Whatcom County other than residential dwellings which are served by a certificated or franchised hauler of solid wastes. The tax shall apply whether the business or institution is for profit or nonprofit, public or private.

B. A “certificated hauler” is a garbage and refuse collection company that has obtained a certificate of convenience and necessity from the WUTC pursuant to Chapter 81.77 RCW for a franchise area that includes unincorporated areas of the county.

C. The “executive committee” means the executive committee formed pursuant to the interlocal agreements incorporated in Appendix A of the ordinance codified in this chapter.

D. A “franchised hauler” is a garbage and refuse collection company that has been granted a franchise to provide service within one or more of the cities that have entered interlocal agreements with the county, as shown in Appendix A of the ordinance codified in this chapter.

E. Repealed by Ord. 97-041.
F. Repealed by Ord. 97-041.

G. The "plan" is the county’s comprehensive solid waste management plan, as approved by the Department of Ecology in 1990 and as may be amended thereafter.

H. A "residential dwelling" shall include each single-family house, apartment, houseboat, or other dwelling unit which is separately billed for waste collection service by a franchised or certificated hauler. Forest areas, farms or ranches that elect to use collection service shall be considered as residential dwellings for purposes of this chapter. Residents of apartments, hotels, dormitories, boarding houses, maritime vessels, or other housing units shall not be separately taxed if the landlord or some other party arranges for solid waste collection and pays for solid waste collection and the tax on behalf of tenants or residents.

I. A "solid waste disposal facility" is a landfill, transfer station, incinerator, convenience center, drop box or other solid waste disposal facility which is available for use by persons other than the owner of the facility.

J. The "WUTC" is the Washington Utilities and Transportation Commission or any agency which succeeds to its powers. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 2).

8.13.030 Excise privilege tax levied.
An excise privilege tax shall be levied upon the charges paid for solid waste collection by each residential dwelling and by each business or institution in the district. This excise privilege tax shall be levied on a per-ton basis, excluding moderate risk wastes and recyclable materials, and be billed by certificated or franchised haulers of solid waste, and solid waste disposal facilities, all as authorized by RCW 36.58.140.

This tax shall be equal throughout the district, and shall not exceed $8.50 per ton without the approval of all cities and towns in the district. The county council shall set the level of the tax from time to time by ordinance. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 3).

8.13.040 Tax collection.
To simplify collection of the tax, each certified or franchised hauler shall include the tax in its regular billing cycle for all customers within the district and remit the proceeds collected to the county treasurer by the due date as established by the treasurer. Each solid waste disposal facility shall include the tax in its regular billing cycle for all customers, excepting certificated and franchised haulers collecting and remitting the tax, within the district and remit the proceeds collected to the county treasurer by the due date as established by the treasurer. The excise tax provided for pursuant to this chapter shall, for administrative purposes, be billed and collected as nearly as possible in a manner compatible with the state solid waste tax, Chapter 82.18 RCW, and the surcharge, Section 15, Chapter 431, Laws of 1989. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 4).

8.13.050 Administration by county treasurer.
The administration and collection of the tax imposed by this chapter, as collected by the certificated and franchised haulers, and solid waste disposal facilities, shall be by the county treasurer pursuant to the terms of this chapter and such rules, regulations and further enactments as may be adopted by the county council or provided by state law. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A).
8.13.060 Failure to make timely payment.
If full payment of any tax or fee owing under this chapter is not received by the Whatcom County treasurer on or before the date due, there shall be added to the collected amount due a penalty fee as follows:

A. One to 10 days late: Five percent of tax collected.
B. Eleven to 20 days late: 10 percent of tax collected.
C. Twenty-one to 30 days late: 15 percent of tax collected.
D. Thirty-one to 60 days late: 20 percent of tax collected.

Failure to make payment in full of all tax amounts collected, and penalties, within 60 days following the day the tax initially became due shall be deemed a violation of this section and may be collected in accordance with the provisions of this chapter.

Any tax owing and unpaid under this chapter, and all penalties, shall constitute a debt between the certificated or franchised hauler, or solid waste disposal facility, and Whatcom County and may be collected by court proceedings the same as any other debt in like amount. This provision shall be in addition to, and not in lieu of, all other existing remedies. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A).

8.13.065 Records required.
Each certificated and franchised hauler, and solid waste disposal facility, collecting the tax imposed by this chapter shall maintain books and/or records respecting that activity which truly, completely and accurately disclose all information necessary to determine the taxpayer’s tax liability hereunder during each base tax period. Such records shall be kept and maintained for a period of not less than three years.

All books, records, or other items which may hereafter be required to be kept and maintained under this section shall be subject to, and immediately available for, inspection and audit at any time, with or without notice, at the place where such records are kept upon demand by the county treasurer or his/her designee, for the purpose of enforcing the provisions of this chapter.

Where a certificated or franchised hauler, or solid waste disposal facility, does not keep such books, records, or other items so that the county treasurer or an authorized designee may examine them conveniently, the certificated or franchised hauler, or solid waste disposal facility, shall produce all of the required books, records, or items for such inspection within 10 working days following a written request by the treasurer. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A).

8.13.070 Application of tax – Appeal.
Any party aggrieved in the application of the excise tax provided for herein may appeal the same to the Whatcom County board of equalization. The decision of such board shall be binding on the county. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 7).

8.13.080 Tax exemptions and special conditions.
Solid waste generated within the district but disposed of outside of Whatcom County pursuant to authorization by the county in compliance with the plan shall be subject to the tax, unless specifically waived by ordinance. Solid waste from the Diablo area disposed of in
Skagit County shall not be subject to the tax. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 8).

8.13.090 Penalties for nonpayment of tax.
If said excise tax is not paid when billed by the certificated or franchised hauler, or solid waste disposal facility, the county may seek payment of the tax and secure liens and execute against the property served for the unpaid tax, penalties and interest, all as provided in RCW 36.58.140. All taxes unpaid for 90 days shall be assessed a penalty of $25.00 plus interest at the rate of one percent per month for each month said tax remains unpaid. (Ord. 2014-050 Exh. A; Ord. 97-067; Ord. 97-041 Exh. A; Ord. 90-1 § 9).

8.13.100 Management of operations.
The operations of the district shall be managed by the Whatcom County health department. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 10).

8.13.110 Use of revenues.
All taxes or other fees collected pursuant to this chapter shall be deposited to the solid waste utility account, or such other accounts as may be designated pursuant to county ordinance or regulation, and shall be solely for purposes related to solid waste management and disposal, and, as to the excise tax, for those purposes set forth in Section 3 of the interlocal agreements, e.g., construction, operation, maintenance, and closure of any landfill that may be developed in the future; funding of approved recycling programs when recommended by the executive committee; public educational programs related to the management of solid waste; construction, maintenance, and operation of transfer stations, and such other programs as the executive committee may recommend pursuant to the plan; provided, however, that the county treasurer and prosecutor shall be authorized to recover their costs for tax billing and collection activities related to the solid waste excise tax up to a maximum of five percent of the funds collected. (Ord. 2014-050 Exh. A; Ord. 98-008; Ord. 97-041 Exh. A; Ord. 90-1 § 11).

8.13.120 Effective date.
This chapter shall take effect on May 1, 1990. The county council shall review the need for the solid waste excise tax, the level of the tax, and the operation of the solid waste system as frequently as may be needed. Such review shall be performed no less frequently than the review of solid waste management plans as required under Chapter 70.95 RCW and as such law may be amended from time to time. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 12).

8.13.130 Severability.
The invalidity or unenforceability of any provision of this chapter shall not affect the other provisions hereof, and this chapter shall be construed in all respects as if such invalid or unenforceable provision were omitted. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 13).

8.13.140 Annual review of tax requirements.
The executive committee shall annually review the tax requirements to fund the solid waste disposal programs and advise the county council of their findings. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 14).
# Proposed Repeal of WCC 8.14, Garbage Pass-Through Fee

## ATTACHMENTS:

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

Should Clerk schedule a hearing? ( X ) Yes ( ) NO
Requested Date: August 8, 2017 introduction for September 12, 2017 public hearing

### 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.

Repeal WCC 8.14, *Garbage Pass-Through Fee* in its entirety due to results of historic legal arbitration ruling.

## 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
DATE: July 25, 2017

SUBJECT: Proposed Repeal of WCC 8.14, Garbage Pass-Through Fee

Please find attached a proposed repeal of WCC 8.14, Garbage Pass-Through Fee, for review and introduction for public hearing.

Background and Purpose

In 1987, Ordinance 87-17 imposed a per ton garbage pass-through fee on all solid waste disposed at privately owned solid waste disposal facilities as per WCC 8.14, Garbage Pass-Through Fee. In 1990, Ordinance 90-1 also levied a solid waste excise tax on solid waste 'collected by each residential dwelling and by each business or institution in the District,' and a surcharge rate, whereby 'Any person not paying the tax shall pay a surcharge rate equal to 125 percent of the usual rate charged for use of county disposal facilities.'

In 1997, due to a solid waste legal arbitration ruling, the surcharge was necessarily repealed, and solid waste services became unfunded. To provide funding for solid waste services, use of the existing per ton garbage pass-through fee, as per WCC 8.14, was considered. However, the same legal issues that resulted in repeal of the surcharge made the pass-through fee equally legally untenable as a funding option. Instead, as per Ordinance 97-41, the existing solid waste excise tax was utilized to fund solid waste services.

Because the garbage pass-through fee was considered legally untenable following the 1997 solid waste legal arbitration ruling, and has not been used since as a funding mechanism, it is the staff recommendation that WCC 8.14, Garbage Pass-Through Fee, be repealed in its entirety as per Exhibit A attached.

Please call Jeff Hegedus at x6044 if there are any questions. Thank you.

Encl.
ORDINANCE NO. ________

REPEAL OF WHATCOM COUNTY CODE (WCC) 8.14, GARBAGE PASS-THROUGH FEE, IN ITS ENTIRETY

WHEREAS, Ordinance 87-17 imposed a per ton pass-through fee on all solid waste disposed at privately owned solid waste disposal facilities, as per WCC 8.14, Garbage Pass-Through Fee; and,

WHEREAS, due to a 1997 solid waste legal arbitration ruling, the option of funding solid waste services through the pass-through fee was considered legally untenable; and solid waste services have since been funded through a solid waste excise tax; and,

WHEREAS, use of a pass-through fee to fund solid waste services, as per WCC 8.14, Garbage Pass-Through Fee, due to the legal arbitration ruling, has not and will not be implemented; and,

WHEREAS, the Solid Waste Executive Committee has reviewed and recommended the repealing WCC 8.14, Garbage Pass-Through Fee.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that WCC 8.14, Garbage Pass-Through Fee is hereby repealed in its entirety as shown in Exhibit A attached hereto.

ADOPTED this ____ day of __________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

Jack Louws, County Executive

( ) Approved  ( ) Denied

Date Signed: ____________________
EXHIBIT A

Chapter 8.14
GARBAGE PASS-THROUGH FEE

Sections:

There is levied, and shall be collected, a solid waste pass-through fee in the form of a per-ton tipping fee established by the council upon every person or persons, company, corporation or contractor that disposes of their refuse and garbage at privately owned incinerator sites or privately owned landfill sites open for public use. (Ord. 87-17 § 1).

8.14.020 Rate.
This chapter shall establish a per-ton tipping fee to generate $150,000 per year from garbage collection and disposal activities. Initially, the rate will fall within the range of $3.00 per ton to $12.00 per ton depending on interlocal agreement endorsement. The revenue requirements and rate will be adjusted in the future subject to council approval, as costs and factors affecting revenue become known. (Ord. 87-17 § 2).

A. The fee or fees shall be collected by the company or companies that own or operate incinerator facilities and landfill sites open for public use within Whatcom County including, but not limited to Thermal Reduction Corporation and the Olivine Corporation; provided, that said corporations shall enter into contractual agreements with Whatcom County for the purpose of collecting the pass-through fee or fees. The companies or corporations, upon approval of such agreements, shall pay to the county, upon a monthly basis, the total amount of fees collected. The fees collected shall be paid to the county no later than 10 days following the end of the preceding month. The remittance shall be accompanied by a form to be provided and prescribed by the county treasurer.

B. The county treasurer shall, in accordance with RCW 70.95.215, deposit the funds received into a new reserve fund to be available for transfer to the solid waste reserve fund, to provide for closure and post-closure costs related to solid waste disposal facilities or transferred to the solid waste fund to reimburse costs related to leachate control, ground water monitoring, recycling programs and solid waste planning and administration. (Ord. 87-17 § 3).

The pass-through fees collected shall be from the users in the unincorporated areas of Whatcom County; provided, that in accordance with RCW Chapter 39.34 the county may enter into an interlocal agreement with any city or town within Whatcom County which has previously utilized or caused to be utilized any of the presently or previously used landfill sites within Whatcom County for the disposal of refuse and garbage to allow Whatcom County to collect the pass-through fee to ensure adequate resources for proper closure of presently and previously used landfill sites. (Ord. 87-17 § 4).
8.14.050 Violations and penalties.
Any person, persons or contractors who dispose of refuse or garbage at the Thermal Reduction Corporation and Olivine Corporation incinerator facilities or privately owned landfill sites open to the public or other sites or facilities that may be designated now or in the future by the county council who fails or refuses to pay the established pass-through tipping fee when due shall be guilty of a misdemeanor. (Ord. 87-17 § 6).
<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>MDC</td>
<td>7/24/17</td>
<td></td>
<td>8/8/17</td>
<td>Intro</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td></td>
<td></td>
<td>9/12/17</td>
<td>Finance Committee; Council</td>
</tr>
<tr>
<td>Prosecutor:</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Purchasing/Budget:</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td></td>
<td>6/1/17</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Ordinance Establishing the Triage Center Expansion Fund And Establishing A Project Based Budget For The Triage Center Expansion Project

**ATTACHMENTS:** Ordinance and Exhibit A

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

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

Request establishes the Triage Center Expansion Fund and requests a project based budget for Phase I of the Triage Center Expansion project in the amount of $300,000.

<table>
<thead>
<tr>
<th>COMMITTEE ACTION:</th>
<th>COUNCIL ACTION:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>

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

515
ORDINANCE NO. _________

ORDINANCE ESTABLISHING THE TRIAGE CENTER EXPANSION FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR THE TRIAGE CENTER EXPANSION PROJECT

WHEREAS, the current Triage Center facility does not have enough capacity to meet community needs, and

WHEREAS, the County is now ready to begin Phase I of the Triage Center expansion project, to include plan design, architectural services, and public outreach efforts, and

WHEREAS, the County has received a $2,500,000 grant from North Sound Behavioral Health Organization in support of this project, and

WHEREAS, Section 6.80 of the Whatcom County Home Rule Charter allows for project-based capital budget appropriation ordinances that lapse when the project has been completed or abandoned or when no expenditure or encumbrance has been made for three (3) years,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a new fund is hereby established titled Triage Center Expansion Fund. This fund shall be used to account for the revenues and expenditures of the capital project mentioned above, and

BE IT FURTHER ORDAINED by the Whatcom County Council that the Triage Center Expansion Fund is approved with a Phase I project budget of $300,000 as described in Exhibit A.

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:______________________
1a. Description of request:
   The North Sound Behavioral Health Organization has provided $2.5 million to Whatcom County for expansion of the existing triage facility. These funds will be combined with other state and local funding to complete the future construction. This funding request is intended to support pre-construction activities to include an update to the design plan, architectural services, and public outreach efforts.

1b. Primary customers:
   County staff and the community members impacted by the Triage Facility construction

2. Problem to be solved:
   The current Triage facility has 13 total beds, five for mental health crisis stabilization, and eight for alcohol and/or drug detox. The facility is often full, unable to meet the demand of the community. First Responders often come into contact with individuals who would be better served by the Triage facility as opposed to jail or the emergency department. Due to insufficient number of beds, First Responders are often unable to access the services at the Triage facility for these individuals.

   Expansion of the Triage facility will increase the number of beds to 16 of each type for a total of 32, thereby providing accessible alternatives to jail or the emergency department.

3a. Options / Advantages:
   Phase I of the Triage Facility expansion will be fully supported by these funds, and set the stage for the Phase II construction process.

3b. Cost savings:
   No local county funds will be used for this request.

4a. Outcomes:
   A final architectural pre-design with construction cost estimates will be completed and used to inform the public of the construction and Triage expansion project.

4b. Measures:

5a. Other Departments/Agencies:
   The county Administrative Services Facilities division

5b. Name the person in charge of implementation and what they are responsible for:
   Anne Deacon, Human Services Manager, will oversee programming elements and the Facilities division will oversee pre-construction activities
### Supplemental Budget Request

<table>
<thead>
<tr>
<th>Health</th>
<th>Human Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suppl ID #: 2330</td>
<td><strong>Fund</strong></td>
</tr>
</tbody>
</table>

#### 6. Funding Source:
100% of the funds supporting this request come from an external source, the North Sound Behavioral Health Organization.
REQUIRED DOCUMENT: 2017 Supplemental Budget Request #10

ATTACHMENTS: Ordinance, Memoranda & Budget Modification Requests

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

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

Supplemental #10 requests funding from the General Fund:

1. To appropriate $125,253 in Non-Departmental to fund Public Services CDBG program from grant proceeds.
2. To appropriate $32,000 in Health to fund food handler test fees and cost adjustments.
3. To appropriate $40,000 to provide additional funding for Council chambers A/V improvement project.

COMMITTEE ACTION: 

COUNCIL ACTION:

Related County Contract #: 
Related File Numbers: 
Ordinance or Resolution Number:
ORDINANCE NO.
AMENDMENT NO. 10 OF THE 2017 BUDGET

WHEREAS, the 2017-2018 budget was adopted December 6, 2016; and,

WHEREAS, changing circumstances require modifications to the approved 2017-2018 budget; and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the Whatcom County Council.

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

<table>
<thead>
<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
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</thead>
<tbody>
<tr>
<td>General Fund</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Departmental</td>
<td>125,253</td>
<td>(125,253)</td>
<td>-</td>
</tr>
<tr>
<td>Health</td>
<td>32,000</td>
<td>(32,000)</td>
<td>-</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>157,253</td>
<td>(157,253)</td>
<td>-</td>
</tr>
<tr>
<td>Public Utilities Improvement Fund</td>
<td>40,000</td>
<td>-</td>
<td>40,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>197,253</td>
<td>(157,253)</td>
<td>40,000</td>
</tr>
</tbody>
</table>

ADOPTED this ___ day of ___________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

( ) Approved  ( ) Denied

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>
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</thead>
<tbody>
<tr>
<td>General Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Departmental</td>
<td>To fund Public Services CDBG program from grant proceeds.</td>
<td>125,253</td>
<td>(125,253)</td>
<td>-</td>
</tr>
<tr>
<td>Health</td>
<td>To fund food handler test fees and cost adjustments.</td>
<td>32,000</td>
<td>(32,000)</td>
<td>-</td>
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<tr>
<td>Total General Fund</td>
<td></td>
<td>157,253</td>
<td>(157,253)</td>
<td>-</td>
</tr>
<tr>
<td>Public Utilities Improvement Fund</td>
<td>To provide additional funding for Council Chambers A/V improvement project.</td>
<td>40,000</td>
<td>-</td>
<td>40,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td></td>
<td>197,253</td>
<td>(157,253)</td>
<td>40,000</td>
</tr>
</tbody>
</table>
MEMORANDUM

To:       Whatcom County Council Members
From:     Jack Louws
Subject:  Budget Supplemental, Opportunity Council Grant
Date:     July 19, 2017

The attached supplemental request for $125,253 is for the purposes of establishing budget authority in order to pass-through an available grant from the Washington State Department of Commerce to the Opportunity Council. This grant was applied for and authorized by the County Council in March, and has been granted for the delivery of direct services by the Opportunity Council as the local community action agency.

This grant is a HUD formula grant, issued annually, and passed through Dept. of Commerce for Community Development Block Grant Programs, for which Opportunity Council qualifies for this financial assistance. Whatcom County has been designated by the Dept. of Commerce as the grantee for the purpose of contracting with the Opportunity Council as a subrecipient for this grant award of $125,253.

This funding is intended to support new or increased levels of service to low- and moderate-income level homeowners and residents in Whatcom, Island and San Juan Counties for a one year period.

Whatcom County has executed a contract with the State Department of Commerce for this funding. Council’s authorization for this supplemental request will result in the execution of a Subrecipient Agreement with the Opportunity Council to implement the designated services noted herein.
Supplemental Budget Request

Executive

Supplemental ID # 2329 | Fund 1 | Cost Center 4283 | Originator: Suzanne Mildner

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

Name of Request: OppCo Public Services CDBG Grant 2017-18

X

Department Head Signature (Required on Hard Copy Submission) | Date

7-19-17

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
<tbody>
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<tr>
<td>6610</td>
<td>Contractual Services</td>
<td>$125,253</td>
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<tr>
<td>Request Total</td>
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<td>$0</td>
<td></td>
</tr>
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</table>

1a. Description of request:
This request is for grant revenue from the Washington State Department of Commerce, for pass through to the Opportunity Council as subrecipient. This is an annual formula grant called CDBG Public Services, for delivery of direct housing services to low- and moderate-income residents in Whatcom, Island and San Juan Counties.

1b. Primary customers:
Low- and moderate-income residents of Whatcom, Island and San Juan Counties

2. Problem to be solved:
This grant must be accessed through the local government, and will provide the following public services: community outreach, resource referral, client housing education, energy conservation education and other housing services.

3a. Options / Advantages:
N/A

3b. Cost savings:
N/A

4a. Outcomes:
Accomplish HUD’s objective of increasing the availability and accessibility of housing public services. This is an annual formula grant and the contract period is July 1, 2017 to June 30, 2018.

4b. Measures:
Opportunity Council will submit ongoing reports regarding service delivery and numbers of persons served. A final report will be issued at grant closeout.

5a. Other Departments/Agencies:
Opportunity Council is our local action agency, and 3 community resource centers in San Juan County.

5b. Name the person in charge of implementation and what they are responsible for:
Sheri Emerson, Associate Director of Opportunity Council, is responsible for overseeing the programming services which benefit from this grant.

6. Funding Source:
Federal grant from HUD through the State Department of Commerce's CDBG Program

Tuesday, July 18, 2017

Rpt: Rpt Suppl Regular
Supplemental Budget Request

Health

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
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<tbody>
<tr>
<td>1</td>
<td>652200</td>
<td>Patty Proctor</td>
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</table>

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

Name of Request: Food Handler Test Fees and Cost Adjustment

X Regina A. DeCaro

Department Head Signature (Required on Hard Copy Submission)  7/25/17

Costs:  

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
<tr>
<td>4321.2160</td>
<td>Food Handler Permit</td>
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<tr>
<td>6610</td>
<td>Contractual Services</td>
<td>$32,000</td>
</tr>
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</table>

Request Total  $0

1a. Description of request:

This request is to address a change in the posting of the food handler permit testing fee. The change records the fee as the gross amount and records the amount paid to Tacoma Pierce as an expense.

1b. Primary customers:

2. Problem to be solved:

Tacoma Pierce County has been providing the online testing for food handler cards for several years. We had been recording the revenue received by the County from the food handler cards as a net of the revenue minus Tacoma Pierce fee. We recently changed the recording to gross amount of receipts as revenue and a recording of the portion paid to Tacoma Pierce as an expense. This budget supplemental reflects the change in recording practice. This request is to establish the budget for the expense.

3a. Options / Advantages:

Accounting practices require the change to properly account for revenue and expenses.

3b. Cost savings:

no change in net cost.

4a. Outcomes:

Entries for the fee will be recorded as required.

4b. Measures:

5a. Other Departments/Agencies:

No impact. This is only a change in the recording of the transaction.

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

6. Funding Source:

Fee for food handler testing.
RECEIVED
JUL 25 2017

WHATCOM COUNTY COUNCIL

July 25, 2017

MEMORANDUM

TO: Jack Louws, Whatcom County Executive
    Whatcom County Council

FROM: Dana Brown-Davis, Clerk of the Council

SUBJ: Council Chambers Audio/Visual Improvement Project

Requested Action:
The Council Office is requesting Council consideration and approval of the attached 2017 budget supplemental for improvement to the Council Chambers audio/visual (AV) system.

Background and Purpose:
The current AV system is outdated and does not allow for consistent, quality audio and visual interaction in the Council Chambers. The current screen is not easily viewed by all audience members and the sound system does not provide clear, consistent or quality sound. Improving on these features will help to encourage and illuminate Council and public interaction taking place during meetings in the Chambers.

Funding Amount and Source:
The Council approved $40,000 to improve the Chambers AV system in the 2017 County budget. Stakeholders met with Dimensional Communications to establish the scope of the project. After review and evaluation of the current system, Dimensional Communications provided a project estimate of $53,000.

The project estimate did not include tax, engineering cost, bond, or contingency. Those additional costs are estimated to be $27,000. The $53,000 quote and the additional $27,000 will bring the estimated cost to approximately $80,000. The additional funding request for this project is $40,000.

We are asking for budget authority to complete this project through the Rural Sales Tax; EDI Fund.

Please contact Dana Brown-Davis at extension 5015 if you have any questions or concerns regarding the terms of this agreement.
Supplemental Budget Request

Non-Departmental

<table>
<thead>
<tr>
<th>Supp ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
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<tbody>
<tr>
<td>2321</td>
<td>332</td>
<td>332214</td>
<td>Tawni Helms</td>
</tr>
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</table>

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

Name of Request: Council Chamber Improvements

[Signature]  
7/31/17

Department Head Signature (Required on Hard Copy Submission)  
Date

Costs:  
<table>
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<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
<tbody>
<tr>
<td>7350</td>
<td>Buildings &amp; Structures</td>
<td>$40,000</td>
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</tbody>
</table>

Request Total  
$40,000

1a. Description of request:
Council approved $40,000 for the Council Chambers Improvement Project to make repairs and upgrades to the audio system as well as purchase and install new projectors and screens. To accomplish this, Facilities staff met with the Council Office staff, Executive Office staff and Dimensional Communications to establish the scope of the project. The vendor reviewed/evaluated the current system to determine the most efficient and cost effective path forward to improve the current audio visual system. Dimensional Communications provided a project estimate of $53000.

The project estimate did not include tax, engineering cost, bond or contingency. Those additional costs are estimated to be at $27,000. The $53,000 quote and the additional $27,000 will bring the estimated cost to approximately $80,000. The additional funding request for this project is $40,000.

1b. Primary customers:
Council and the public.

2. Problem to be solved:
The current AV system is old and does not allow for consistent, quality audio visual interaction in council chambers. The current screen is not easily viewed by all audience members and the current speakers do not provide clear, consistent or quality sound. Improving on these features will help to encourage and illuminate council and public interaction taking place during meetings in the council chambers.

3a. Options / Advantages:
An expanded proposal was submitted during the budget process that included a production studio installation (media room). The project has been appropriately scaled to include only the current AV improvements necessary to facilitate information sharing and interactive dialogue in council chambers. The project cost was substantially reduced and will accommodate the immediate needs to improve the audio visual capabilities in the council chambers.

3b. Cost savings:

n/a

4a. Outcomes:
The audio visual capacity will be improved with the relocation and replacement of the public video projection screen above and behind the dais along with the addition of a new screen on the west wall for better council viewing. Additionally, new high quality independent speaker controls will be installed for greater coordination and responsiveness to public needs within the council chambers and the rotunda area.

4b. Measures:
The system will be upgraded to a complete, safe and reliable high quality independent audio video system for improved public interaction and council viewing.
Supplemental Budget Request

Non-Departmental

Supp'l ID # 2321  Fund 332  Cost Center 332214  Originator: Tawni Helms

5a. Other Departments/Agencies:
Facilities will oversee the project. Work will begin between regularly scheduled council meeting dates. The work may impact District Court which uses Council Chambers for jury orientation. Council Office staff will work with District Court to mitigate any potential conflicts and provide adequate notification so arrangements can be made to accommodate the jury training in another location.

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

6. Funding Source:
EDI - Rural Sales Tax
<table>
<thead>
<tr>
<th>Task</th>
<th>Cost for Contractor</th>
<th>Material Cost</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inside</td>
<td>$3,500.00</td>
<td></td>
<td>Cap or remove compressor, wires</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Service exhaust fans</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Replace missing outlet covers</td>
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<td></td>
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<td>General: repipe, move in / out, replace</td>
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<td></td>
<td></td>
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<td>HVAC: Repair, Change filters, service and inspect</td>
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<td>Electrical: Inspect and repair, replace the lighting</td>
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<tr>
<td></td>
<td>$2,200.00</td>
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<td>Between ideas and hallway</td>
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<td></td>
<td></td>
<td>Item threshold and install threshold.</td>
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<tr>
<td></td>
<td>120.00</td>
<td></td>
<td>Toilet area (south east side): replace/installed threshold</td>
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<tr>
<td></td>
<td>240.00</td>
<td></td>
<td>Install work area, remove+cut/flap floor polks</td>
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<td>500.00</td>
<td></td>
<td>Secure valve station</td>
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<td></td>
<td>100.00</td>
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<td>Woman's rest room: fix/paint wet damage to wall by sink</td>
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<td>$1,200.00</td>
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<td>Tops, rest room: replace/knot to steel divider by</td>
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<td></td>
<td>Club room: Install new missing tiles in main shop area</td>
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<td>Replace door handle/missing hardware</td>
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<td>$200.00</td>
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<td>Location door, east side - between work area and office</td>
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<td>- Extents (man) doors: install door sweeps</td>
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<td>$3,000.00</td>
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<td>missing a support and installation</td>
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<td>they are i good working condition. Main garage door is</td>
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<td>Garage doors: inspect and repair all overhead doors so that</td>
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<td>Building: Reconnect, shampoo carpet, mop, dust and window</td>
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<td>$3,000.00</td>
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<td>Open windows</td>
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<td>Clean crown</td>
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<td>Clean roof gutters, down spouts</td>
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<td>Replace/timber broken door</td>
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<td>Lockers/storage units on North side: clean inside</td>
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<td>$1,000.00</td>
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<td>Landscaping and parking lot: general clean, mow/seed</td>
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<td></td>
<td></td>
<td>Exterior</td>
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<tr>
<td></td>
<td>$600.00</td>
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<td>Task</td>
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