2017-282

WHATCOM COUNTY COUNCIL AGENDA BILL

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CLEARANCES	Initial	Date	Date Receiv	ved in Council Office	Agenda Date	Assigned to:				
Originator:	JNT	August 23, 2017		CEIVED	September 26, 2017	Finance/Board of Supervisors				
Division Head:	fm	9/12/12	, , , , , , , , , , , , , , , , , , , ,							
Dept. Head:	#	9/12/17	SI	EP 19 2017						
Prosecutor:	alg.ML	08/23/17	WHAT	COM COUNTY						
Purchasing/Budget:	bb A	8/23/17		COUNCIL						
Executive: (16)		9.18.1	7							
TITLE OF DOCU Washington State D		f Ecology agreer	nent to sponsor a	Washington Conservation	n Corps crew for 2017	-2018				
ATTACHMENTS										
1. Contract										
SEPA review required? () Yes (X) NO Should Clerk schedule a hearing? () Yes (X) NO Requested Date:										
SUMMARY STAT	TEMENT O	R LEGAL NO	TICE LANGUAC	GE: (If this item is an or	dinance 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 agreement between Washington Department of Ecology and Whatcom County Flood Control Zone District provides a 6-									
person crew to perf	orm habitat r	estoration and w	ater quality work	for Public Works. What	com County Parks and	Recreation and				
the Nooksack Salmon Enhancement Association (NSEA) are co-sponsors under separate agreements and NSEA will house the crew and provide office and equipment space at their facility.										
COMMITTEE AC	TION.	H		COUNCIL ACTION	J•					
COMMITTEE					`					
Related County Co	ontract #:	Rel	ated File Number	:s:	Ordinance or Resolu	tion Number:				
	, -									
Please Note: Once website at: www.c			ances and resolut	ions are available for v	lewing and printing o	on the County's				
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WHATCOM COUNTY Public Works Dept. Natural Resource Division 322 N. Commercial St., Suite 110 Bellingham, WA 98225



RECEIVED

SEP 1 5 2017

MEMORANDUM

JACK LOUWS COUNTY EXECUTIVE

TO:

The Honorable Members of the Whatcom County Flood Control Zone District

Board of Supervisors

THROUGH:

Jon Hutchings, Public Works Director

FROM:

Gary Stoyka, Natural Resource Manager

John N. Thompson, Senior Salmon Recovery Planner

RE:

2017-2018 Washington Conservation Corps Crew Agreement

DATE:

September 11, 2017

Enclosed are two (2) originals of a 2017-2018 Washington Conservation Corp Crew Agreement between the Washington Department of Ecology and Whatcom County Flood Control Zone District for your review and signature.

Background and Purpose

Public Works proposes to host a 6-member Washington Conservation Corps Crew for the 2017-2018 term. The crew will assist Public Works with salmon habitat, stormwater, and water quality projects and monitoring and will be available for emergency response. As in years past, the crew is shared with the Nooksack Salmon Enhancement Association under a separate agreement with Ecology. A new aspect this term is that the crew will also be shared with Whatcom County Parks and Recreation where they will assist with Lake Whatcom Park trail development under a separate agreement.

Funding Amount and Source

This agreement is for \$76,000 and is included in the 2017 Public Works – Natural Resources budget and the proposed 2018 Public Works-Natural Resources budget. Parks will provide \$60,000 under a separate agreement with Ecology. Nooksack Salmon Enhancement Association also has a separate \$30,000 agreement with Ecology and will provide office and equipment space at their facility. Combined sponsor cost is \$166,000 with Ecology providing the balance of the \$221,334 total crew cost.

Differences from Previous Contract

This is a new agreement.

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

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. 201709007

	T	Public Works			
Originating Department:					
Division/Program: (i.e. Dept. Division and Program)					
Contract or Grant Administrator:		John N. Thompson, Sr. Planne	er		
Contractor's / Agency Name:		Washington Department of Ec	cology		
· ·		-	Yes No No		
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 age	ncy contract nu	umber(s): CFDA#	<u></u>		
Is this contract grant funded? Yes ☐ No ☑ If yes, Whatcom C	County grant co	ontract number(s):			
Is this contract the result of a RFP or Bid process? Yes ☐ No ☑ If yes, RFP and Bid number.	per(s):	Contract Cost Center:	169119		
Is this agreement excluded from E-Verify? No	☐ Yes ⊠	If no, include Attachment D Contract	or Declaration form.		
☐ 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): \$ 76,000 This Amendment Amount: \$ Total Amended Amount: \$	Council approva \$40,000, and prothan \$10,000 or 1. Exercising a 2. Contract is a ordinance. 3. Bid or awar 4. Contract is a electronic sy	Contract for Commercial off the shall Work related subcontract less than \$\] Public Works - Local Agency/Fede all required for; all property leases, contracts of the service contract amendments that 10% of contract amount, whichever is great an option contained in a contract previously for design, construction, r-o-w acquisition, all costs approved by council in a capital bud and is for supplies or equipment included approximation of the supplies of the support and he systems and/or technical support and software.	or bid awards exceeding thave an increase greater approved by the council. professional services, or leget appropriation broved in the budget. ardware maintenance of re maintenance from the		
This agreement between Washington Department of E crew to perform restoration and water quality work for Nooksack Salmon Enhancement Association are co-sp space at their facility.	Public Works. onsors under se	Whatcom County Parks and Recreation eparate agreements. NSEA will provide of	Department and office and equipment		
		Date:	August 23, 2017		
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Contract or Grant Administrator: John N. Thompson, Sr. Planner					
	Natural Resources Septe Distillation and Programs Natural Resources John N. Thompson, Sr. Planner Series Agency Name: Washington Department of Ecology				
Is this a New Contract? Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: Does contract require Council Approval? Yes No If No, include WCC: (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100) Is this a grant agreement? Yes No If yes, grantor agency contract number(s): CFDA#: Is this contract grant funded? Yes No If yes, Whatcom County grant contract number(s): Is this contract the result of a FPP 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 from. 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): \$ 76,000 This Amendment Amount: \$ 26,000 Total Amended Amount: \$ 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for manufacturer's technical support and bardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and hardware maintenance of electronic systems and/or technical support and solvative maintenance of electro					
Sontract or Grant Administrator: Washington Department of Ecology					





WHATCOM COUNTY
CONTRACT NO.
201709807

AGREEMENT NO. WCC-1719

AGREEMENT BETWEEN

The State of Washington, Department of ECOLOGY
AND
Whatcom County Flood Control Zone District

THIS AGREEMENT is made and entered into by and between the Department of the "SPONSOR." Whatcom County Flood Control Zone District the "SPONSOR."	
IT IS THE PURPOSE OF THIS AGREEMENT to provide Washington C complete environmental or disaster services projects, pursuant to Chapt	onservation Corps (WCC) members to ter 43.220 of the Revised Code of Washington.
THEREFORE, IT IS MUTUALLY AGREED THAT:	
STATEMENT OF WORK	
Both parties agree to do all things necessary for or incidental to the perfeattached hereto and incorporated herein.	ormance of the work set forth in Appendix "A"
PERIOD OF PERFORMANCE	
Subject to its other provisions, the period of performance of this Agreem and be completed on 9/9/2018, unless terminated sooner as provindividual Placement corpsmember specified in this agreement will be a on the calendar in Appendix "B" attached hereto and incorporated herein	vided herein. The WCC Crew and/or WCC vailable to SPONSOR on the dates set forth
COMPENSATION	
The parties have determined that the cost of accomplishing the work her Payment for satisfactory performance of the work shall not exceed this a higher amount. Compensation for service(s) shall be based on the follow	mount unless the parties mutually agree to a
Provided by ECOLOGY	Reimbursed to ECOLOGY by SPONSOR
Shared WCC crew with NSEA and Whatcom County Parks and Recreation Department	\$76,000
Total SPONSOR COST	\$76,000

The costs reimbursed to ECOLOGY by SPONSOR are a cost-share rate. Estimated value of a WCC crew is \$5,334 weekly per WCC Crew consisting of five WCC/AmeriCorps Members and one Supervisor (excludes food and lodging). Indirect costs are included in SPONSOR share at a standard rate of 5% of direct costs.

BILLING PROCEDURE

ECOLOGY shall submit invoices monthly to the SPONSOR's designated contact person listed under "Agreement Management" section. Payment to ECOLOGY for approved and completed work will be made by warrant or account transfer by SPONSOR within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

AGREEMENT ALTERATIONS AND AMENDMENTS

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

ASSIGNMENT

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

ASSURANCES

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

CONFORMANCE

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

DISPUTES

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

FUNDING AVAILABILITY

The obligation of the SPONSOR to provide reimbursements is contingent upon appropriation of funds by the SPONSOR's governing body for the specific purpose of funding the project, which is the subject of this Agreement. Upon the failure of such appropriation, the SPONSOR may terminate this Agreement.

ECOLOGY's ability to provide cost-share is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the agreement, in whole or part, for convenience or to renegotiate the agreement subject to new funding limitations and conditions. ECOLOGY may also elect to suspend performance of the agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification restrictions.

GOVERNING LAW AND VENUE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

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

INDEPENDENT CAPACITY

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

ORDER OF PRECEDENCE

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

- 1. Applicable federal and state of Washington statutes, regulations, and rules.
- Mutually agreed written amendments to this Agreement
- 3. This Agreement
- 4. Statement of Work and Budget.
- 5. Any other provisions of this Agreement, including materials incorporated by reference.

RECORDS MAINTENANCE

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

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

RESPONSIBILITIES OF THE PARTIES

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

RIGHTS IN DATA

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

SEVERABILITY

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

TERMINATION FOR CAUSE

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

TERMINATION FOR CONVENIENCE

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

WAIVER

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

ALL WRITINGS CONTAINED HEREIN

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

AGREEMENT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract/Program Manager for ECOLOGY is:

Peter Nevin
PO Box 47600
Olympia, WA 98504
Bellingham WA 98225
(206) 940-3615
peter.nevin@ecy.wa.gov

IN WITNESS WHEREOF, the parties have executed this Agreement.
State of Washington
Department of ECOLOGY

The Contract/Program Manager for SPONSOR is:
John N. Thompson
322 N. Commercial Street Suite 110
Bellingham WA 98225
(360) 778-6230
jnthomps@co.whatcom.wa.us

IN WITNESS WHEREOF, the parties have executed this Agreement.
State of Washington
Department of ECOLOGY
Whatcom County Flood Control Zone District

State of Washington Department of ECOLOGY		SPONSOR Whatcom County Flood Control Zone District							
	Whatcom County F (See Attached FC Date Signature gram Manager Printed	(See Attached FCZD S	Signature Page)						
Signature Date		Signature	Date						
Gordon White, SEA Program M Name, Title	1anager	Printed Printed Name, Title							

Recommended for Approval:
Jon Hutchings, Paplic Works Director Date
Approved as to form only:
Daniel Gibson, Chief Civil Deputy Prosecutor Date
Approved: Accepted for Whatcom County Flood Control Zone District
By: Jack Louws, Whatcom County Executive, Date
acting for the Whatcom County Flood Control Zone District Board of Supervisors
STATE OF WASHINGTON)
COUNTY OF WHATCOM)
On this day of, 2017, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.
NOTARY PUBLIC in and for the State of Washington, residing at
. My commission expires

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:

STATEMENT OF WORK Appendix A

Work summary:

Under direction of SPONSOR, crew(s) will perform restoration activities. Specific tasks could include invasive control, native species installation, plant nursery care, scientific monitoring, and fence installation or repair.

Special terms and conditions:

- WCC members and staff will not be utilized to clear and/or clean up hazardous materials including hypodermic needles. If a significant amount of hazardous or unidentifiable material is discovered on a project site, activity will cease until SPONSOR either mitigates potential hazards or finds an alternate project site. WCC resources (includes members, supervisors, tools and trucks) will not be utilized for clearing active or abandoned homeless encampments.
- 2. Vehicle is not to be used for heavy hauling. The primary use of the crew vehicle is for transportation of crew, tools, and safety equipment. In the event that WCC vehicles are requested to tow SPONSOR equipment, SPONSOR is solely responsible for accidental damages, unless damages are caused by WCC negligence.
- 3. WCC is not responsible for normal wear and tear when project requires the use of SPONSOR-provided tools, equipment or safety gear.
- 4. The assignment of corpsmembers shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of using a corpsmember with available funds. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use corpsmembers to carry out essential agency work or contractual functions without displacing current employees.
- 5. All state holidays and shutdown weeks are non-working days for members. Shutdown weeks are to be used by WCC staff/supervisors for planning purposes.
- 6. The WCC standard 40-hour schedule is Monday through Thursday from 7:00am to 5:30pm. An alternate schedule may be arranged with prior approval from the WCC.
- 7. Indirect costs are included in SPONSOR share at a standard rate of 5% of direct costs.

ECOLOGY shall:

- 1. Provide WCC members for the number of weeks specified in this agreement. Full-time crews and Individual Placements are available to SPONSOR for a maximum of 41.5 weeks during the Federal AmeriCorps program service year (October-September).
- 2. In the event of a disaster response deployment, the WCC Program will make every effort to fulfill sponsor program needs, including sending additional members, whenever possible. Invoices will include all activities during the program year including training, community service events, and other activities required by WCC, excluding Emergency Response, if needed.
- 3. Provide training and development specified in Appendix "B": eight (8) days of formal WCC member training, a three (3) day Orientation Training, one (1) day dedicated to MLK Community Service, and a debrief meeting near the conclusion of the term. WCC members and supervisors are logging hours on these dates, but are unavailable to sponsor to perform project work.
- 4. Provide a 4-day Assistant Supervisor training to the designated Assistant Supervisor.
- 5. For crew (s), ECOLOGY agrees to provide a crew of 5 members, a crew supervisor, vehicle, and basic hand tools.
- 6. Cost-share rates are not based on actual attendance, however, invoices will be reduced for member or supervisor vacancies lasting 20 days or more.

SPONSOR shall:

- Guide completion of appropriate projects for the number of weeks specified in this agreement by providing the
 logistical, technical and safety-related support necessary for project completion. Provide site orientation for
 WCC members, specific on-the job task training, and any materials beyond basic hand tools to complete tasks
 assigned under this Agreement. Obtain and ensure adherence to applicable permits as set by local, state, tribal
 or federal laws and regulations.
- 2. Help to promote the AmeriCorps and WCC brands, logo, slogans and phrases. The WCC will provide cameraready logo. AmeriCorps is a registered service mark of the Corporation for National and Community Service.

AmeriCorps Prohibited Activities:

While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or CNCS, staff and members may not engage in the following activities (see 45 CFR § 2520.65):

- A. Attempting to influence legislation;
- B. Organizing or engaging in protests, petitions, boycotts, or strikes;
- C. Assisting, promoting, or deterring union organizing;
- Impairing existing contracts for services or collective bargaining agreements;
- E. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- F. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- G. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- H. Providing a direct benefit to—
 - I. A business organized for profit;
 - II. A labor union:
 - III. A partisan political organization;
 - IV. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - V. An organization engaged in the religious activities described in paragraph 3.g. above, unless CNCS assistance is not used to support those religious activities;
- I. Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
- J. Providing abortion services or referrals for receipt of such services; and
- K. Such other activities as CNCS may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-CNCS funds. Individuals should not wear the AmeriCorps logo while doing so.

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Appendix C Whatcom County Flood Control Zone District PROPOSED PROJECT TYPES AND GEOGRAPHIC FOCUS

Water Quality & Habitat Monitoring and Improvement Projects

- Birch Bay Watershed
- Drayton Harbor Watershed
- Portage Bay Shellfish District
- Lake Whatcom
- South Fork Nooksack River
- Canyon Creek, North Fork Nooksack River

New Restoration Projects

- Birch Bay
- Drayton Harbor
- Mainstem tributaries
- South Fork and tributaries
- Middle Fork
- North Fork and tributaries

Maintain Existing Projects

- Birch Bay
- Canyon Creek, North Fork
- Drayton Harbor
- Friday Creek
- Lake Whatcom
- Mainstem tributaries
- North Fork tributaries (e.g. High Creek)
- South Fork & tributaries