Information Technology Manager Perry Rice will present IT’s report to Council

**ATTACHMENTS:**

<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>
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</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.)

Information Technology Manager Perry Rice will present IT’s report to Council

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
TITLE OF DOCUMENT: 2017 Supplemental Budget Request #14

ATTACHMENTS: Ordinance, Memoranda & Budget Modification Requests

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

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

Supplemental #14 requests funding from the General Fund:
1. To appropriate $52,198 in the Sheriff’s Department to fund reimbursable overtime increase.
2. To appropriate $5,000 in the Sheriff’s Department to fund Recreation Boating Safety Program increase from grant proceeds.

From the Road Fund:
3. To appropriate $33,750 to partially fund ferry emergency electrical repairs.

From the Jail Fund:
4. To appropriate $84,859 to fund Corrections Deputies transfer to new medical plan.

From the Ferry Fund:
5. To appropriate $75,000 to fund 2017 ferry emergency electrical repairs.

COMMITTEE ACTION: 

COUNCIL ACTION:
11/21/2017: Introduced 7-0

Related County Contract #: 2
Related File Numbers:
Ordinance or Resolution Number:
ORDINANCE NO.
AMENDMENT NO. 14 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>Sheriff</td>
<td>57,198</td>
<td>(57,198)</td>
<td>-</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>57,198</td>
<td>(57,198)</td>
<td>-</td>
</tr>
<tr>
<td>Road Fund</td>
<td>33,750</td>
<td>-</td>
<td>33,750</td>
</tr>
<tr>
<td>Jail Fund</td>
<td>84,859</td>
<td>-</td>
<td>84,859</td>
</tr>
<tr>
<td>Ferry Fund</td>
<td>75,000</td>
<td>(33,750)</td>
<td>41,250</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>250,807</td>
<td>(90,948)</td>
<td>159,859</td>
</tr>
</tbody>
</table>

ADOPTED this ____ day of _______________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

( ) Approved      ( ) Denied

Jack Louws, County Executive

Date: ________________________

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
## Summary of the 2017 Supplemental Budget Ordinance No. 14

<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><strong>General Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund reimbursable overtime increase.</td>
<td>52,198 (52,198)</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund Recreational Boating Safety Program increase from grant proceeds.</td>
<td>5,000 ($000)</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td><strong>Total General Fund</strong></td>
<td></td>
<td>57,198 (57,198)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Road Fund</strong></td>
<td>To partially fund ferry emergency electrical repairs.</td>
<td>33,750</td>
<td>-</td>
<td>33,750</td>
</tr>
<tr>
<td><strong>Jail Fund</strong></td>
<td>To fund Corrections Deputies transfer to new medical plan.</td>
<td>84,859</td>
<td>-</td>
<td>84,859</td>
</tr>
<tr>
<td><strong>Ferry Fund</strong></td>
<td>To fund 2017 ferry emergency electrical repairs.</td>
<td>75,000 (33,750)</td>
<td>41,250</td>
<td></td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td></td>
<td>250,807 (90,948)</td>
<td>159,859</td>
<td></td>
</tr>
</tbody>
</table>
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: November 6, 2017
SUBJECT: Supplemental Budget ID# 2510
          Reimbursable Overtime Increase - 2017

The attached Supplemental Budget requests an increase in revenue and expenditure authority for Reimbursable Overtime in 2017.

Background and Purpose
The Sheriff’s Office provides extra law enforcement, traffic control, and security services in accordance with contracts, temporary right-of-way permits, and agreements to hire extra-duty deputies in order to enhance safety and response capabilities. These services are provided by deputies on overtime so as not to impact the daily operations and response capabilities of regularly scheduled shift deputies.

The current budget is inadequate to cover the services requested in 2017.

Expenditures will be offset by revenue generated from billing rate of $73.00 per hour for reimbursable overtime in accordance with the Whatcom County Unified Fee Schedule.

Funding Amount and Source
Funding of $52,195 will be provided by organizations requesting services.

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

Thank you.
**Supplemental Budget Request**

**Sheriff Operations**

<table>
<thead>
<tr>
<th>Supp'l ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>2510</td>
<td>1</td>
<td>2965</td>
<td>Dawn Pierce</td>
</tr>
</tbody>
</table>

**Expenditure Type:** One-Time  
**Year:** 2017  
**Priority:** 1

**Name of Request:** Reimbursable Overtime Increase - 2017

![Signature]

**Department Head Signature (Required on Hard Copy Submission)**  
**Date:** 11-6-2017

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>4342.1012</td>
<td>Off Duty Overtime</td>
<td>($52,195)</td>
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<tr>
<td>6110</td>
<td>Regular Salaries &amp; Wages</td>
<td>$4,825</td>
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<tr>
<td>6140</td>
<td>Overtime</td>
<td>$38,859</td>
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<tr>
<td>6210</td>
<td>Retirement</td>
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<tr>
<td>6230</td>
<td>Social Security</td>
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<td>6259</td>
<td>Worker's Comp-Interfund</td>
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<td>6259</td>
<td>Unemployment-Interfund</td>
<td>$57</td>
</tr>
<tr>
<td><strong>Request Total</strong></td>
<td></td>
<td><strong>$0</strong></td>
</tr>
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</table>

**1a. Description of request:**

The Sheriff's Office provides extra law enforcement, traffic control, and security services in accordance with contracts, temporary right-of-way permits, and agreements to hire extra-duty deputies in order to enhance safety and response capabilities. These services are provided by deputies on overtime so as not to impact the daily operations and response capabilities of regularly scheduled shift deputies.

**1b. Primary customers:**

Citizens of Whatcom County

**2. Problem to be solved:**

The current budget is inadequate to cover additional law enforcement services requested.

**3a. Options / Advantages:**

**3b. Cost savings:**

**4a. Outcomes:**

Sheriff's Office deputies provide extra law enforcement, traffic control, and security services as requested.

**4b. Measures:**

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

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

**6. Funding Source:**

Funding provided by organizations requesting services.  
Overtime billed at $73.00 per hour in accordance with Whatcom county Unified Fee Schedule.
MEMORANDUM

TO: Jack Louws, County Executive

FROM: Sheriff Bill Elfo

DATE: October 23, 2017

SUBJECT: Supplemental Budget ID# 2499
Recreational Boating Safety Grant Increase 2017

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

Background and Purpose
The Sheriff’s Office received a Recreational Boating Safety Grant Award of $18,374.57 from Washington State Parks and Recreation Commission to conduct on the water patrols during the peak boating period from March 1 through September 30, 2017 (Whatcom County Contract #201703016).

In a letter dated June 7, 2017, the Washington State Parks and Recreation Commission awarded an additional $5,000 to the Sheriff’s Office in recognition of our long term support of the Recreational Boating Safety (RBS) Program and for providing State Parks RBS program instructors to conduct basic and advanced marine law enforcement training.

Funding Amount and Source
Additional $5,000 provided by Washington State Parks and Recreation Commission, Recreational Boating Safety Federal Financial Assistance Grant, CFDA No. 97.012.

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

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff Operations

Supp’l ID # 2499 Fund 1 Cost Center 1003512006 Originator: Dawn Pierce

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

Name of Request: Recreational Boating Safety Grant Increase 2017

X

Department Head Signature (Required on Hard Copy Submission) Date 10/23/17

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
<tbody>
<tr>
<td>4333.8701</td>
<td>Boating Safety</td>
<td>($5,000)</td>
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<tr>
<td>6110</td>
<td>Regular Salaries &amp; Wages</td>
<td>$104</td>
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<tr>
<td>6140</td>
<td>Overtime</td>
<td>$4,231</td>
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<tr>
<td>6210</td>
<td>Retirement</td>
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<tr>
<td>6230</td>
<td>Social Security</td>
<td>$313</td>
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<td>6259</td>
<td>Worker’s Comp-Interfund</td>
<td>$131</td>
</tr>
<tr>
<td>6269</td>
<td>Unemployment-Interfund</td>
<td>$5</td>
</tr>
</tbody>
</table>

Request Total $0

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

1b. Primary customers:
Whatcom County citizens and visitors

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

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

3b. Cost savings:
Cost savings of $5,000.

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

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

5a. Other Departments/Agencies:

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

6. Funding Source:
To: Whatcom County Sheriff’s Office, Sheriff William Elfo

From: Wade Alonzo, Washington State Parks Boating Program, Boating Law Administrator

Subject: Grant Increase for Instructor Support

Date: June 7, 2017

In recognition of the long-term support of the Recreational Boating Safety program and the fiscal, personnel, and logistic expenditures made by your agency by providing instructors to State Parks we are increasing your grant amount.

Your agency for providing instructor(s) to the State Parks RBS program will be immediately awarded an additional $5000.00 to your Federal Financial Assistance Grant. Your current grant amount of $18,374.57 is increased to $23,374.57 upon receipt of this notification. As State Parks has grown the number and types of boating courses offered, it has required much more support and participation from your personnel and your agency.

This bonus amount may change from year to year based on multiple factors that affect the Federal Financial Assistance Grants. However, it is State Parks intention to compensate your agency for actively supporting Recreational Boating Safety in Washington State by going beyond the call of duty. Without your personnel and the support provided to them by your agency, our ability to offer basic and advanced level marine law enforcement training would be severely impacted.

Please do not hesitate to email or call Hoyle Hodges 360-902-8835 hoyle.hodges@parks.wa.gov Marine Law Enforcement Coordinator if there are any questions.
Supplemental Budget Request

Public Works

<table>
<thead>
<tr>
<th>Suppl ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
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<tbody>
<tr>
<td>2507</td>
<td>108</td>
<td>10895</td>
<td>Randy Rydel</td>
</tr>
</tbody>
</table>

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

Name of Request: 2017 Ferry Electrical Emergency Companion to #2506

X

Department Head Signature (Required on Hard Copy Submission)  Date

11/14/17

Costs:

<table>
<thead>
<tr>
<th>Object</th>
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<tr>
<td>8351.444 Operating Transfer Out</td>
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<tr>
<td>Request Total</td>
<td>$33,750</td>
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</tbody>
</table>

1a. Description of request:

Companion to ferry supplemental request 2506.

Ferry Fund expenses are covered 45% by Road Fund transfers per WCC 10.34.030.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

   Road Fund Balance
MEMORANDUM

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

Through: Jon Hutchings, Director

From: Randy Rydel, Public Works Financial Services Manager

Date: November 6, 2017

Subject: Supplemental Budget Request (SBR)-2506 and 2507 for 2017 Emergency Ferry Electrical Work

Enclosed for your approval are Supplemental Budget Request (SBR)-2506 and 2507 from the Ferry Fund and the Road Fund. This request supplements ferry fund expenditure authority that was previously utilized for emergency electrical work. Replenishing this maintenance expenditure authority will enable Public Works to respond quickly and efficiently to maintenance emergencies that may come up prior to year-end.

Requested Action
Public Works respectfully requests that the County Council and the County Executive approve SBR-2506 replenishing the expenditure authority available to deal with emergency maintenance issues as they surface prior to 2017 year end. Concurrent with the approval of SBR-2506 is the approval of SBR-2507 providing for the transfers funds from the Road Fund to the Ferry Fund for 45% of expenditures per WCC 10.34.030.

Background and Purpose
On March 6th, 2017 the electrical system for the ferry dock at Gooseberry Point began experiencing significant electrical problems. After initial troubleshooting by county staff was unsuccessful, VECA Electric & Technologies was called in to locate and resolve the problem. The electrical problems proved elusive requiring over two months and 230 contractor hours to resolve. During much of this time, an onsite backup generator provided power necessary to run the lift motor. Work to return the dock to normal operations exceeded $75,000; approximately $38,000 paid to VECA and $37,000 paid to the ER&R fund for generator fuel and staff assistance to VECA.

This request will replenish $75,000 expenditure authority to be used in the event of further emergency maintenance needs prior to the end of 2017.

Funding Amount and Source
All operating expenditures of the Ferry Fund are subsidized 45% by the Road Fund. The remaining 55% is covered through farebox revenue banked as fund balance.

Please contact Randy Rydel at extension 6271, if you have any questions or concerns regarding the terms of this request.
Supplemental Budget Request

Jail

<table>
<thead>
<tr>
<th>Supp'l ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
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<tbody>
<tr>
<td>2511</td>
<td>118</td>
<td></td>
<td>M Caldwell</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: Corrections Deputies Medical Insurance

X

Department Head Signature (Required on Hard Copy Submission)  Date

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
<tbody>
<tr>
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<tr>
<td>Request Total</td>
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<td></td>
<td>$84,859</td>
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</tbody>
</table>

1a. Description of request:

According to the bargaining unit settlement with the Corrections Deputies, the Deputies are transferring to Teamsters Medical beginning in 2018. Teamsters requires two months down payment to be paid in December 2017. This supplemental requests the difference between one month County medical that is currently in the budget and two months Teamsters medical times 72 deputy positions. $1,178.60 per deputy X 72 positions = $84,859

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

   Jail Fund Balance
1. **Description of request:**

On March 6th, 2017 the electrical system for the ferry dock at Gooseberry Point began experiencing significant electrical issues. After initial troubleshooting by county staff was unsuccessful, VECA Electric & Technologies was called in to locate and resolve the problem. The electrical problems proved elusive and required 230 hours of service and over 2 months to resolve the issues. During much of this time, an onsite backup generator was the only way to provide power that could run the lift motor. The cost of this effort to get the dock back to normal operations exceeded $75,000 with approximately $38,000 paid to VECA and $37,000 paid to the ER&R fund for generator fuel and staff assistance to VECA.

This request will replenish expenditure authority to be used in the event of further emergency maintenance needs prior to the end of 2017.

1b. **Primary customers:**

Travelers between Lummi Island and the mainland.

2. **Problem to be solved:**

This emergency maintenance activity eliminated any excess expenditure authority in the Ferry Fund for handling end of year emergencies as they surface.

3a. **Options / Advantages:**

The availability of expenditure authority to cover emergency maintenance needs enables Public Works to respond quickly and efficiently to situations as they arise.

3b. **Cost savings:**

In the event of an emergency, acting quickly and prior to significant failure often proves more cost effective. Additionally, quick action results in less downtime and user inconvenience.

4a. **Outcomes:**

The Ferry Fund will remain within the adopted budget while still responding to maintenance needs.

4b. **Measures:**

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

ER&R - May be requested to provide assistance in the event of a maintenance emergency. Maintenance & Operations - May be requested to provide assistance in the event of a maintenance emergency.

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

<table>
<thead>
<tr>
<th>Public Works</th>
<th>Ferry &amp; Docks</th>
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<tbody>
<tr>
<td>Supp ID # 2506</td>
<td>Fund 444</td>
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<tr>
<td></td>
<td>Cost Center 444510</td>
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<tr>
<td></td>
<td>Originator: Randy Rydel</td>
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</table>

**Status:** Pending

6. **Funding Source:**
   - 55% Ferry Fund Balance (Fare Box Revenue)
   - 45% Road Fund Transfer
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
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<td></td>
<td>11/21/17</td>
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<td></td>
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<td>12/5/17</td>
<td>Finance Committee; Council</td>
</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td>11/9/17</td>
<td></td>
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<td>11/13/17</td>
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**TITLE OF DOCUMENT:** 2018 Supplemental Budget Request #2

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

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

Supplemental #2 requests funding from the Road Fund:

1. To appropriate $90,000 to partially fund 2018 planned ferry dock maintenance.
2. To appropriate $200,000 to fund 2018 planned dock maintenance supplement.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

11/21/2017: Introduced 7-0

| Related County Contract #: | Related File Numbers: | Ordinance or Resolution Number: |
ORDINANCE NO.
AMENDMENT NO. 2 OF THE 2018 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 2018 budget included therein:

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<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road Fund</td>
<td>90,000</td>
<td></td>
<td>90,000</td>
</tr>
<tr>
<td>Ferry Fund</td>
<td>200,000</td>
<td>(90,000)</td>
<td>110,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>290,000</td>
<td>(90,000)</td>
<td>200,000</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:

Jack Louws, County Executive

Date: ______________________
## WHATCOM COUNTY

### Summary of the 2018 Supplemental Budget Ordinance No. 2

<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
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<tr>
<td>Road Fund</td>
<td>To partially fund 2018 planned ferry dock</td>
<td>90,000</td>
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<td>maintenance.</td>
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Supplemental Budget Request

Status: Pending

Public Works

Supp/ID # 2509  Fund 108  Cost Center 10895  Originator: Randy Rydel

Expenditure Type: One-Time  Year 2 2018  Add'l FTE [ ]  Add'l Space [ ]  Priority 1

Name of Request: 2018 Planned Dock Maintenance Supplement - 2508

X

Department Head Signature (Required on Hard Copy Submission)  11/4/17

Costs:

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1a. Description of request:
Companion to ferry supplemental request 2508.

Ferry Fund expenses are covered 45% by Road Fund transfers per WCC 10.34.030.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:
Road Fund Balance
MEMORANDUM

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

Through: Jon Hutchings, Director

From: Randy Rydel, Public Works Financial Services Manager

Date: November 6, 2017

Subject: Supplemental Budget Request (SBR)-2508 and 2509 for 2018 Planned Dock Maintenance

Enclosed for your approval is Supplemental Budget Request (SBR)-2508 and 2509 from the Ferry Fund and the Road Fund. This request supplements existing 2018 ferry fund expenditure authority in anticipation of increased dock related repair and maintenance needs. The facilities have seen increased repair and maintenance costs as they age. This request funds the identified 2018 repairs necessary to keep the docks operational.

Requested Action
Public Works respectfully requests that the County Council and the County Executive approve SBR-2508 adding expenditure authority to deal with the increased cost of maintaining our aging docks. Public Works has identified approximately $200K of planned maintenance in excess of the previously approved base budget. Concurrent with the approval of SBR-2508 is the approval of SBR-2509 providing for the transfers funds from the Road Fund to the Ferry Fund for 45% of expenditures per WCC 10.34.030.

Background and Purpose
As the ferry dock structures approach their engineered end of life we are seeing increased maintenance and capital costs associated with keeping them in operation. We have seen the expenses ramp up in 2017 with major electrical issues. In response to 2017 emergency work and preparation for 2018 capital repairs, a schedule of additional maintenance projects has been compiled for 2018. Some of these projects were contemplated in the existing maintenance budget, while others are newly discovered needs. In planning out our maintenance schedule we are taking every opportunity to maximize efficiencies by not working under emergency measures.

Funding Amount and Source
All operating expenditures of the Ferry Fund are subsidized 45% by the Road Fund. The remaining 55% is covered through farebox revenue banked as fund balance.

Please contact Randy Rydel at extension 6271, if you have any questions or concerns regarding the terms of this request.
Supplemental Budget Request

Public Works  
Ferry & Docks

Fund 444  
Cost Center 444200  
Originator: Randy Rydel

Expenditure Type: One-Time  
Year: 2018  
Add'l FTE □  
Add'l Space □  
Priority: 1

Name of Request: 2018 Planned Dock Maintenance Supplement

Department Head Signature (Required on Hard Copy Submission)

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1a. Description of request:
As the ferry dock structures approach their engineered end of life we are seeing increased maintenance and capital costs associated with keeping them in operation. We have seen the expenses ramp up in 2017 with major electrical issues. In response to 2017 emergency work and preparation for 2018 capital repairs, a schedule of additional maintenance projects has been compiled for 2018. Some of these projects were contemplated in the existing maintenance budget, while others are newly discovered needs. In planning out our maintenance schedule we are taking every opportunity to maximize efficiencies by not working under emergency measures.

1b. Primary customers:
Travelers between Lummi Island and the mainland.

2. Problem to be solved:
Public Works has identified approximately $225K of planned maintenance for 2018 and while we anticipate that some of this maintenance will be covered with the previously approved base budget for maintenance of $160K, it is prudent to request $200K of additional authority. Concurrent with the approval of SBR-2508 is the approval of SBR-2509 providing for the transfers funds from the Road Fund to the Ferry Fund for 45% of expenditures per WCC 10.34.030.

3a. Options / Advantages:
The availability of expenditure authority to cover scheduled and emergency maintenance needs enables Public Works to respond quickly and efficiently to situations as they arise. If maintenance is foregone until it is an emergency it will result in increased expense and unpredictable downtime.

3b. Cost savings:
Scheduling ahead of actual failure often provides more cost effective solutions to the maintenance issues.

4a. Outcomes:
The Ferry Fund will remain within the adopted budget while still responding to maintenance needs.

4b. Measures:

5a. Other Departments/Agencies:
ER&R, Maintenance & Operations

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

6. Funding Source:

Monday, November 06, 2017
## Supplemental Budget Request

**Status:** Pending

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- 55% Ferry Fund Balance (Fare Box Revenue)
- 45% Road Fund Transfer
### CLEARANCES

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### TITLE OF DOCUMENT:

Ordinance establishing WCC 2.126, Climate Impact Advisory Committee

### ATTACHMENTS:

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

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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

Ordinance establishing WCC 2.126, Whatcom County Climate Impact Advisory Committee

### COMMITTEE ACTION:

11/21/2017: Amended and forwarded to Council for Introduction

### COUNCIL ACTION:

11/21/2017: Substitute Introduced 7-0

### Related County Contract #:

### Related File Numbers:

### Ordinance or Resolution Number:

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

ESTABLISHING WHATCOM COUNTY CODE 2.126, WHATCOM COUNTY CLIMATE IMPACT ADVISORY COMMITTEE

WHEREAS, a near consensus of the scientific community agrees that human activities are causing detrimental climate change, and historic pollution is already causing climate impacts that ensure some amount of future climate change will continue to occur for the foreseeable future; and

WHEREAS, the Whatcom County Council supports the 2015 United Nations Paris Agreement on Climate Change; and

WHEREAS, the Paris Agreement recognizes “the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge”; and

WHEREAS, the Paris Agreement recognizes that people “may be affected not only by climate change, but also by the impacts of the measures taken in response to it”; and

WHEREAS, the Paris Agreement recognizes “the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change”; and

WHEREAS, the Paris Agreement recognizes the need to take “into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs”; and

WHEREAS, the Paris Agreement affirmed “the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels” regarding climate change “; and

WHEREAS, the Paris Agreement recognized “the importance of the engagement of all levels of government” regarding climate change; and

WHEREAS, in 2007 Whatcom County adopted a Climate Action Plan to reduce the emissions that cause climate change in both municipal operations and the community at large; and

WHEREAS, one of the proposed future steps of the 2007 Climate Action Plan was the creation of a Climate and Energy Advisory Committee to provide a conduit to educate and receive information from the community, provide oversight for implementation of the plan, and make future recommendations; and

WHEREAS, in 2016 the Whatcom County Council added Policy 10D-6 to the Comprehensive Plan calling for the creation of a Climate Impact Advisory Committee to in part review the implementation of the 2007 Climate Action Plan.
NOW THEREFORE BE IT ORDAINED, by the Whatcom County Council, that Whatcom County Code Chapter 2.126, Whatcom County Climate Impact Advisory Committee, is hereby established as outlined in Exhibit A to this ordinance.

BE IT FURTHER ORDAINED, that the Whatcom County Council establishes the goal of 100% renewable energy use within County Operations and the larger Whatcom County community, and directs the Whatcom County Climate Impact Advisory Committee to work diligently toward that goal.

APPROVED this __________ day of __________, 2017.

ATTEST:

Dana Brown Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Council Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Jack Louws, County Executive

(  ) Approved   (  ) Denied

Date Signed: ____________________
EXHIBIT A
(ESTABLISHING WCC 2.126, CLIMATE IMPACT ADVISORY COMMITTEE)

Chapter 2.126
WHATCOM COUNTY CLIMATE IMPACT ADVISORY COMMITTEE

Sections:
2.126.010 Established.
2.126.020 Purpose.
2.126.030 Function.
2.126.040 Membership – Term of office.

2.126.010 Established.
There is hereby established the Whatcom County Climate Impact Advisory Committee.

2.126.020 Purpose.
The Whatcom County Climate Impact Advisory Committee provides review and recommendations to the Whatcom County Council and Executive on issues related to the preparation and adaptation for, and the prevention and mitigation of, impacts of climate change.

2.126.030 Function.
To advise the County Council or the Executive on the following functions:

A. Evaluating and reporting on Whatcom County’s compliance with meeting targets for greenhouse gas reduction set forth in the 2007 Climate Action Plan, and setting targets, evaluating and reporting on the 100% renewable energy goal established in Ordinance 2017-______; and

B. Periodically recommending to the County Council new or revised targets that meet or exceed state and federal greenhouse gas reduction and renewable energy goals; and

C. Updating the Climate Action Plan, at a minimum every five years, or as needed to meet targets; and

D. Make recommendations to the Whatcom County Council about policies and budget priorities that will support a stable and just transition for workers and businesses, wherever possible encouraging and supporting a predictable shift towards clean energy and low carbon alternatives within the same or similar industry; and

E. Review available science, and recommend to the County Council the adoption of standardized guidelines for anticipated future sea level rise, risk of flood, fires, drought and other impacts of climate change to be used in community planning and capital facilities development; and

F. Recommending updates to the Whatcom County Comprehensive Plan in accordance with meeting Whatcom County’s goals to mitigate climate change, and prevent, adapt to, and prepare for climate change impacts; and
G. Recommend updates to Whatcom County land use policies and development regulations to support Whatcom County’s goals to prevent, adapt to, and prepare for climate change impacts.

H. Serve as a conduit for public education, information exchange, and engagement in support of Whatcom County’s climate change mitigation and impact prevention, adaptation, and preparation goals.

I. Make recommendations relevant to Whatcom County’s climate change mitigation and impact prevention, adaptation and preparation goals to the Whatcom County Council and Whatcom County Executive regarding state and federal policy priorities.

2.126.040 Membership – Term of office.
A. The committee shall consist of 11 voting members. A minimum of seven of the members will have previous work or educational experience in subjects including climate change, renewable energy development, energy conservation, waste reduction and recycling, farming, food security, land use planning, municipal government and flood mitigation and planning. Elected officials and staff from the cities within the county are eligible and encouraged to participate as members. A quorum shall consist of at least half of the appointed members.

B. The County Council shall appoint the committee members. Member terms will be three years; provided, that the terms of members first appointed will be staggered so that five of the initial committee members shall be appointed for two years. Members of the committee shall serve without compensation.

2.126.050 Organization – Meetings.
Meetings of the committee shall be open and accessible to the public and shall be subject to the Open Public Meetings Act. At every meeting, the committee will schedule an open session to take public comment on issues associated with the committee. Written records of meetings, resolutions, research, findings and recommendations shall be kept and such records shall be public. The committee shall adopt its own rules and procedures for the conduct of business. The committee shall elect a chairperson from among its members who shall preside at its meetings. The committee shall determine its meeting schedule and agenda, but shall meet at least quarterly. The committee may form and appoint ad hoc committees to work on specific issues, so long as at least two committee members are also members of each ad hoc committee.

2.126.060 Committee staffing.
The committee is encouraged to operate and hold its meetings as independent of county staffing and resources as possible. Staffing and other resources for the Committee shall be requested through the County Executive’s Office. The committee is authorized to request from the executive’s office information from administrative departments as necessary.
# WHATCOM COUNTY COUNCIL AGENDA BILL

**CLEARANCES**

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**TITLE OF DOCUMENT:**

Ord amend WCC 2.02, County Council

**ATTACHMENTS:**

Ordinance

**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.)

This ordinance amends WCC 2.02, County Council to update the guidelines for the conduct of Council and committee meetings, Council organization, rules of procedure, ordinance introduction and adoption, resolution approval, and other council-related matters.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

11/21/2017: Substitute Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
PROPOSED BY: ____________________________
INTRODUCTION DATE: 11/21/2017

ORDINANCE NO. ______
AMENDING WHATCOM COUNTY CODE 2.02, COUNTY COUNCIL

WHEREAS, Whatcom County Code 2.02 sets forth guidelines for the conduct of council
and council committee meetings, council organization, rules of procedure, ordinance
introduction and adoption, resolution approval, and other council-related matters; and

WHEREAS, amendments to Whatcom County Code 2.02 are necessary to clarify the
rules under which the council conducts its business.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom
County Code 2.02 is hereby amended as indicated in Exhibit A to this ordinance.

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:

( ) Approved ( ) Denied

Karen Frakes, Civil Deputy Prosecutor

Jack Louws, County Executive

Date: ____________________________

Page 1

28
Chapter 2.02
COUNTY COUNCIL* 

Exhibit A

Sections:
2.02.005 Council – Composition.
2.02.010 Council – Terms of office.
2.02.015 Council vacancies – Announcement.
2.02.020 Council vacancies – Qualifications.
2.02.025 Council vacancies – Nominations.
2.02.030 Council vacancies – Procedures.
2.02.035 Council vacancies – Term of appointee.
2.02.040 Meetings – General rules.
2.02.045 Meetings – Agenda.
2.02.050 Meetings – Council acting in other capacities.
2.02.055 Meetings – Order of business.
2.02.060 Meetings – Decorum of debate.
2.02.065 Meetings – Powers of the chair.
2.02.070 Meetings – Annual reorganization and election of officers.
2.02.075 Standing committees – Established.
2.02.080 Standing committees – Membership.
2.02.085 Standing committees – Committee action.
2.02.090 Membership on required boards, commissions, and committees.
2.02.095 Election of councilmembers as representatives to various boards and committees.
2.02.100 Resolutions – General provisions.
2.02.105 Ordinances – General provisions.
2.02.110 Ordinances – Introduction.
2.02.115 Ordinances – Reintroduction.
2.02.120 Ordinances – Publication of proposed and enacted ordinances.
2.02.125 Ordinances – Effective date.
2.02.130 Ordinances – Veto message – Overriding.
2.02.135 Emergency ordinances.
2.02.140 Signature on documents.
2.02.145 Requests for ordinances or legal opinions.
2.02.150 Duties of the chair.
2.02.155 Clerk.
2.02.160 Hearing examiner.
2.02.165 Other staff selected by the county council.
2.02.170 Correspondence requirements.
2.02.175 Requests of the executive branch.
2.02.180 Handling complaints and concerns.
2.02.185 Travel and expense approval.
2.02.190 Suspension of rules.


2.02.005 Council – Composition.
The council shall consist of seven members, one councilmember from each of the five council districts and two councilmembers at large. (Ord. 2016-038 Exh. A; Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).
2.02.010 Council – Terms of office.
The term of office of each elected councilmember shall be four years, commencing on the second Monday in January following election. The term of office of each elected councilmember shall be four (4) years commencing with the second Monday in January following election, and until a successor has been elected and has qualified. Elected councilmembers shall serve no more than three consecutive full terms in office. Terms are considered consecutive unless they are at least four years apart. The limit in terms shall be applied prospectively only, beginning with the elections in 2017 and 2019. (Whatcom County Charter 2.14 – Amended by referendum 2015). (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.015 Council vacancies – Announcement.
A. The council shall publicly announce any vacancy and shall provide a reasonable period for interested candidates to contact councilmembers and request that his or her name be considered for the vacant position.

B. Such announcement shall be made at least 10 days before the vacancy is filled. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.020 Council vacancies – Qualifications.
A. A vacancy on the county council shall be filled by a qualified registered voter and resident of the district he or she represents, meeting all of the qualifications of Section 4.20 of the Whatcom County Charter.

B. Any information provided by a nominee shall may be checked to verify qualifications, and submission of a personal resume may be requested. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.025 Council vacancies – Nominations.
A. Nominations to fill a vacancy on the county council shall be made by any councilmember who may place an individual’s name into nomination by nominating an individual by name in a regular open meeting. No councilmember may nominate himself or herself.

B. All names submitted may be referred to a committee of the whole for consideration.

C. Nominees may be personally interviewed by a committee of the council, or any councilmember(s) or councilmembers chosen by the council to conduct such interviews. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.030 Council vacancies – Procedures.
A. An appointment to fill a vacancy on the council shall be approved by an affirmative roll-call vote by a majority of the council. The council majority shall be four votes.

B. A nominated councilmember shall be allowed to vote for other nominees.

C. If at any time, by virtue of vacancies on the council, the membership of the council is reduced below that required to constitute a quorum (four members), the council may nevertheless fill the vacancies by an affirmative roll-call vote by a majority of the remaining council.

D. If a council vacancy remains unfilled for a period of 30 days because of the inability of the council to make the appointment, the vacancy shall be filled within 15 additional days by the county executive from among those persons nominated by the members of the council. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.035 Council vacancies – Term of appointee.
Section 4.50 of the Whatcom County Charter shall govern the term for which the appointee may serve. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.040 Meetings – General rules.
A. It is the policy of the council that, to the greatest extent possible, all official meetings of the council and its committees shall be open to the public, with the exception of “executive sessions” (closed to the public), for certain limited topics, as defined in RCW 42.23.110. All council and committee meetings will be held in compliance with the state Open Public Meetings Act (Chapter 42.30 RCW).
B. Regular meetings of the county council and its standing committees shall be held every other Tuesday in the Whatcom County Council Chambers, unless decided otherwise by the council. A schedule of specific meeting dates shall be approved by resolution annually. The chairperson of the council or the chairperson of any of its standing committees may call special meetings as required, provided proper public notice and notice to councilmembers is given.

C. Committee of the whole meetings will be scheduled as necessary. These meetings may be cancelled at the will of the council.

D. Executive sessions (closed meetings) may be held in accordance with the provisions of the Washington State Open Public Meetings Act. (RCW 42.30.110)

E. All council and council committee meetings shall be conducted pursuant to Sturgis The American Institute of Parliamentarians Standard Code of Parliamentary Procedure, latest edition, except when in conflict with the standing rules of the council. A copy of the Standard Code of Parliamentary Procedure shall be available in the council office for review.

F. A majority (four members) of the council shall be in attendance to constitute a quorum and shall be necessary for the transaction of the council’s business. A majority of a council committee (two members) shall be necessary for the transaction of a committee’s business. If a quorum is not present, the chair may call the meeting to order to establish that a meeting was held, but no official action may be taken. Agenda items that do not require official action may be dealt with, such as a minor discussion or report. At the conclusion of the meeting, those in attendance will be named and they shall adjourn to a later time.

G. A councilmember may participate in all or part of a council meeting by speakerphone or by computer video/internet. Notice of attendance via speakerphone or video must be provided to the clerk of the council not less than forty-eight hours before the scheduled start time for the meeting. The clerk or designee shall immediately advise the council chair of the proposed speakerphone or video participation. At any meeting where a councilmember is attending via speakerphone or video, there shall be a device that allows the voice and/or video of the councilmember to be heard by everyone present in the meeting room and the councilmember must be able to hear all speakers in the meeting room. The councilmember shall identify himself or herself before speaking. The councilmember shall notify others if he or she is about to disconnect. A councilmember who is connected remotely by speakerphone or video in the meeting place shall be considered to be actually present at that meeting for the period of time he or she is so connected, and that presence shall count toward a quorum of the council.

GH. In the event of a tie in votes on any motion, the motion shall be considered lost.

HI. Any session of the council may be continued or adjourned from day to day, or for more than one day, but no adjournment shall be for a longer period than until the next regular meeting thereafter. (RCW 42.30.090)

IJ. The council may schedule work sessions (open to the public) at the call of the council chair or of any two or more members of the council to review forthcoming programs of the county, receive progress reports on current programs or projects, or receive other similar information from the county executive or county staff. Formal action may be taken at these meetings.

JK. The clerk of the council shall keep an account of all proceedings of the council. Written minutes shall be recorded promptly after every meeting and, upon approval by the council, shall be entered in a minutes book constituting the official record of the council. All approved minutes shall be open to public inspection. Minutes shall include a summation of the actions and discussions forthcoming from each council and committee meeting, as well as a record of the vote of each councilmember. A verbatim public record shall be kept of each meeting by electronic or mechanical means for a reasonable period of time as provided by state law.

KL. Minutes of a council meeting are required to be read into the record only if requested by a member of the council. Minutes may be approved without reading if the clerk of the council previously furnished each councilmember with a copy thereof.
I-M. During an open session or public hearing, audience members will be given three minutes to address the council.

M-N. Cell phones shall be silenced and cell phone conversations shall be prohibited within the confines of the council chambers during meetings.

N-O. Placards, signs, applause, or other distractions shall not be allowed in the council chambers without the consent of the council chair.

O-P. Any person making personal, impertinent, or slanderous remarks, or who shall becomes boisterous, while attending a council or council committee meeting may be requested to leave the meeting and may be forthwith, by the presiding officer, barred from further audience before the council during that meeting. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.045 Meetings – Agenda.
A. The clerk of the council shall consult with the council chair and the chair of each committee prior to preparation of the council’s agenda. The clerk shall prepare the agenda, which, together with supporting documents, shall be provided to all councilmembers no less than five days prior to each regular council meeting and at the earliest possible date prior to any special meeting. The agenda shall be posted conspicuously within the Whatcom County Courthouse and shall be available for review on the council’s web page.

B. Upon request by any two or more members of the council at any council meeting, an item of business shall be placed on the agenda of the next regular meeting.

C. Consent items may be acted upon en masse; provided, however, that any consent item shall be considered separately if so requested by a councilmember, a member of the county administration, or a member of the public.

D. Introduction items may be accepted en masse; provided, however, that any introduction item shall be considered separately if so requested by one or more councilmembers. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.050 Meetings – Council acting in other capacities.
Where the members of the county council sit in an administrative or legislative capacity in situations such as, but not limited to, supervisors of a special district or members of the county health board, all business in these other capacities shall be treated as regular items of business during council meetings. The agenda for the meeting shall note any items being considered in one or more of these other capacities. It shall not be necessary for the council to adjourn itself in order to consider items in these other capacities. All actions taken by the council regarding issues in these other capacities shall be deemed to have been enacted or approved by those entities under the authority as may be provided for in law, or the authority of the county if appropriate. (Ord. 2010-044 Exh. A; Ord. 2008-046 § 1; Ord. 2008-004 Exh. A).

2.02.055 Meetings – Order of business.
Business may include but not be limited to the following order:

1. Roll call;
2. Flag salute;
3. Announcements;
4. Special presentations;
5. Approval of minutes;
6. Public hearings and final consideration of hearing items;
7. Open session;
8. Consent agenda;

9. Final consideration of other items;

10. Introduction of ordinances and resolutions;

11. Committee Reports, and other items, and from council members updates;

12. Adjourn.


2.02.060 Meetings – Decorum of debate.
A. Any councilmember desiring to speak shall first be recognized by the chair, and shall confine his or her remarks to the specific subject under consideration or to be considered. The councilmember who has proposed a motion or the committee member who has presented a report shall be allowed the first opportunity to explain the motion or report, and usually is allowed to speak last on it. No member or small group of members shall be permitted to monopolize the discussion on a question. If a member has already spoken and other members wish to speak, they should be recognized in preference to the member who has already spoken on a question.

B. Councilmembers shall address each other as “councilmember” and the council chair shall be addressed as “chair.”

C. Staff members, presenters, and the general public shall be addressed as Mr., Mrs., Ms., or by their official or honorary title.

D. When two or more councilmembers desire to speak at the same time, the chair shall name the member who shall have the floor.

E. When a councilmember is speaking, no other member shall hold discourse which may interrupt the speaker except to raise a point of order. The chair should insist that every member be attentive to the business before the assembly.

F. Councilmembers shall have time to explain any motion they intend to make. All motions will begin with the words, “I move” and must receive a second prior to being put to a vote.

G. When it appears that all councilmembers who wish to speak have done so, the chair shall inquire, “Is there any further discussion?” If there is not, the question is put to a vote.

H. To bring a question to immediate vote, a councilmember may move to close debate. If more than one motion is pending, the motion to close debate should specify the pending motions to which it applies (main motion, motion to amend, etc.). The motion to close debate cannot interrupt a speaker, is not debatable, and requires an affirmative vote by two-thirds of the councilmembers in attendance. The motion to close debate should be used in moderation, as members cannot be expected to maintain interest in an organization if they are frequently denied the right to participate in its deliberations. (Ord. 2015-021 Exh. A; Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.065 Meetings – Powers of the chair.
A. The council chair, if present, shall preside as chairperson at all meetings of the council. In the absence of the council chair, the vice chair shall preside. In the absence of both the council chair and the vice chair, the council shall elect a chair.

B. All meetings of the council shall be called to order by the council chair or vice chair. In the absence of both the council chair and the vice chair, the meeting shall be called to order by the clerk of the council for the election of a temporary chair. The roll shall then be called by the clerk, who shall enter in the minutes of the meeting the names of the members present. Four councilmembers shall be in attendance to constitute a quorum.

C. The chair shall preserve order and is responsible for controlling and expediting debate.
D. The chair shall determine all points of order, subject to the right of any member to appeal to the council. If any appeal is taken, the question shall be, “Shall the decision of the chair be sustained?”

E. The chair shall state all questions submitted for a vote and announce the result. A roll-call vote is required for all ordinances and may be taken upon request of a councilmember for all other items.

F. The presiding officer may move and debate from the chair, subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges of a councilmember by reason of his acting as the presiding officer. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.070 Meetings – Annual reorganization and election of officers.
A. At its first committee of the whole or regular council meeting in January, the council shall schedule its annual reorganization. At this meeting, the council shall elect the chair, vice chair, the executive pro tempore and the members of all standing committees, each by an affirmative roll-call vote by a majority of the entire council, or by general consent when applicable. Prior to each reorganizational meeting, the council clerk or chairperson shall ask councilmembers to circulate to each other in writing their requests for committee assignments and other offices. No councilmember shall hold the position of chair more than two full consecutive years.

B. The chair of the council shall act as executive pro tempore in the absence of the regular executive pro tempore who was selected pursuant to the above procedure. Terms of office shall begin at the conclusion of the reorganizational meeting.

C. In the temporary absence of the chairperson, the vice chairperson shall perform the duties and responsibilities of the chairperson. A temporary chairperson shall be elected should both the chairperson and vice chairperson be absent and shall serve during such absence. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.075 Standing committees – Established.
The following committees are established:

A. Finance and Administrative Services. General areas of responsibility for this committee shall be budget, taxation and purchasing issues, personnel policies and union negotiations;

B. Planning and Development. General areas of responsibility for this committee shall be zoning, development, stormwater, and fire;

C. Public Works, and Health and Safety. General areas of responsibility for this committee shall be road construction and vacations, new construction, remodeling, public utilities issues, criminal justice activities and planning, solid waste and health-related issues referred to the committee by the health board, public health advisory board, or health department;


E. Criminal Justice and Public Safety. General areas of responsibility for this committee shall be criminal justice activities and planning, public safety, and law enforcement.

2.02.080 Standing committees – Membership.
A. There shall be three members of all standing committees, membership to be determined by an affirmative vote of a majority of the entire council, or by general consent where applicable. The committee members shall be responsible for election of a chairperson and its internal organization.

B. The time of standing committee meetings shall be determined by the chairperson of each committee. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).
2.02.085 Standing committees – Committee action.  
A recommendation of any committee shall be agreed to by a majority of the committee in a regularly called meeting before a proposed item is reported out. All actions of a committee pertaining to an ordinance that has been properly introduced, as specified elsewhere in this chapter, will be reported out to the full council for final consideration. A committee report may contain only that information which is approved by a majority vote of the committee; however, minority reports may be presented to the full council after the committee report is presented. A majority recommendation of the committee may be “do pass,” “do pass as amended,” “do pass the attached substitute ordinance,” “do not pass,” “no recommendation,” “postpone indefinitely” or “withdraw.” Minority reports may also be submitted. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.090 Membership on required boards, commissions, and committees.  
Membership of councilmembers on those boards, commissions or committees on which, by law, members of the legislative body are required to sit shall be determined by an affirmative vote by a majority of the entire council, or by general consent when applicable. Councilmembers who are appointed by the county to any other county governmental boards, commissions or committees, other than ad hoc council committees, shall likewise be determined by an affirmative vote by a majority of the entire council, or by general consent when applicable. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.095 Election of councilmembers as representatives to various boards and committees. 
A. Each year at its annual meeting, the county council shall elect its representatives who shall serve until the next annual meeting to the various boards and commissions on which it must appoint its own members to serve.

B. This annual election for one-year terms shall begin in January, 1981. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A; Ord. 2001-028 Exh. A; Ord. 95-006 Exh. A; Res. 80-12 §§ 1, 2. Formerly 2.03.010).

2.02.100 Resolutions – General provisions.  
The county council may pass resolutions to organize and administer the legislative branch, to make declarations of policy which do not have the force of law, and to request information from any other agency of county government. Resolutions shall not be subject to the veto power of the executive, and the council in passing resolutions need not comply with the procedural requirements for the introduction, consideration and adoption of ordinances. All resolutions shall be filed with the clerk of the council in writing in their entirety and shall be scheduled on the council’s agenda as requested and required. Resolutions of the Whatcom County Flood Control Zone District Board of Supervisors shall meet the requirements in Chapter 100.01.070 WCC. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.105 Ordinances – General provisions. 
A. Every legislative act of the council shall be by ordinance.

B. The subject of every ordinance shall be clearly stated in the title and no ordinance shall contain more than one subject.

C. Ordinances may, by reference, adopt Washington State statutes or any recognized, printed codes or compilations in whole or in part.

D. No ordinance shall be amended unless a new ordinance sets forth each amended section or subsection at full length.

E. Voting on final passage of all ordinances shall be by roll-call vote of the council. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.110 Ordinances – Introduction.  
A. All proposed ordinances shall be filed with the clerk of the council in their entirety in writing and shall be introduced by a councilmember or by consent of the full council.

B. Proposed ordinances shall be introduced on the council’s agenda by title, following which the council may refer the proposal to the appropriate standing or special committee, committee of the whole, or schedule the proposal for public hearing. Ordinances may also be scheduled for council consideration without committee assignment or public.
hearing, if appropriate. Following committee report or public hearing closure, if applicable, an ordinance that has been properly introduced and scheduled on the agenda may be considered by the full council.

C. At least 13 days shall pass between introduction and final passage of every ordinance, except emergency ordinances. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.115 Ordinances – Reintroduction.
Any ordinance which has been introduced and not acted upon within 120 days of its introduction must be reintroduced, notice of introduction republished, and at least 13 days elapsed before it can come up for final consideration; except, if any such ordinance has been under active consideration by any standing committee, special ad hoc committee, or committee of the whole and has appeared at least twice on such committee’s published agenda, it is not subject to this requirement. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.120 Ordinances – Publication of proposed and enacted ordinances.
Ordinances, or summaries of them, the places where copies are filed, and the times when they are available for inspection shall be published when the ordinances are proposed for introduction and again upon enactment. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.125 Ordinances – Effective date.
Every ordinance which passes the council must be presented to the county executive. If the executive approves and signs the ordinance, it shall take effect 10 days after the date it is signed by the county executive, or otherwise enacted, or at a later date if stated in the ordinance. If the executive does not either sign or veto an ordinance within 10 days, Saturdays, Sundays, and holidays excepted, after presentation of the ordinance by the council, it shall become law without the executive’s signature. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.130 Ordinances – Veto message – Overriding.
If an ordinance is not approved by the executive, the entire ordinance shall be vetoed and returned with the executive’s written objections, which shall be attached to the ordinance, placed in the council’s agenda bill file, and distributed to all councilmembers. If, within 30 days after being returned to the council, the ordinance receives an affirmative roll-call vote by two-thirds of the entire council, it shall become law. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.135 Emergency ordinances.
An emergency ordinance necessary for the immediate preservation of the public peace, health, safety, or support of the county government and its existing institutions may be passed by an affirmative roll-call vote by two-thirds of the entire council. An emergency ordinance shall be effective immediately when approved by the county executive. The specific emergency and the facts creating it shall be clearly stated in the ordinance. All emergency ordinances, except those making appropriations from an emergency reserve or borrowing money for 120 days or less, shall expire as of the sixty-first day following the date on which the ordinance became law. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.140 Signature on documents.
All official documents issued by order of the council shall be signed by the chairperson (or authorized designee) and attested by the clerk of the council (or authorized designee), except as otherwise provided by the Charter. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.145 Requests for ordinances or legal opinions.
A. Any member of the county council may forward a request to the county executive to have proposed legislation prepared for placement on an upcoming agenda.

B. Any member of the county council may request written legal opinions, relating to county business, from the county prosecuting attorney or designee.

C. Any member of the council may, for purposes of inquiry, request verbal opinions or advice on county legal matters directly from the council’s assigned attorney. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).
2.02.150 Duties of the chair.
The chairperson shall supervise the clerk of the council and other personnel selected by the county council; provided, however, that such powers of the chair shall be exercised at the direction of the council. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.155 Clerk.
A. The county council shall employ and supervise the clerk of the county council, who shall function as the administrative department director with the responsibility for the operation of the council office and the council clerk’s staff. The clerk shall serve at the will of the council and will consult the council on major policy or procedural matters.

B. The clerk of the council shall supervise, hire and have full disciplinary authority over assigned staff. An employee may seek review by the council’s finance and administrative services committee of a disciplinary action taken by the clerk of the council; provided further, that such review shall take place in executive session with both the clerk and the employee requesting the review present.

C. The clerk will prepare and justify the department budget, monitor all fiscal operations of the department, and approve all departmental expenditures. The clerk will provide planning leadership and direction for assigned staff. The clerk will develop policy recommendations concerning county-wide programs, and will develop and implement departmental policies and procedures.

D. The duties of the clerk of the county council shall include, but not be limited to, those statutory powers, responsibilities and duties specified in RCW 36.22.010(6), 36.22.020, 36.32.135 and 36.32.140.

E. The duties of the clerk of the county council shall be increased or decreased consistent with future enactments of the state legislature.

F. The clerk of the county council shall oversee creation, management, and retention of public records in the council office by following the “Local Government Records Retention Schedules” as required by the State of Washington, Office of Secretary of State, pursuant to Chapter 40.14 RCW. file with the county auditor, at such time as they may be microfilmed, all original documents presented to the county council along with a notation of the council’s official action securely appended for secure disposition of all such official records.

G. All tort liability claims filed against Whatcom County shall first be served upon the clerk of the county council or designee. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.160 Hearing examiner.
The county council shall administer an annual contract for hearing examiner services. The duties of the hearing examiner are established in Chapter 20.92 WCC. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.165 Other staff selected by the county council.
If additional staff members are selected by the county council, they shall be employed as independent staff members reporting to the council, and would be responsible for such duties as may be assigned by the council by an affirmative vote of two-thirds of the council. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.170 Correspondence requirements.
Upon approval by a majority of the entire council, it shall be the responsibility of the council chairperson to respond to any correspondence on behalf of the council. Communications requesting council action shall be placed on the appropriate council committee agenda for consideration and recommendation to the full council. A copy of all council-initiated correspondence shall be kept in the council office. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.175 Requests of the executive branch.
The county council, its staff, and individual councilmembers shall not interfere in the day-to-day operations of the executive branch, nor shall they give orders to or direct, either publicly or privately, any officer or employee of the executive branch. Requests for detailed information and attendance by executive staff at any council committee or full council meeting shall be submitted to the county executive’s office for handling. Requests for documents that are
readily available to the public may go directly to a specific department without seeking approval of the county executive. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.180 Handling complaints and concerns.
A. The duty and responsibility for receiving and addressing complaints and concerns that are not related to the council's legislative responsibility or matters before the council or one of its committees are delegated to the county administration and the various executive official and department heads by the county charter.

B. Councilmembers shall refer all complaints and concerns which are not county policy or legislative matters to the administration, various elected officials or department heads, as circumstances dictate, for resolution before any council action is initiated. Subsequently, after which the county council, council committees, or individual councilmembers may address such issues with the administration before deciding if legislative action by the council is appropriate. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.185 Travel and expense approval.
A. All councilmember expense claims shall be subject to approval by the chair of the council or authorized designee;

B. Expense claims made by the chair shall be approved by the vice chair or authorized designee;

C. Expense claims shall be submitted in detailed account citing date, place, and business purpose in accordance with procedures established by and forms approved by administrative services finance;

D. Original receipts prepared and issued by the service provider or copies of endorsed checks are required whenever this policy provides for actual cost reimbursement; and

E. Itemized expense claims shall be submitted to the deputy clerk of the council after obtaining written approval from the chair or vice chair, as appropriate. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.190 Suspension of rules.
The rules and procedures set forth in this chapter may be suspended in specific instances by an affirmative roll-call vote by two-thirds of the entire council. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).
ATTACHMENTS:
1. Cover memorandum

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.)

Watershed Science & Engineering is providing final designs, developing bid-ready plans and specifications, assisting in bid preparation, and providing construction support for the High Creek Management Plan preferred option. This second amendment provides additional design work to reduce impacts to adjacent landowners and to large riparian trees which were not anticipated in the original scope. The end date is extended until June 30, 2019 to provide summer 2018 or later construction support and preparation of as-built drawings and documentation. This amendment is for $38,416 with a total amended contract amount of $192,720.

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
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: Paula Harris, River & Flood Manager
       Gary Stoyka, Natural Resource Manager

RE: Amendment No. 2 to Watershed Science & Engineering Contract for Services for High Creek Final Design

DATE: November 20, 2017

Enclosed are two (2) originals of Amendment No. 2 to the Contract for Services Agreement between Watershed Science & Engineering and Whatcom County Flood Control Zone District for your review and signature.

▪ Requested Action
Public Works respectfully requests that the County Executive, acting for the Whatcom County FCZD Board of Supervisors, execute the proposed amendment to the Contract for Services with Watershed Science & Engineering to provide additional services necessary to complete final designs and provide construction support.

▪ Background and Purpose
Watershed Science & Engineering is contracted with the FCZD to develop final designs, bid-ready plans and specifications, assist in bid preparation, and provide construction support for the preferred option identified in the High Creek Management Plan. This project will address chronic sediment accumulation in the channelized lower reach of High Creek which blocks fish passage and contributes to local flooding. Additional design iterations are necessary to address permit requirements and to reduce impacts to adjacent landowners and large mature riparian trees which were not anticipated when the project was originally scoped.

The amendment also extends the contract as the additional design work and lack of construction funding has delayed the project from 2016 to 2018. A new end date of June 30, 2019 will provide for summer 2018 or later construction support and preparation of as-built drawings and documentation.

▪ Funding Amount and Source
This amendment is for $38,416 with a total amended contract amount of $192,720. The 2017 FCZD budget has adequate budget authority for this amendment. While this contract amendment is for design of a capital project approved by the Board of Supervisors in the FCZD capital budget appropriations, the amendment amount exceeds 10 percent of the 2017 project appropriation so Board of Supervisor approval is required.

Please contact Paula at extension 6285, if you have any questions or concerns regarding the terms of this amendment.

Encl.
<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>River &amp; Flood</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>John N. Thompson, Sr. Planner</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Watershed Science &amp; Engineering</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 #: 201505035

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

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

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

Is this contract the result of a RFP or Bid process? Yes ☒ No ☐
If yes, RFP and Bid number(s): 15-01 (Consultant Roster) Cost Center: 715005

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):**
$154,304

**This Amendment Amount:**
$38,416

**Total Amended Amount:**
$192,720

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:**
Watershed Science & Engineering is providing final designs, developing bid-ready plans and specifications, assisting in bid preparation, and providing construction support for the High Creek Management Plan preferred option. This second amendment provides additional design work to reduce impacts to adjacent landowners and to large riparian trees which were not anticipated in the original scope. The end date is extended until June 30, 2019 to provide summer 2018 or later construction support and as-built drawings and documentation. This amendment is for $38,416 with a total amended contract amount of $192,720.

**Term of Contract:**
Date: December 31, 2017
**Expiration Date:**
Date: June 30, 2019

**Contract Routing:**
1. Prepared by: John N. Thompson
Date: 11/15/2017
2. Attorney signoff: Daniel L. Gibson ☒ 11/21/17
Date: 11/15/17
3. AS Finance reviewed: M Caldwell
Date: 11/15/17
4. IT reviewed (if IT related):
Date: 11/16/17
5. Contractor signed:
Date: 11/21/17
6. Submitted to Exec.:
Date: 11/21/17
7. Council approved (if necessary):
Date: 11/21/17
8. Executive signed:
Date: 11/21/17
9. Original to Council:
Date: 11/21/17

V2.0
Amendment No. 2
CONTRACT FOR SERVICES BETWEEN
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT
AND WATERSHED SCIENCE & ENGINEERING
For HIGH CREEK FINAL DESIGN

THIS SECOND AMENDMENT is to the Contract between the Whatcom County Flood Control Zone District, hereinafter referred to as the “County”, and Watershed Science & Engineering, hereinafter referred to as the “Contractor”, dated June 10, 2015 and designated Whatcom County Contract No. 201505035. In consideration of the mutual benefits to be derived, the parties agree to the following:

WITNESSETH

WHEREAS, the County has entered into an agreement with the Contractor, dated June 10, 2015, to provide final designs, bid-ready plans and specifications, bid preparation assistance, and construction support for the High Creek Management Plan preferred option; and

WHEREAS, the County and the Contractor executed an amendment to the agreement on September 15, 2016 which modified the scope of work to include additional survey work in support of project design and extended the termination date to December 31, 2017 in anticipation of summer 2017 construction; and

WHEREAS, additional design work and multiple design iterations have been needed to resolve issues related to permitting and to reduce construction impacts to large mature trees and adjoining landowners; and

WHEREAS, the anticipated construction window for the project has been moved to the summer of 2018 or later with site restoration work likely extending into spring of the year following construction; and

WHEREAS, an extension of the construction timeline two years beyond that originally planned also increases Contractor administrative responsibilities; and

NOW, THEREFORE, the County and the Contractor agree to modify the Agreement as follows:

1. SCOPE OF WORK

   The Scope of Work is amended to include the additional Scope of Services described in Exhibit A-2, attached heretofore and incorporated herein by reference.

2. COMPENSATION

   As consideration for the additional services to be provided by the Contractor, the County agrees to reimburse the Contractor for additional services rendered under this amendment at a total sum not to exceed THIRTY EIGHT THOUSAND FOUR HUNDRED AND SIXTEEN DOLLARS ($38,416) based on the revised task cost breakdown and rate table detailed in Exhibit B-2, attached hereto and incorporated herein by reference. The revised contract amount is $192,720.

3. CONTRACT TERMINATION DATE

   The contract termination date is extended to June 30, 2019.

This amendment shall be made part of Whatcom County Contract No. 201505035 by and between Whatcom County Flood Control Zone District and Watershed Science & Engineering. Unless specifically stated herein, all other terms and conditions of the original agreement shall remain in full force and effect.
IN WITNESS WHEREOF, Whatcom County Flood Control Zone District and Watershed Science & Engineering have executed this Amendment on the date and year below written.

DATED this ______ day of ______, 2017

CONTRACTOR INFORMATION:

Watershed Science & Engineering
Jeffrey P. Johnson, P.E., President

Address:
110 Prefontaine Pl. S., Suite 508
Seattle, WA 98104

Contact Name: Jeff Johnson
Contact Phone: (206) 521-3000
Contact Fax: N/A
Contact Email: jeff@watershedse.com

CONTRACTOR:

Watershed Science & Engineering

Jeffrey P. Johnson, P.E., President

Date

11/16/2017

STATE OF WASHINGTON
COUNTY OF KING

) ) SS.

On this 16 day of Nov., 2017, before me personally appeared Jeffrey P. Johnson to me known to be the President of Watershed Science & Engineering and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Tricia Chiem
Notary Public
State of Washington

Commission Expires 01/19/2018

NOTARY PUBLIC in and for the State of Washington, residing at Seattle. My commission expires 01/19/2018.
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:

Jon Hutchings, Public Works Director Date 11/2/17

Approved as to form only:

Daniel Gibson, Chief Civil Deputy Prosecutor Date 11/2/17

Approved:
Accepted for Whatcom County Flood Control Zone District

By:

Jack Louws, Whatcom County Executive, Date 11/2/17
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
__________________________.
Exhibit "A-2"
(Scope of Services)

Watershed Science & Engineering will provide the following services to Whatcom County in support of the High Creek Final Design project:

- Incorporate additional rounds of revision and provide additional materials requested by the County to support a permit-ready plan set; and

- Revise the design and incorporate additional comments into the 60% design in order to finalize the project footprint so as to minimize impacts to large mature conifers and to landowners in the project area west of SR 542 and prepare additional draft project details and specifications as requested by the County; and,

- Provide project administration necessary to manage the project and sub-consultant work under the extended timeline.


## Exhibit B-2 - Compensation

### High Creek Final Design & Construction Support, Amendment 2

<table>
<thead>
<tr>
<th>TASK</th>
<th>WBE</th>
<th>PBE</th>
<th>Element</th>
<th>AE/S</th>
<th>Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Senior Professionals</td>
<td>Senior Geotechnical Engineers</td>
<td>Junior Engineers</td>
<td>Contract Admin</td>
<td>Principal Lead Survey</td>
<td>3 Person Survey Crew</td>
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<tr>
<td>2015 Rate</td>
<td>$105.00</td>
<td>$137.00</td>
<td>$90.00</td>
<td>$60.00</td>
<td>$146.00</td>
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<td>2018 Rate (applies in years after Amendment 2 approval)</td>
<td>$145.00</td>
<td>$133.00</td>
<td>$94.00</td>
<td>$60.00</td>
<td>$166.00</td>
<td>$196.00</td>
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### 1. Data Collection & Review

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<th>WBE</th>
<th>PBE</th>
<th>Element</th>
<th>AE/S</th>
<th>Total</th>
<th>Total</th>
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<td>Topographic Survey</td>
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<td>$46.00</td>
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### 2. Permit Ready Plans

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<th>PBE</th>
<th>Element</th>
<th>AE/S</th>
<th>Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan view, sections, and limited details</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
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### 3. Easement Acquisition Assistance

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<th>Total</th>
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<td>Identifying required easement areas</td>
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<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
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### 4. Final Technical Analysis

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<th>PBE</th>
<th>Element</th>
<th>AE/S</th>
<th>Total</th>
<th>Total</th>
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<tr>
<td>Geotechnical investigation</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
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### C. 5%. Design Plans

<table>
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<th>WBE</th>
<th>PBE</th>
<th>Element</th>
<th>AE/S</th>
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<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Coordination with agencies</td>
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<td>$46.00</td>
<td>$46.00</td>
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### 5. Construction Support

<table>
<thead>
<tr>
<th>Subtask</th>
<th>WBE</th>
<th>PBE</th>
<th>Element</th>
<th>AE/S</th>
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<th>Total</th>
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<tbody>
<tr>
<td>Review of contractor bids</td>
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<td>$46.00</td>
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### 6. Project Management and Contracting

<table>
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<tr>
<th>Subtask</th>
<th>WBE</th>
<th>PBE</th>
<th>Element</th>
<th>AE/S</th>
<th>Total</th>
<th>Total</th>
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<tbody>
<tr>
<td>Project Management &amp; Contracting</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
<td>$46.00</td>
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### Direct Expense Estimate

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<tr>
<th>Item</th>
<th>Units</th>
<th>Rate</th>
<th>Cost</th>
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<tr>
<td>Mileage</td>
<td>3500</td>
<td>$0.50</td>
<td>$1,750</td>
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<tr>
<td>Phone and courier for project investigation</td>
<td>1</td>
<td>$50</td>
<td>$50</td>
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<tr>
<td>Other communication equipment etc.</td>
<td>5</td>
<td>$20</td>
<td>$100</td>
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<tr>
<td>Subcontractor Mileage</td>
<td>114.843</td>
<td>3%</td>
<td>$3,445</td>
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**NOTE:**

- All bid prices are the 2015 rate, with necessary adjustments included in Amendment 2 and Amendment 3.
- Mileage rates are expected to be updated at 2017 rates.

Total $137,705
<table>
<thead>
<tr>
<th>Labor Category</th>
<th>Billing Rate ($/hr)</th>
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<tbody>
<tr>
<td><strong>Watershed Science &amp; Engineering</strong></td>
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</tr>
<tr>
<td>Senior Professional</td>
<td>$200</td>
</tr>
<tr>
<td>Senior Engineer I</td>
<td>$170</td>
</tr>
<tr>
<td>Senior Engineer II</td>
<td>$130</td>
</tr>
<tr>
<td>Senior Geomorphologist</td>
<td>$130</td>
</tr>
<tr>
<td>Junior Engineer</td>
<td>$90</td>
</tr>
<tr>
<td>GIS Specialist</td>
<td>$75</td>
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<tr>
<td>Engineering Intern</td>
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<tr>
<td>Contract Administrator</td>
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<tr>
<td><strong>Pacific Survey &amp; Engineering</strong></td>
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<tr>
<td>Principal Engineer</td>
<td>$158</td>
</tr>
<tr>
<td>Principal Land Surveyor</td>
<td>$158</td>
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<tr>
<td>Senior Field Scientist</td>
<td>$128</td>
</tr>
<tr>
<td>Senior CAD / GIS Technician</td>
<td>$112</td>
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<tr>
<td>Engineering Technician</td>
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<tr>
<td>Survey Coordinator</td>
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<tr>
<td>Survey Crew Chief</td>
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<tr>
<td>Survey Technician</td>
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<tr>
<td>2-person Survey Crew</td>
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<tr>
<td><strong>Associated Earth Sciences</strong></td>
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<tr>
<td>Senior Principal Engineer</td>
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</tr>
<tr>
<td>Senior Principal Hydrogeologist</td>
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<tr>
<td>Senior Project Engineering Geologist</td>
<td>$130</td>
</tr>
<tr>
<td>Senior Project Geologist</td>
<td>$130</td>
</tr>
<tr>
<td>Graphic Specialist</td>
<td>$95</td>
</tr>
<tr>
<td>Word Processing</td>
<td>$60</td>
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<tr>
<td><strong>Expenses</strong></td>
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</tr>
<tr>
<td>Mileage</td>
<td>$0.535</td>
</tr>
</tbody>
</table>
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

Originator: GSS 10/23/17
Division Head: GSS 10/23/17
Dept. Head: 11/16/17
Prosecutor: 10/27/17
Purchasing/Budget: bb 10/30/17
Executive: 11/28/17

TITLE OF DOCUMENT:
Interlocal Agreement between Whatcom County Flood Control Zone District and Public Utility District No. 1 of Whatcom County to provide funding for surface and groundwater monitoring activities.

ATTACHMENTS:
1. Memo
2. Interlocal Agreement

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

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

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

Interlocal Agreement between Whatcom County Flood Control Zone District and Public Utility District No. 1 of Whatcom County to provide funding for surface and groundwater monitoring activities.

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 Members of the Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

RE: Interlocal Agreement with Public Utility District No. 1 of Whatcom County for Funding of Surface and Groundwater Monitoring

DATE: October 23, 2017

Enclosed are two (2) originals of an Interlocal Agreement between the Whatcom County Flood Control Zone District (FCZD) with the Public Utility District No. 1 of Whatcom County (PUD) for funding of Surface and Groundwater Monitoring for your review and signature.

- **Background and Purpose**
  This interlocal agreement provides funding from the PUD to the FCZD to fund stream gaging and groundwater level monitoring associated with the numerical groundwater modeling project for the Lynden-Everson-Nooksack-Sumas area of Whatcom County.

- **Funding Amount and Source**
  The PUD is providing $100,000 in funding for the stream gaging and monitoring project.

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

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

<table>
<thead>
<tr>
<th>Is this a New Contract?</th>
<th>If not, is this an Amendment or Renewal to an Existing Contract?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☒ No ☐</td>
<td>If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Does contract require Council Approval?</th>
<th>Yes ☒ No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If No, include WCC:</td>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Is this a grant agreement?</th>
<th>Yes ☒ No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, grantor agency contract number(s):</td>
<td>CFDA#:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this contract grant funded?</th>
<th>Yes ☒ No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, Whatcom County grant contract number(s):</td>
<td>Awarded to PUD</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this contract the result of a RFP or Bid process?</th>
<th>Yes ☒ No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, RFP and Bid number(s):</td>
<td>Contract</td>
</tr>
<tr>
<td></td>
<td>Cost Center: 169121</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this agreement excluded from E-Verify?</th>
<th>No ☐ Yes ☒</th>
</tr>
</thead>
<tbody>
<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).
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Work related subcontract less than $25,000.
- ☐ Public Works - Local Agency/Federally Funded FHWA.

<table>
<thead>
<tr>
<th>Contract Amount: (sum of original contract amount and any prior amendments):</th>
<th>$ (100,000.00)</th>
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</thead>
<tbody>
<tr>
<td>This Amendment Amount:</td>
<td>$</td>
</tr>
<tr>
<td>Total Amended Amount:</td>
<td>$</td>
</tr>
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**Summary of Scope:** Interlocal funding agreement between Flood Control Zone District and the Whatcom PUD to provide funding for surface and groundwater monitoring activities.

<table>
<thead>
<tr>
<th>Term of Contract: 15 mos.</th>
<th>Expiration Date: 12/31/18</th>
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</thead>
<tbody>
<tr>
<td>Contract Routing: 1. Prepared by: Gary Stoyka</td>
<td>Date: 10/23/17</td>
</tr>
<tr>
<td>2. Attorney signoff: Daniel L. Gibson</td>
<td>Date: 10/27/17</td>
</tr>
<tr>
<td>3. AS Finance reviewed: bbennett</td>
<td>Date: 10/30/17</td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td>Date: 11/14/17</td>
</tr>
<tr>
<td>5. Contractor signed:</td>
<td>Date: 11/21/17</td>
</tr>
<tr>
<td>6. Submitted to Exec.:</td>
<td>Date:</td>
</tr>
<tr>
<td>7. Council approved (if necessary):</td>
<td>Date:</td>
</tr>
<tr>
<td>8. Executive signed:</td>
<td>Date:</td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td>Date:</td>
</tr>
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</table>
INTERLOCAL AGREEMENT
BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY FOR
IMPLEMENTATION OF STREAM GAGING AND GROUNDWATER LEVEL
MONITORING IN SUPPORT OF A GROUNDWATER MODELING PROJECT IN THE
LYNDEN-EVERSON-NOOKSACK-SUMAS AREA

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

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

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

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

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

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

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

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

WHEREAS, stream gaging and groundwater level monitoring is an integral part of the
groundwater modeling project in the LENS area; and
WHEREAS, the PUD has access to specific funding sources that can be utilized to fund one year of stream gaging and groundwater level monitoring.

NOW, THEREFORE, the FCZD and the PUD agree as follows:

1. SCOPE OF WORK

(a) The FCZD and PUD shall cooperate to implement stream gaging of the lower mainstem of the Nooksack River and its tributaries from October 1, 2017 through September 30, 2018. The FCZD will enter into a contract with the U.S. Geological Survey (USGS) to conduct the stream gaging as described in Task 1 of Exhibit “A”.

(b) The FCZD and PUD shall cooperate to implement groundwater level monitoring of monitoring wells located in the lower Nooksack River watershed from January 1, 2018 through December 31, 2018. The FCZD will enter into a contract with a qualified consultant to conduct the groundwater level monitoring as described in Task 2 of Exhibit “A”.

(c) The FCZD will manage the USGS contract for stream gaging and the consultant contract for groundwater level monitoring on behalf of the FCZD and PUD.

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

2. TERM

(a) This agreement shall be effective October 1, 2017 and shall continue through December 31, 2018. The Agreement shall only be renewed, in writing, on terms then agreed to by the parties. The term shall be as stated in the Agreement regardless of the date of signature.

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

3. PAYMENT

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

(b) Payments to the FCZD will be made quarterly based on invoices submitted to the PUD.

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

(d) A short project update shall accompany each invoice.
4. PERSONS RESPONSIBLE FOR ADMINISTRATION OF THE AGREEMENT

The persons responsible for administration of this Agreement shall be:

Stephan Jilk
General Manager
Public Utility District No. 1 of Whatcom County
1705 Trigg Road
Ferndale, WA 98248
Phone: (360) 384-4288

Gary Stoyka
Natural Resources Manager
Public Works Department
Whatcom County
322 N. Commercial St., Ste 110
Bellingham, WA 98225
Phone: (360) 676-6876
Fax: (360) 738-2468

5. LEGAL RELATIONS

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

6. LIABILITY

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

7. MODIFICATIONS

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

8. APPLICABLE LAW

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

9. SEVERABILITY

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

10. ENTIRE AGREEMENT

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

11. RECORDATION

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

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

_____________________________________________________________________
Jack Louws
County Executive for the
Flood Control Zone District

DEPARTMENTAL APPROVAL:  APPROVED AS TO FORM:

[Signature]
Jon Hutchings
Director, Public Works Department

[Signature]
Daniel L. Gibson
Prosecuting Attorney’s Office
EXECUTED this 14 day of November 2017 for PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY:

Name: 

Title: General Manager
EXHIBIT A

SCOPE OF WORK

Task 1. Stream Gaging. Surface water data will be collected and published at 7 USGS stream gages in the Nooksack River Basin as follows:

<table>
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<tr>
<th>Gage ID</th>
<th>Location</th>
<th>Parameter(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12205000</td>
<td>North Fork Nooksack River below Cascade Creek near Glacier</td>
<td>Water temperature</td>
</tr>
<tr>
<td>12209490</td>
<td>Skookum Creek above Diversion near Wickersham</td>
<td>Streamflow discharge; Water temperature</td>
</tr>
<tr>
<td>12210700</td>
<td>Nooksack River at North Cedarville</td>
<td>Water temperature</td>
</tr>
<tr>
<td>12210900</td>
<td>Anderson Creek at Smith Road near Goshen</td>
<td>Streamflow discharge; Water temperature</td>
</tr>
<tr>
<td>12212050</td>
<td>Fishtrap Creek at Front Street at Lynden</td>
<td>Streamflow discharge; Water temperature</td>
</tr>
<tr>
<td>12212390</td>
<td>Bertrand Creek at International Boundary</td>
<td>Streamflow discharge; Water temperature</td>
</tr>
<tr>
<td>12212430</td>
<td>Unnamed Tributary to Bertrand Creek near H Street near Lynden</td>
<td>Streamflow discharge; Water temperature</td>
</tr>
</tbody>
</table>

Task 2. Groundwater Level Monitoring. Groundwater elevations shall be monitored in 15 wells located throughout Whatcom County and already outfitted with data loggers and barometers as part of the Lynden-Evenson-Nooksack-Sumas ground water modeling project. The loggers and barometers record data hourly. Services will include the following:

- Visit each well quarterly and download available water level and barometric pressure data. Check that loggers are working properly and that available memory is sufficient to store data. Make repairs and adjustments as necessary to maintain accurate data recording.

- Measure water depths manually with an electric water-level tape.

- Compensate raw water level data to account for barometric pressure.

- Calculate ground water elevations based on logger data, manual water depth measurements, ground surface elevation, and height of the well casing relative to ground surface.

- Compile ground water elevation data into a spreadsheet, plot ground water elevations over time, and provide the compiled and graphed data to the FCZD.

- Complete aquifer tests and/or install data loggers in additional wells as opportunities arise as directed by the FCZD.
TITLE OF DOCUMENT:
Interlocal Agreement between Whatcom County, City of Bellingham and Fire Protection District #7 for Advanced Life Support (ALS) Services.

ATTACHMENTS:
Memo and Interlocal Agreement

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 County Executive requests Council approval to enter into the seven year ALS service agreement.

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: Whatcom County Council Members  
    Jack Louws, County Executive  
From: Tyler Schroeder, Deputy Executive  
Subject: EMS ALS Provider Contracts  
Date: November 22, 2017

Enclosed are the Interlocal Agreements with the Advanced Life Support (ALS) Providers, the City of the Bellingham and Fire Protection District #7, for continued ALS services through December 31, 2023.

Background and Purpose
With the successful passage of the EMS Levy in late 2016, efforts have been made to fulfill the recommendations of the Funding Work Group (FWG) adopted by County Council in March, 2016. The FWG recommendations outlined revised ALS Service Fees which were included in the EMS Levy Budget.

The County has worked with the ALS providers to develop new professional service agreements that are timed with the 6-year levy and include the new per unit cost for ALS services. All Parties have agreed to the terms as outlined through the EMS Funding Work Group Recommendations.

Funding Amount and Source:
The funding source is the EMS Levy Tax Collection and is in the revised amount for 2017 of $8,010,789 for the first year and a CPI-W increase, not to be less than 2.5%, in subsequent years.

Action:
The County Executive requests Council review and approval of this Interlocal Agreement with the ALS providers for continued ALS services in Whatcom County.
<table>
<thead>
<tr>
<th>Field</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originating Department:</td>
<td>Executive Office</td>
</tr>
<tr>
<td>Division/Program: (i.e. Dept., Division and Program)</td>
<td>Non-Departmental/EMS</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>T. Schroeder/T. Helms</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>City of Bellingham &amp; Fire Protection Dist. 7</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>[blank]</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>[blank]</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>[blank]</td>
</tr>
<tr>
<td>CFDA#:</td>
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<tr>
<td>Is this contract grant funded?</td>
<td>Yes ☑ No □</td>
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<tr>
<td>If yes, Whatcom County grant contract number(s):</td>
<td>[blank]</td>
</tr>
<tr>
<td>Is this the result of a RFP or Bid process?</td>
<td>Yes ☑ No □</td>
</tr>
<tr>
<td>Contract</td>
<td>[blank]</td>
</tr>
<tr>
<td>Cost Center:</td>
<td>[blank]</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>[blank]</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>[blank]</td>
</tr>
<tr>
<td>☐ Contract work is for less than $100,000.</td>
<td>[blank]</td>
</tr>
<tr>
<td>☐ Contract work is for less than 120 days.</td>
<td>[blank]</td>
</tr>
<tr>
<td>☑ Interlocal Agreement (between Governments).</td>
<td>[blank]</td>
</tr>
<tr>
<td>☐ Work related subcontract less than $25,000.</td>
<td>[blank]</td>
</tr>
<tr>
<td>☐ Public Works - Local Agency/Federally Funded FHWA.</td>
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</tr>
<tr>
<td>Contract Amount:(sum of original contract amount and any prior amendments):</td>
<td>[blank]</td>
</tr>
<tr>
<td>$8,010,789.00 in 2017</td>
<td>[blank]</td>
</tr>
<tr>
<td>$8,251,116.00 in 2018</td>
<td>[blank]</td>
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<tr>
<td>Subsequent years will include CPI-W increase not less than 2.5%</td>
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<tr>
<td>This Amendment Amount:</td>
<td>[blank]</td>
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<td>$</td>
<td>[blank]</td>
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<tr>
<td>Total Amended Amount:</td>
<td>[blank]</td>
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<td>$</td>
<td>[blank]</td>
</tr>
<tr>
<td>Summary of Scope: Provider agreement for Advanced Life Support services throughout Whatcom County. Cost is based on a per unit fee as recommended through the EMS Funding Work Group and approved and recommended by the EMS Oversight Board.</td>
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</tr>
<tr>
<td>Term of Contract:</td>
<td>Expiration Date: 12-31-23</td>
</tr>
<tr>
<td>Contract Routing:</td>
<td>Date:</td>
</tr>
<tr>
<td>1. Prepared by:</td>
<td>Date:</td>
</tr>
<tr>
<td>[Daniel L. Gibson]</td>
<td>Date:</td>
</tr>
<tr>
<td>2. Attorney signoff:</td>
<td>Date:</td>
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<td>[blank]</td>
<td>Date:</td>
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<td>3. AS Finance reviewed:</td>
<td>Date:</td>
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<td>[blank]</td>
<td>Date:</td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td>Date:</td>
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<td>[blank]</td>
<td>Date:</td>
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<tr>
<td>5. Contractor signed:</td>
<td>Date:</td>
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<td>[blank]</td>
<td>Date:</td>
</tr>
<tr>
<td>6. Submitted to Exec.:</td>
<td>Date:</td>
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<tr>
<td>[blank]</td>
<td>Date:</td>
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<td>7. Council approved (if necessary):</td>
<td>Date:</td>
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<td>Date:</td>
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<tr>
<td>8. Executive signed:</td>
<td>Date:</td>
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<td>[blank]</td>
<td>Date:</td>
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<tr>
<td>9. Original to Council:</td>
<td>Date:</td>
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<td>[blank]</td>
<td>Date:</td>
</tr>
</tbody>
</table>

Last edited 10/31/16
INTERLOCAL AGREEMENT FOR ADVANCED LIFE SUPPORT SERVICES

This Interlocal Agreement for Advanced Life Support Services ("Agreement") is made and entered into in triplicate originals this day by and between the COUNTY OF WHATCOM, a municipal corporation, hereinafter referred to as the 'County' and the City of Bellingham a municipal corporation, hereinafter referred to as the 'City' and Fire Protection District #7, a municipal corporation of the State of Washington, hereinafter referred to as the 'District'. Together, the County, the City and the District are the only parties to this Agreement and may be referred to collectively as "Parties" or the City and the District may be referred to collectively as "ALS Providers" hereinafter.

RECITALS

WHEREAS, Chapter 39.34 RCW authorizes local governments to enter into agreements for joint and cooperative undertakings; and

WHEREAS, statutes and regulations concerning the provision of emergency medical services include Chapters 18.71, 18.73, 70.168 RCW and Chapter 246-976 WAC; and

WHEREAS, in 2005 the City of Bellingham, County and all Whatcom County fire agencies developed a near-term, six-year emergency medical services plan which has largely been implemented; and

WHEREAS, that planning effort also addressed longer-term planning issues, such as provision of tiered services (ALS and BLS) and development of further ALS capacity within the county fire service agencies depending upon future service demands; and

WHEREAS, changing demographics in the County, along with a greater utilization of tiered service, has resulted in changes in the nature of service delivery, expectations for service, and capacity of various agencies to deliver service, all of which have driven the search for an updated, sustainable model of a still-unified EMS system to deliver emergency medical services throughout the cities and the unincorporated area of the County; and

WHEREAS, the County is the governmental entity that will assume responsibility to ensure a unified administration and integrated operation of ALS services on a county wide basis; and
WHEREAS, in 2011, the Medic One Planning Committee, comprised of Whatcom County and City of Bellingham Councils, and County Fire District representatives was formed to address the issues related to countywide EMS; and

WHEREAS, the Medic One Planning Committee recommended a countywide EMS business model and Whatcom County and the City of Bellingham passed joint resolutions 2012-016 (County) and 2012-13 (City) adopting the EMS business model recommendations which included the creation of an EMS Oversight Board (EOB) and a Technical Advisory Board (TAB); and

WHEREAS, in 2013, upon the recommendations of the Medic One Planning Committee, the County established new EMS oversight boards with the adoption of Ordinance 2013-074 which rescinded and replaced Ordinance 82-109 codified in Whatcom County Code as Chapter 5.04.080. Chapter 5.04.080 defines the composition and duties of these newly established Boards; EOB (WCC 5.04.080) and TAB (WCC 5.04.085) as resolved through Joint Resolution 2012-016; and; and

WHEREAS, in 2015, the EOB confirmed the EMS Funding Work Group (FWG) comprised of County and City elected officials, Fire District leadership and citizen representation and a mission to recommend a stable funding strategy and mechanism that would support and sustain a countywide EMS system; and

WHEREAS, on March, 2016 the EMS Oversight Board accepted the formal submission of the Whatcom County EMS Funding Work Group Recommendations which include the recommendation for a County Department Governance Model, Per ALS Unit Cost, the addition of a County EMS Administrator and a proposed EMS Levy rate; and

WHEREAS, In November, 2016 the citizens of Whatcom County supported and passed the proposed 0.295 EMS Levy allowing for stable EMS funding over the next six years; and

WHEREAS, the success of the EMS levy allows the County to contract with ALS providers for the projected per unit rate included in the Whatcom County EMS Funding Work Group Recommendations as outlined in Exhibit E, Funding Work Group Recommendations EMS Levy
Budget Forecast; and the ALS Providers both represent that they have qualified and experienced ALS operational personnel already in place to perform the services as defined in this Agreement; and

WHEREAS, the Parties agree that a contract for services with compensation based on the per ALS unit cost as recommended by the EMS Funding Work Group, and accepted by the EOB, City and County Councils, with agreed-upon amounts for the six years, subject to the modifications set forth below, is the appropriate form of contract for the services being provided; and

WHEREAS, this Agreement will replace and supersede the Previous Interlocal Agreement for EMS Services.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and obligations contained herein, the Parties mutually agree as follows:

AGREEMENT

1. DEFINITIONS AND EXHIBITS:

DEFINITIONS:

"ALS Services" are limited to those services identified throughout this Agreement and those services added to this Agreement by written contract modification.

"ALS" (Advanced Life Support) means pre-hospital medical care requiring training and certification beyond the Emergency Medical Technician Basic level as required by Washington State law and regulations.

"ALS Service Provider" means those entities that contract with the County to provide pre-hospital ALS treatment and transport services and which possess Washington State ambulance licensure and operate consistent with trauma verification regulations to provide such service within Whatcom County.
"BLS" (Basic Life Support) means those services identified in Washington state law and regulations as being provided at the Emergency Medical Technician Basic level.

"EMS Oversight Board" ("EOB") means the board envisioned in Whatcom County Resolution #2012-016 and City of Bellingham Resolution #2012-013 to provide recommendations regarding EMS system planning, administration, operations, levels of service, EMS service costs, revenues, and associated financial reporting to the County, Cities and Fire Districts in Whatcom County. The composition and duties of the EOB have been further defined by County Ordinance #2013-074.

"Technical Advisory Board" ("TAB") means the board established jointly by the County and City pursuant to Whatcom County Resolution #2012-016 and City of Bellingham Resolution #2012-013 to provide recommendations and information on operational, educational, and logistical components of ALS service in Whatcom County. The composition and duties of the TAB have been further defined by County Ordinance #2013-074.

EXHIBITS:

The Agreement utilizes:
Exhibit "A" Scope of Work
Exhibit "B" Defined Service Areas
Exhibit "C" EMS Administrative Services
Exhibit "D" Business Associate Terms
Exhibit "E" Funding Work Group Recommendations – EMS Levy Budget Forecast
Exhibit "F" Quarterly Report Example
Exhibit "G" EMS Supervisor Roles & Responsibilities

These Exhibits may be modified by mutual written agreement of the Executive and the Mayor.

2. OBLIGATIONS OF THE PARTIES AS TO COUNTY-WIDE ALS SERVICE.
The goal of the Parties is to work cooperatively with each other as well as the EOB and TAB to facilitate coordinated county-wide paramedic ambulance services. Each party's responsibilities in furtherance of this goal are identified as follows:

a) The ALS Service Providers, shall perform such services as are identified and designated as ALS Service Provider responsibilities throughout this Agreement and as detailed in
Exhibits "A" and "B" attached hereto and made a part hereof. The City will be the primary service provider for Service Area 1 as identified on Exhibit "B" and shall provide backup services to Service Area 2. The District will be the primary service provider for Service Area 2 as identified on Exhibit "B" and shall provide backup services to Service Area 1. The primary service area may change by mutual agreement following recommendation and approval by the TAB and EOB during the length of this contract. The ALS Service Providers shall provide support and cooperate with all other EMS providers.

b) The County, as the administrator of the county-wide EMS system, shall be responsible for high level administrative functions or actions that are needed to ensure continued integrated and uniform county-wide EMS service. The County shall also provide county-wide ALS administrative services that include impartial oversight of financial, operations, and legal matters while considering the long term objectives of the system in collaboration with the TAB and EOB. These administrative responsibilities and administrative services are detailed in Exhibit "C", attached hereto and by reference made a part hereof. The County shall require that any contracts or agreements with ALS Service Providers facilitate efficient and effective cooperation among all Whatcom County EMS system Service Providers and the EMS Manager and further ensure integrated and uniform county-wide ALS service.

c). The County shall pay EMS dispatch fees associated with services provided under this Agreement.

3. IMPRACTICABILITY AND FORCE MAJEURE.

Neither the County nor the ALS Service Providers shall be required to perform any obligation to the extent the performance or the provision of such becomes impracticable as a result of a cause or causes outside of the reasonable control of the County or ALS Service Providers, or to the extent the performance of such requires the County or ALS Providers to violate applicable laws, rules or regulations or result in the breach of any license, permit or applicable contract. The obligations of the County and ALS Service Providers under this Agreement are subject to conditions of force majeure, including an act of God, act of a public enemy, war, revolution, riot, or any other cause which is not reasonably within the control of the County or ALS Service Providers.

4. THE EOB AND TAB
The ALS Service Providers and the County shall coordinate and implement the services described in Exhibit "A" in accordance with best industry practices and EOB and TAB recommendations as administered by the County, and subject to a right to reopen the financial component of this Agreement as described in Section 6 below. ALS Service Providers will participate in the work of the EOB and TAB. Neither the EOB nor the TAB is a party to this Agreement, and nothing herein shall serve to create third party rights in favor of the EOB, the TAB, or any other person or entity not specifically identified as a Party to this Agreement.

5. COMPENSATION AND METHOD OF PAYMENT

As consideration for the provision of the ALS services set forth in this Agreement, the County shall pay to the ALS Service Providers a fee for ALS services ("ALS Service Fee") as defined in this Section and further described in Exhibit E, Budget. The ALS service fees are based on the work accomplished by the EMS Funding Work Group with an updated and more recent CPI-W for Seattle Tacoma Bellevue included.

a. ALS Service Fee For Calendar Years 2017, 2018 and 2019 by Party:

City ALS Provider Service Fee includes three paramedic ambulances and the EMS Supervisor Unit:

The ALS Service Fee for calendar year 2017 shall be:

Total cost of three paramedic ambulances is $5,549,310.00;
Countywide EMS Supervisor unit is $611,709.00.

The ALS Service Fee for calendar year 2018 shall be:

Total cost of three paramedic ambulances is $5,715,792.00;
Countywide EMS Supervisor unit is $630,060.00.

The ALS Service Fee for calendar year 2019 shall be:

Total cost of three paramedic ambulances and Countywide EMS Supervisor unit is 2018 fee plus CPI-W rate as of June 2018, however, the adjustment shall not be less than 2.5%.

District ALS Provider Service Fee includes one paramedic ambulance:

The ALS Service Fee for calendar year 2017 shall be:

Total cost of one paramedic ambulance is $1,849,770.00.

The ALS Service Fee for calendar year 2018 shall be:
Total cost of one paramedic ambulance is $1,905,264.

The ALS Service Fee for calendar year 2019 shall be:
Total cost of one paramedic ambulance is 2018 fee plus CPI-W rate as of June 2018 however; the adjustment shall not be less than 2.5%.

b. **ALS Service Fee Beyond the Initial Three-Year Period.** Beginning in April of 2019, the County and ALS providers may meet to discuss a joint recommendation to request a review of the ALS Service Fee for the ALS Service Fee amounts for the years following 2019 by the EMS Oversight Board. The County and ALS Providers will review the detailed expenditure reports covering the actual cost of service provided, using standard format developed jointly by the County and ALS Service Providers. If an increase is warranted, the EMS Oversight Board will submit a recommendation to the Whatcom County Council. Following approval by the County Council, the ALS Service Fee amounts for the following three years will be set forth in an addendum to this agreement. In the event the Parties do not agree to an increased ALS Service Fee amount for the following three calendar years, the ALS Service Fee shall be automatically adjusted annually on January 1 of each remaining year using the previous year’s June CPI-W for Seattle Tacoma Bellevue, until this Agreement terminates in accordance with its provisions; provided, however, that such automatic adjustment shall not be less than 2.5%.

c. **Monthly Payments.** At the inception of this agreement, the County shall pay to the ALS Service Providers their respective ALS Service Fee amounts in twelve (12) monthly payments and for each year thereafter in twelve (12) monthly payments. The new 2017 ALS fee is retroactive to January 1, 2017 for ALS Service Fees already paid at a lesser rate in previous months. The County shall reimburse the City the difference between the former ALS Service Fee amount included in contract #201312009 and the new 2017 ALS Service Fee amount provided in this contract. The County shall reimburse the District between the former ALS Service Fee amount included in contract #201312008 and the new 2017 ALS Service Fee amount provided in this contract.

d. **Mobile Home Transfer.** The double-wide manufactured home located at 1886 Grandview Road, Ferndale, WA shall be transferred to the District for the purchase price
of $10.00. The District agrees to use the facility for 24/7 paramedic housing thereby mitigating the need to acquire paramedic housing during the term of this agreement, reducing overall cost to the EMS Fund. To the extent the Grandview Road Facility is legally categorized as personal property, this Agreement shall serve as a valid and binding Bill of Sale for such facility.

e. **Certain Services May Be Compensated and Billed Separately Subject to County Review and Approval.** An event that overburdens current operational resources or adversely affects service capacity, as identified in Exhibit “A” number 3 may result in an application by the ALS Provider to the County for cost reimbursement separate from the ALS Service Fee. Such application may be subject to review and recommendation by the EOB. The County will review such an application in good faith for reimbursement.

6. **CONTRACT REOPENER**

   a. The Parties may mutually agree to re-open the contract for renegotiation of any of its terms based on changed circumstances.

   b. This Agreement will be reopened at either the County's request or an ALS Service Provider's request if the County requests changes in the means, methods, or scope of services identified in Exhibit "A" that have financial implications. The scope of the reopener shall be limited to addressing the financial implications and the specific request that raises financial implications.

   c. This Agreement will be reopened at the request of any Party if either ALS Service Provider withdraws from this Agreement. The scope of the reopener shall be limited to addressing the matters implicated by such withdrawal.

   d. The ALS Providers in entering this Agreement are relying on the EOB and TAB structure as set forth in County Ordinance No. 2013-074. This Agreement will be reopened at the Provider's request if the composition or duties of the EOB or the TAB are modified from those defined by the above County ordinance. The scope of the reopener shall be limited to addressing the implication of the modifications.

   e. This Agreement may be reopened as set forth in Sections 19.c and 19.d.

7. **EFFECTIVE DATE, DURATION, WITHDRAWAL AND TERMINATION**
This Agreement shall be effective on date of signature by all Parties, and shall apply retroactively to January 1, 2017 for the purposes of ALS service fees as described above and shall continue through and including December 31, 2023. Starting on January 1, 2022, this Agreement shall automatically extend for successive one (1) year periods unless one party provides the other parties with written notice of termination by no later than January 1. For example, if no party provides a written notice of termination to the other party by January 1, 2022, this Agreement will automatically extend by one (1) year to December 31, 2024. By way of further example, if no party provides a written notice of termination to the other parties by January 1, 2023, this Agreement will automatically extend by one (1) year to December 31, 2025. This automatic extension and renewal provision shall continue until this Agreement is properly terminated by the provision of written notice in accordance with this Section. In no event may any Party unilaterally initiate a termination that is effective prior December 31, 2023.

Following notice of termination, the terms and conditions contained herein shall continue in full force and effect for the remaining term of the Agreement. The Parties covenant to work cooperatively and in good faith under the terms and conditions expressed herein after one party has given the other parties a written notice of termination.

In addition to the right to terminate this Agreement, each ALS Service Provider has the right to withdraw from this Agreement by providing the County and the other ALS Service Provider with 12 month’s written notice prior to the effective date of withdrawal. As soon as practicable after providing such notice, the Parties shall meet and work cooperatively to plan and implement an orderly transition of services and funding. Following the effective date of withdrawal, upon written request by the withdrawing ALS Service Provider, the County shall expeditiously make payment to the provider of contract payment amounts not covered by previous payments; and upon written request by the County, the withdrawing ALS Service Provider shall expeditiously refund to the County any monies paid in advance for services not performed. This Agreement shall remain in effect between the remaining Parties following a withdrawal by any one ALS Service Provider.

8. ESTABLISHMENT AND MAINTENANCE OF RECORDS
   a. The ALS Providers agree to maintain books, records and documents and accounting procedures and practices which accurately reflect the costs and its collection results
related to the performance of this Agreement. Such fiscal books, records, documents, reports and other data shall be maintained in a manner consistent with the "Budgeting, Accounting, Reporting System for Counties and Cities, and Other Local Governments," referred to as "BARS," as issued by the Office of the State Auditor, State of Washington. The ALS Providers further agree that the County shall have the right to monitor, at its own expense, the fiscal components of the EMS services provided by either ALS Provider under this Agreement to evaluate whether actual costs remain consistent with the terms of this Agreement. Information will be available based on quarterly financial reporting. The structure of the quarterly report will be mutually agreed to by the County and ALS Service Providers and shall include all actual expenses by categories generally consistent with the budget reflected in Exhibit E without being inordinately onerous to the ALS Service Providers.

The ALS Service Providers shall retain all books, records, documents and other material relevant to this Agreement for at least three (3) years after its expiration, or as required by state and federal law, whichever is longer. The ALS Service Providers agree that the County or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

9. ALS USER FEES AND WHATCOM COUNTY EMS FUND

a. The Whatcom County Council shall by ordinance establish user fees for ALS services. Prior to establishment of such fees, the County shall seek input and advice from the EOB on the appropriate amounts for those fees. The ALS Service Providers shall take those steps necessary to implement the fees so determined by the County Council, including collection activities when necessary.

b. The ALS Service Providers shall remit all user fees received for services delivered by the contracted transport units to the County on a monthly basis for deposit in the Whatcom County Emergency Medical Services Fund.

c. The County shall set aside all ALS user fees and funds collected under the Interlocal Cooperation Agreement Between Whatcom County and The Cities of Whatcom County For The Purpose of Defining the Distribution of funds received from the One-Tenth of one Percent Sales Tax Initiative for Countywide Emergency Services ("Sales Tax
Agreement”), and the EMS property tax levy of $.0295 or less per thousand dollars of assessed valuation, including all interest income, to procure and fund countywide emergency medical services. The County shall maintain its record and accounting of such fees and funds in a manner consistent with "BARS," as issued by the Office of the State Auditor, State of Washington. The County further agrees that the District shall have the right to monitor, at its own expense, the use and expenditure of such funds to ensure they remain consistent with the terms of this Agreement.

d. The ALS Service Providers agree to establish specific funds and/or accounts that will allow for accountability of all EMS levy funds distributed to the ALS Service Providers. On an annual basis the Providers shall provide detailed revenue and expense report, inclusive of reserve fund balances, that accounts for the activity of the services contracting here within. The specific funds and/or accounts will remain separate from other funds for the duration of this Agreement. An EMS levy funds can only be spent on services as outlined in this agreement.

10. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA)

The Parties agree that protected health information shall be used and maintained as set forth in the Business Associate Agreement attached hereto as Exhibit D in order to ensure compliance with HIPAA. The ALS Service Providers shall also comply with all applicable provisions of the Health Information Technology for Economic and Clinical Health Act.

11. ASSIGNMENT

The ALS Service Providers shall not assign any portion of this Agreement without the written consent of the County, and it is further agreed that, to the extent practical, said consent must be sought in writing by the ALS Service Provider not less than forty-five (45) days prior to the date of any proposed assignment. The County agrees that it will not unreasonably withhold such consent. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth by local, State and/or Federal statutes, ordinances and guidelines.

The County recognizes that fire agencies throughout the state are actively engaging in regionalization efforts in order to improve efficiencies while reducing duplication and associated
expenses in order to better serve their citizens. During the course of planning for any such action involving an ALS Provider party to this agreement, the ALS Service Provider shall keep the County informed of the plan and the capabilities of the merged entities or new entity to provide the services set forth in this Agreement.

12. COMPLIANCE WITH LAWS
The Parties, in performance of this Agreement, agree to comply with all applicable local, State and/or Federal laws and ordinances, including standards for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals and any other standards or criteria as described in this Agreement to assure quality of services.

13. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICES
The County and the ALS Service Providers are equal opportunity employers. The ALS Service Providers agree that they shall not discriminate against any employee or applicant on the grounds of race, color, religion, sex, sexual orientation, national origin, creed, marital status, age, veteran status, or the presence of any disability; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the particular worker involved from performing the occupational requirements of the job. The ALS Service Providers shall take such action with respect to this Agreement as may be required to ensure full compliance with state and federal law. The ALS Service Providers shall not, on the grounds of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, veteran status or the presence of any disability deny any individual any services or other benefits provided under this Agreement.

14. RELATIONSHIP OF PARTIES
The Parties hereto recognize and agree that they are independent governmental entities. Except as expressly provided for herein, nothing in the Agreement shall be construed to limit the discretion of the governing bodies of each party.

Neither party shall assume any liability for the direct payment of any salary, wages or other compensation of any type to any of the other party’s personnel performing services hereunder. No agent, employee or other representative of the Parties shall be deemed to be an employee of the other party for any reason. This Agreement shall not be construed or interpreted such that either party hereto is held to be an agent of the other party.
15. DISPUTE RESOLUTION, JURISDICTION, AND VENUE

a. In the event of a dispute between the Parties arising from this Agreement or any obligations hereunder, the dispute shall first be referred to the operational officers or representatives designated by the Parties to have the responsibility of administering this Agreement. Said officers or representatives shall meet as soon as possible, and in any event the initial meeting shall be held within thirty (30) days of either Party's request for a meeting to resolve the dispute. The Parties covenant to make a good faith attempt to resolve the dispute at this meeting.

b. In the event that the Parties are unable to resolve any dispute arising under this Agreement, or other dispute or disagreement arising from the implementation of the terms of the Agreement, the Parties agree that mediation will be a condition precedent to any litigation. The Parties agree to jointly select a mediator. If the Parties are unable to agree upon a mediator, the Parties shall jointly obtain a list of five (5) mediators from a reputable non-Whatcom County dispute resolution organization and alternately strike mediators on that list until one remains. The Parties agree to share equally in the cost of mediation.

c. In the event that mediation is unsuccessful and litigation ensues, each Party shall bear its own costs and expenses. The venue for any dispute related to this Agreement shall be Skagit County, Washington. This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance.

16. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.

17. INDEMNIFICATION; HOLD HARMLESS

All services to be rendered or performed by each Party under this Agreement shall be performed or rendered entirely at each Party's own risk, as to third-party claims based on such
services. Each Party ("Indemnifying Party") expressly agrees to indemnify and hold harmless each other Party and all of its officers, agents, employees ("Indemnified Party"), from any and all liability, loss or damage including reasonable costs of defense that the Indemnified Party may suffer as a result of claims, demands, actions, or damages to any and all persons or property, costs or judgments against the Indemnified Party or any person which result from or arise out of the services performed by the Indemnifying Party under this Agreement; provided, that no Party is entitled to the protection of this section when the liability at issue has resulted exclusively from the errors or omissions of such Party, its officers, agents, or employees.

18. TREATMENT OF ASSETS AND LIABILITIES
Following the effective date of this Agreement, the ALS Service Providers will be responsible for the acquisition, repair, maintenance, and upkeep of personal property assets needed to provide ALS service. Any future purchase of real property needed for ALS service within Whatcom County will require further discussions and agreement between the County and the ALS Service Providers that will operate on the real property.

19. TRANSITION, PHASE OUT, AND CLOSE OUT
Upon written notice of termination as outlined in Section 7, the Parties agree to meet and to develop an ALS services transition and phase-out strategy that is agreeable to all Parties. Such strategy shall set forth the manner in which services under this Agreement will be phased out and transitioned to another entity, and will, to the extent practical, minimize the impact to all Parties and the public resulting from the termination and phase out of services. The Parties agree to meet within thirty (30) days from the written notice of termination to discuss the transition and phase-out strategy. In the event that this Agreement is terminated for any reason, the following provisions shall apply upon the effective date of termination:

a. Upon written request by the ALS Service Provider, the County shall expeditiously make payment to the ALS Provider of contract payment amounts not covered by previous payments; and

b. The ALS Service Provider shall expeditiously refund to the County any monies paid in advance for services not performed.
c. The provision of this subsection 19.c shall be effective only in the event the County initiates termination of this Agreement and there is no contract by the County for ALS Service within the City of Bellingham. In order to mitigate the impacts resulting from termination of the agreement, for a three year period following the effective date of termination of this Agreement, the County shall remit to the City a proportion of the total sales tax collected for countywide emergency medical services under the Sales Tax Agreement. The proportion of the total annual sales tax remitted to the City shall be equal to the proportion of the population of the City of Bellingham compared to the population of Whatcom County in its entirety. Population figures will be based on the most recent OFM population estimates. By way of example, if the population of the City of Bellingham constitutes 40% of the total population of Whatcom County, the amount remitted to the City shall be 40% of the total sales tax receipt received by the County under the Sales Tax Agreement. In the event the City withdraws from the Sales Tax Agreement, upon the effective date of the City's withdrawal, the City will have the right to retain the portion due the City under RCW 82.14.450 and the remittance set forth in this subsection (19.c) will cease. This subsection (19.c) may be modified by mutual agreement of the City and County. This subsection (19.c) may be reopened at the request of either the County or the City if the voters of Whatcom County pass a new levy that is intended to fund emergency medical services.

d. The provision of this subsection (19.d) shall be effective only if the City initiates termination of this Agreement in which event the City will only be eligible for the sales tax proceeds as defined under RCW 82.14.450. This subsection (19.d) may be modified by mutual agreement of the City and County. This subsection (19.d) may be reopened at the request of either the County or the City if the voters of Whatcom County pass a new levy that is intended to fund emergency medical services.

20. SEVERABILITY

a. It is understood and agreed by the Parties hereto that if any part, term or provision of this Agreement is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.
b. If it should appear that any provision hereof is in conflict with a statute of the State of Washington, said provision which may conflict therewith shall be deemed modified to conform to such statutory provision. If there is a judicial finding of illegality or conflict as set forth in this Section, and such finding materially frustrates either Party's intent with respect to this Agreement, the Party disadvantaged by the finding may cause this Agreement to be reopened for negotiation, with 60 days advance written notice. The negotiation shall be limited to reinstating the Parties to their respective positions as if the finding had not occurred.

21. ENTIRE AGREEMENT
The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by all Parties. All Parties recognize time is of the essence in the performance of the provision of this Agreement. It is also agreed by the Parties that the forgiveness of the non-performance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. The Parties agree that this Agreement supersedes any previous agreement between the Parties regarding the services and obligations set forth herein.

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

WHATCOM COUNTY

c/o COUNTY EXECUTIVE

311 GRAND AVENUE

BELLINGHAM, WASHINGTON 98225

BELLINGHAM FIRE DEPARTMENT

c/o FIRE CHIEF

1800 BROADWAY
23. WHATCOM MEDIC ONE NAME

The Parties acknowledge the provider name "Whatcom Medic One" is a licensed, recognized entity operated by the City of Bellingham Fire Department. This name shall continue to be used by the Bellingham Fire Department for Medicare licensing and billing provisions and programs. The Parties will cooperate in using the "Medic One" name, to the extent practical, in a manner that promotes the uniform and integrated provision of EMS service on a county-wide basis.

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

__________________________
Jack Louws, County Executive

Approved as to form:

__________________________
County Civil Deputy Prosecuting Attorney

Executed this ___ day of ______________, 2017, for CITY OF BELLINGHAM.

__________________________
Kelli Linville, Mayor
Attest:

__________________________________________
Brian Henshaw, Finance Director

Departmental Approval:

__________________________________________
Department Head

Approved as to form:

__________________________________________
City Attorney
Executed this ___ day of ____________, 2017, for WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 7

__________________________
Al Saab, Board Chair

Attest:

__________________________
Board Secretary
Exhibit A

Scope of Work

RESPONSE:

1. The City shall provide three (3) and the District shall provide one (1) ambulance(s), available 24 hours for each day of contracted service January 1, 2017 through December 31, 2023, and shall meet the following criteria:

   a. Staffing for each ambulance shall consist of two (2) Washington State Certified paramedics in good standing with Washington State Department of Health.

      i. The paramedics shall have authority of the Medical Program Director ("MPD") to provide paramedic level service in Whatcom County.

      ii. During times when a Whatcom County paramedic training program is in operation, staffing levels may be altered to one (1) paramedic and one (1) paramedic student.

   b. All ambulances used to deliver emergency medical services and supported by Whatcom County funds must meet vehicle standards and requirements for operation as an Advanced Life Support ambulance service as established by the Washington State Department of Health pursuant to RCW 18.73, unless waived by the State Department of Health Office of EMS Trauma Prevention Licensing. Medical equipment used by personnel supported by Whatcom County funds shall be reliable and maintained consistent with standards identified in RCW 18.73 and must meet appropriate federal or state standards or county protocols.

   c. Vehicles and staffing shall meet all applicable Washington State Department of Health and Center for Medicare/Medicaid Service (CMS) requirements for operation as an Advanced Life Support ambulance service.

2. The City shall provide one (1) paramedic supervisor available 24 hours per day of contracted service January 1, 2017 through December 31, 2023 and shall meet the following criteria:

   a. The paramedic supervisor shall have authority of the Medical Program Director to provide paramedic level service in Whatcom County.

   b. The supervisor shall be furnished with, and shall utilize, a utility-type vehicle equipped with essential equipment and supplies allowing for paramedic level care to be rendered to patients consistent with standards identified in RCW 18.73.

   c. In addition to supervisory duties performed, this paramedic-staffed unit shall be available for response countywide when "call for service surge" exceeds paramedic ambulance capacity.
d. In addition, the supervisor shall provide supervisory and surge capacity as discussed above throughout Whatcom County and will provide the duties as established by the TAB and EOB and outlined in Exhibit “G” during the life of this contract.

3. The parties recognize there are occasions, both planned and unplanned, that requires temporary additions to ALS ambulance services. When determining whether to reimburse the ALS Service Provider for such extraordinary events, the Parties will use the following criteria and categories:

a. Planned events which are of short duration and for which participation by the ALS Service Provider is voluntary typically will not result in a request for additional reimbursement.

b. When planned events require additional ALS resources for longer periods of time (usually greater than 8 hours in a day and/or requiring multiple days of service) and the ALS Service Provider has been preapproved by the County to provide these resources, the ALS Service Provider may submit a request for additional reimbursement and should anticipate receipt of requested funds.

c. For unplanned events, such as weather events, multi-casualty events, catastrophic man-made or naturally occurring events, and/or events that isolate portion(s) of a service area that require adding ALS resources, the Fire Chief has the authority to deploy additional ALS resources during such events. The Fire Chief shall consult regarding resource deployment with the County Executive as soon as reasonably possible, but no later than 24 hours after deployment, and may request reimbursement for these additional services. All reimbursement requests for additional services must include supporting documentation to demonstrate expenditures.

4. The parties recognize all areas of the county will not receive the same response time for ALS services. A county-wide tiered response model of closest Basic Life Support (BLS) service providing first response to ALS incidents with ALS Service Providers responding as soon as possible to the highest call volume areas will be utilized.

a. The County and ALS Service Provider shall determine the best location to stage/houseambulances within a Countyidentified service area in a manner that achieves best possible response times to the highest call volume areas.

b. Impacts resulting from changes to service areas will be negotiated by the parties.

c. The Parties recognize the ALS Service Provider provides BLS service using a contracted ambulance unit pursuant to dispatch protocols and/or directions of the Medical Program Director. Revenue from services provided under those BLS Services will be remitted to the County.
PERFORMANCE MEASUREMENT AND REVIEW:

1. The Contractor agrees to participate in an ongoing program of regional performance measurement and review as established by the TAB and authorized by the EOB. Performance indicators will be reported by the Contractor on an annual basis and updated as needed. Performance standards include but are not limited to:

   a. Response times to time-critical incidents within County-identified sub divisions of the contracted service area(s);

   b. Ambulance response statistics including responses, transports, out-of-service time, and count of incident types responded to;

   c. Year-end expenditure report; and

   d. County-identified patient outcome reporting.

   e. Other performance reports as recommended by the TAB and EOB.

COORDINATION OF SERVICES:

1. ALS Service Provider shall work cooperatively with first response agencies, other ALS Service Provider agencies and the Medical Program Director to achieve a consistent and coordinated response countywide by using the following methods:

   a. Mutual aid agreements with all County-contracted ALS service providers that minimize delays to ALS services.

   b. Standardization of vehicles and equipment ensuring effective emergency scene operations.

2. The ALS Service Provider shall contract with a supervising physician to provide consistent and high quality ALS medical oversight of the care provided by paramedic personnel authorized to practice under this Agreement.

3. The ALS Service Provider shall facilitate participation in County-approved pre-hospital medical care studies and the collection of required documentation for such studies.

4. In cooperation with the MPD and other ALS Service Providers, the ALS Service Provider personnel shall attend continuing education meetings designed to meet state continuing education, supervising physician, and MPD requirements.

5. Based on call volumes and service capacity, the Parties agree to regularly discuss, together with EOB and TAB, deployment planning to include number and location of units to ensure high quality service is retained throughout Whatcom County.
6. The ALS Service Provider will coordinate with the EMS Administrator on the countywide Equipment Exchange Program as approved by the TAB.

BILLING SERVICES:

1. The ALS Service Provider shall provide medical billing services for contracted ambulance transports utilizing criteria that are consistent with Centers for Medicare & Medicaid Services (CMS) Ambulance billing requirements. For claims that are not covered by CMS, the ALS service provider will apply the applicable rules/regulations of the specific payor(s) for such claims.

   a. The ALS Service Provider will provide or, contract for billing staff with appropriate coding credentials and compliance expertise as they pertain to ambulance medical billing.

   b. The ALS Service Provider shall maintain policies which address write-offs, write-downs, charity care, and collections criteria and process. These policies will be modified as may be required by CMS or other regulation.

   c. The ALS Service Provider shall remit to the County on a monthly basis all ambulance fees collected that result from services provided by the contracted ambulance(s).

      i. The ALS Service Provider shall maintain documentation of all payments and activities on all accounts/claims, to be disclosed to the County upon request of such information.

      ii. The ALS Service Provider will provide reports to the appropriate County personnel regarding status of accounts, individually, and/or summary on a periodic basis as is appropriate for the specific tasks.

   d. The ALS Service Provider shall securely process and store all patient medical records consistent with Washington State RCW/WAC and HIPAA.

   e. The ALS Service Provider will make good faith effort to establish a consistent billing platform used between EMS ALS Providers.
EXHIBIT "B"
SERVICE AREA
EXHIBIT "C"

WHATCOM COUNTY EMS ADMINISTRATIVE SERVICES

Whatcom County shall provide over-all administrative services for EMS, with the following tasks and goals:

A. Maintain the EMS system as an integrated regional network (county-wide) of Basic Life Support (BLS) and Advanced Life Support (ALS) services provided by Whatcom County, local Cities and County Fire Districts using the following model:

- Firefighter Emergency Medical Technicians (EMTs) provide first-on-scene response to EMS calls and provide BLS services
- ALS services provided by a limited number of providers
- Regional programs emphasize uniformity of medical care across jurisdictions, consistency and excellence in training, and medical quality assurance

B. Make regional delivery and funding decisions cooperatively with the EOB and TAB to ensure ALS delivery from a system-wide perspective.

- EMS Oversight Board (EOB) will monitor uniformity and consistency of the system and provide counsel to Whatcom County EMS Administration

C. Develop and implement strategic initiatives to provide greater efficiencies within the system that (TAB will play an integral part in making recommendations to the County):

1. Maintain or improve current standards of patient care through:
   a. Regional Medical Direction in conjunction with Whatcom County Medical Program Director (MPD)
   b. BLS/ALS protocols
   c. Medical Community sponsored research studies approved by the County
   d. National and International industry best practices

2. Improve the operational efficiencies of the system to help contain costs by:
   a. Standardizing paramedic student training requirements; consolidating and conducting joint training
   b. Strengthening cross-jurisdictional mutual service agreements

3. Manage the rate of growth in the demand for ALS services
a. Determining the number and location of ALS units based on:
   • Unit workload
   • Unit response time
   • Availability in primary service area and dependency on backup
   • Frequency and service impact of multiple alarms
   • Paramedic exposure to critical skill sets
   • Projection of calls
   • Population trends

b. Triaging calls and classification as BLS vs. ALS patient care

c. Appropriate utilization of transport services based on patient needs

d. Coordinating EMS system development with local health care providers,
   EMS Trauma Care Council(s) and the State Department of Health

D. Ensure the EMS system operates in coordinated partnerships between the BLS agencies
   and ALS Service Providers through regionalization, collaboration and cross-jurisdictional
   coordination, including, by way of example:

   a. Equipment exchange
   b. Equipment research
   c. Group purchasing
   d. Equipment specifications
   d. Paramedic/EMT interaction training
EXHIBIT "D"

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made and entered into in duplicate originals this day by and between the COUNTY OF WHATCOM, a municipal corporation, hereinafter referred to as the 'County', the CITY OF BELLINGHAM, a municipal corporation, hereinafter referred to as the 'City' and FIRE PROTECTION DISTRICT #7, a municipal corporation, hereinafter referred to as the 'District'. Together, the County, City and the District are the only parties to this Agreement and may be referred to as "Parties" or individually as a "Party" hereinafter.

1. Definitions

1.1 HIPAA Terminology:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2 Specific definitions:

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the County.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the City.


2. Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected
health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(e) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose protected health information as necessary to perform its obligations under the Interlocal Agreement for EMS Administrative Services.

(b) Business Associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

(c) Business Associate may use or disclose protected health information as required by law.

(d) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

(e) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below.

(f) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for
the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

4. Termination

(a) Term. The Term of this Agreement shall be effective as of the effective date of the Interlocal Agreement For Ems Administrative Services to which this Agreement is attached and shall terminate on the termination date of the Interlocal Agreement For Ems Administrative Services or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity; provided, however, that termination of this Agreement shall not affect the Interlocal Agreement For Ems Administrative Services except that the Parties shall meet and establish a new business associate agreement with appropriate provisions to correct the violation.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by business associate on behalf of Covered Entity, shall:

Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;

Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;

Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out in Section 3 above which applied prior to termination; and

Return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
(d) Survival. The obligations of Business Associate under this Section 4 shall survive the termination of this Agreement.
# EXHIBIT “E”
## Budget

**Whatcom County**  
**ALS: Standard Costs Forecasts**

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<th>2019</th>
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| **EXPENDITURES**             |       |       |       |       |       |       |       |
| **EMS Operations:**          |       |       |       |       |       |       |       |
| Benefits                     | 1,076,741 | 1,109,044 | 1,136,770 | 1,309,559 | 1,340,988 | 1,525,747 | 1,562,364 |
| Overtime                     | 219,019  | 225,590  | 231,230  | 266,376  | 272,769  | 310,351  | 317,799  |
| Overtime Benefits            | 39,424   | 40,608   | 41,620   | 47,948   | 49,100   | 55,985   | 57,205   |
| Supplies (Drugs, disposables, etc) | 329,600  | 339,488  | 347,575  | 400,867  | 410,488  | 467,044  | 478,253  |
| Fuel                         | 74,150   | 76,385   | 78,294   | 90,195   | 92,360   | 105,085  | 107,607  |
| Uniforms                     | 26,790   | 27,583   | 28,273   | 32,570   | 33,352   | 37,947   | 38,858   |
| R&M Vehicles                 | 123,600  | 127,308  | 130,491  | 150,325  | 153,933  | 175,142  | 179,345  |
| R&M Equipment                | 82,400   | 84,672   | 86,994   | 100,217  | 102,622  | 116,761  | 119,563  |
| Physician/Medical Consulting | 135,960  | 140,039  | 143,540  | 165,358  | 169,326  | 192,655  | 197,280  |
| Training                     | 24,720   | 25,462   | 26,038   | 30,065   | 30,767   | 35,028   | 35,889   |
| Small tools & Equipment      | 32,960   | 33,949   | 34,798   | 40,087   | 41,049   | 46,704   | 47,825   |
| Medical Exams                | 41,200   | 42,436   | 43,497   | 50,108   | 51,311   | 58,381   | 59,782   |
| Communication Expense (fiber, data, phones, radio, etc) | 98,890 | 101,846 | 104,393 | 121,260 | 123,146 | 140,113 | 143,476 |
| **EMS 1**                    | 611,709  | 630,060  | 645,812  | 661,311  | 677,182  | 693,435  | 710,077  |
| **Total EMS Operations Expense** | 5,567,473 | 6,764,499 | 6,933,608 | 7,904,854 | 8,094,572 | 9,132,776 | 9,351,962 |

| Administrative (Indirect) Expense |       |       |       |       |       |       |       |
| Salaries & Wages                | 282,055 | 290,517 | 297,780 | 343,042 | 351,275 | 395,673 | 409,265 |
| Benefits                       | 92,169  | 94,934  | 97,307  | 112,098 | 114,788 | 130,603 | 133,738 |
| Billing Services                | 185,400 | 190,562 | 195,736 | 225,488 | 230,000 | 262,712 | 269,018 |
| **Total Administrative Expense** | 539,624 | 576,412 | 590,823 | 680,628 | 696,063 | 792,989 | 812,021 |

| Facilities & Tech Allowance   | 131,840 | 135,705 | 139,190 | 160,347 | 164,195 | 186,818 | 191,301 |
| **Capital Allowance**         | 267,800 | 275,834 | 282,730 | 325,705 | 333,522 | 379,474 | 388,581 |

| Total Fire Districts Standard Operating Costs | 7,526,737 | 7,752,540 | 7,946,351 | 9,071,533 | 9,289,252 | 10,492,056 | 10,743,895 |

| Add: Overhead Allowance        | 484,052 | 498,574 | 511,038 | 588,716 | 602,848 | 685,904 | 702,365 |

| **Total Unit ALS Reimbursement** | 8,010,789 | 8,251,114 | 8,457,389 | 9,660,249 | 9,892,098 | 11,177,960 | 11,466,230 |
### EXHIBIT “F”
#### Quarterly Financial Report

**Bellingham Fire Department 2017 Invoice**

**Invoice Period:**

<table>
<thead>
<tr>
<th>Budget</th>
<th>This Invoice</th>
<th>Previous Totals</th>
<th>Expenses To Date</th>
<th>Remaining Budget</th>
<th>Percent Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### EMS Operations:
- **Paramedic Wages**: 2,737,740
- **Benefits**: 807,556
- **Overdue**: 164,264
- **Overtime Benefits**: 29,568
- **Supplies (Drugs, disposables, etc)**: 92,700
- **Fuel**: 55,620
- **Uniforms**: 20,085
- **R&M Vehicles**: 92,700
- **R&M Equipment**: 51,800
- **Physician/Medical Consulting**: 101,970
- **Training**: 18,540
- **Small tools & Equipment**: 24,720
- **Medical Exams**: 30,900
- **Communication Expense (fiber, data, phones, radio, etc)**: 74,160

**Total EMS Operations Expense**: 4,466,823

#### Administrative (Indirect) Expense:
- **Salaries & Wages**: 211,541
- **Benefits**: 69,126
- **Billing Services**: 130,050

**Total Administrative Expense**: 419,718

#### Facilities & Tech Allowance:
- **Capital Allowance**: 98,880

**Total Fire Districts Standard Operating Costs**: 5,186,271

#### Add. Overhead Allowance: 7.0%:
- **Total Unit ALS Reimbursement**: 5,549,310

#### EMS1:
<table>
<thead>
<tr>
<th>Budget</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Captains Wages</td>
<td>486,494</td>
</tr>
<tr>
<td>Captains Benefits</td>
<td>101,525</td>
</tr>
<tr>
<td>Vehicle</td>
<td>13,390</td>
</tr>
<tr>
<td>Consumables</td>
<td>10,300</td>
</tr>
</tbody>
</table>

**Total**: 611,709
EXHIBIT G

EMS Supervisor Roles & Responsibilities
(As approved by the EMS Oversight Board 4/25/2016)

This attachment lists a number of the roles provided by the EMS supervisor, by way of example of historical, current and potential future areas of responsibility. This list is by no means all inclusive, or exclusive, of work performed by the EMS supervisor.

One of the overarching responsibilities of the EMS Supervisor is to actively monitor the ALS system performance in terms of resource availability and incident assignments, and to effect change as appropriate. This includes assisting Prospect (Fire/EMS Dispatch Center) with questions regarding response levels needed for certain calls. The Paramedic Supervisor is tasked with managing all Whatcom County ALS units when episodes of high demand occur, and may decide to overrule the criteria based dispatch protocols (the card system) during these times in an effort to provide the highest trained EMS provider to the sickest patient.

<table>
<thead>
<tr>
<th>Incident Response Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Paramedic Supervisors are available to respond system-wide for surge capacity when the current four staffed ALS units are unavailable due to high call demand times</td>
</tr>
<tr>
<td><em>Continues providing ALS response when no other Medic Units are available</em></td>
</tr>
<tr>
<td>- Assists in keeping Medic Units in established response areas</td>
</tr>
<tr>
<td><em>Example: Any responses in the City of Bellingham involving County Medic Unit responses (M-10 or M-45)</em></td>
</tr>
<tr>
<td>- Multiple Medic Unit Responses</td>
</tr>
<tr>
<td><em>Assists in coordination of resources and/or patients</em></td>
</tr>
<tr>
<td>- Multiple “Red” Patient Responses</td>
</tr>
<tr>
<td><em>Assists in coordination of resources and/or patients</em></td>
</tr>
<tr>
<td>- CPR calls that involve services other than EMS, such as Fire, Haz-Mat, or LE (MVA, Industrial Accident, Rescue, GSW, or Stabbing)</td>
</tr>
<tr>
<td><em>Assists in coordination of resources</em></td>
</tr>
</tbody>
</table>
On Scene-Role

❖ Officer Role

Paramedic Supervisors may be assigned to a Medical Branch/Group at incidents that have a high number of patients. Mass Casualty Incidents (MCI), Haz-mat and Active Shooter are examples of the types of incidents where this assignment would take place.

Can be placed in officer roles at MCI. (Treatment Officer, Triage Officer, and Transport Officer).

Transports personnel and equipment to and from hospital when need arises.

❖ Paramedic Role

Primary role of EMS-1 Captain should be serving and supporting the needs of individual paramedics, it may or may not be a role of a supervisor depending on ALS agency and jurisdiction. Paramedic that has the primary care is in charge of the patient treatment, care, & transport. He or she may utilize EMS-1 Captain in whatever capacity needed for that incident. EMS-1 may make suggestions or recommendation similar to Paramedic Partner role.

In order to improve communications and eliminate confusion, below is a set of questions that EMS-1 Captain should be asking on arrival:

❖ What do you have?
❖ What have you done?
❖ What is your plan?
❖ What can I do to assist?

❖ Agency Specific

The Paramedic Supervisor is available to provide on scene oversight of Paramedic performance specifically in the area of delivery of ALS care in accordance with Whatcom County ALS protocols.
Non-Response Support Role

System-wide:

☐ Manages common equipment such as gurneys and vacuum splints.

☐ Assists Paramedic Units with delivery or replacement of equipment that has failed.

☐ Act as a liaison to other agencies: Other Fire Departments, Dispatch, Hospital, etc. Paramedic Supervisors participate in and serve as an advisory on the performance of ALS providers to the Whatcom County Trauma Committee. This committee is made up of Emergency Physicians, Trauma Surgeons, Anesthesiologists and other providers of Trauma services to critically injured patients. Paramedic Supervisors are also involved with the CQI committee, which focuses on improving the overall care that patients receive from both ALS and BLS providers.

☐ The Paramedic Supervisor assists the Whatcom County Medical Director with evaluating, developing, implementing any changes or additions to the Whatcom County ALS protocols.

☐ Paramedic Supervisors are available for, and do receive, a number of EMS related questions from BLS providers. These questions can range from patient care, equipment replacement and maintenance questions, to assistance with infectious disease exposures.

☐ Paramedic Supervisors handle any complaints that patients may have with the service that was provided and directs appropriately to responsible agency; BLS or ALS.

Agency Specific:

☐ Paramedic Supervisors review medical incident reports for quality assurance in the areas of patient care, billing and legal requirements.
## TITLE OF DOCUMENT: Birch Bay Chamber of Commerce

### ATTACHMENTS:
1. Contract
2. Memo

### 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.)

Executive Louws requests your consideration and approval of the 2018 contract for services between Whatcom County and Birch Bay Chamber of Commerce in support of operations as recommended by the Lodging Tax Advisory Committee and approved by Council through Resolution.

### 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.
<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Tawni Helms</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Birch Bay Chamber of Commerce</td>
</tr>
<tr>
<td>Is this a New 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:</td>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</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>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>Contract:</td>
<td></td>
</tr>
<tr>
<td>Cost Center:</td>
<td>141</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>
<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></td>
</tr>
<tr>
<td>Contract work is for less than 120 days.</td>
<td></td>
</tr>
<tr>
<td>Interlocal Agreement (between Governments).</td>
<td></td>
</tr>
<tr>
<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 $10,000 or 10% of contract amount, whichever is greater, except when:</td>
<td></td>
</tr>
<tr>
<td>1. Exercising an option contained in a contract previously approved by the council.</td>
<td></td>
</tr>
<tr>
<td>2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance.</td>
<td></td>
</tr>
<tr>
<td>3. If bid or award is for supplies or equipment included approved in the budget.</td>
<td></td>
</tr>
<tr>
<td>4. Contract is for manufacturer’s technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.</td>
<td></td>
</tr>
<tr>
<td>Contract Amount:(sum of original contract amount and any prior amendments):</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>This Amendment Amount:</td>
<td></td>
</tr>
<tr>
<td>Total Amended Amount:</td>
<td></td>
</tr>
<tr>
<td>Summary of Scope: Contractor has received Convention Center funding to pay for the operations of the Birch Bay Visitor Center and the promotion and advertising of multi-day annual events.</td>
<td></td>
</tr>
<tr>
<td>Term of Contract:</td>
<td>January 1, 2018</td>
</tr>
<tr>
<td>Expiration Date:</td>
<td>December 31, 2018</td>
</tr>
</tbody>
</table>

**Contract Routing:**
1. Prepared by: T. Helms  
   Date: 11/01/17
2. Attorney signoff:  
   Date: 11/05/17
3. AS Finance reviewed:  
   Date: 11/09/17
4. IT reviewed (if IT related):  
   Date: 11/14/17
5. Contractor signed:  
   Date: 11/14/17
6. Submitted to Exec.:  
   Date: 11/16/17
7. Council approved (if necessary):  
   Date: 11/16/17
8. Executive approved (if necessary):  
   Date:  
9. Original to Council:  
   Date:  

V2.0
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Tawni Helms, Administrative Coordinator
RE: Birch Bay Chamber of Commerce
DATE: November 1, 2017

Enclosed are two (2) originals of a Contract for Services between Whatcom County and Birch Bay Chamber of Commerce for your review and signature.

- **Background and Purpose**
  Contractor has received Convention Center funding to pay for the operations of the Birch Bay Visitor Center and the promotion and advertising of multi-day annual events.

- **Funding Amount and Source**
  Funding in the amount of $100,000 will come from the Convention Center Fund as recommended by the Lodging Tax Advisory Committee and approved by Whatcom County Council on November 22, 2017.

- **Differences from Previous Contract**
  No substantive changes.

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

Encl.
CONTRACT FOR SERVICES
Birch Bay Chamber of Commerce

Birch Bay Chamber of Commerce, 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), p. 9,
- Exhibit B (Compensation), p. 10,
- Exhibit C (Sample Survey), p. 11,

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

The general purpose or objective of this Agreement is to: pay for the operations of the Birch Bay Visitor Center and the promotion of annual multi-day events that encourage tourism, 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 $100,000. 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 ________________, 20__.

CONTRACTOR:

Birch Bay Chamber of Commerce

[Signature]

Billy Brown, President

STATE OF WASHINGTON

COUNTY OF Whatcom ss.

On this 16th day of November, 2017, before me personally appeared Billy Brown to me known to be the President of the Birch Bay Chamber of Commerce and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SANDY JO KORTHUIS
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

My commission expires 7/1/2019.
WHATCOM COUNTY:

Approved as to form:

[Signature] 11/16/17
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 ________, 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:

Birch Bay Chamber of Commerce

Billy Brown, President

Address:
7900 Birch Bay Drive
Blaine, WA 98230

Mailing Address:
same

Contact Name: Billy Brown

Contact Phone: 360-220-7175

Contact FAX: N/A

Contact Email:
Billy Brown: Billybrown60@gmail.com
Randy Partner: partner@gmail.com
Series 00-09: Provisions Related to Scope and Nature of Services

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

Series 10-19: Provisions Related to Term and Termination

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

10.2 Extension: Not Applicable

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

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

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

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

23.1 **Labor Standards:** Not Applicable

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

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

Contract for Services
Birch Bay Chamber of Commerce
V2.0
3.3 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.

3.2 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.

3.1 Confidentiality: Not Applicable

3.1 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.

3.1 Proof of Insurance:
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;
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 non-contributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

3.2 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.

3.3 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 officials, 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 officials, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

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

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

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

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: Not Applicable
36.2 Conflict of Interest: Not Applicable

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:

Tawni Helms, Administrative Coordinator
Whatcom County Executive’s Office
311 Grand Avenue, Suite 108
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:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any
person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit. Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

42.1 Disputes:

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

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

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

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:

Contract for Services
Birch Bay Chamber of Commerce
V2.0
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 Birch Bay Chamber of Commerce will use tourism promotion funds to:

1. Fund the operations of the Visitor Center  
2. Fund the advertising and marketing for annual multi-day events designed to promote tourism and overnight stays.

Promotional materials regarding the proposed activity must mention that it is made possible in part by a Tourism Promotion Grant from Whatcom County. The scale of this credit should be commensurate with the County's level of financial support. It should include the name and logo of the County. It is not expected that this credit be displayed in all materials, but at a minimum it should be placed in such documents as programs and annual reports.

Within 30 days after the end of the contract term, the Chamber shall submit a final project report (the "Final Project Report") detailing:

• How the evaluation criteria were met by the event  
• What elements worked well and which did not.
• Modifications, if any, planned for future activities.
• Summarize the results of the year's activities and accomplishments.
• Provide Budget vs. Actual Financials.

_Failure to complete and deliver the Final Project Report in a timely manner may render recipient ineligible for future funding._ Pursuant to RCW 67.28.1816, recipients of lodging tax funds must provide the following information:

_The estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event or tourism-related facility owned or sponsored by a nonprofit organization or local jurisdiction._
EXHIBIT "B"
(COMPENSATION)

Maximum consideration for this contract shall be $100,000. The Contract Number shall be included on all billings or correspondence.

Allowable Expenses include:

Personnel
Operations
Marketing (for annual multi-day events designed to encourage tourism and overnight stays)

Birch Bay Chamber of Commerce will submit invoices detailing allowable expenditures as outlined in Exhibit A to the Whatcom County Executive’s Office. Payment is for reimbursement only and copies of receipts must be attached to invoices. Payment will be made no more than one time per month.

Contractor will also provide Whatcom County with a copy of all brochures and advertisements included with invoices.
EXHIBIT 'C'  
(Sample Survey)

Sample Survey Questions for Attendees/Participants of Attractions, Festivals and Events

1. What is your zip code?

2. How did you hear about this event? (i.e. newspaper, radio, internet, magazine, word of mouth, other)

3. How many nights away from home, if any, are you spending in Whatcom County?

4. Will you stay overnight? If so, where?
   ____ Hotel or motel
   ____ Campground
   ____ Friend/Relative
   ____ Not staying overnight

5. How much money have you spent in Whatcom County as a visitor including any food, gas lodging, tickets, etc.?
   ____ $0-$25
   ____ $25-$50
   ____ $50-$100
   ____ $100-$200
   ____ $200 or over

Sample Survey Plan:

Your Survey Plan should answer the following questions regarding your survey methodology:

1. How do you intend to distribute your survey to your event participants?
2. What incentives or methods will you use to ensure you obtain sufficient data on your event participants?
3. Who will be responsible for collecting your data?
4. Any other details regarding your survey methods or alternative methods you may use obtain relevant data regarding your event participants.
ATTACHMENT D
Whatcom County Contractor’s E-Verify Declaration Form

I. CONTRACTOR INFORMATION

<table>
<thead>
<tr>
<th>Contractor Name:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person:</td>
<td>Fax:</td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
</tbody>
</table>

II. E-VERIFY ENROLLMENT (check box and submit copy of MOU for verification)
Contractors with funded contracts of $100,000 or more must be enrolled in E-Verify system. Work related subcontract is $25,000 or higher.  www.uscis.gov/e-verify

☐ Contractor is enrolled in E-Verify; copy of the signed E-Verify Memorandum of Understanding is attached.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

________________________________________
Signature

________________________________________
Date

________________________________________
Name

________________________________________
Title

Contract for Services
Birch Bay Chamber of Commerce
V2.0
CERTIFICATE OF LIABILITY INSURANCE

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 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
Ottman Insurance Agency, Inc.
2417 Meridian Street, Suite 102
Bellingham, WA 98225

CONTACT NAME: Marty Stauffer
PHONE (AIC, No. Exp): 360-734-3960
FAX (AIC, No): 360-671-4590
E-MAIL ADDRESS: marty@oltmaninsurance.com

INSURED
Birch Bay Chamber of Commerce
7900 Birch Bay Dr
Birch Bay, WA 98230-9009

INSURER(S) AFFORDING COVERAGE
INSURER A: Ohio Security Insurance Co
24082

COVERAGE
CERTIFICATE NUMBER: BLS96966719
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>RANK</th>
<th>TYPE OF INSURANCE</th>
<th>ADL SUB</th>
<th>INSD</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF</th>
<th>POLICY EXP</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>CLAIMS-MADE</td>
<td>X OCCUR</td>
<td>X</td>
<td>02/24/2017</td>
<td>02/24/2018</td>
<td>EACH OCCURRENCE: $1,000,000</td>
</tr>
</tbody>
</table>

- GEVLY AGGREGATE LIMIT APPLIES PER:
  - POLICY
  - PROJECT
  - LOCATION
  - OTHER

- AUTOMOBILE LIABILITY
  - ANY AUTO
  - ALL OWNED AUTOS
  - HIRED AUTOS
  - SCHEDULED AUTOS
  - NON-OWNED AUTOS

- UMBRELLA LIABILITY
  - OCCUR
  - CLAIMS-MADE

- EXCESS LIABILITY
  - OCCUR
  - CLAIMS-MADE

- DED RETENTION $4

- WORKERS COMPENSATION AND EMPLOYERS' LIABILITY
  - PER STATUTE
  - OTHER
  - E.L. EACH ACCIDENT
  - E.L. DISEASE - EA EMPLOYEE
  - E.L. DISEASE - POLICY LIMIT

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

SEE NOTE PAD

CERTIFICATE HOLDER

Whatcom County Parks & Recreation Department
3373 Mt. Baker Highway
Bellingham, WA 98226

CANCELLATION

WHATC-7

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]

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ACORD 25 (2014/01)
The ACORD name and logo are registered marks of ACORD
**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>Twh</td>
<td>11/01/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td></td>
<td>11/03/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>bb</td>
<td>11/03/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td>11/28/17</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Mount Baker Foothills Chamber of Commerce contract

**ATTACHMENTS:**
1. Contract
2. Memo

**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.)

Executive Louws requests your consideration and approval of the 2018 contract for services between Whatcom County and Mount Baker Foothills Chamber of Commerce in support of Visitor Center operations as recommended by the Lodging Tax Advisory Committee and approved by Council through Resolution.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

V2.0
**Whatcom County Contract Information Sheet**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Tawni Helms</td>
</tr>
<tr>
<td>Contractor's/Agency Name:</td>
<td>Mount Baker Foothills Chamber of Commerce</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)

**Does contract require Council Approval?**
- Yes [ ] No [ ]
- If No, include WCC:
  - (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

**Is this contract the result of a RFP or Bid process?**
- Yes [ ] No [ ]
  - If yes, RFP and Bid number(s):
  - Contract
  - Cost Center: 141

**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.
- [X] Contract work is for less than $100,000.
- [ ] Contract work is for less than 120 days.
- [ ] Interlocal Agreement (between Governments).
- [ ] Contract for Commercial off the shelf items (COTS).
- [ ] Work related subcontract less than $25,000.
- [ ] Public Works - Local Agency/Federally Funded FHWA.

**Contract Amount (sum of original contract amount and any prior amendments):**
- $ 100,000

**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:** Contractor has received Convention Center funding to pay for the operations of the Mount Baker Foothills Visitor Center.

| Term of Contract: | January 1, 2018 | Expiration Date: | December 31, 2018 |

**Contract Routing:**
1. Prepared by: T. Helms
2. Attorney signoff: [Signature]
3. AS Finance reviewed: b.bennett
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.:
7. Council approved (if necessary):
8. Executive approved:
9. Original to Council:

Date: 11/01/17
Date: 01/03/17
Date: 11/03/17
Date: 12/14/17
Date: 12/14/17
MEMORANDUM

TO: Jack Louws, County Executive

FROM: Tawni Helms, Administrative Coordinator

RE: Mount Baker Foothills Chamber of Commerce

DATE: November 1, 2017

Enclosed are two (2) originals of a Contract for Services between Whatcom County and Mount Baker Foothills Chamber of Commerce for your review and signature.

- **Background and Purpose**
  Contractor has received Convention Center funding to pay for the operations of the Mount Baker Foothills Visitor Center.

- **Funding Amount and Source**
  Funding in the amount of $100,000 will come from the Convention Center Fund as recommended by the Lodging Tax Advisory Committee and approved by Whatcom County Council on November 22, 2017.

- **Differences from Previous Contract**
  No substantive changes.

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

Encl.
CONTRACT FOR SERVICES
Mount Baker Foothills Chamber of Commerce

Mount Baker Foothills Chamber of Commerce, 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 7.
Exhibit A (Scope of Work), p. 8.
Exhibit B (Compensation), p. 9.
Exhibit C (Certificate of Insurance).

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

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

The general purpose or objective of this Agreement is to: pay for the operations of the Mount Baker Foothills Visitor Center, 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 $100,000. 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 14th day of November, 2017.

CONTRACTOR:
Mount Baker Foothills Chamber of Commerce

[Signature]
Paul Engel, President

STATE OF WASHINGTON
COUNTY OF WHATCOM ss.
On this 14th day of November, 2017, before me personally appeared Paul Engel to me known to be the President of the Mount Baker Foothills Chamber of Commerce and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]
[Notary Public]

WHATCOM COUNTY:

Approved as to form:

[Signature]

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 ____________, 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:

Mount Baker Foothills Chamber of Commerce

Paul Engel, President

Address:
P.O. Box 866
Maple Falls, WA 98266

Mailing Address:
same

Contact Name: Rebecca Boonstra, Executive Director

Contact Phone: 360-599-1518

Contact FAX: N/A

Contact Email: info@mtbakerchamber.org

Contract for Services
Mount Baker Foothills Chamber of Commerce
V2.0
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:** Not Applicable

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

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

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 commercial general liability insurance with the following minimums:
Property Damage - $500,000.00 per occurrence;
General Liability & Bodily injury - $1,000,000.00 per occurrence.

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

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 sub(contractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

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

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

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

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest: Not Applicable

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:

Tawni Helms, Administrative Coordinator
Whatcom County Executive’s Office
311 Grand Avenue, Suite 108
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:
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 eligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

42.1 Disputes:

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

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

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

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:

Contract for Services
Mount Baker Foothills Chamber of Commerce

V2.0
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 Mount Baker Foothills Chamber of Commerce will use tourism promotion funds to:

Fund the operations of the Visitor Center. Expenses will include salaries and benefits, marketing/promotion and travel.

Promotional materials regarding the proposed activity must mention that it is made possible in part by a Tourism Promotion Grant from Whatcom County. The scale of this credit should be commensurate with the County’s level of financial support. It should include the name and logo of the County. It is not expected that this credit be displayed in all materials, but at a minimum it should be placed in such documents as programs and annual reports.

Within 30 days after the end of the contract term, the Chamber shall submit a final project report (the “Final Project Report”) detailing:

- How the evaluation criteria were met by the event
- What elements worked well and which did not.
- Modifications, if any, planned for future activities.
- Summarize the results of the year’s activities and major accomplishments.
- Provide Budget vs. Actual Financials.

Failure to complete and deliver the Final Project Report in a timely manner may render recipient ineligible for future funding. Pursuant to RCW 67.28.1816, recipients of lodging tax funds must provide the following information:

The estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event or tourism-related facility owned or sponsored by a nonprofit organization or local jurisdiction.
Maximum consideration for this contract shall be $100,000. The Contract Number shall be included on all billings or correspondence.

Allowable Expenses include:

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<th>Category</th>
<th>Amount</th>
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<tr>
<td>Wages and benefits</td>
<td>$ 72,775</td>
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<tr>
<td>Administration (rent, janitor, taxes, office supplies)</td>
<td>$ 21,425</td>
</tr>
<tr>
<td>Marketing/Promotion (website design, maint. &amp; hosting)</td>
<td>$ 5,000</td>
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<tr>
<td>Travel</td>
<td>$ 800</td>
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<td>$100,000</td>
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Mount Baker Foothills Chamber of Commerce will submit invoices detailing allowable expenditures as outlined in Exhibit A to the Whatcom County Executive’s Office. Payment is for reimbursement only and copies of receipts must be attached to invoices. Payment will be made no more than one time per month. Mileage will be reimbursed at the Federal IRS rate.

Contractor will also provide Whatcom County with a copy of all brochures and advertisements included with invoices.
Non Profit Insurance Program

CERTIFICATE OF COVERAGE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONVEYS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF COVERAGE 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 coverage may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Clear Risk Solutions
451 Diamond Drive
Ephrata, WA 98823

INSURED

Mt Baker Foothills Chamber of Commerce
PO Box 866
Maple Falls WA, 98266

COMPANIES AFFORDING COVERAGE

GENERAL LIABILITY
American Alternative Insurance Corporation

AUTOMOBILE LIABILITY
American Alternative Insurance Corporation

PROPERTY
American Alternative Insurance Corporation, et al.

MISCELLANEOUS PROFESSIONAL LIABILITY

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE COVERAGE PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF 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.

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<th>TYPE OF INSURANCE</th>
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<th>POLICY EFF DATE</th>
<th>POLICY EXP DATE</th>
<th>DESCRIPTION</th>
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<td>06/01/2018</td>
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<td>PER CLAIM</td>
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</table>

Regarding Visitor's Center Contract. Whatcom County is named as Additional Insured regarding this contract only and is subject to policy terms, conditions, and exclusions. NPIP policy is primary and non-contributory. Waiver of Subrogation endorsement is attached.

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.

CERTIFICATE HOLDER

Whatcom County
311 Grand Ave, Suite #108
Bellingham, WA 98225

AUTHORIZED REPRESENTATIVE

[Signature]

3109223
AMERICAN ALTERNATIVE
INSURANCE COMPANY

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION
(GENERAL LIABILITY)

<table>
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<tr>
<td>Endorsement Effective</td>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Person or Organization (Additional Insured): As Per Schedule on file with Clear Risk Solutions, Underwriting Administrator

Whatcom County
311 Grand Ave, Suite #108
Bellingham, WA 98225

Regarding Visitor’s Center Contract. Whatcom County is named as Additional Insured regarding this contract only and is subject to policy terms, conditions, and exclusions. NPIP policy is primary and non-contributory. Waiver of Subrogation endorsement is attached.

A. With respects to the General Liability Coverage Part only, the definition of Insured in the Liability Conditions, Definitions and Exclusions section of this policy is amended to include as an Insured the Person or Organization shown in the above Schedule. Such Person or Organization is an Insured only with respect to liability for Bodily Injury, Property Damage, or Personal and Advertising Injury caused in whole or in part by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In performance of your ongoing operations; or
2. In connection with your premises owned or rented to you.

B. The Limits of Insurance applicable to the additional Insured are those specified in either the:

1. Written contract or written agreement; or
2. Declarations for this policy,

whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits Of Insurance shown in the Declarations.

All other terms and conditions remain unchanged.

Includes copyrighted material of the Insurance Services Office, Inc., with its permission.
WAIVER OF TRANSFER OF RIGHTS AND RECOVERY AGAINST OTHERS TO US

<table>
<thead>
<tr>
<th>Named Insured</th>
<th>Non Profit Insurance Program (NPIP)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Endorsement Effective</td>
</tr>
<tr>
<td>Policy Number</td>
<td>N1-A2-RL-0000013-08</td>
</tr>
<tr>
<td></td>
<td>6/1/2016</td>
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</tbody>
</table>

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Name of Person or Organization: As Per Schedule on file with Clear Risk Solutions, Underwriting Administrator

The Our Right To Recovery Condition in the Liability Conditions, Definitions and Exclusions form is amended by addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or Your Work done under contract with that person or organization. This waiver only applies to the person or organization shown in the Schedule above; however, this waiver does not apply if the injury or damage is due to the sole negligence of such scheduled person or organization.

All other terms and conditions remain unchanged.
Firm Name: Mt Baker Foothills Chamber of Commerce

Proposal/Bid/Invitation/Solicitation No. ________________

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

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

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

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

DATE: 4/15/17

SIGNATURE: ________________________________

PRINTED NAME: Rebecca Bamha
Sample Survey Questions for Attendees/Participants of Attractions, Festivals and Events

1. What is your zip code?

2. How did you hear about this event? (i.e. newspaper, radio, internet, magazine, word of mouth, other)

3. How many nights away from home, if any, are you spending in Whatcom County?

4. Will you stay overnight? If so, where?
   □ Hotel or motel
   □ Campground
   □ Friend/Relative
   □ Not staying overnight

5. How much money have you spent in Whatcom County as a visitor including any food, gas lodging, tickets, etc.?
   □ $0-$25
   □ $25-$50
   □ $50-$100
   □ $100-$200
   □ $200 or over

Sample Survey Plan:

Your Survey Plan should answer the following questions regarding your survey methodology:

1. How do you intend to distribute your survey to your event participants?
2. What incentives or methods will you use to ensure you obtain sufficient data on your event participants?
3. Who will be responsible for collecting your data?
4. Any other details regarding your survey methods or alternative methods you may use obtain relevant data regarding your event participants.
**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>Twh</td>
<td>11/01/17</td>
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<td></td>
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<tr>
<td>Division Head:</td>
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<td>Dept. Head:</td>
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<tr>
<td>Prosecutor:</td>
<td>LIV</td>
<td>11/15/17</td>
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</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>BB</td>
<td>11/14/17</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Executive:</td>
<td></td>
<td>11/28/17</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:** Bellingham Whatcom County Tourism

**ATTACHMENTS:**
1. Contract
2. Memo

**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.)

Executive Louws requests your consideration and approval of the 2018 contract for services between Whatcom County and Bellingham Whatcom County Tourism in support of operations as recommended by the Lodging Tax Advisory Committee through Resolution,

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: Jack Louws, County Executive
FROM: Tawni Helms, Administrative Coordinator
RE: Bellingham Whatcom County Tourism
DATE: November 1, 2017

Enclosed are two (2) originals of a Contract for Services between Whatcom County and Bellingham Whatcom County Tourism for your review and signature.

- **Background and Purpose**
  Contractor has received Convention Center funding for the purposes of marketing and operations for Bellingham Whatcom County Tourism.

- **Funding Amount and Source**
  Funding in the amount of $290,000 will come from the Convention Center Fund as recommended by the Lodging Tax Advisory Committee and approved by Whatcom County Council on November 21, 2017.

- **Differences from Previous Contract**
  No substantive changes with the exception of a $15,000 increase in funding in support of the implementation of the cultural heritage tourism plan.

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

Encl.
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Tawni Helms</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Bellingham Whatcom County Tourism</td>
</tr>
</tbody>
</table>

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

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

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

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

**Is this contract the result of a RFP or Bid process?**  
- Yes ☐  No ☒  
If yes, RFP and Bid number(s):  
Contract  
Cost Center: 141

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

If YES, indicate exclusion(s) below:  
- Professional services agreement for certified/licensed professional.  
- Contract work is for less than $100,000.  
- Contract work is for less than 120 days.  
- Interlocal Agreement (between Governments).  

**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 Amount:** (sum of original contract amount and any prior amendments):  
- $ 290,000

**This Amendment Amount:**  
- $  

**Total Amended Amount:**  
- $  

**Summary of Scope:** Contractor has received Convention Center funding for the purposes of tourism marketing and operations.

**Term of Contract:** January 1, 2018  
**Expiration Date:** December 31, 2018

**Contract Routing:**  
1. Prepared by: T. Helms  
2. Attorney signoff: [Signature]  
3. AS Finance reviewed: [Signature]  
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:  

**Date:** 10.22.16  
**Date:** 11/5/17  
**Date:** 11/16/17  
**Date:** 11-21-17  
**Date:** 11-21-17  
**Date:**
CONTRACT FOR SERVICES
Bellingham Whatcom County Tourism

Bellingham Whatcom County Tourism, 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 7
Exhibit A (Scope of Work), p. 8
Exhibit B (Compensation), p. 9
Exhibit C (Certificate of Insurance).

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

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

The general purpose or objective of this Agreement is to: support Bellingham Whatcom County Tourism marketing and operations costs associated with tourism efforts, 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 $290,000. The Contract Number, set forth above, shall be included on all billing 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 ____________, 20__.

CONTRACTOR:

Bellingham Whatcom County Tourism

Sandy Ward, President

STATE OF WASHINGTON

COUNTY OF Whatcom ss.

On this 21st day of February, 2017, before me personally appeared Sandy Ward to me known to be the President of Bellingham Whatcom County Tourism and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Suzanne M. Miller, Notary Public in and for the State of Washington, residing at Bellingham, My commission expires 12-31-18

Contract for Services
Bellingham Whatcom County Tourism

V2.0
WHATCOM COUNTY:

Approved as to form:

Daniel L. Gibson  11/8/17
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 __________, 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:

BELLEINGHAM WHATCOM COUNTY TOURISM

Sandy Ward, President

Address:
904 Potter Street
Bellingham, WA 98229

Mailing Address:
same

Contact Name: Sandy Ward

Contact Phone: 360-671-3990

Contact FAX: N/A

Contact Email: Sandy@bellingham.org
Series 00-09: Provisions Related to Scope and Nature of Services

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

Series 10-19: Provisions Related to Term and Termination

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

10.2 Extension: Not Applicable

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

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

23.1 Labor Standards: Not Applicable

Series 30-39: Provisions Related to Administration of Agreement

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

Contract for Services
Bellingham Whatcom County Tourism

V2.0
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:**
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:** Not Applicable

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 commercial general liability insurance with the following minimums:
- Property Damage - $500,000.00 per occurrence;
- General Liability & Bodily Injury - $1,000,000.00 per occurrence.

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

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

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

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

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

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

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest: Not Applicable

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:

Tawni Helms, Administrative Coordinator
Whatcom County Executive’s Office
311 Grand Avenue, Suite 108
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:
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 non-ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit. Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

42.1 Disputes:

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

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

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

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:

Contract for Services
Bellingham Whatcom County Tourism

V2.0
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 Bellingham Whatcom County Tourism will use tourism promotion funds to:
Funding provided by Whatcom County is used to provide year-round services to promote tourism in Whatcom County and support the implementation of the Cultural Heritage Tourism Strategic Plan and other projects that promote countywide tourism. This includes staffing and operating information centers that serve and/or interact with more than one million existing and potential visitors each year, referrals to local agencies and businesses plus the publication and distribution of community information in an effort to promote tourism.

Maximum consideration for this agreement is $290,000.

Allowable expenses under RCW 67.28.210, tourism promotion includes:

Daily tourism operations: Rent
Utilities
Salaries
Payroll taxes
Health insurance
Telephone service
Printing of promotional materials
Postage costs

Facilities will be open to the public seven days a week, 9:00 a.m. to 5:00 p.m. (except holidays). Advertising, promotional brochures and marketing of special events and festivals designed to attract visitors and encourage tourist expansion.

Promotional materials regarding the proposed activity must mention that it is made possible in part by a Tourism Promotion Grant from Whatcom County. The scale of this credit should be commensurate with the County's level of financial support. It should include the name and logo of the County. It is not expected that this credit be displayed in all materials, but at a minimum it should be placed in such documents as programs and annual reports.

Within 30 days after the end of the contract term, the Festival shall submit a final project report (the "Final Project Report") detailing:
• How the evaluation criteria were met by the event
• What elements worked well and which did not.
• Modifications, if any, planned for future activities.
• Summarize the results of the year's activities and major accomplishments.
• Provide Budget vs. Actual Financials.

Failure to complete and deliver the Final Project Report in a timely manner may render recipient ineligible for future funding. Pursuant to RCW 67.28.1816, recipients of lodging tax funds must provide the following information:

The estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event or tourism-related facility owned or sponsored by a nonprofit organization or local jurisdiction.
Maximum consideration for this contract shall be $290,000. The Contract Number shall be included on all billings or correspondence.

Allowable Expenses include:

GENERAL LEDGER DETAIL:
- Salaries
- Payroll taxes
- Health insurance

RECEIPTS:
- Rent
- Utilities
- Telephone service
- Printing of promotional materials
- Postage costs

Bellingham Whatcom County Tourism will submit invoices detailing allowable expenditures as outlined in Exhibit A to the Whatcom County Executive’s Office. Payment is for reimbursement only and copies of receipts must be attached to invoices. Payment will be made no more than one time per month.

Bellingham Whatcom County Tourism will also provide Whatcom County with a copy of all brochures and advertisements included with invoices.
EXHIBIT 'C'
Certificate of Insurance
ATTACHMENT D
Whatcom County Contractor's E-Verify Declaration Form

I. CONTRACTOR INFORMATION

<table>
<thead>
<tr>
<th>Contractor Name:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Fax:</th>
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</thead>
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<tr>
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<table>
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<tr>
<th>Address:</th>
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</table>

II. E-VERIFY ENROLLMENT (check box and submit copy of MOU for verification)
Contractors with funded contracts of $100,000 or more must be enrolled in E-Verify system. Work related subcontract is $25,000 or higher. www.uscis.gov/e-verify

☐ Contractor is enrolled in E-Verify; copy of the signed E-Verify Memorandum of Understanding is attached.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature ___________________________ Name ___________________________

Date ___________________________ Title ___________________________
EXHIBIT 'E'  
(Sample Survey)

Sample Survey Questions for Attendees/Participants of Attractions, Festivals and Events

1. What is your zip code?

2. How did you hear about this event? (i.e. newspaper, radio, internet, magazine, word of mouth, other)

3. How many nights away from home, if any, are you spending in Whatcom County?

4. Will you stay overnight? If so, where?
   ____ Hotel or motel
   ____ Campground
   ____ Friend/Relative
   ____ Not staying overnight

5. How much money have you spent in Whatcom County as a visitor including any food, gas lodging, tickets, etc.?
   ____ $0-$25
   ____ $25-$50
   ____ $50-$100
   ____ $100-$200
   ____ $200 or over

Sample Survey Plan:

Your Survey Plan should answer the following questions regarding your survey methodology:

1. How do you intend to distribute your survey to your event participants?
2. What incentives or methods will you use to ensure you obtain sufficient data on your event participants?
3. Who will be responsible for collecting your data?
4. Any other details regarding your survey methods or alternative methods you may use obtain relevant data regarding your event participants.
Non Profit Insurance Program
CERTIFICATE OF COVERAGE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONVEYS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE INSURING 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 coverage may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Clear Risk Solutions
451 Diamond Drive
Ephrata, WA 98823

COMAPNIES AFFORDING COVERAGE
GENERAL LIABILITY
American Alternative Insurance Corporation, et al.

AUTOMOBILE LIABILITY
American Alternative Insurance Corporation, et al.

PROPERTY
American Alternative Insurance Corporation, et al.

MISCELLANEOUS PROFESSIONAL LIABILITY
Princeton Excess and Surplus Lines Insurance Company

COVERAGES
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE COVERAGE PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF 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>
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<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF DATE</th>
<th>POLICY EXP DATE</th>
<th>DESCRIPTION</th>
<th>LIMITS</th>
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<td>GENERAL LIABILITY</td>
<td>N1-A2-RL-00000013-08</td>
<td>06/01/2017</td>
<td>06/01/2018</td>
<td>PER OCCURRENCE</td>
<td>$5,000,000</td>
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<tr>
<td>OCCURRENCE FORM</td>
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<td></td>
<td></td>
<td>PER MEMBER AGGREGATE</td>
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<td>INCLUDES STOP GAP</td>
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<td></td>
<td></td>
<td>PRODUCT-CP M/P/O/P</td>
<td>$5,000,000</td>
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<tr>
<td>(LIABILITY IS SUBJECT TO A $50,000 SIR PAYABLE FROM PROGRAM FUNDS)</td>
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<td></td>
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<td>PERSONAL &amp; ADV. INJURY</td>
<td>$5,000,000</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>ANNUAL POOL AGGREGATE</td>
<td>$50,000,000</td>
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<tr>
<td>AUTOMOBILE LIABILITY</td>
<td>N1-A2-RL-00000013-08</td>
<td>06/01/2017</td>
<td>06/01/2018</td>
<td>COMBINED SINGLE LIMIT</td>
<td>$5,000,000</td>
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<td></td>
<td></td>
<td></td>
<td>ANNUAL POOL AGGREGATE</td>
<td>NONE</td>
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</table>

PROPERTY
N1-A2-RL-00000013-08
06/01/2017
06/01/2018
ALL RISK PER OCC EXCL EQ & FL
$75,000,000
EXCLUDED
EXCLUDED
EARTHQUAKE PER OCC
FLOOD PER OCC
ANNUAL POOL AGGREGATE
NONE

MISCELLANEOUS PROFESSIONAL LIABILITY
N1-A2-RL-00000013-08
06/01/2017
06/01/2018
PER CLAIM
EXCLUDED
ANNUAL POOL AGGREGATE
$40,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS
Regarding contracted services provided, Whatcom County is named as Additional Insured regarding these contracted services only and is subject to policy terms, conditions, and exclusions. Additional Insured endorsement is attached. Waiver of Subrogation is attached. NPI/P retained limit is primary and non-contributory.

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.

CERTIFICATE HOLDER
Attn: Executive's Office
Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225

AUTHORIZED REPRESENTATIVE

3292587
AMERICAN ALTERNATIVE
INSURANCE COMPANY

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION
(GENERAL LIABILITY)

<table>
<thead>
<tr>
<th>Named Insured</th>
<th>Non Profit Insurance Program (NPIP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Number</td>
<td>Endorsement Effective</td>
</tr>
<tr>
<td>N1-A2-RL-0000013-08</td>
<td>6/1/2016</td>
</tr>
</tbody>
</table>

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Person or Organization (Additional Insured): As Per Schedule on file with Clear Risk Solutions, Underwriting Administrator

Attn: Executive’s Office
Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225

Regarding contracted services provided. Whatcom County is named as Additional Insured regarding these contracted services only and is subject to policy terms, conditions, and exclusions. Additional Insured endorsement is attached. Waiver of Subrogation is attached.

NPIP retained limit is primary and non-contributory.

A. With respects to the General Liability Coverage Part only, the definition of Insured in the Liability Conditions, Definitions and Exclusions section of this policy is amended to include as an Insured the Person or Organization shown in the above Schedule. Such Person or Organization is an Insured only with respect to liability for Bodily Injury, Property Damage, or Personal and Advertising Injury caused in whole or in part by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In performance of your ongoing operations; or
2. In connection with your premises owned or rented to you.

B. The Limits of Insurance applicable to the additional Insured are those specified in either the:

1. Written contract or written agreement; or
2. Declarations for this policy.

whichsoever is less. These Limits of Insurance are inclusive and not in addition to the Limits Of Insurance shown in the Declarations.

All other terms and conditions remain unchanged.

Includes copyrighted material of the Insurance Services Office, Inc., with its permission.

RL 2163 12/12
32992588

Page 1 of 1
WAIVER OF TRANSFER OF RIGHTS AND RECOVERY AGAINST OTHERS TO US

<table>
<thead>
<tr>
<th>Named Insured</th>
<th>Non Profit Insurance Program (NPIP)</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Name of Person or Organization:  As Per Schedule on file with Clear Risk Solutions, Underwriting Administrator

The Our Right To Recovery Condition in the Liability Conditions, Definitions and Exclusions form is amended by addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or Your Work done under contract with that person or organization. This waiver only applies to the person or organization shown in the Schedule above; however, this waiver does not apply if the injury or damage is due to the sole negligence of such scheduled person or organization.

All other terms and conditions remain unchanged.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>DateReceived in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
</tr>
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<tbody>
<tr>
<td>Originator:</td>
<td>JT</td>
<td>9/22/17</td>
<td></td>
<td>12/05/17</td>
<td>Finance/Council</td>
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<tr>
<td>Division Head:</td>
<td></td>
<td>11/7/17</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td>11/7/17</td>
<td></td>
<td></td>
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<tr>
<td>Prosecutor:</td>
<td></td>
<td>11/3/17</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Purchasing/Budget:</td>
<td></td>
<td>11/14/17</td>
<td></td>
<td></td>
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<tr>
<td>Executive:</td>
<td></td>
<td>11/28/17</td>
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<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**
Northwest Educational Service District 189 Youth Marijuana Prevention & Education Program Interlocal Agreement

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

**SEPA review required?**
- ( ) Yes
- ( X ) NO

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

**Should Clerk schedule a hearing?**
- ( ) Yes
- ( X ) NO

**Requested Date:**

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

The purpose of this agreement is to provide funding to the Northwest Educational Service District 189 to support their participation in planning and implementing regional youth marijuana strategies and activities.

**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 Youth Marijuana Prevention and Education Program Interlocal Agreement

DATE: November 7, 2017

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

- **Background and Purpose**
  The Washington Initiative 502 passed in November of 2012 and went into effect July 1, 2015. I-502 directed the Washington State Department of Health to implement a grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth. The goal of the department’s Youth Marijuana Prevention and Education Program (YMPEP) is to reduce initiation and use of marijuana by youth (ages 12-20), especially among populations most adversely affected by marijuana use throughout Washington State. Whatcom County Health Department is the lead agency for the North Sound Regional YMPEP and the purpose of this contract is to provide funding to Northwest Educational Service District 189 to support their participation in planning and implementing regional youth marijuana strategies and activities. The start date of this agreement is July 1st as it is the official date Whatcom became the lead agency, and we are supporting YMPEP work that is continuing in our region.

- **Funding Amount and Source**
  These funds are from the Washington State Department of Health Youth Marijuana Prevention Education Program and are included in the 2017 – 2018 budgets. The allocation amount is $15,000. County Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Alyssa Pavitt at extension 6061 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:** Alyssa Pavitt  
**Contractor's / Agency Name:** Northwest Educational Service District 189

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)

Does contract require Council Approval? Yes ☐ No ☒  
If No, include WCC: CFDA#: N/A

Is this a grant agreement? Yes ☐ No ☒  
If yes, grantor agency contract number(s):  
Is this contract grant funded? Yes ☒ No ☐  
If yes, Whatcom County grant contract number(s): 201412008

Is this contract the result of a RFP or Bid process? Yes ☐ No ☒  
If yes, RFP and Bid number(s): Contract Cost Center: 677350

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): $ 15,000

**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 Health Department is the lead agency for the North Sound Regional YMEPEP and the purpose of this agreement is to provide funding to the Northwest Educational Service District 189 to support their participation in planning and implementing regional youth marijuana strategies and activities.

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

**Contract Routing:**

1. Prepared by: JT  
2. Attorney signoff: Date: 3/29/17  
3. AS Finance reviewed: Date: 11/14/17  
4. IT reviewed (if IT related): Date:  
5. Contractor signed: Date: 10-30-17  
6. Submitted to Exec.: Date: 11-16-17  
7. Council approved (if necessary): Date:  
8. Executive signed: Date:  
9. Original to Council: Date:
INTERLOCAL COOPERATIVE AGREEMENT BETWEEN

Whatcom County
AND
Northwest Educational Service District 189

THIS AGREEMENT is made and entered into by and between Whatcom County ("Whatcom") and Northwest Educational Service District 189 ("ESD 189"); both governmental agencies in the State of Washington pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. PURPOSE: The purpose of this agreement is to implement youth marijuana prevention activities outlined in the ESD 189 Work Plan.

2. RESPONSIBILITIES:

Whatcom will:

1. Lead and facilitate a regional strategic planning process, create a 5-Year Strategic Plan for the North Sound Region Youth Marijuana Prevention and Education Program (YMPEP), and lead implementation of the developed plan.

2. Provide technical assistance and support to ESD 189 in carrying out their Youth Marijuana Prevention and Education Program (YMPEP) work.

3. Include ESD 189 staff in regional Youth Marijuana Prevention and Education Program communication, trainings and meetings.

4. Share State and regional YMPEP resources with designated ESD 189 staff.

5. Provide ESD 189 with templates for submitting work plan, budget, and reporting.

ESD 189 will:

1. Develop a budget and work plan using the template provided by Whatcom, and submit to Whatcom for approval by October 20th 2017. Budget and work plan must be approved before submitting first invoice. The budget and work plan will outline project expenditures, including salary for YMPEP funded staff, training and travel, and specific tasks and deliverables to address the following areas:

   A. Actively participating in the Regional Strategic Planning process including providing expertise, additional data and knowledge, and representing local partners and sectors

   B. Attending Regional Network and Regional Strategic Planning Team Meetings

   C. Recruiting local representatives interested in Marijuana Prevention to join the North Sound Regional Network

   D. Being a local resource for Marijuana Prevention efforts in communities served by ESD 189
E. Additional primary, innovative, and/or training strategies and activities selected by ESD 189 for implementation during the period of this agreement. ESD 189 will only select strategies and activities from the DOH approved list of strategies provided by Whatcom.

2. Participate in regional and state conference calls, trainings, and in-person meetings as available.

3. Provide meeting space on a rotation basis, as requested.

4. Maintain accurate records of staff time dedicated to YMPEP activities.

5. Provide monthly reports of program activities and staff effort to Lead Regional Coordinator for inclusion in DOH reporting. ESD 189 will use reporting form provided by Whatcom. Due dates will be no later than the 10th day of the month following the month activities occurred.

6. Perform all work necessary within the limits of the available resources from this agreement to implement the strategies, action steps, and deliverables agreed to with regional partners and approved by DOH.

7. Request approval for Budget adjustments that total ten percent (10%) or more - need approval at least 15 days prior to expending adjusted budget items.

8. Use no more than twenty percent (20%) of YMPEP allocation for indirect/overhead costs.

9. Comply with all applicable Federal and State requirements that govern this agreement and will cooperate with Whatcom County on at least one annual site visit at a mutually agreeable time to discuss ESD 189 program progress and contract oversight.

3. TERM OF AGREEMENT: The start date for this grant funded project is July 1, 2017 therefore the start date of this contract has been established as of that date, and shall be in effect through March 31, 2018.

4. EXTENSION: The duration of this Agreement may be extended by mutual written consent of the parties.

5. MANNER OF FINANCING:

The source of funding for this agreement is the Youth Marijuana Prevention Education Program contract from the Washington State Department of Health.

ESD 189 will be reimbursed for costs associated with meeting the requirements established in the “Responsibilities” section above in an amount not to exceed $15,000.

Invoicing

A. All reimbursed costs must be allowable as defined in OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments.
B. Indirect Costs: Eligible program costs include direct program costs and indirect cost reimbursement. With the first invoice claiming indirect costs, ESD 189 will submit a copy of their Cost Allocation Agreement. The rate or rates specified in the agreement will be established following applicable Federal cost principles. The indirect rate used for this contract will not exceed 20% or the rate specified in the submitted Cost Allocation Agreement if it is lower than 20%.

C. ESD 189 shall submit itemized invoices on a monthly basis in a format approved by Whatcom County. Invoices submitted for payment must include sufficient documentation to prove the validity of all costs claimed. A general ledger report of costs claimed toward this project will be sufficient for invoicing this agreement. Whatcom County reserves the right to request further back-up documentation for any costs claimed for reimbursement. Equipment purchases are not an allowable expense. Food and incentive purchases must follow DOH YMPEP guidelines.

D. ESD 189 shall submit invoices to (include PO#):

   HL-BusinessOffice@whatcomcounty.us   OR

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

E. Payment to ESD 189 for approved and completed work will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Whatcom County. Whatcom County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

F. 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.

G. Duplication of Billed Costs or Payments for Service: ESD 189 shall not bill Whatcom County for services performed or provided under this contract and Whatcom County shall not pay ESD 189, if ESD 189 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. ESD 189 is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. Administration: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed the party making the change shall notify the other party.
6.1 Whatcom County's representative shall be:

Alyssa Pavitt  
Program Specialist  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225  
apavitt@co.whatcom.wa.us  
(360) 778-6061

6.2 ESD 189's representative shall be:

Jodie DesBiens  
Behavioral Health & Prevention Center Director  
Northwest Educational Service District 189  
1601 R Avenue  
Anacortes, WA 98221  
jdesbiens@nwesd.org  
(425) 879-8810

7. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

8. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and further agrees to save, indemnify, defend and hold the other party harmless from any such liability. It is further provided that no liability shall attach to Whatcom County by reason of entering into this contract except as expressly provided herein.

9. TERMINATION: Any party hereto may terminate this Agreement upon (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. 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.

10. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

11. SEVERABILITY: In the event of any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.
12. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

13. OTHER PROVISIONS: ESD 189 will comply with all applicable Federal and State requirements that govern this Agreement.
WHATCOM COUNTY

PROGRAM APPROVAL

Anne Deacon, Human Services Manager  11/6/17
Date

Regina Delahunt, Director  11/4/17
Date

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 as 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  11/3/17
Date
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

Initial | Date | Date Received in Council Office | Agenda Date | Assigned to:
---|---|---|---|---
Originator: | JT | 9/22/17 | | 
Division Head: | AD | 10/9/17 | | Finance/Council
Dept. Head: | P4D | 11/13/17 | | 
Prosecutor: | Z.E | 11/13/17 | | 
Purchasing/Budget: | BB | 11/17/17 | | 
Executive: | JS | 11/26/17 | | 

TITLE OF DOCUMENT:
San Juan County Youth Marijuana Prevention & Education Program Interlocal Agreement

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

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
The purpose of this agreement is to provide funding to the San Juan County Health Department to support their participation in planning and implementing regional youth marijuana strategies and activities.

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: San Juan County Youth Marijuana Prevention and Education Program
    Interlocal Agreement

DATE: November 7, 2017

Enclosed are two (2) originals of an Interlocal Agreement between Whatcom County and San Juan County for your review and signature.

- Background and Purpose
  The Washington Initiative 502 passed in November of 2012 and went into effect July 1, 2015. I-502 directed the Washington State Department of Health to implement a grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth. The goal of the department’s Youth Marijuana Prevention and Education Program (YMPEP) is to reduce initiation and use of marijuana by youth (ages 12-20), especially among populations most adversely affected by marijuana use throughout Washington State. Whatcom County Health Department is the lead agency for the North Sound Regional YMPEP and the purpose of this contract is to provide funding to the San Juan County Health Department to support their participation in planning and implementing regional youth marijuana strategies and activities. The start date of this agreement is July 1st as it is the official date Whatcom became the lead agency, and we are supporting YMPEP work that is continuing in our region.

- Funding Amount and Source
  These funds are from the Washington State Department of Health Youth Marijuana Prevention Education Program and are included in the 2017 budget. The allocation amount is $15,555. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Alyssa Pavitt at extension 6061 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:
Alyssa Pavitt

### Contractor’s / Agency Name:
San Juan County

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

### Does contract require Council Approval? If No, include WCC:
- Yes [x] No [ ]

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

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

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

### Is this agreement excluded from E-Verify?
- Yes [x] No [ ]

### Contract Amount: (sum of original contract amount and any prior amendments):
- $15,555

### This Amendment Amount:
- $ [ ]

### Total Amended Amount:
- $ [ ]

### Summary of Scope:
Whatcom County Health Department is the lead agency for the North Sound Regional YMPEP and the purpose of this contract is to provide funding to the San Juan County Health Department to support their participation in planning and implementing regional youth marijuana strategies and activities.

### Term of Contract:
1 Year

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<td>Date: 3/29/17</td>
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<td>RB</td>
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<tr>
<td>9. Original to Council:</td>
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</table>
INTERLOCAL COOPERATIVE AGREEMENT BETWEEN

Whatcom County
AND
San Juan County

THIS AGREEMENT is made and entered into by and between Whatcom County ("Whatcom") and San Juan County ("San Juan"); both Counties in the State of Washington pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. PURPOSE: The purpose of this agreement is to implement youth marijuana prevention activities outlined in the San Juan County Work Plan.

2. RESPONSIBILITIES:

Whatcom will:

1. Lead and facilitate a regional strategic planning process, create a 5-Year Strategic Plan for the North Sound Region Youth Marijuana Prevention and Education Program (YMPEP), and lead implementation of the developed plan.

2. Provide technical assistance and support to San Juan County in carrying out their Youth Marijuana Prevention and Education Program (YMPEP) work.

3. Include San Juan County staff in regional Youth Marijuana Prevention and Education Program communication, trainings and meetings.

4. Share State and regional YMPEP resources with designated San Juan County staff.

5. Provide San Juan County with templates for submitting work plan, budget, and reporting.

San Juan will:

1. Develop a budget and work plan using the template provided by Whatcom, and submit to Whatcom for approval by October 20th 2017. Budget and work plan must be approved before submitting first invoice. The budget and work plan will outline project expenditures, including salary for YMPEP funded staff, training and travel, and specific tasks and deliverables to address the following areas:

   A. Actively participating in the Regional Strategic Planning process including providing expertise, additional data and knowledge, and representing local partners and sectors

   B. Attending Regional Network and Regional Strategic Planning Team Meetings

   C. Recruiting local representatives interested in Marijuana Prevention to join the North Sound Regional Network

   D. Being a local resource for Marijuana Prevention efforts in communities served by San Juan
E. Additional primary, innovative, and/or training strategies and activities selected by San Juan for implementation during the period of this agreement. San Juan will only select strategies and activities from the DOH approved list of strategies provide by Whatcom.

2. Participate in regional and state conference calls, trainings, and in-person meetings as available.

3. Provide meeting space on a rotation basis, as requested.

4. Maintain accurate records of staff time dedicated to YMPEP activities.

5. Provide monthly reports of program activities and staff effort to Lead Regional Coordinator for inclusion in DOH reporting. San Juan will use reporting form provided by Whatcom. Due dates will be no later than the 10th day of the month following the month activities occurred.

6. Perform all work necessary within the limits of the available resources from this agreement to implement the strategies, action steps, and deliverables agreed to with regional partners and approved by DOH.

7. Request approval for Budget adjustments that total ten percent (10%) or more - need approval at least 15 days prior to expending adjusted budget items.

8. Use no more than twenty percent (20%) of YMPEP allocation for indirect/overhead costs.

9. Comply with all applicable Federal and State requirements that govern this agreement and will cooperate with Whatcom County on at least one annual site visit at a mutually agreeable time to discuss San Juan County program progress and contract oversight.

3. TERM OF AGREEMENT: The start date for this grant funded project is July 1, 2017 therefore the start date of this contract has been established as of that date, and shall be in effect through March 31, 2018.

4. EXTENSION: The duration of this Agreement may be extended by mutual written consent of the parties.

5. MANNER OF FINANCING:

The source of funding for this agreement is the Youth Marijuana Prevention Education Program contract from the Washington State Department of Health.

San Juan County will be reimbursed for costs associated with meeting the requirements established in the “Responsibilities” section above in an amount not to exceed $15,555.

Invoicing

A. All reimbursed costs must be allowable as defined in 2CFR200.

B. Indirect Costs: Eligible program costs include direct program costs and indirect cost reimbursement. With the first invoice claiming indirect costs, San Juan County will submit a copy of their Cost Allocation...
Agreement. The rate or rates specified in the agreement will be established following applicable Federal cost principles. The indirect rate used for this contract will not exceed 20% or the rate specified in the submitted Cost Allocation Agreement if it is lower than 20%.

C. San Juan County shall submit itemized invoices on a monthly basis in a format approved by Whatcom County. Invoices submitted for payment must include sufficient documentation to prove the validity of all costs claimed. A general ledger report of costs claimed toward this project will be sufficient for invoicing this agreement. Whatcom County reserves the right to request further back-up documentation for any costs claimed for reimbursement. Equipment purchases are not an allowable expense. Food and incentive purchases must follow DOH YMPEP guidelines.

D. San Juan County shall submit invoices to (include PO#):

HL-BusinessOffice@co.whatcom.wa.us OR

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

E. Payment to San Juan County for approved and completed work will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Whatcom County. Whatcom County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

F. 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.

G. Duplication of Billed Costs or Payments for Service: San Juan County shall not bill Whatcom County for services performed or provided under this contract and Whatcom County shall not pay San Juan County, if San Juan County 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. San Juan County is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed the party making the change shall notify the other party.
6.1 Whatcom County’s representative shall be:

Alyssa Pavitt, Program Specialist – apavitt@co.whatcom.wa.us
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
(360) 778-8061

6.2 San Juan County’s representative shall be:

Cynthia Stark-Wickman, Prevention Coordinator – prevention@sanjuanco.com
San Juan County Health and Community Services
520 Spring Street, PO Box 562
Friday Harbor, WA 98250
(360) 370-7516

7. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

8. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and further agrees to save, indemnify, defend and hold the other party harmless from any such liability. It is further provided that no liability shall attach to Whatcom County by reason of entering into this contract except as expressly provided herein.

9. TERMINATION: Any party hereto may terminate this Agreement upon (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party’s last known address for the purposes of giving notice under this paragraph. 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.

10. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

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

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

13. OTHER PROVISIONS: San Juan County will comply with all applicable Federal and State requirements that govern this Agreement. The following Exhibits include additional contract requirements:
WHATCOM COUNTY

PROGRAM APPROVAL

Anne Deacon, Human Services Manager

Date

Regina Delahunt, Director

Date

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 as 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
SAN JUAN COUNTY
HEALTH & COMMUNITY SERVICES
Mark Tompkins
Director

[Signature]
10/30/17
Date

APPROVED AS TO FORM ONLY
San Juan County Prosecuting Attorney
Randall K. Gaylord

[Signature]
10/26/17
Date

FINAL APPROVAL
County Manager
Michael J. Thomas

[Signature]
4/17
Date
## WHATCOM COUNTY COUNCIL AGENDA BILL

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**TITLE OF DOCUMENT:** Medical Program Director Contract

### ATTACHMENTS:
1. Contract Memo
2. Contract

### 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.)

Contract for Medical Program Director Services for the Countywide EMS System as defined in the Washington State Medical Program Director Handbook.  [https://www.doh.wa.gov/Portals/1/Documents/2900/mpdmanual.pdf](https://www.doh.wa.gov/Portals/1/Documents/2900/mpdmanual.pdf)

### 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:                Tawni Helms, Administrative Coordinator
Through:             Tyler Schroeder, Deputy Executive
RE:                  Medical Program Director Services
DATE:                October 11, 2017

Enclosed are two (2) originals of a Professional Services Agreement between Whatcom County and Marvin Wayne, MD, PS, a professional services corporation, for your review and signature.

▪ **Background and Purpose**
In November 2016, a countywide Emergency Medical Services (EMS) levy passed which approved the EMS funding plan. The EMS Funding Plan included in the EMS Funding Work Group (FWG) Recommendations approved by the EMS Oversight Board details budgeting for a countywide EMS system. The budget includes compensation for a Medical Program Director who shall have the responsibilities as set forth in WAC 246-976-920.

This personal services agreement allows for countywide Medical Program Director services as outlined in the Washington State Department of Health’s Medical Program Director Handbook.

▪ **Funding Amount and Source**
The funding source is the EMS Levy Tax Collection.

▪ **Differences from Previous Contract**
This is a new professional services agreement.

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

Encl.
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2. Attorney signoff: Daniel L. Gibson  
3. AS Finance reviewed:  
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: | Date: 10/11/17  
Date: 11/16/17  
Date: 11/28/17  
Date: 11-17-17  
Date: 11-20-17 |
CONTRACT FOR SERVICES
Between Marvin Wayne, M.D., P.S., and Whatcom County for Services as Countywide EMS Medical Program Director

Marvin Wayne, M.D., P.S., 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 7,
Exhibit A (Scope of Work), pp. 8 to 9,
Exhibit B (Compensation), pp. 10 to 10,
Exhibit C (Certificate of Insurance), 11 to 11,
Exhibit D (MPD Report), pp. 12 to 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 January, 2017 regardless the date of signature and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2018. This contract has the option to renew for one year.

The general purpose or objective of this Agreement is to: provide countywide EMS Medical Program Director services in compliance with WAC 246-976-920, 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 $105,000. 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 ________________, 20__.

CONTRACTOR:
Marvin Wayne, M.D., P.S.

[Signature]
Marvin Wayne, M.D., for Marvin Wayne, M.D., P.S.

STATE OF WASHINGTON )
) ss.
COUNTY OF ________________ )

On this ___ day of November, 2017 before me personally appeared Marvin Wayne, M.D. ______________ to me known to be the County Whatcom County EMS Medical Program Director and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Notary Public Signature]
NOTARY PUBLIC in and for the State of Washington, residing at ______________. My commission expires ______________.

Professional Services
Countywide EMS Medical Program Director

Page 1
V2.0
WHATCOM COUNTY:
Recommended for Approval:

Department Director __________________ Date __________________

Approved as to form:

[Signature] 11/7/17
Prosecuting Attorney __________________ Date __________________

Approved:
Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM )

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

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

CONTRACTOR INFORMATION:

____________________________
Marvin Wayne, M.D., P.S.

Address:
456 14th Street
Bellingham, WA 98225

Name: Marvin Wayne, M.D., P.S.
Mailing Address: same

Contact Name: Marvin Wayne, M.D., P.S.

Contact Phone: _____________________________
Contact FAX: _____________________________
Contact Email: _____________________________
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: Not Applicable

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 (herein 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:
Professional Services
Countywide EMS Medical Program Director

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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.

**31.1 Ownership of Items Produced:**
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

**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.

**34.1 Proof of Insurance:**

- Professional Liability - $1,000,000 per occurrence, $3,000,000 aggregate.
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 provide notice to the County thirty days in advance of cancellation of insurance and maintain or obtain tail coverage for a minimum of three years from the completion date of this contract or any amendment to or cancellation of this contract.

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

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

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

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

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

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

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest:

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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:

Tyler Schroeder, Deputy Executive
Whatcom County Executive Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225

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

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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, 34.1, 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.

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Countywide EMS Medical Program Director

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EXHIBIT "A"
(SCOPE OF WORK)

The Contractor shall serve as the County’s EMS Medical Program Director and shall have the responsibilities as set forth in WAC 246-976-920 during the term of this Agreement. The Contractor is retained to provide services to Whatcom County consisting of such supervision and control over Emergency Medical Services (EMS) Agencies and Individuals as is required to maintain operations of EMTs EMT II and Paramedics. This shall be as provided under RCW for Medical Program Director operations.

CONTRACTOR SHALL:

1. Maintain Washington State Department of Health Medical Program Director appointment status throughout the term of this agreement.
2. Have the responsibility for completion of all duties and responsibilities as outlined in the Washington State Department of Health OEMSTS – MPD Handbook, Revised November, 2006, or as subsequently amended.
3. Establish standing State approved medical protocols, practices, and guidelines for Whatcom County EMS at both the BLS and ALS level.
4. Recommend standards of equipment for Whatcom County EMS.
5. Assure ongoing training and education for EMS personnel. This may be accomplished through one or more supervising physicians.
6. Either directly, or via Supervising Physicians, review medical incident reports submitted by the departments to ensure standard medical procedures, documentation and appropriate patient care is provided. Obtain patient follow up as appropriate and permitted by Washington State Law.
7. Further assist all ALS agencies either directly, or through supervising physicians in providing quality assurance of care being provided.
8. Meet with the appropriate emergency medical and ambulance advisory bodies to facilitate EMS system operation.
9. Support Whatcom County EMS operations during mass casualty and disaster situations.
10. Provide medical liaison with the medical and nonmedical community.
11. Be responsible for supervision and assignment of duties to the Delegate EMS Supervising Physician.
12. Meet a minimum of once per month with the Whatcom County EMS Manager.
13. Acknowledge they are a covered entity under Federal HIPPA regulations and will comply with all applicable rules and regulations. Contractor agrees to adhere to any specific HIPPA protocols, including any required training, requested by County related to transmitting, storing, and using HIPPA information pursuant to this Agreement. Any violations of HIPPA rules and regulations, including a breach of PHI, shall be reported immediately to the County along with Contractor’s actions to mitigate the effect of such violations.
14. No later than the tenth day of each calendar month Contractor will provide County with;
   A monthly Medical Program Director Report (as found in the Washington State Department of Health – OEMSTS – MPD Handbook – Revised November 2006, or as subsequently amended; and an invoice for services provided previous month.
15. Drive his own vehicle, or with mutual agreement, County vehicles, in the performance of his duties under this agreement.
Further in performance of his duties under this agreement, the Contractor may operate emergency vehicles, including his own vehicle, if the Contractor:

1. Maintains the required Emergency Vehicle Incident Prevention (EVIP) certification.
2. Notified Prospect Dispatch Center before operating the vehicle as an emergency vehicle.
3. Maintains emergency lighting, sirens, and communications equipment per the standards of the Washington State Patrol.

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Countywide EMS Medical Program Director

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The EMS Manager or Whatcom County Sheriff shall have the authority to unilaterally rescind the Contractor's emergency driving privileges upon written notice with or without good cause. If the Contractor complies with all of the requirements contained in this paragraph, the County shall indemnify, defend, and hold harmless the Contractor for any liability arising from the operation of his vehicle in the performance of his duties under this agreement.

The Contractor will be provided with protective equipment sufficient to achieve the stated goals and requirements of this Agreement including office space and administrative support.
EXHIBIT "B"
(COMПENSATION)

The Contractor shall be paid a Maximum consideration for this contract of $105,000. The amount of the contract has been increased to the amount stated above to include an amount sufficient for the contractor to purchase the medical professional liability insurance required under this contract. The Contract Number shall be included on all billings or correspondence.

No later than December 31, 2017 the Contractor will provide an invoice for the entire annual EMS Medical Program Director fee of $50,000 for services rendered.

Effective January 1, 2018 the County will reimburse the Contractor for the cost of professional liability insurance up to $5,000 annually. The Contractor will submit an invoice at the end of each month for 1/12 of the annual EMS Medical Program Director fee of $50,000 for services rendered.

An invoice for services provided shall be submitted to Whatcom County for services rendered along with the completed monthly Medical Program Director Report as outlined in Exhibit D, for the associated billed monthly services.

The Medical Program Director Report can be found in the Washington State Department of Health’s Medical Program Director Handbook, https://www.doh.wa.gov/Portals/1/Documents/2900/mpdmanual.pdf, or as subsequently updated.

Invoices may be submitted on a monthly or quarterly basis. Payment will be made no more than one time per month.
EXHIBIT "C"
Certificate of Insurance
EXHIBIT "D"
MONTHLY MEDICAL PROGRAM DIRECTOR REPORT

MONTHLY MEDICAL PROGRAM DIRECTOR REPORT

MEDICAL CONTROL ACTIVITY FOR THE MONTH OF ____________________________
COUNTY ____________________________

<table>
<thead>
<tr>
<th>MEDICAL CONTROL ACTIVITY</th>
<th># OF HOURS</th>
<th>WORK PERFORMED BY</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td>DELEGATE</td>
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<tr>
<td>Patient Care Protocol</td>
<td></td>
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<tr>
<td>* Certification &amp; Recertification</td>
<td></td>
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<tr>
<td>Corrective Action</td>
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<tr>
<td>* Counseling</td>
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<tr>
<td>* Decert., etc.</td>
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<tr>
<td>Training</td>
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<tr>
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<tr>
<td>Patient Care Procedures</td>
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* ACTIVITY CAN NOT BE DELEGATED AND MUST BE DONE BY MPD

Comments: ____________________________________________________________
__________________________________________________________
__________________________________________________________

Medical Program Director Signature ____________________________ Date ____________________________

Professional Services Agreement
Countywide EMS Medical Program Director

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### Clearances

<table>
<thead>
<tr>
<th>Clearances</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assignee</th>
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</thead>
<tbody>
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<td>J</td>
<td>11/20/17</td>
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<td>12/5/17</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Division Head</td>
<td></td>
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</tr>
<tr>
<td>Dept. Head</td>
<td>JK</td>
<td>11/20/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor</td>
<td>D</td>
<td>11/21/17</td>
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<tr>
<td>Purchasing/Budget</td>
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<td>11/21/17</td>
<td></td>
<td></td>
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<tr>
<td>Executive</td>
<td>W</td>
<td>11/23/17</td>
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<td></td>
</tr>
</tbody>
</table>

### Title of Document:
Contract between Whatcom County and Washington State Office of Public Defense

### Attachments:
Memo to County Executive, Information Sheet, Contract

### SEPA Review

<table>
<thead>
<tr>
<th>SEPA Review Required?</th>
<th>( ) Yes</th>
<th>( X ) No</th>
<th>Should Clerk Schedule a Hearing?</th>
<th>( ) Yes</th>
<th>( X ) No</th>
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</thead>
<tbody>
<tr>
<td>SEPA Review Completed?</td>
<td>( ) Yes</td>
<td>( ) No</td>
<td>Requested Date:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

Each year the Public Defender’s office receives grant funds from the Washington State Office of Public Defense (pursuant to Chapter 10.101 RCW) in order to cover two attorney positions in the Whatcom County Public Defender’s Office. The Public Defender’s Office seeks Council authorization for the Office of Public Defense Grant Award and cost sharing in the amount of $33,000.00.

### Committee Action:

### Council Action:

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

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

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Whatcom County Public Defender's Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Julie Wiles</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Washington State Office of Public Defense</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

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

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

$194,550.00

This Amendment Amount:

$ ________________

Total Amended Amount:

$ ________________

Summary of Scope: Legal representation of indigent clientele. Funding will be utilized to provide public defense through the Whatcom County Public Defender's Office for adult felony, adult misdemeanor and juvenile offender cases.

<table>
<thead>
<tr>
<th>Term of Contract:</th>
<th>01/01/18 to 12/31/18</th>
<th>Expiration Date:</th>
<th>12/31/18</th>
</tr>
</thead>
</table>

Contract Routing: 1. Prepared by: Julie Wiles
2. Attorney signoff: M Caldwell
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: ________________

Contracts that require Council Approval (incl. agenda bill & memo)
- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Last Edited 060414
MEMORANDUM

To: Whatcom County Council Members
From: Jon C. Komorowski, Director, Whatcom County Public Defender’s Office
Subject: Washington State Office of Public Defense grant funding
Date: November 16, 2017

BACKGROUND
Each year the Public Defender’s office receives grant funds from the Washington State Office of Public Defense (pursuant to Chapter 10.101 RCW) in order to cover two attorney positions in the Whatcom County Public Defender’s Office. The grant is based on the amount of felony filings and therefore fluctuates from year to year.

For 2018, the Office of Public Defense proposes to provide $194,550 to the Whatcom County Public Defender’s Office; however, the cost of the two attorney positions comes to $227,550. Therefore, we are asking for cost sharing in the amount of $33,000 to cover the gap.

ACTION:
The County Executive requests council review and approval of this grant award and additional County contribution in the amount of $33,000.
November 9, 2017

Jon Komorowski  
Whatcom County Public Defender Director  
215 N Commercial Street  
Bellingham, WA 98225

Re: Chapter 10.101 RCW Application for Public Defense Grant Funds

Dear Mr. Komorowski:


Enclosed is a short Interagency Agreement for your review and signature by an authorized representative of Whatcom County. The signed Interagency Agreement should be returned by email or postal mail to OPD by December 15, 2017. A conformed copy will be sent to you for your records. A copy of OPD’s policy on authorized uses is enclosed.

The funds will be provided by paper check and mailed to you in early January 2018. The check will be issued to the entity corresponding to the Statewide Vendor Number that you provided in your application earlier this year, SWV0002425-57. If you want the check issued under a different Statewide Vendor Number, or if you want the check mailed to a different person or office, please let us know. If Whatcom County uses state BARS coding, these grant funds should be received under BARS revenue code 336.01.28.

Chapter 10.101 RCW requires counties awarded funds to demonstrate that they are either meeting the public defense standards referenced in RCW 10.101.030, or that the funds received are used to make appreciable demonstrable improvements in the delivery of public defense services.

We look forward to working with you and hope to visit your program during the year. If you have any questions, please feel free to contact Katrin Johnson at (360) 586-3164 ext. 108.

Sincerely,

Joanne Moore, Director

cc:    Presiding Superior Court Judge Deborra Garrett  
       Presiding District Court Judge David M. Grant

Enclosures
WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

COUNTY/CITY USE OF STATE PUBLIC DEFENSE FUNDING
(as amended June 2008)

State funds disbursed to counties and cities pursuant to Chapter 10.101 RCW cannot be used to supplant local funds that were being spent on public defense services prior to the initial disbursement of state funds. State funds must be spent to improve the quality of legal representation directly received by indigent defendants. The funds cannot be spent on purely administrative functions. Following are guidelines regarding permitted use of state public defense funds.

1. State public defense funding under Chapter 10.101 RCW may be used in the following ways:

   a) Additional investigator services
   b) Additional expert services
   c) Creation of a public defense office
   d) New quality monitoring by an attorney coordinator who can act as a legal supervisor for the attorneys providing public defense (but non-attorney administrative employees of the county or city are not an approved use of funds)
   e) Computers or access to electronic legal research systems for public defenders
   f) Increase in public defense attorney compensation
   g) Provision of public defense services at first appearance calendars (or increase of first appearance services if public defenders are already provided)
   h) Addition of more attorneys to lower public defense caseloads
   i) Addition of social worker services to assist public defense attorneys
   j) Direct training costs to train public defense attorneys
   k) Evaluations of defendants for sentencing options, such as drug evaluations, SSOSA, DOSA
   l) Provision of internet connectivity (e.g. wireless) for public defense attorneys
   m) Provision of interpreter services for attorney-client interviews and communication (but in-court interpreter appointments required under Chapter 2.43 RCW are not an approved use of funds)

2. State public defense funding under Chapter 10.101 RCW may not be used in the following ways:

   a) Supplanting county or city funds used for public defense services prior to the initial disbursement of state funds to the county or city
   b) Billing or other administrative costs incurred by the county or city in administering the public defense program
   c) Indigency screening
   d) County, city or court technology systems or administrative equipment
   e) County or city attorney time, including advice on public defense contracting, except as provided in Section 1(d) above.
**Agreement No. ICA18552**

**FACE SHEET**

**WASHINGTON STATE OFFICE OF PUBLIC DEFENSE**

1. **Recipient –RCW 10.101.070 Funds**
   Whatcom County
   215 N Commercial Street
   Bellingham, WA 98225

2. **Recipient Representative**
   Julie Wiles
   Office Administrator
   215 N Commercial Street
   Bellingham, WA 98225

   711 Capitol Way South, Suite 106
   PO Box 40957
   Olympia, WA 98504-0957

4. **OPD Representative**
   Joanne I. Moore
   Director
   Office of Public Defense
   711 Capitol Way South, Suite 106
   PO Box 40957
   Olympia, WA 98504-0957

5. **Distribution Amount**
   $194,550

6. **Use Period**
   January 1, 2018 through December 31, 2018

7. **Purpose**
   Chapter 10.101 RCW county distributions are statutory formula distributions for the purpose of improving the quality of public defense services in Washington State counties.

The Office of Public Defense (OPD) and Recipient, as defined above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start January 1, 2018 and end December 31, 2018. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Special Terms and Conditions, and General Terms and Conditions.

---

**FOR THE RECIPIENT**

**Name, Title**

Jack Louws
County Executive

**FOR OPD**

**Name, Title**

Joanne I. Moore, Director

**Date**
SPECIAL TERMS AND CONDITIONS

1. AGREEMENT MANAGEMENT
   The Representative for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.
   a. The Representative for OPD and their contact information are identified on the Face Sheet of this Agreement.
   b. The Representative for the Recipient and their contact information are identified on the Face Sheet of this Agreement.

2. DISTRIBUTION AMOUNT
   The Distribution Amount is one hundred ninety-four thousand five hundred fifty and 00/100 Dollars ($194,550) to be used for the purpose(s) described in the USE OF FUNDS below.

3. PROHIBITED USE OF FUNDS (as adopted in OPD Policy County/City Use of State Public Defense Funding)
   a. Funds cannot be used to supplant local funds that were being spent on public defense prior to the initial disbursement of RCW 10.101.070 funds.
   b. Funds cannot be spent on purely administrative functions or billing costs.
   c. Funds cannot be used for indigency screening costs.
   d. Funds cannot be used for county or court technology systems or administrative equipment.
   e. Funds cannot be used for county attorney time, including advice on public defense contracting.

4. USE OF FUNDS
   a. Recipient agrees to use the RCW 10.101.070 funds to improve the quality of legal representation directly received by indigent defendants. (See Chapter 10.101 RCW and OPD Policy County/City Use of State Public Defense Funding for guidelines regarding permitted uses of state public defense funds.)
   b. Recipient agrees to use the funds in calendar year 2018. If Recipient is unable to use the funds in 2018, the Recipient agrees to notify OPD to determine what action needs to be taken.
   c. Recipient agrees to deposit the RCW 10.101.070 funds check within 14 days of receipt.

5. ORDER OF PRECEDENCE
   In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:
   • Applicable federal and state of Washington statutes, regulations, and court rules
   • Special Terms and Conditions
   • General Terms and Conditions
GENERAL TERMS AND CONDITIONS

1. **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.

2. **AMENDMENTS**
   This Agreement may be amended by mutual agreement of the parties. Such amendment shall not be binding unless it is in writing and signed by personnel authorized to bind each of the parties.

3. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 29 CFR Part 35.**
   The Recipient must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

4. **ASSIGNMENT**
   Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Recipient without prior written consent of OPD.

5. **ATTORNEY'S FEES**
   Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney fees and costs.

6. **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.

7. **ETHICS/CONFLICTS OF INTEREST**
   In performing under this Agreement, the Recipient shall assure compliance with the Ethics in Public Service, Chapter 42.52 RCW and any other applicable court rule or state or federal law related to ethics or conflicts of interest.

8. **GOVERNING LAW AND VENUE**
   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.

9. **INDEMNIFICATION**
   To the fullest extent permitted by law, the Recipient shall indemnify, defend, and hold harmless the state of Washington, OPD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Agreement.

10. **LAWS**
    The Recipient shall comply with all applicable laws, ordinances, codes, regulations, court rules, policies of local and state and federal governments, as now or hereafter amended.

11. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**
    During the performance of this Agreement, the Recipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Recipient's non-
compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part.

12. **RECAPTURE**

In the event that the Recipient fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of the Agreement, OPD reserves the right to recapture funds in an amount to compensate OPD for the noncompliance in addition to any other remedies available at law or in equity.

13. **RECORDS MAINTENANCE**

The Recipient shall maintain all books, records, documents, data and other evidence relating to this Agreement. Recipient shall retain such records for a period of six (6) years following the end of the Agreement period. 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 finally resolved.

14. **RIGHT OF INSPECTION**

At no additional cost all records relating to the Recipient’s performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by OPD, the Office of the State Auditor, and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Agreement. The Recipient shall provide access to its facilities for this purpose.

15. **SEVERABILITY**

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

16. **WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<tr>
<td>James E. Lee, P.E.</td>
<td>JEL</td>
<td>11-20-17</td>
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<tr>
<td>Joe Rutan, P.E.</td>
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<td>11-20-17</td>
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<tr>
<td>Jon Hutchings</td>
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<td>11/21/17</td>
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<tr>
<td>Daniel L. Gibson</td>
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<td>11/21/17</td>
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<tr>
<td>Brad Bennett</td>
<td></td>
<td>11/21/17</td>
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<tr>
<td>Jack Louws</td>
<td></td>
<td>11/28/17</td>
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</table>

TITLE OF DOCUMENT:
Local Agency Agreement Supplement No. 1 and Local Agency Federal Aid Project Prospectus for the Hannegan Road/Ten Mile Creek Bridge No. 236 Replacement Project

ATTACHMENTS:
1. Cover Memo
2. Contract Information Sheet
3. Local Agency Agreement Supplement No. 1
4. Revised Local Agency Federal Aid Project Prospectus
5. Project Narrative

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

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

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

This Local Agency Agreement Supplement No. 1 and revised Local Agency Federal Aid Project Prospectus between Whatcom County and WSDOT are required to obligate federal funds for construction of the Hannegan Road/Ten Mile Creek Bridge No. 236 Replacement Project.

COMMITTEE ACTION:

COUNCIL ACTION:

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

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

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

Through: Jon Hutchings, Director

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

Date: November 21, 2017

Re: Hannegan Road/Ten Mile Creek Bridge No. 236 Replacement Project
    CRP No. 913007; Fed. Aid STPR-#T371(010)
    Local Agency Agreement Supplement No. 1 & Revised Project Prospectus

Enclosed for your review and signature are two (2) originals of the Local Agency Agreement Supplement No. 1 between Whatcom County and the Washington State Department of Transportation (WSDOT), and one (1) original of the revised Local Agency Federal Aid Project Prospectus.

Requested Action
Public Works respectfully requests the County Council to authorize the County Executive to sign the attached Local Agency Agreement Supplement No. 1 and please return both originals to my office for further processing. We will return a fully executed original to you once they are signed by WSDOT. Please also execute the revised Local Agency Federal Aid Project Prospectus and return to my office.

Background and Purpose
This Local Agency Agreement Supplement No. 1 is required to obligate federal funds for contract construction, consultant and agency construction engineering support, material testing and construction inspection for the Hannegan Road/Ten Mile Creek Bridge No. 236 Replacement Project. Construction of this project is scheduled for the summer of 2018. This project is listed as Item No. 19 on the 2018 Annual Construction Program.

Funding Amount and Source
This supplement increases the agreement amount by $1,435,045.00 for a new total of $1,565,045.00. Whatcom County has been awarded Federal Surface Transportation Program Rural (STPR) funds totaling $950,000 for this project. Of that amount, $100,000 was allotted to the PE phase and $850,000 is being obligated to the construction phase. The remaining portion of the total project cost, an estimated maximum of $615,045.00, will be covered with local road funds. Sufficient 2018 budget authority exists for this supplement.

Please contact Doug Burghart at extension 6277 if you have any questions or concerns regarding the terms of this agreement.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

**Originating Department:** Public Works  
**Division/Program:** Bridge & Hydraulic

**Contractor's / Agency Name:** James E. Lee, P.E., Engineering Manager  
**Washington State Dept. of Transportation**

**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 #: 201604013

**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): LA-8897 CFDA#:  

**Is this contract grant funded?**  
Yes ☒ No ☐ If yes, Whatcom County grant contract number(s): STPR-T371(010)

**Is this the result of a RFP or Bid process?**  
Yes ☐ No ☒ If yes, RFP and Bid number(s):  

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

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

**Contract Amount:**(sum of original contract amount and any prior amendments):  
$ 130,000.00

**This Amendment Amount:**  
$ 1,435,045.00

**Total Amended Amount:**  
$ 1,565,045.00

**Summary of Scope:** This Local Agency Agreement Supplement No. 1 is required to obligate federal funds for contract construction, consultant and agency construction engineering support, material testing and construction inspection for the Hannegan Road/Ten Mile Creek Bridge No. 236 Replacement Project.

**Term of Contract:** N/A  
**Expiration Date:** December 31, 2021

**Contract Routing:**  
1. Prepared by: D. Burghart  
2. Attorney signoff: Daniel Gibson  
3. AS Finance reviewed:  
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:

Last edited 10/31/16

195
Local Agency Agreement Supplement

<table>
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<th>Agency</th>
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<td>Federal Aid Project Number</td>
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The Local Agency requests to supplement the agreement entered into and executed on All provisions in the basic agreement remain in effect except as modified by this supplement.

The change to the agreement are as follows:

**Project Description**

Name: Hannegan Road / Ten Mile Creek Bridge No. 236 Replacement Project

Termini: MP 6.76 to 6.78

**Description of Work** ✓ No Change

Remove the existing bridge structure and replace with a new bridge structure.

**Reason for Supplement**

Obligate Construction funds for contract construction (CN), consultant construction support (CE), material testing (CE) and Agency (CE).

Are you claiming indirect cost rate?  ✓ No

Project Agreement End Date: 12/31/2021

Does this change require additional Right of Way or Easements?  ✓ No

Advertisement Date: February 28th, 2018

### Estimate of Funding

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>(1) Previous Agreement/Suppl.</th>
<th>(2) Supplement</th>
<th>(3) Estimated Total Project Funds</th>
<th>(4) Estimated Agency Funds</th>
<th>(5) Estimated Federal Funds</th>
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<td>PE 86.5 %</td>
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The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

**Agency Official**

By:

Title: Jack Louws, County Executive

Washington State Department of Transportation
By:
Director, Local Program

Date Executed

 DOT Form 140-041 Revised 05/2015

Approved as to form:

[Signature]
Daniel L. Gibson
Chief Civil Deputy Prosecutor
VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursable by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin. Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government. An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director, Local Programs. Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who spends $750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

XVII. Assurances

Local Agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).
### WHATCOM COUNTY COUNCIL AGENDA BILL

#### CLEARANCES:
- **Originator:** James Lee, P.E.
- **Division Head:** Joe Rotan, P.E.
- **Dept. Head:** Jon Hutchings
- **Procurement:** Daniel Gibson
- **Purchasing/Budget:** Brad Bennett
- **Executive:** Jack Louws

#### Date Received in Council Office:
- **Initial Date:** 11/21/17
- **Date:** 11/21/17
- **12-5-2017**
- **Finance/Council**

#### TITLE OF DOCUMENT:
**Local Agency Agreement Supplement No. 1 and Local Agency Federal Aid Project Prospectus for the Roberts Road/Anderson Creek Bridge No. 249 Replacement Project**

#### ATTACHMENTS:
1. Cover Memo
2. Contract Information Sheet
3. Local Agency Agreement Supplement No. 1
4. Revised Local Agency Federal Aid Project Prospectus
5. Project Narrative

#### SEPA review required? ( ) Yes ( x ) NO
- **SEPA review completed?** ( ) Yes ( ) NO

#### Should Clerk schedule a hearing? ( ) Yes ( x ) NO
- **Requested Date:**

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

This Local Agency Agreement Supplement No. 1 and revised Local Agency Federal Aid Project Prospectus between Whatcom County and WSDOT are required to obligate federal funds for construction of the Roberts Road/Anderson Creek Bridge No. 249 Replacement Project.

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

Through: Jon Hutchings, Director

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

Date: November 21, 2017

Re: Roberts Road / Anderson Creek Bridge No. 249 Replacement Project
   CRP #915020, Fed Aid No. BROS-2037(106)
   Local Agency Agreement Supplement No. 1 and Revised Project Prospectus

Enclosed for your review and signature are two (2) originals of the Local Agency Agreement Supplement No. 1 between Whatcom County and the Washington State Department of Transportation (WSDOT), and one (1) original of the revised Local Agency Federal Aid Project Prospectus.

Requested Action
Public Works respectfully requests that the County Council authorize the County Executive to sign the attached Local Agency Agreement Supplement No. 1 and please return both originals to my office for further processing. We will return a fully executed original to you once they are signed by WSDOT. Please also execute the revised Local Agency Federal Aid Project Prospectus and return to my office.

Background and Purpose
This Local Agency Agreement Supplement No. 1 and Project Prospectus are required to obligate Bridge Replacement Advisory Committee (BRAC) funds for the construction phase of the Roberts Road/Anderson Creek Bridge No. 249 Replacement Project. Construction of this project is scheduled for the summer of 2018. This project is listed as Item No. 20 on the 2018 Annual Construction Program.

Funding Amount and Source
This supplement increases the agreement amount by $1,771,495.00 for a new project total of $1,947,945.00. Whatcom County has been awarded federal BRAC funds totaling $1,387,170 for this project, with $141,160.00 allotted to the PE phase and $1,246,010.00 allotted to the construction contract. The remaining portion of the total project cost, an estimated maximum of $560,775.00, will be covered with local road funds. Sufficient 2018 budget authority exists for this supplement.

Please contact Ben Floyd at ext. 6252 or James Lee at ext. 6242 with questions concerning this agreement.
<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works - Engineering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Bridge and Hydraulic</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>James E. Lee, Engineering Manager</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Washington Department of Transportation</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**
- Yes [x] No [x]

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

Original Contract #: 201507022

**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 [x] No [ ]

If yes, grantor agency contract number(s): LA-8751

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

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

**Contract**

**Cost Center:**

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

If yes, RFP and Bid number(s):

**Is this agreement excluded from E-Verify?**
- No [x] 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):

<table>
<thead>
<tr>
<th>Amount</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>$ 176,450.00</td>
<td>N/A</td>
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**This Amendment Amount:**

<table>
<thead>
<tr>
<th>Amount</th>
<th>Description</th>
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<tbody>
<tr>
<td>$ 1,771,495.00</td>
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**Total Amended Amount:**

<table>
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<th>Amount</th>
<th>Description</th>
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<tbody>
<tr>
<td>$ 1,947,945.00</td>
<td>N/A</td>
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</tbody>
</table>

**Summary of Scope:** Whatcom County has been awarded federal Bridge Replacement Advisory Committee (BRAC) funds for the Roberts Road/Anderson Creek Bridge No. 249 Replacement Project. A Local Agency Agreement was executed to obligate a portion of those funds for design. A Supplement to that Agreement is required to obligate the remaining funds for construction.

**Term of Contract:** N/A

**Expiration Date:** December 31, 2021

**Date:** 11/2017

**Contract Routing:**

1. Prepared by: B. Floyd
2. Attorney signoff: Daniel L. Gibson
3. AS Finance reviewed: bennett
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:

Last edited 10/31/16
Local Agency Agreement Supplement

<table>
<thead>
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<td>Federal Aid Project Number</td>
<td>BROS-2037(106)</td>
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<tr>
<td>Agreement Number</td>
<td>LA-8751</td>
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<tr>
<td>CFDA No.</td>
<td>20.205</td>
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The Local Agency requests to supplement the agreement entered into and executed on August 26, 2015.

All provisions in the basic agreement remain in effect except as modified by this supplement.

The change to the agreement are as follows:

**Project Description**

Name: Roberts Road/Anderson Creek Bridge No. 249 Replacement

Termini: MP 0.21-0.23

**Description of Work**: ✓ No Change

Length: 0.020

Reason for Supplement:

This supplement will obligate funds necessary for the construction of the project.

Are you claiming indirect cost rate? ✓ Yes ✓ No

Project Agreement End Date: 12/31/2021

Does this change require additional Right of Way or Easements? ✓ Yes ✓ No Advertisement Date: 02/28/2018

<table>
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<th>(1) Previous Agreement/Suppl.</th>
<th>(2) Supplement</th>
<th>(3) Estimated Total Project Funds</th>
<th>(4) Estimated Agency Funds</th>
<th>(5) Estimated Federal Funds</th>
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<td>c. Other</td>
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<td>525,485.00</td>
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<tr>
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<td>1,771,495.00</td>
<td>1,947,945.00</td>
<td>560,775.00</td>
<td>1,387,170.00</td>
</tr>
</tbody>
</table>

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

**Agency Official**

By

Title: Jack Louws, Whatcom County Executive

**Washington State Department of Transportation**

By

Director, Local Program

Date Executed

Approved as to form: [Signature]

Daniel L. Gibson

Chief Civil Deputy Prosecutor

Page 1
<table>
<thead>
<tr>
<th>Agency</th>
<th>Supplement Number</th>
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</thead>
<tbody>
<tr>
<td>Whatcom County</td>
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</tr>
<tr>
<td>Federal Aid Project Number</td>
<td>Agreement Number</td>
</tr>
<tr>
<td>BROS-2037(106)</td>
<td>LA-8751</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin. Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

### VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant’s records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency’s files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation.

### IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State’s billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309). Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

### VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends $750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

### XVII. Assurances

Local Agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).
**TITLE OF DOCUMENT:**
Skagit County Youth Marijuana Prevention & Education Program Interlocal Agreement

**ATTACHMENTS:**
1. Memo to County Executive
2. Contract Information Sheet
3. 1 Original of Agreement

**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 funding for the Skagit County Health Department to support their participation in planning and implementing regional youth marijuana strategies and activities.

**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).
Enclosed is one (1) original of an Interlocal Agreement between Whatcom County and Skagit County for your review and signature.

- **Background and Purpose**
  The Washington Initiative 502 passed in November of 2012 and went into effect July 1, 2015. I-502 directed the Washington State Department of Health to implement a grants program for local health departments or other local community agencies that supports development and implementation of coordinated prevention strategies for the prevention and reduction of marijuana use by youth. The goal of the department’s Youth Marijuana Prevention and Education Program (YMPEP) is to reduce initiation and use of marijuana by youth (ages 12-20), especially among populations most adversely affected by marijuana use throughout Washington State. Whatcom County Health Department is the lead agency for the North Sound Regional YMPEP and the purpose of this contract is to provide funding to Skagit County Public Health to support their participation in planning and implementing regional youth marijuana strategies and activities. The start date of this agreement is July 1st as it is the official date Whatcom became the lead agency, and we are supporting YMPEP work that is continuing in our region.

- **Funding Amount and Source**
  These funds are from the Washington State Department of Health Youth Marijuana Prevention Education Program and are included in the 2017 budget. The allocation amount is $20,550. County Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Alyssa Pavitt at extension 6061 if you have any questions regarding this agreement.

Encl.
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

**Originating Department:** Health  
**Division/Program:** Human Services  
**Contract or Grant Administrator:** Alyssa Pavitt  
**Contractor's / Agency Name:** Skagit County

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

**Does contract require Council Approval?** Yes [x] No [ ]  
If No, include WCC: (see Whatcom County Codes 3.08.010, 3.08.090 and 3.08.100)

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

**Is this contract grant funded?** Yes [x] No [ ]  
If yes, Whatcom County grant contract number(s): 201412008  

**Is this contract the result of a RFP or Bid process?** Yes [x] No [ ]  
If yes, RFP and Bid number(s):  
**Contract Cost Center:** 677350

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

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

**Contract Amount:** (sum of original contract amount and any prior amendments):  
$ 20,550

**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 Health Department is the lead agency for the North Sound Regional YMPEP and the purpose of this contract is to provide funding to Skagit County Public Health to support their participation in planning and implementing regional youth marijuana strategies and activities.

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

**Contract Routing:**  
1. Prepared by: JT  
2. Attorney signoff: RB  
3. AS Finance reviewed:  
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:  

**Date:** 3/29/17  
**Date:** 10/11/17  
**Date:** 10/21/17  
**Date:** 11-13-17  
**Date:** 11-21-17  
**Date:**  
**Date:**  
**Date:**
INTERLOCAL COOPERATIVE AGREEMENT BETWEEN

Whatcom County
AND
Skagit County

THIS AGREEMENT is made and entered into by and between Whatcom County ("Whatcom") and Skagit County ("Skagit"); both Counties in the State of Washington pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. PURPOSE: The purpose of this agreement is to implement youth marijuana prevention activities outlined in the Skagit County Work Plan.

2. RESPONSIBILITIES:

Whatcom will:

1. Lead and facilitate a regional strategic planning process, create a 5-Year Strategic Plan for the North Sound Region Youth Marijuana Prevention and Education Program (YMPEP), and lead implementation of the developed plan.

2. Provide technical assistance and support to Skagit County in carrying out their Youth Marijuana Prevention and Education Program (YMPEP) work.

3. Include Skagit County staff in regional Youth Marijuana Prevention and Education Program communication, trainings and meetings.

4. Share State and regional YMPEP resources with designated Skagit County staff.

5. Provide Skagit County with templates for submitting work plan, budget, and reporting.

Skagit will:

1. Develop a budget and work plan using the template provided by Whatcom, and submit to Whatcom for approval by October 20th 2017. Budget and work plan must be approved before submitting first invoice. The budget and work plan will outline project expenditures, including salary for YMPEP funded staff, training and travel, and specific tasks and deliverables to address the following areas:

   A. Actively participating in the Regional Strategic Planning process including providing expertise, additional data and knowledge, and representing local partners and sectors

   B. Attending Regional Network and Regional Strategic Planning Team Meetings

   C. Recruiting local representatives interested in Marijuana Prevention to join the North Sound Regional Network

   D. Being a local resource for Marijuana Prevention efforts in communities served by Skagit
E. Additional primary, innovative, and/or training strategies and activities selected by Skagit for implementation during the period of this agreement. Skagit will only select strategies and activities from the DOH approved list of strategies provided by Whatcom.

2. Participate in regional and state conference calls, trainings, and in-person meetings as available.

3. Provide meeting space on a rotation basis, as requested.

4. Maintain accurate records of staff time dedicated to YMPEP activities.

5. Provide monthly reports of program activities and staff effort to Lead Regional Coordinator for inclusion in DOH reporting. Skagit will use reporting form provided by Whatcom. Due dates will be no later than the 10th day of the month following the month activities occurred.

6. Perform all work necessary within the limits of the available resources from this agreement to implement the strategies, action steps, and deliverables agreed to with regional partners and approved by DOH.

7. Request approval for Budget adjustments that total ten percent (10%) or more - need approval at least 15 days prior to expending adjusted budget items.

8. Use no more than twenty percent (20%) of YMPEP allocation for indirect/overhead costs.

9. Comply with all applicable Federal and State requirements that govern this agreement and will cooperate with Whatcom County on at least one annual site visit at a mutually agreeable time to discuss Skagit County program progress and contract oversight.

3. TERM OF AGREEMENT: The start date for this grant funded project is July 1, 2017 therefore the start date of this contract has been established as of that date, and shall be in effect through March 31, 2018.

4. EXTENSION: The duration of this Agreement may be extended by mutual written consent of the parties.

5. MANNER OF FINANCING:

The source of funding for this agreement is the Youth Marijuana Prevention Education Program contract from the Washington State Department of Health.

Skagit County will be reimbursed for costs associated with meeting the requirements established in the “Responsibilities” section above in an amount not to exceed $20,550.

Invoicing

A. All reimbursed costs must be allowable as defined in OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments.
B. Indirect Costs: Eligible program costs include direct program costs and indirect cost reimbursement. With the first invoice claiming indirect costs, Skagit County will submit a copy of their Cost Allocation Agreement. The rate or rates specified in the agreement will be established following applicable Federal cost principles. The indirect rate used for this contract will not exceed 20% or the rate specified in the submitted Cost Allocation Agreement if it is lower than 20%.

C. Skagit County shall submit itemized invoices on a monthly basis in a format approved by Whatcom County. Invoices submitted for payment must include sufficient documentation to prove the validity of all costs claimed. A general ledger report of costs claimed toward this project will be sufficient for invoicing this agreement. Whatcom County reserves the right to request further back-up documentation for any costs claimed for reimbursement. Equipment purchases are not an allowable expense. Food and incentive purchases must follow DOH YMPEP guidelines.

D. Skagit County shall submit invoices to (include PO#):

HL-BusinessOffice@whatcomcounty.us OR

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

E. Payment to Skagit County for approved and completed work will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Whatcom County. Whatcom County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

F. 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.

G. Duplication of Billed Costs or Payments for Service: Skagit County shall not bill Whatcom County for services performed or provided under this contract and Whatcom County shall not pay Skagit County, if Skagit County 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. Skagit County is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed the party making the change shall notify the other party.
6.1 Whatcom County’s representative shall be:

Alyssa Pavitt, Program Specialist - apavitt@co.whatcom.wa.us
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
(360) 778-6061

6.2 Skagit County’s representative shall be:

Julie de Losada, Public Health Analyst – julied@co.skagit.wa.us
Skagit County Health Department
700 South Second, Room 301
Mount Vernon, WA 98273
(360) 416-1538

7. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

8. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and further agrees to save, indemnify, defend and hold the other party harmless from any such liability. It is further provided that no liability shall attach to Whatcom County by reason of entering into this contract except as expressly provided herein.

9. TERMINATION: Any party hereto may terminate this Agreement upon (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party’s last known address for the purposes of giving notice under this paragraph. 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.

10. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

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

12. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
13. OTHER PROVISIONS: Skagit County will comply with all applicable Federal and State requirements that govern this Agreement.
WHATCOM COUNTY

PROGRAM APPROVAL

Anne Deacon, Human Services Manager

Date

Regina Delahunt, Director

Date

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 as 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

11/20/17
DATED this 13 day of November, 2017.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Ron Wesen, Chair
Kenneth A. Dahlstedt, Commissioner
Lisa Janicki, Commissioner

For contracts under $5,000: Authorization per Resolution R20030146

County Administrator

Attest:

Clerk of the Board

Recommended:

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES | Initial | Date       | Date Received in Council Office | Agenda Date | Assigned to:
-------------|---------|------------|---------------------------------|-------------|----------------
Originator:  | JT      | 6/26/17    |                                 |             |                
Division Head: | AD      | 10/6/17    |                                 |             |                
Dept. Head:   |         |            |                                 |             |                
Prosecutor:  |         |            | 11/21/17                         |             |                
Purchasing/Budget: | BB      | 11/27/17   |                                 |             |                
Executive:    |         |            | 11/29/17                         |             |                

TITLE OF DOCUMENT:
Snohomish Health District Youth Marijuana Prevention & Education Program Interlocal Agreement

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

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

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

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

The purpose of this agreement is to provide funding to the Snohomish Health District to support their participatin in planning and implementing regional youth marijuana strategies and activities.

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: Snohomish Health District Youth Marijuana Prevention and Education Program Interlocal Agreement

DATE: November 20, 2017

Enclosed are two (2) originals of an Interlocal Agreement between Whatcom County and Snohomish Health District for your review and signature.

- **Background and Purpose**
  The Washington Initiative 502 passed in November of 2012 and went into effect July 1, 2015. I-502 directed the Washington State Department of Health to implement a grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth. The goal of the department's Youth Marijuana Prevention and Education Program (YMPEP) is to reduce initiation and use of marijuana by youth (ages 12-20), especially among populations most adversely affected by marijuana use throughout Washington State. Whatcom County Health Department is the lead agency for the North Sound Regional YMPEP and the purpose of this contract is to provide funding to Snohomish Health District to support their participation in planning and implementing regional youth marijuana strategies and activities. The start date of this agreement is July 1st as it is the official date Whatcom became the lead agency, and we are supporting YMPEP work that is continuing in our region.

- **Funding Amount and Source**
  These funds are from the Washington State Department of Health Youth Marijuana Prevention Education Program and are included in the 2017 budget. The allocation amount is $52,185. County Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Alyssa Pavitt at extension 6061 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: Alyssa Pavitt
Contractor’s / Agency Name: Snohomish Health District

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

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

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

Is this contract grant funded? Yes ☒ No ☐ If yes, Whatcom County grant contract number(s):
201412008

Is this contract the result of a RFP or Bid process? Yes ☒ No ☐ If yes, RFP and Bid number(s):
Contract Cost
Center:
677350

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.
☒ Interlocal Agreement (between Governments).
☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 52,185

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:

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

Contract Routing:
1. Prepared by: JT Date: 3/29/17
2. Attorney signoff: RB Date: 10/11/17
3. AS Finance reviewed: "Kenneth" Date: 11/27/17
4. IT reviewed (if IT related):
   Date:
5. Contractor signed: Date: 10/27/17
6. Submitted to Exec.: Date: 11/28/17

7. Council approved (if necessary):
   Date:
8. Executive signed:
   Date:
9. Original to Council:
   Date:
INTERLOCAL COOPERATIVE AGREEMENT BETWEEN

Whatcom County
AND
Snohomish Health District

THIS AGREEMENT is made and entered into by and between Whatcom County, a County in the State of Washington, ("Whatcom") and Snohomish Health District, a public entity organized pursuant to the provisions of chapters 70.05 and 70.46 RCW. ("Snohomish"); both local health jurisdictions in the State of Washington pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. PURPOSE: The purpose of this agreement is to implement youth marijuana prevention activities outlined in the Snohomish Health District Work Plan.

2. RESPONSIBILTIES:

Whatcom will:

1. Lead and facilitate a regional strategic planning process, create a 5-Year Strategic Plan for the North Sound Region Youth Marijuana Prevention and Education Program (YMPEP), and lead implementation of the developed plan.

2. Provide technical assistance and support to Snohomish in carrying out their Youth Marijuana Prevention and Education Program (YMPEP) work.

3. Include Snohomish Health District staff in regional Youth Marijuana Prevention and Education Program communication, trainings and meetings.

4. Share State and regional YMPEP resources with designated Snohomish staff.

5. Provide Snohomish with templates for submitting work plan, budget, and reporting.

Snohomish will:

1. Develop a budget and work plan using the template provided by Whatcom, and submit the budget and work plan to Whatcom for approval by October 20, 2017. Budget and work plan must be approved before submitting first invoice. The budget and work plan will outline project expenditures, including salary for YMPEP funded staff, training and travel, and specific tasks and deliverables to address the following areas:

   A. Actively participating in the Regional Strategic Planning process including providing expertise, additional data and knowledge, and representing local partners and sectors

   B. Attending Regional Network and Regional Strategic Planning Team Meetings

   C. Recruiting local representatives interested in Marijuana Prevention to join the North Sound Regional Network

   D. Being a local resource for Marijuana Prevention efforts in communities served by Snohomish
E. Additional primary, innovative, and/or training strategies and activities selected by Snohomish for implementation during the period of this agreement. Snohomish will only select strategies and activities from the DOH approved list of strategies provided by Whatcom.

2. Participate in regional and state conference calls, trainings, and in-person meetings as available.

3. Provide meeting space on a rotation basis, as requested.

4. Maintain accurate records of staff time dedicated to YMPEP activities.

5. Provide monthly reports of program activities and staff effort to Lead Regional Coordinator for inclusion in DOH reporting. Snohomish will use the reporting form provided by Whatcom. Due dates will be no later than the 10th day of the month following the month activities occurred.

6. Perform all work necessary within the limits of the available resources from this agreement to implement the strategies, action steps, and deliverables agreed to with regional partners and approved by DOH.

7. Request approval for Budget adjustments that total ten percent (10%) or more. Approval will be required by Whatcom at least 15 days prior to expending adjusted budget items.

8. Use no more than twenty percent (20%) of YMPEP allocation for indirect/overhead costs.

9. Comply with all applicable Federal and State requirements that govern this agreement and will cooperate with Whatcom on at least one annual site visit at a mutually agreeable time to discuss Snohomish program progress and contract oversight.

3. TERM OF AGREEMENT: The start date for this grant funded project is July 1, 2017 therefore the start date of this contract has been established as of that date, and shall be in effect through March 31, 2018.

4. EXTENSION: The duration of this Agreement may be extended by mutual written consent of the parties.

5. MANNER OF FINANCING:

The source of funding for this agreement is the Youth Marijuana Prevention Education Program contract from the Washington State Department of Health.

Snohomish Health District will be reimbursed for costs associated with meeting the requirements established in the “Responsibilities” section above in an amount not to exceed $52,185.

Invoicing

A. All reimbursed costs must be allowable as defined in OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments.
B. Indirect Costs: Eligible program costs include direct program costs and indirect cost reimbursement. With the first invoice claiming indirect costs, Snohomish will submit a copy of their Cost Allocation Agreement. The rate or rates specified in the agreement will be established following applicable Federal cost principles. The indirect rate used for this contract will not exceed 20% or the rate specified in the submitted Cost Allocation Agreement if it is lower than 20%.

C. Snohomish shall submit itemized invoices on a monthly basis in a format approved by Whatcom. Invoices submitted for payment must include sufficient documentation to prove the validity of all costs claimed. A general ledger report of costs claimed toward this project will be sufficient for invoicing this agreement. Whatcom reserves the right to request further back-up documentation for any costs claimed for reimbursement. Equipment purchases are not an allowable expense. Food and incentive purchases must follow DOH YMPEP guidelines.

D. Snohomish shall submit invoices to (include PO#):

HL-BusinessOffice@whatcomcounty.us OR

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

E. Payment to Snohomish for approved and completed work will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Whatcom. Whatcom may withhold payment of an invoice if Snohomish submits it more than 30 days after the expiration of this contract.

F. 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.

G. Duplication of Billed Costs or Payments for Service: Snohomish shall not bill Whatcom for services performed or provided under this contract and Whatcom shall not pay Snohomish if Snohomish 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. Snohomish is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed the party making the change shall notify the other party.

6.1 Whatcom's representative shall be:
6.2 Snohomish’s representative shall be:

Heather Thomas
Public & Government Affairs Manager
Snohomish Health District
3020 Rucker Avenue, Suite #306
Everett, WA 98201
hthomas@snohd.org
(425) 339-8888

7. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

8. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and each party further agrees to save, indemnify, defend and hold the other party harmless from any such liability. In the event of a finding of joint or concurrent negligence, each party will be liable for the proportionate share of fault attributed to it. It is further provided that no liability shall attach to Whatcom or Snohomish by reason of entering into this contract except as expressly provided herein.

9. TERMINATION: Any party hereto may terminate this Agreement upon (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party’s last known address for the purposes of giving notice under this paragraph. 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.

10. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

11. SEVERABILITY: In the event of any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.
12. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereof.

13. OTHER PROVISIONS: Snohomish and Whatcom will comply with all applicable Federal and State requirements that govern this Agreement.

14. This Agreement has been approved and authorized by the governing bodies of Snohomish and Whatcom and each party represents that the persons executing this agreement have has been authorized to do so on behalf of the public entity referenced below.

15. This Agreement shall be posted or recorded by Whatcom as required by RCW 39.34.040.
WHATCOM COUNTY

PROGRAM APPROVAL

Anne Deacon, Human Services Manager
Date 11/20/17

Regina Delahunt, Director
Date 11/21/17

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 as 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 11/21/17
SNOHOMISH HEALTH DISTRICT

JEFFERSON S. KETCHEL
Interim Administrator

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

On this 27th day of October, 2017, before me personally appeared Jefferson S. Ketchel, to me known as the Interim Administrator of the Snohomish Health District and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

LINDA B. CARL
NOTARY PUBLIC in and for the State of Washington, Residing at Everett

My Commission expires: 8/1/2020

APPROVED AS TO FORM

Grant Weed, Snohomish Health District Counsel

Date

11-7-17
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>JT</td>
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<td>L. K.</td>
<td>12/20/17</td>
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<td>Purchasing/Budget:</td>
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<tr>
<td>Executive:</td>
<td></td>
<td>11/28/17</td>
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</tbody>
</table>

TITLE OF DOCUMENT:
Contract amendment between Whatcom County and Opportunity Council

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

SEPA review required? ( ) Yes ( X ) NO  Should Clerk schedule a hearing? ( ) Yes ( X ) NO
SEPA review completed? ( ) 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 referral and connection to services for families and professionals seeking resources for children and youth ages 3 – 21 with suspected developmental disabilities and delays

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: November 14, 2017

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

- **Background and Purpose**
  These services started in 2013 as a pilot with the Opportunity Council as our communities’ “Lead Agency” focused on children aged 0 – 3 with disabilities and delays. The program works in partnerships with a local group of healthcare and service providers.

  The Single Entry Access to Services (SEAS) line has quickly become an essential part of our Counties’ system to quickly and effectively connect children and their families with developmental evaluation and other specialty services. SEAS served 969 children and families in 2016 and is on pace to exceed that number in 2017. This amendment extends the agreement for an additional year and increases funding to replace start up grant funds which end in December of 2017.

- **Funding Amount and Source**
  This amendment, in an amount not to exceed $77,939, is funded by local DD millage and State DSHS/DDA funding. These funds are included in the 2018 budget. County Council approval is required because this amendment exceeds 10% of the original contract budget.

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

Encl.
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

#### Originating Department: Health
#### Division/Program: (i.e. Dept. Division and Program) Human Services
#### Contract or Grant Administrator: Jessica Lee
#### Contractor’s / Agency Name: Opportunity Council

<table>
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<tr>
<th>Is this a New Contract?</th>
<th>Yes ☒</th>
<th>No ☐</th>
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<tbody>
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<td>If not, is this an Amendment or Renewal to an Existing Contract?</td>
<td>Yes ☒</td>
<td>No ☐</td>
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<td>If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:</td>
<td>201511025</td>
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<th>Does contract require Council Approval?</th>
<th>Yes ☒</th>
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<td>If No, include WCC: (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
<td>673200</td>
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<th>Is this a grant agreement?</th>
<th>Yes ☒</th>
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<td>If yes, grantor agency contract number(s):</td>
<td>CFDA#:</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this contract grant funded?</th>
<th>Yes ☒</th>
<th>No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, Whatcom County grant contract number(s):</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this contract the result of a RFP or Bid process?</th>
<th>Yes ☒</th>
<th>No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Cost Center: 673200</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this agreement excluded from E-Verify?</th>
<th>Yes ☒</th>
<th>No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If no, include Attachment D Contractor Declaration form.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- ☐ Professional services agreement for certified/licensed professional.
- ☒ Contract work is for less than $100,000.
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☐ Interciocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

#### Contract Amount:
- **Sum of original contract amount and any prior amendments:**
  - $67,000

- **This Amendment Amount:**
  - $77,939

- **Total Amended Amount:**
  - $144,939

#### 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 referral and connection to services for families and professionals seeking resources for children and youth ages 3 – 21 with suspected developmental disabilities and delays.

#### Term of Contract:
- **1 Year**
- **Expiration Date:** 12/31/2018

#### Contract Routing:
1. Prepared by: JT
2. Attorney signoff: RB
3. AS Finance reviewed: bbennett
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:
WHATCOM COUNTY HEALTH DEPARTMENT CONTRACT EXTENSION

Whatcom County # 201511025

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

AMENDMENT NUMBER: 1

AND CONTRACTOR:
Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225

CONTRACT PERIODS:
Original: 01/01/2016 – 12/31/2016
Amendment #1: 01/01/2017 – 12/31/2017
Amendment #2: 01/01/2018 – 12/31/2018

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. Replace Exhibit "B" Compensation with the attached Exhibit B which includes an increase in funding from $38,000 to $77,939 to replace other funding for these services no longer available in 2018.

3. Funding for this extended contract period (01/01/2018 - 12/31/2018) is not to exceed $77,939.

4. Funding for the total contract period (01/01/2016 – 12/31/2018) is not to exceed $144,939.

5. All other terms and conditions remain unchanged.

6. The effective start date of the extension is 01/01/2018.
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  
11/17/17  
Date

DEPARTMENT HEAD APPROVAL:  
Regina A. Delahunt, Health Department Director  
11/20/17  
Date

APPROVAL AS TO FORM:  
Royce Buckingham, Civil Deputy Prosecuting Attorney  
11/20/17  
Date

FOR THE CONTRACTOR:

Greg Winter  
EXECUTIVE DIRECTOR  
11/8/17

Contractor Signature  
Print Name and Title  
Date

STATE OF WASHINGTON

COUNTY OF WHATCOM

On this 8th day of November, 2017, before me personally appeared Greg Winter, to me known to be the Executive Director and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Kaitlyn Miller  
NOTARY PUBLIC in and for the State of Washington,  
Residing at Bellingham

My Commission expires: 05/31/21

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.

__________________________  
NOTARY PUBLIC in and for the State of Washington,  
Residing at __________________________

My Commission expires:
EXHIBIT "B"
COMPENSATION

I. Budget and Source of Funding

The source of funding for this contract, in the amount not to exceed $77,939, is DD Millage and DSHS/DDA funds.

II. Budget and Allowable Costs

The 12-month budget for this cost reimbursement contract is as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Invoice Documentation</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care Navigator 1</td>
<td>General Ledger Detail</td>
<td>49,800</td>
</tr>
<tr>
<td>Care Navigator 2</td>
<td>General Ledger Detail</td>
<td>5,000</td>
</tr>
<tr>
<td>Supervisor</td>
<td>General Ledger Detail</td>
<td>10,500</td>
</tr>
<tr>
<td>Translation/Interpreters</td>
<td>General Ledger Detail</td>
<td>3,600</td>
</tr>
<tr>
<td>Operating Supplies</td>
<td>General Ledger Detail</td>
<td>1,000</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
<td>$69,900</td>
</tr>
<tr>
<td>Indirect Administration</td>
<td>Not to exceed 11.5%</td>
<td>8,039</td>
</tr>
<tr>
<td><strong>Total Budget</strong></td>
<td></td>
<td>$77,939</td>
</tr>
</tbody>
</table>

Funding may be redistributed between line items, with written authorization from the County; however, indirect administration will not exceed 11.5% of direct expenses.

III. Invoicing

1. Monthly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include documentation listed in budget table above.

2. The Contractor shall submit invoices via email to HL-BusinessOffice@co.whatcom.wa.us (include contract) or mail to:

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

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

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

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

5. 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.
WHATCOM COUNTY COUNCIL AGENDA BILL

Clearances | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to:
--- | --- | --- | --- | --- | ---
Originator: | JT | 11/14/2017 | | 12/5/2017 | Finance/Council
Division Head: | | | RECEIVED | | 
Dept. Head: | | | NOV 28 2017 | | 
Prosecutor: | | | WHATCOM COUNTY COUNCIL | | 
Purchasing/Budget: | | | | |
Executive: | | | | |

TITLE OF DOCUMENT:
Agreement between Whatcom County and City of Bellingham for Maintenance and Operation of the Crisis Triage Facility

ATTACHMENTS:
1. Information Sheet
2. Memo to Executive
3. 2 Copies of Agreement

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.)

This agreement will provide funding for ongoing maintenance and operation of the Crisis Triage Facility located at 2030 Division Street in Bellingham

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: City of Bellingham, Crisis Triage Facility

DATE: November 14, 2017

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

- **Background and Purpose**
  This contract provides partial funding of all aspects of the ongoing maintenance and operation of the Crisis Triage Facility. Whatcom County leases the Crisis Triage Facility located at 2030 Division Street in Bellingham to a treatment provider who offers behavioral health treatment on-site 24 hours daily, seven days weekly. Services provided at this facility are intended to assist adults who are experiencing a behavioral health crisis and who can be managed successfully in this setting. These services are also intended to divert individuals when appropriate, from hospital utilization, arrest, or incarceration.

- **Funding Amount and Source**
  This contract provides partial funding in the amount of $59,000 for all aspects of the ongoing maintenance and operation of the Crisis Triage Facility. These funds are included in the 2018 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Anne Deacon at extension 6054 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:** Anne Deacon  
**Contractor’s / Agency Name:** City of Bellingham

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this a New Contract?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Question</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this a grant agreement?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If yes, grantor agency contract number(s):  
CFDA#:  
Is this contract grant funded?  
If yes, Whatcom County grant contract number(s):  
Contract Cost Center:

<table>
<thead>
<tr>
<th>Question</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this the result of a RFP or Bid process?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If yes, RFP and Bid number(s):  
Is this agreement excluded from E-Verify?  
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):  
$ 59,000

**This Amendment Amount:**  
$

**Total Amended Amount:**  
$

Summary of Scope: The purpose of this contract is to provide funding for ongoing maintenance and operation of the Crisis Triage Facility located at 2030 Division Street in Bellingham.

**Term of Contract:** 1 Year  
**Expiration Date:** 12/31/2018

<table>
<thead>
<tr>
<th>Contract Routing</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prepared by:</td>
<td>JT</td>
<td></td>
</tr>
<tr>
<td>2. Attorney signoff:</td>
<td></td>
<td>rb</td>
</tr>
<tr>
<td>3. AS Finance reviewed:</td>
<td></td>
<td>o</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>
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<tr>
<td>8. Executive signed:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td></td>
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</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th></th>
<th>Date</th>
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<tbody>
<tr>
<td>Date: 11/14/2017</td>
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<tr>
<td>Date: 11-22-17</td>
<td></td>
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<tr>
<td>Date: 11-14-17</td>
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<td>Date: 11-14-17</td>
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<tr>
<td>Date: 11-14-17</td>
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</tr>
</tbody>
</table>

231
INTERLOCAL FINANCIAL ASSISTANCE AGREEMENT FOR
CRISIS INTERVENTION SERVICES
CITY OF BELLINGHAM - WHATCOM COUNTY

The CITY OF BELLINGHAM, a first-class municipal corporation of the State of Washington (hereinafter the "City"), with offices at 210 Lottie Street, Bellingham, Washington 98225, and WHATCOM COUNTY, a political subdivision of the State of Washington, acting through the Whatcom County Health Department, (hereinafter the "Recipient"), located at 509 Girard Street, Bellingham, Washington 98225, in consideration of the mutual covenants herein, do agree as follows:

1. PURPOSE. This Agreement sets out the terms of financial assistance provided by the City to the Recipient to assist the latter in providing programs and services that address alcoholism and other drug addictions as further detailed in Exhibit A “Scope of Work”, attached hereto and incorporated herein by this reference.

2. TERM OF AGREEMENT. Notwithstanding the date of execution hereof, this Agreement shall be in effect from January 1, 2018 through December 31, 2018.

3. LIAISON. The City’s Project Manager for this Agreement is Renee Firos. The Recipient’s responsible person is Anne Deacon, Human Services Manager.

4. SCOPE OF WORK. See attached Exhibit A, incorporated herein by this reference.

5. FUNDS PROVIDED AND METHOD OF PAYMENT.
   A. The financial assistance provided to the Recipient shall not exceed $59,000. The city’s share of liquor taxes and profits in the amount of $22,000 is included in this total and authorized in RCW 71.24.555.

   B. The City agrees to financially assist the Recipient only for activities specified in Exhibit A. Payment shall be based on two separate properly executed quarterly invoices. The Recipient shall submit the invoices, documentation and any necessary reports by the 15th of the month following the period being invoiced, except for January where the same will be due by the 10th of the month. The City will make payment to the Recipient no more than thirty (30) days after said reimbursement request is received and approved by the City.
6. **EXTRA WORK AND CHANGE ORDERS.** Work in addition to or different from that provided for in the Scope of Work section shall only be allowed by prior authorization in writing, as a modification to this Agreement. Such modifications shall be attached hereto and shall be approved in the same manner as this Agreement.

7. **ACCOUNTING AND AUDIT.** The Recipient agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles and to retain the same for a period of three years after termination of this Agreement. The financial records shall be made available to representatives of the City or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the City shall designate.

8. **INDEMNIFICATION AND INSURANCE.** The Recipient agrees to defend the City, hold it harmless, and indemnify it as to all claims, suits, costs, fees and liability arising out of the acts or work of the Recipient, its employees, subcontractors, or agents (including field work) pursuant to this Agreement, where such liability is incurred as a result of the actions or omissions of such parties. Recipient will obtain and maintain in force adequate insurance and/or self-insurance with coverage limits sufficient to cover potential liability arising within the Scope of Work.

Recipient specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this contract shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts.

9. **COMPLIANCE WITH LAWS.** The Recipient shall comply with all applicable laws, ordinances, and codes of the local, State, and Federal governments. Recipient shall submit any and all information the City requires to demonstrate compliance with such laws, ordinances, and codes within two weeks of City's request for such information. The Recipient covenants that its employees have no interest and will not acquire interest, direct or indirect, or any other interest which would conflict in any manner or degree with the performance of services hereunder. The Recipient further covenants that in the performance of this Agreement, no person having such interest will be employed.

10. **NONDISCRIMINATION IN CLIENT SERVICES:**
    The Recipient shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, gender identity, or disability, unlawfully deny a qualified individual any facilities, financial aid, services or other benefits provided under this Agreement or otherwise deny or condition
services in a manner that violates any applicable laws against discrimination. If assignment or subcontracting has been authorized, said assignment or subcontract shall include appropriate safeguards against discrimination in client services binding upon each contractor or subcontractor. The Recipient shall take such action as may be required to ensure full compliance with the provisions of this clause, including sanctions for noncompliance.

11. TERMINATION; REDUCTION IN FUNDING.

A. Should either party hereto believe that the other has failed to perform, or is likely to be unable to substantially perform, all or a material part of its obligations under this Agreement, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party fifteen (15) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non-defaulting party, this Agreement may be terminated upon seven (7) days written notice (delivered by certified mail).

B. In the event that funding is withdrawn, reduced or limited in any way after the effective date of this Agreement due to City budgetary constraints or economic downturn resulting in reduced revenues, and prior to its normal completion, the City may summarily terminate the 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 City deems that the continuation of the services covered by this Agreement is no longer in the best interest of the City, the City may summarily terminate this Agreement in whole notwithstanding any other termination of this Agreement. Termination under this Section shall be effective upon receipt or written notice thereof.

C. Termination of this Agreement shall not prevent the City from invoking those provisions herein necessary to protect or enforce its rights hereunder, which provisions shall survive termination.

12. ASSIGNMENT. Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the written consent of the other party; provided, however, that the City acknowledges that the Recipient contracts with service providers to operate the crisis intervention services that are partially funded by this Agreement and the City consents to such arrangement.

13. VENUE STIPULATION. This Agreement has been and shall be considered as having been made and delivered within the State of Washington, and shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action in law or equity, or judicial
proceeding for the enforcement of this Agreement or any of the provisions contained therein, shall be instituted and maintained only in Skagit County Superior Court, Washington.

14. **STATUS OF RECIPIENT.** Neither Recipient nor personnel employed by the Recipient shall acquire any rights or status in the City's employment, nor shall they be deemed employees or agents of the City for any purpose other than as specified herein. Recipient shall be deemed an independent contractor and shall be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs.

EXECUTED, this ___ day of ______________________, 2017, for the WHATCOM COUNTY:

__________________________
Whatcom County Executive

APPROVED AS TO FORM:

__________________________
Prosecuting Attorney

APPROVED AS TO PROGRAM:

__________________________
Human Services Manager

APPROVAL AS TO DEPARTMENT:

__________________________
Director

[Signatures and dates]

11/20/17  
Date

11/17/17  
Date

11/30/17  
Date
EXECUTED, this ____ day of ___________________ 2017, for the CITY OF BELLINGHAM.

Kelli Linville, Mayor

Attest: 
Finance Director

Approved as to Form:
Office of the City Attorney

Departmental Approval:
David Doll, Chief of Police
Bellingham Police Department
Exhibit A
Statement of Work

I. Background:

Recipient owns the Crisis Triage Facility located at 2030 Division Street, Bellingham, Washington. Recipient leases the facility to a treatment provider who offers behavioral health treatment on-site 24 hours daily, seven days weekly. Services provided at this facility are intended to assist adults who are experiencing a behavioral health crisis, and who can be managed successfully in this setting. These services are also intended to divert individuals when appropriate, from hospital utilization, arrest or incarceration.

Services provided at the Crisis Triage Facility include:

1. Eight beds dedicated to providing sub-acute detox services to adults.
2. Medication-assisted treatment to mitigate the symptoms of Opiate withdrawal and stabilize recovery.
3. Five beds dedicated to providing mental health stabilization services to adults. Many of these adults are also challenged with substance use disorders that may exacerbate their symptoms of mental illness. Co-occurring treatment is offered to ensure comprehensive care to these individuals.
4. Discharge planning and connection to community or in-patient treatment providers offered to optimize client recovery and stabilization.

Law Enforcement officials may directly refer and transport individuals to the Crisis Triage Facility as they deem appropriate, and as accepted by the facility.

II. Scope of Work:

This contract provides partial funding of all aspects of the ongoing maintenance and operation of the Crisis Triage Facility as set forth in the Background section above.
ATTACHMENTS:
- Cover Memo
- Contract Information Sheet
- Microsoft Enterprise Enrollment
- Microsoft Enterprise and Enterprise Subscription Enrollment Product Selection Form
- Microsoft Program Signature Form
- Microsoft Enterprise Enrollment – Amendment ID M97
- Microsoft Enterprise 6.6 Agreement Pricing – CDW Government LLC Enterprise Quote

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

Request authorization for the County Executive to enter into a contract with CDW Government LLC pursuant to State of Washington Master Contract No. 06016 for the renewal of our 3-Year Microsoft Enterprise Agreement in the amount of $168,879.35 per year.
MEMORANDUM

TO: Whatcom County Council
    Jack Louws, County Executive

FROM: Perry Rice, IT Manager

RE: Microsoft Enterprise Agreement Renewal – Three Year Software Maintenance

DATE: November 21, 2017

Enclosed is a proposed contract between CDW Government LLC (CDW-G) and Whatcom County to renew our Microsoft Enterprise Agreement for your review and signature.

- Background and Purpose
  Whatcom County currently has a Microsoft Enterprise Agreement that provides organization-wide software licensing for various Microsoft products such as Microsoft Office Professional Pro, Microsoft Exchange Online (e-mail), Microsoft networking, Microsoft Terminal Services and other software components.

  Washington state agencies and local governments such as Whatcom County receive discounted pricing from Microsoft pursuant to State of Washington Master Contract No. 06016. CDW-G is a Software Value Added Reseller under this agreement. The purpose of this agreement is to renew the Microsoft Enterprise Agreement for a new 3-year term.

- Funding Amount and Source
  This agreement is to pay software maintenance in the amount of $168,879.35 per year for 2018, 2019 and 2020. The annual sources of funding are the IT Base Budget and the Technology Replacement & Revolving Fund.

- Differences from Previous Contract
  The State of Washington has changed Software Value-Added Resellers so Whatcom County has transitioned from CompuCom Systems, Inc. to CDW-G. This agreement represents an increase of $14,731.26 per year primarily due to an increase in the number of user licenses required.

Please contact Perry Rice at x5235 or Denise Toth Banyan at x5255, if you have any questions or concerns regarding the terms of this agreement.
<table>
<thead>
<tr>
<th><strong>WHATCOM COUNTY CONTRACT INFORMATION SHEET</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Originating Department:</strong></td>
<td><strong>Information Technology</strong></td>
</tr>
<tr>
<td><strong>Division/Program:</strong> (i.e. Dept. Division and Program)</td>
<td>AS – Information Technology – IT WAN</td>
</tr>
<tr>
<td><strong>Contract or Grant Administrator:</strong></td>
<td>Perry Rice</td>
</tr>
<tr>
<td><strong>Contractor’s / Agency Name:</strong></td>
<td>CDW-G</td>
</tr>
<tr>
<td><strong>Is this a New Contract?</strong></td>
<td>Yes ☑ No ☐</td>
</tr>
<tr>
<td><strong>If not, is this an Amendment or Renewal to an Existing Contract?</strong></td>
<td>Yes ☑ No ☐</td>
</tr>
<tr>
<td><strong>If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:</strong></td>
<td>2015-01030</td>
</tr>
<tr>
<td><strong>Does contract require Council Approval?</strong></td>
<td>Yes ☑ No ☐</td>
</tr>
<tr>
<td><strong>If No, include WCC:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
</tr>
<tr>
<td><strong>Is this a grant agreement?</strong></td>
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</tr>
<tr>
<td></td>
<td>CFDA#:</td>
</tr>
<tr>
<td><strong>Is this contract grant funded?</strong></td>
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<td></td>
<td>If yes, Whatcom County grant contract number(s):</td>
</tr>
<tr>
<td><strong>Is this contract the result of a RFP or Bid process?</strong></td>
<td>Yes ☑ No ☐</td>
</tr>
<tr>
<td><strong>If yes, RFP and Bid number(s):</strong></td>
<td>State of WA Contract DES Master Contract 06016 NASPO #ADSP016-130652</td>
</tr>
<tr>
<td><strong>Contract Cost Center:</strong></td>
<td>507111 &amp; 507700</td>
</tr>
<tr>
<td><strong>Is this agreement excluded from E-Verify?</strong></td>
<td>No ☐ Yes ☑</td>
</tr>
<tr>
<td></td>
<td>If no, include Attachment D Contractor Declaration form.</td>
</tr>
<tr>
<td><strong>If YES, indicate exclusion(s) below:</strong></td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td><strong>Contract Amount (sum of original contract amount and any prior amendments):</strong></td>
<td>$168,879.35 per Year</td>
</tr>
<tr>
<td><strong>This Amendment Amount:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total Amended Amount:</strong></td>
<td>$</td>
</tr>
<tr>
<td><strong>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:</strong></td>
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<tr>
<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>
<td></td>
</tr>
<tr>
<td>3. Bid or award is for supplies or equipment included approved in the budget.</td>
<td></td>
</tr>
<tr>
<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>
<td></td>
</tr>
<tr>
<td><strong>Summary of Scope:</strong> Renewal of three year Microsoft Enterprise Agreement that provides software maintenance for organization-wide use of various Microsoft products. These products include Microsoft Office, Microsoft Exchange Online (email), Microsoft Networking (client access licenses) and Microsoft Terminal Services.</td>
<td></td>
</tr>
<tr>
<td><strong>Term of Contract:</strong></td>
<td>3-Years</td>
</tr>
<tr>
<td><strong>Expiration Date:</strong></td>
<td>December 31, 2020</td>
</tr>
<tr>
<td><strong>Contract Routing:</strong></td>
<td>1. Prepared by: Date:</td>
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<tr>
<td></td>
<td>2. Attorney signoff: Date:</td>
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<td></td>
<td>3. AS Finance reviewed: Date:</td>
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<td></td>
<td>4. IT reviewed (if IT related): Date:</td>
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<td></td>
<td>5. Contractor signed: Date:</td>
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<td></td>
<td>6. Submitted to Exec.: Date:</td>
</tr>
<tr>
<td></td>
<td>7. Council approved (if necessary): Date:</td>
</tr>
<tr>
<td></td>
<td>8. Executive signed: Date:</td>
</tr>
<tr>
<td></td>
<td>9. Original to Council: Date:</td>
</tr>
</tbody>
</table>

Last edited 10/31/16

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Enterprise Enrollment

State and Local

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at http://www.microsoft.com/licensing/contracts. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements.
Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Enterprise Online Service” means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

“Enterprise Product” means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

“Expiration Date” means the date upon which the Enrollment expires.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Industry Device” (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

“Managed Device” means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

“Qualified Device” means any device that is used by or for the benefit of Enrolled Affiliate’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

“Qualified User” means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

“Reseller” means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;
“Reserved License” means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’s jurisdiction and geographic boundaries.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

“Volume Licensing Site” means http://www.microsoft.com/licensing/contracts or a successor site.

2. Order requirements.
   a. Minimum order requirements. Enrolled Affiliate’s Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.

   (i) Enterprise commitment. Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).

   (ii) Enterprise Online Services only. If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.

   b. Additional Products. Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.

   c. Use Rights for Enterprise Products. For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate’s use of that Product during that term.

   d. Country of usage. Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.

   e. Resellers. Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term “price” refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

   f. Adding Products.

   (i) Adding new Products not previously ordered. New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order
is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

(ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.

**g. True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.

(i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

(ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.

(iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were ordered.

(iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:

1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.

2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate’s use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

(v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate’s Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate’s authorized representative.

(vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-
year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

(vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

(i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

(ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled “Adding new Products not previously ordered,” then for additional step-up Licenses, by following the true-up order process.

i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.

j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. **Pricing.**

a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate’s Price Level for all Products ordered under this Enrollment will be Level “D” throughout the term of the Enrollment.

b. **Setting Prices.** Enrolled Affiliate’s prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft’s prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft’s prices to Resellers are reestablished at the beginning of the renewal term.

4. **Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If an upfront payment is elected, Microsoft will invoice Enrolled Affiliate’s Reseller in full upon acceptance of this Enrollment. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate’s Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft’s acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.
5. **End of Enrollment term and termination.**

a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.

b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. **If Enrolled Affiliate elects not to renew.**

   (i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

   (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

   1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") for up to one year, unless designated in the Product Terms to continue until cancelled, is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.

   2) **Cancellation during Extended Term.** At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

   (iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

e. **Early termination.** Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.
6. **Government Community Cloud.**

   a. **Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

   b. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.

   c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

   d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

      (i) Government Community Cloud Services will be offered only within the United States.

      (ii) Additional European Terms, as set forth in the Use Rights, will not apply.

      (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.
Enrollment Details

1. **Enrolled Affiliate’s Enterprise.**
   a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate’s Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:
      - Enrolled Affiliate only
      - Enrolled Affiliate and all Affiliates
      - Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

      - Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

   b. Please indicate whether the Enrolled Affiliate’s Enterprise will include all new Affiliates acquired after the start of this Enrollment: Include future Affiliates

2. **Contact information.**

   Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at https://www.microsoft.com/licensing/servicecenter.

   a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate’s Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes.

      - Name of entity (must be legal entity name)*
      - Contact name* First Last
      - Contact email address*
      - Street address*
      - City*
State/Province*
Postal code* -
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)
Country*
Phone*
Tax ID
* indicates required fields

b. Notices contact and Online Administrator. This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

☐ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Last
Contact email address*
Street address*
City*
State/Province*
Postal code* -
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)
Country*
Phone*
Language preference. Choose the language for notices. English
☐ This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.
* indicates required fields

c. Online Services Manager. This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

☐ Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Last
Contact email address*
Phone*
☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.
* indicates required fields

d. Reseller information. Reseller contact for this Enrollment is:

Reseller company name* CDW Logistics, Inc.
Street address (PO boxes will not be accepted)* 200 N. Milwaukee Ave.
City* Vernon Hills
State/Province* IL
Postal code* 60061
Country* USA
Contact name* Aubrey Styles
Phone* 262-237-3805
Contact email address*aubrey.styles@cdw.com
* indicates required fields
By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

<table>
<thead>
<tr>
<th>Signature*</th>
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</thead>
<tbody>
<tr>
<td>Printed name*</td>
</tr>
<tr>
<td>Printed title*</td>
</tr>
<tr>
<td>Date*</td>
</tr>
</tbody>
</table>

*indicates required fields

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. Otherwise, the notices contact and Online Administrator remains the default.

(i) Additional notices contact  
(ii) Software Assurance manager  
(iii) Subscriptions manager  
(iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing? ☐ Yes, ☑ No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.
Enterprise and Enterprise Subscription Enrollment
Product Selection Form

Step 1. Enter all fields in the table below (Required).

<table>
<thead>
<tr>
<th>Profile</th>
<th>Qualified Devices</th>
<th>Qualified Users</th>
<th>Enterprise Product Platform</th>
<th>Licensing Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise</td>
<td></td>
<td></td>
<td>Choose One</td>
<td>Choose One</td>
</tr>
<tr>
<td>Device Profile (e.g. Call Center)</td>
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<td></td>
<td>Choose One</td>
<td>Choose One</td>
</tr>
</tbody>
</table>

Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order. Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is stepping-up within Enrollment term.

<table>
<thead>
<tr>
<th>Products</th>
<th>Enterprise Quantity</th>
<th>Device Profile (e.g. Call Center)</th>
</tr>
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<tbody>
<tr>
<td>Secure Productive Enterprise (SPE)</td>
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<tr>
<td>Secure Productive Enterprise E3 USL</td>
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<tr>
<td>Secure Productive Enterprise E3 Add-on</td>
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<tr>
<td>Secure Productive Enterprise E5 USL</td>
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<tr>
<td>Secure Productive Enterprise E5 Add-on</td>
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<tr>
<td>Office Professional Plus</td>
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<tr>
<td>Office Professional Plus</td>
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<td>Office 365 ProPlus</td>
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<td>Office 365 Plan E1 USL</td>
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<td>Office 365 Plan E3 USL</td>
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<td>Office 365 Plan E5 USL</td>
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<tr>
<td>Office 365 Plan E1 Add-on</td>
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<td>Office 365 Plan E3 Add-on</td>
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<td>Office 365 Plan E5 Add-on</td>
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<tr>
<td>Office 365 Plan E3 without ProPlus Add-on</td>
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<tr>
<td>Client Access License (CAL)</td>
<td>&lt;Choose One&gt;</td>
<td>&lt;Choose One&gt;</td>
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<td>Choose Core CAL or Enterprise CAL:</td>
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<tr>
<td>Core CAL or Enterprise CAL</td>
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<tr>
<td>Bridge for Office 365</td>
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<tr>
<td>Bridge for Enterprise Mobility Suite</td>
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<tr>
<td>Windows Desktop</td>
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<tr>
<td>Windows 10 Enterprise E3 and LTSB Upgrade per Device</td>
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<tr>
<td>Windows 10 Enterprise E5 per Device SL</td>
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<tr>
<td>Windows 10 Enterprise E3 per User SL</td>
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<tr>
<td>Windows 10 Enterprise E3 per User Add-on SL</td>
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<td>Windows 10 Enterprise E5 per User SL</td>
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<td></td>
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<tr>
<td>Windows 10 Enterprise E5 per User Add-on SL</td>
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<tr>
<td>Products</td>
<td>Enterprise Quantity</td>
<td>Device Profile (e.g. Call Center)</td>
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<td>Windows 10 Enterprise E5 per Device Add-on SL</td>
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<tr>
<td>Windows VDA</td>
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<tr>
<td>Windows VDA per User SL</td>
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<td></td>
</tr>
<tr>
<td><strong>Microsoft Intune</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Enterprise Mobility + Security</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise Mobility + Security E3 USL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise Mobility + Security E3 Add-on</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise Mobility + Security E5 USL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise Mobility + Security E5 Add-on</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Step 3. Establish the Enrolled Affiliate’s price level.** Unless otherwise indicated in the associated contract documents, the price level for each Product offering/pool is set based upon the quantity to price level mapping. **DO NOT INCLUDE BRIDGE CALs OR ADD-ONS.**

<table>
<thead>
<tr>
<th>Price Group</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Product Offering / Pool</th>
<th>Price Level</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Enterprise Products and Enterprise Online Services USLs:</strong> Unless otherwise indicated in associated contract documents, Price Level is set using the highest quantity from Groups 1 through 4.</td>
<td></td>
</tr>
<tr>
<td><strong>Additional Product Application Pool:</strong> Unless otherwise indicated in associated contract documents, Price Level is set using quantity from Group 1.</td>
<td></td>
</tr>
<tr>
<td><strong>Additional Product Server Pool:</strong> Unless otherwise indicated in associated contract documents, Price Level is set using the highest quantity from Group 2 or 3.</td>
<td></td>
</tr>
<tr>
<td><strong>Additional Product Systems Pool:</strong> Unless otherwise indicated in associated contract documents, Price Level is set using quantity from Group 4.</td>
<td></td>
</tr>
</tbody>
</table>
Quantity of Licenses and Software Assurance to Price Level Mapping:

<table>
<thead>
<tr>
<th>Quantity of Licenses and Software Assurance</th>
<th>Price Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,399 and below</td>
<td>A</td>
</tr>
<tr>
<td>2,400 to 5,999</td>
<td>B</td>
</tr>
<tr>
<td>6,000 to 14,999</td>
<td>C</td>
</tr>
<tr>
<td>15,000 and above</td>
<td>D</td>
</tr>
</tbody>
</table>

Notes:

1. Enterprise Online Services may not be available in all locations. Please see the Product Terms for a list of locations where these may be purchased.

2. If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment.

3. Unless otherwise indicated in the associated Agreement documents, the CAL selection must be the same across the Enterprise for each Profile.

This form must be attached to a signature form to be valid.
Program Signature Form

MBA/MBSA number

Agreement number

Proposal ID

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

<table>
<thead>
<tr>
<th>Contract Document</th>
<th>Number or Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>Document Description</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>Document Description</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>Document Description</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>Document Description</td>
<td>Document Number or Code</td>
</tr>
<tr>
<td>Document Description</td>
<td>Document Number or Code</td>
</tr>
</tbody>
</table>

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer

Name of Entity (must be legal entity name)*

Signature*

Printed First and Last Name*

Printed Title

Signature Date*

Tax ID

* indicates required field
<table>
<thead>
<tr>
<th><strong>Microsoft Affiliate</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Microsoft Corporation</strong></td>
</tr>
<tr>
<td>Signature</td>
</tr>
<tr>
<td>Printed First and Last Name</td>
</tr>
<tr>
<td>Printed Title</td>
</tr>
<tr>
<td><strong>Signature Date</strong></td>
</tr>
<tr>
<td>(date Microsoft Affiliate countersigns)</td>
</tr>
<tr>
<td><strong>Agreement Effective Date</strong></td>
</tr>
<tr>
<td>(may be different than Microsoft's signature date)</td>
</tr>
</tbody>
</table>

Optional 2\textsuperscript{nd} Customer signature or Outsourcer signature (if applicable)

<table>
<thead>
<tr>
<th><strong>Customer</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of Entity (must be legal entity name)</strong>*</td>
</tr>
<tr>
<td>Signature*</td>
</tr>
<tr>
<td>Printed First and Last Name*</td>
</tr>
<tr>
<td>Printed Title</td>
</tr>
<tr>
<td><strong>Signature Date</strong>*</td>
</tr>
</tbody>
</table>

* indicates required field

<table>
<thead>
<tr>
<th><strong>Outsourcer</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of Entity (must be legal entity name)</strong>*</td>
</tr>
<tr>
<td>Signature*</td>
</tr>
<tr>
<td>Printed First and Last Name*</td>
</tr>
<tr>
<td>Printed Title</td>
</tr>
<tr>
<td><strong>Signature Date</strong>*</td>
</tr>
</tbody>
</table>

* indicates required field

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer’s channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

**Microsoft Corporation**
Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada 89511-1137
USA
Amendment to Contract Documents

Enrollment Number 6651682

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

Enterprise Enrollment (Indirect)
Invoice for Quoted Price
Amendment ID M97

Notwithstanding anything to the contrary or in addition to any terms in the Enrollment, the Enrollment is hereby amended to add the following paragraph:

The price quoted to Enrolled Affiliate’s Reseller is a fixed price based on an estimated order submission date. Microsoft will invoice Enrolled Affiliate’s Reseller based on this fixed price quote. If this order is submitted later than the estimated order submission date, Enrolled Affiliate’s Reseller will be charged for net new Monthly Subscriptions (including Online Services) for the period during which these services were not provided. Pricing to Enrolled Affiliate is agreed between Enrolled Affiliate and Enrolled Affiliate’s Reseller.

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

(M97)EnrAmend(Ind)/InvoiceforQuotedPrice(
WWW)(ENG)Aug2017v2(IU).docx

M97
B
**EA # 6651682 Renewal**
Customer to make three annual payments to CDW-G

<table>
<thead>
<tr>
<th>Microsoft Part #</th>
<th>Description</th>
<th>Level</th>
<th>Quantity</th>
<th>Price</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAA-12416</td>
<td>CoreCALBridgeO365FromSA ALNG SubsVL MVL PerUser</td>
<td>D</td>
<td>877</td>
<td>$14.28</td>
<td>$12,506.02</td>
<td>$14.28</td>
<td>$14.28</td>
</tr>
<tr>
<td>AAA-10758</td>
<td>O365E3FromSA ShrdSvr ALNG SubsVL MVL PerUser</td>
<td>D</td>
<td>877</td>
<td>$149.61</td>
<td>$131,207.97</td>
<td>$149.61</td>
<td>$149.61</td>
</tr>
<tr>
<td>9GA-00310</td>
<td>O365StdCore ALNG SA MVL 16Lic Core/Lc</td>
<td>D</td>
<td>10</td>
<td>$269.98</td>
<td>$2,699.80</td>
<td>$269.98</td>
<td>$269.98</td>
</tr>
<tr>
<td>7TC-00001</td>
<td>ExchgOnlnKss ShrdSvr ALNG SubsVL MVL PerUser</td>
<td>D</td>
<td>150</td>
<td>$17.30</td>
<td>$2,695.00</td>
<td>$17.30</td>
<td>$17.30</td>
</tr>
<tr>
<td>6VC-01254</td>
<td>WinRmtDktpSrvcsALNG SA MVL UserCAL</td>
<td>D</td>
<td>300</td>
<td>$21.18</td>
<td>$6,354.00</td>
<td>$21.18</td>
<td>$21.18</td>
</tr>
</tbody>
</table>

Year 1 Total $155,362.79
Year 2 Total $155,362.79
Year 3 Total $155,362.79
Three Year Total $466,088.37

**Notes**
**NO TAX referenced**
Washington NFP Software (#06516-00004)
WHATCOM COUNTY:
Recommended for Approval:

IT Manager  1/22/2017

Approved as to form:

Prosecuting Attorney  1/22/17
**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>11/2/17</td>
<td></td>
<td>12/5/2017</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Division Head:</td>
<td>AD</td>
<td>11/7/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Head:</td>
<td>RD</td>
<td>11/27/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td>RB</td>
<td>11/21/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>MDC</td>
<td>11/21/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td>VS</td>
<td>11/30/17</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Amendment #1 to East County Prevention Contract between Whatcom County and the Whatcom Family & Community Network

**ATTACHMENTS:**
1. Info sheet
2. Executive Memo
3. 2 copies of Contract

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

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

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

This amendment adds additional funding to deliver prevention strategies that will reduce risk factors for substance abuse and other problem behaviors in the Mt. Baker school district geographic area.

**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: Whatcom Family & Community Network – East County Prevention Services Amendment #1

DATE: November 27, 2017

Enclosed are two (2) originals of a contract amendment between Whatcom County and Whatcom Family & Community Network (WFCN) for your review and signature.

- Background and Purpose
  The Washington State Division of Behavioral Health and Recovery’s substance abuse prevention services require community based coalitions to engage in assessment, service planning, evaluation, and implementation. Locally, the Whatcom Family and Community Network is facilitating these efforts in the geographical area of the Mt. Baker School District. The eastern part of the county has exhibited elevated risks for substance abuse but has also demonstrated high capacity and readiness to participate and achieve positive outcomes.

  The overarching goal of these services is to reduce youth substance abuse and improve mental health and wellbeing among youth, families and the general population. The community will plan and implement programs and services that will reduce substance abuse while building on community resources that promote healthy children and families.

  This amendment acknowledges the work completed thus far, and outlines continued expectations of contract deliverables.

- Funding Amount and Source
  The source of funding for this amendment, in an amount not to exceed $129,250, is the Substance Abuse and Mental Health Services Administration (SAMHSA) CFDA #93.788 passed through the State of Washington Division of Behavioral Health and Recovery, State Targeted Response to the Opioid Crisis (STR). Funding passed through the State of Washington, Division of Behavioral Health and Recovery grant number 1763-94278 in the amount of $200,000 for the period of 9/1/17 through 4/30/19. This amendment extends the contract period and funds are included in the 2017/18 budget. County Council approval is required as this amendment exceeds 10% of the original contract amount.

Please contact Joe Fuller at extension #6045 if you have any questions regarding this agreement.

Encl.
<table>
<thead>
<tr>
<th>Section</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originating Department:</td>
<td>Health</td>
</tr>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Human Services</td>
</tr>
<tr>
<td>Contractor or Grant Administrator:</td>
<td>Joe Fuller</td>
</tr>
<tr>
<td>Contractor’s/ Agency Name:</td>
<td>Whatcom Family &amp; Community Network</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>201710011</td>
</tr>
<tr>
<td>Does contract require Council Approval?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If No, include WCC:</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#: 93.788</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>201707012-1</td>
</tr>
<tr>
<td>Is this contract 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>subrecipient</td>
</tr>
<tr>
<td>Contract Cost Center:</td>
<td>677360</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>
<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 $10,000 or 10% of contract amount, whichever is greater, except when:</td>
</tr>
<tr>
<td>$ 33,750</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>$ 129,250</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>$ 163,000</td>
<td>Summary of Scope: The purpose of this contract is to deliver prevention strategies that will reduce risk factors for substance abuse and other problem behaviors in the Mt. Baker geographic area.</td>
</tr>
<tr>
<td>Term of Contract:</td>
<td>1 Year</td>
</tr>
<tr>
<td>Expiration Date:</td>
<td>12/31/2018</td>
</tr>
<tr>
<td>Contract Routing:</td>
<td></td>
</tr>
<tr>
<td>1. Prepared by:            JF</td>
<td>Date: 10/31/2017</td>
</tr>
<tr>
<td>2. Attorney signoff:       RB</td>
<td>Date: 11/09/2017</td>
</tr>
<tr>
<td>3. AS Finance reviewed:    Bennett</td>
<td>Date: 11/17</td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td></td>
</tr>
<tr>
<td>5. Contractor signed:       Kristi Silette</td>
<td>Date: 11/27/2017</td>
</tr>
<tr>
<td>6. Submitted to Exec.:     Date:</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>
WHATCOM COUNTY HEALTH DEPARTMENT CONTRACT EXTENSION

Whatcom County # 201710011

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

AMENDMENT NUMBER: 1

AND CONTRACTOR:
Whatcom Family & Community Network
1231 N Garden Street #210
Bellingham, WA 98225-5162

CONTRACT PERIODS:
Original: 09/01/2017 - 12/31/2017
Amendment #1: 01/01/2018 - 12/31/2018

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. Add Exhibit “A” – Amendment #1 (Scope of Work) to update the link to the CPWI Community Coalition Guide, to acknowledge work that has been completed in the first phase, and to outline work to be completed.

3. Replace Exhibit “B” (Compensation) with Exhibit “B” – Amendment #1 (Compensation) to include the entire contract period.

4. Add Exhibit F “E-Verify Declaration” as contract funds exceed $100,000.

5. Funding for this extended contract period (01/01/2018 - 12/31/2018) is not to exceed $129,250.

6. Funding for the total contract period (09/01/2017 - 12/31/2018) is not to exceed $163,000.

7. All other terms and conditions remain unchanged.

8. The effective start date of the extension is 01/01/2018.
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  
11/21/17

DEPARTMENT HEAD APPROVAL: 
Regina A. Delahant, Health Department Director  
11/27/17

APPROVAL AS TO FORM: 
Royce Buckingham, Civil Deputy Prosecuting Attorney  
11/27/17

FOR THE CONTRACTOR:
Kristi L. Slette  
11/22/2017

Contractor Signature  
Print Name and Title  
Date

STATE OF WASHINGTON
COUNTY OF WHATCOM

On this 22nd day of November, 2017, before me personally appeared
Kristi L. Slette, to me known to be the Executive Director and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Janice M. Duellman  
NOTARY PUBLIC in and for the State of Washington,
Residing at 509 6th Ave W

My Commission expires: 9-9-20

FOR WHATCOM COUNTY:

Jack Louws, County Executive  
11/22/2017

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 ____________________
EXHIBIT "A" – Amendment #1  
(SCOPE OF WORK)

Background

During the first phase of these services, WFCN has already convened Mt. Baker’s community coalition, conducted a Key Leader Orientation with community leaders to gain feedback and support, established a community needs assessment process, conducted a Town Hall meeting to educate community members about local youth substance use issues, and delivered the first ever Medicine Take Back effort in the Mt. Baker area. The next phase of these efforts will focus on selecting programs and interventions to be implemented, along with continued coalition development and community capacity building.

Statement of Work

In order to address the identified goals of the contract, the Contractor will provide the services outlined below during the extended term of this agreement. These activities support the implementation of the strategic plan and an action plan, and result in targeted strategies provided to youth, their families and the larger population in the Mt. Baker geographic area. This contract supports the initial year of services in support of the Community Prevention & Wellness Initiative (CPWI) services, the starting point for long-term, sustained efforts that will take place over several years.

The Contractor will continue to:

1. Provide services according to the CPWI Community Coalition Guide found at [http://theathenaforum.org/cpwi community coalition guide updated sept 2017](http://theathenaforum.org/cpwi community coalition guide updated sept 2017) and ensure that all benchmarks are met according to the expected timeline, throughout the entire duration of the contract. These efforts will include the following:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Product/Service</th>
<th>Documentation</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Secure Medicine Return Events</td>
<td>- Collection of unused medications</td>
<td>- Weight of medications</td>
<td>- Promotional materials</td>
</tr>
<tr>
<td>3) Recruit and retain membership.</td>
<td>- Sector Engagement</td>
<td>- Recruitment Plan</td>
<td>- Recruitment Plan</td>
</tr>
<tr>
<td>a. Maintain 8 of 12 sectors actively participating in the coalition.</td>
<td>- Recruitment Plan</td>
<td>- Participation Report</td>
<td>- Minutes</td>
</tr>
<tr>
<td>b. Develop and implement a recruitment and retention plan incorporates the demographics and culture of the community.</td>
<td>- - Facilitate Process</td>
<td>- Minutes</td>
<td>-</td>
</tr>
<tr>
<td>4) Refine decision making model between coalition, Core Workgroups, and other coalition subgroups. Update or revise diagram or flow chart for decision making as necessary.</td>
<td>- Facilitate Process</td>
<td>- Agendas</td>
<td>- Minutes or Sign-In Sheets</td>
</tr>
<tr>
<td>5) Maintain coalition “workgroups,” including standing workgroups (projects, leadership committee, etc.), ad hoc workgroups, and other groups needed to accomplish the strategic plan.</td>
<td>- Coordination of Core Workgroups</td>
<td>- Revised charter or</td>
<td>- Minutes</td>
</tr>
<tr>
<td>6) Review and revise, the coalition’s decision-making strategy, meeting schedule and minimum participation rules, and other related actions.</td>
<td>- Facilitate Process</td>
<td>- Revised charter or</td>
<td>- Minutes</td>
</tr>
<tr>
<td>7) Coalition Assessment Tool (Surveys)</td>
<td>- Completed Surveys</td>
<td>- Survey Report</td>
<td>-</td>
</tr>
<tr>
<td>a. Members will complete a baseline and annual coalition survey using an instrument provided by DBHR and work to achieve an 80% response rate for the annual coalition survey</td>
<td>-</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>b. Coalition feedback survey adopted, implemented and analyzed with results discussed at coalition meetings.</td>
<td>- Completed Surveys</td>
<td>- Survey Report</td>
<td>-</td>
</tr>
<tr>
<td>8) Community Survey-The Coalition will use a survey</td>
<td>- Disseminate and</td>
<td></td>
<td>- Survey Report</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9) Hold key leader orientation event annually to discuss coalition goals and activities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Orientation Event</td>
</tr>
<tr>
<td>- Flyer</td>
</tr>
<tr>
<td>- Annually, date to be determined</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>10) Implement Environmental Strategies. Coalition members lead and oversee environmental strategies (population level) as identified in the action plan, resulting in 1-2 strategies in the targeted community. Strategies determined by the outcome of the needs assessment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>- 1-2 Strategies implemented</td>
</tr>
<tr>
<td>- Agenda</td>
</tr>
<tr>
<td>- Minutes</td>
</tr>
<tr>
<td>- Flyers</td>
</tr>
<tr>
<td>- Additional items to be determined</td>
</tr>
<tr>
<td>- Annually, schedule to be determined</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11) Implement Direct Service Programming. Evidence-based programs will be targeted to youth and families in the area, selected from a list of best-practice programs. Strategies determined by the outcome of the needs assessment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>- 1-2 Strategies implemented</td>
</tr>
<tr>
<td>- Agenda</td>
</tr>
<tr>
<td>- Minutes</td>
</tr>
<tr>
<td>- Flyers</td>
</tr>
<tr>
<td>- Additional items to be determined</td>
</tr>
<tr>
<td>- Annually, schedule to be determined</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>12) Support a public awareness campaign relating to drug issues in the community. State or national campaign efforts will be applied when appropriate.</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Identified campaign (state, national, or other)</td>
</tr>
<tr>
<td>- To be determined</td>
</tr>
<tr>
<td>- Annually</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>13) Strategic Planning Updates</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Update needs assessment and resource assessment as identified by the CPWI process. Establish assessment workgroups to review data to prioritize programs and strategies.</td>
</tr>
<tr>
<td>- Mt. Baker Strategic Plan</td>
</tr>
<tr>
<td>- Mt. Baker Strategic Plan or logic models</td>
</tr>
<tr>
<td>- Revised Work Plans or logic models</td>
</tr>
<tr>
<td>- Revised Work Plans or logic models</td>
</tr>
<tr>
<td>- Annually, and as new data becomes available</td>
</tr>
<tr>
<td>- Annually</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14) Report outputs and outcomes, including pre- and post-test assessments for all participants in recurring services who are at least ten (10) years old as of the first date of service.</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Administer DBHR measurement tools</td>
</tr>
<tr>
<td>- Outcome Reports from DBHR</td>
</tr>
<tr>
<td>- 15th of the month following service</td>
</tr>
</tbody>
</table>

2. Provide Medicine Take-Back event in conjunction with local law enforcement.
   a. Collection and disposal must follow all United States Drug Enforcement Agency (DEA) rules and all federal and state laws and regulations
   b. Overtime wages for law enforcement officers and staff outside of normal duties and other real costs (including mileage reimbursement) associated with transporting and properly disposing of collected medicines at EPA approved locations shall be permitted.

3. Participate in planning meetings to meet service confirmation deadlines with identified school district and Educational Service District (ESD) staff for the provision of Prevention and Intervention services as outlined in the application.

4. Prepare a regular annual schedule of direct prevention services for public dissemination.
   a. Regular annual schedule shall take into account items including, but not limited to: implementation times that maximize participation and service outcomes; local needs and gaps; leveraged resources; and, other locally identified factors that influence service delivery throughout the year.
   b. Regular annual schedule and community dissemination plan shall be identified as part of the CPWI Action Plan and submitted to Contract Manager or designee for DSHS review.

5. Attend annual contractor training with staff specified in original contract. Date and location will be announced by DBHR.

6. Confirm that Community Coalition Coordinators are Certified Prevention Professionals (CPP).
   a. Current coordinators must maintain CPP credential status, and
   b. New coordinators must be certified within eighteen months of start date.
7. Enter approved programs, based on the priorities, goals and objectives described in the approved Strategic Plan, into the Minerva within thirty days of Plan approval.

8. Provide programming that meets the Center for Substance Abuse Prevention's (CSAP) Principles of Substance Abuse Prevention, found on the Athena Forum Website. [www.TheAthenaForum.org/CSAPprinciples](http://www.TheAthenaForum.org/CSAPprinciples). Sixty percent of programming must be replications or adaptations of "Evidence-based Practice" substance abuse prevention programs as identified by DBHR.

9. Report monthly prevention activities in the DSHS Minerva in accordance with the requirements and timelines set forth by DBHR. This includes entry of all services and data by the 15th of the month, following the month of service. Staff must be properly trained in Minerva data entry and reporting must be accurate and unduplicated.

10. Conduct all services in a culturally competent manner. Services will take into account an understanding of Adverse Childhood Experiences (ACE's), resilience and also be delivered in a compassionate manner.

11. Collaborate and partner with community-based organizations that operate within or serve the CPWI community.

12. Comply with additional requirements as directed from DBHR or the County.

13. Meet all administrative requirements stated in the original contract concerning food costs, budget adjustments and federal sub-recipient requirements.
EXHIBIT "B" – Amendment #1
(COMPLEMENTATION)

The source of funding for this amendment, in an amount not to exceed $129,250, is the Substance Abuse and Mental Health Services Administration (SAMHSA) CFDA #93.786 passed through the State of Washington Division of Behavioral Health and Recovery, State Targeted Response to the Opioid Crisis (STR). Funding passed through the State of Washington, Division of Behavioral Health and Recovery grant number 1763-94278 in the amount of $200,000 for the period of 8/15/17 through 4/30/19. Total funding for the contract is not to exceed $163,000.

The budget for services is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Documentation needed with invoice</th>
<th>Budget</th>
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<tr>
<td>Coalition and Project Coordinators (salary, benefits, and taxes)</td>
<td>Approved hourly billing rate and timesheet showing total hours and hours charged to this contract</td>
<td>$19,000</td>
</tr>
<tr>
<td>Supplies, Materials, Printing, Postage, Space Rental, Equipment, and phone</td>
<td>Receipts for supplies, materials, printing, postage, space rental, equipment, and phone</td>
<td>$7,750</td>
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<tr>
<td>Professional development/training, and travel</td>
<td>Receipt for registration or training fees. 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. 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. 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.</td>
<td>$4,500</td>
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<tr>
<td>Indirect Costs</td>
<td>Administration @ 8%</td>
<td>$2,500</td>
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<tr>
<td>TOTAL</td>
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<td>$33,750</td>
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Amendment #1 Program Budget 1/1/2018 – 04/30/2018 (Federal Fiscal Year 2017 funding):

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</thead>
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<tr>
<td>Coalition and Project Coordinators (salary, benefits, and taxes)</td>
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<td>$36,000</td>
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<tr>
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<td>Receipt for registration or training fees. 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. 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. 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.</td>
<td>$2,834</td>
</tr>
<tr>
<td>Subcontracted and Professional Services</td>
<td>Copy of invoice and payment.</td>
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<tr>
<td>Indirect Costs</td>
<td>Administration @ 8%</td>
<td>$4,166</td>
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<td>$56,250</td>
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<tr>
<td>Item</td>
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<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Coalition and Project Coordinators (salary, benefits, and taxes)</td>
<td>Approved hourly billing rate and timesheet showing total hours and hours charged to this contract</td>
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</tr>
<tr>
<td>Supplies, Materials, Printing, Postage, Space Rental, Equipment, and phone</td>
<td>Receipts for supplies, materials, printing, postage, space rental, equipment, and phone</td>
<td>$8,000</td>
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<tr>
<td>Professional development/training, and travel</td>
<td>Receipt for registration or training fees. 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. 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. 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.</td>
<td>$4,593</td>
</tr>
<tr>
<td>Subcontracted and Professional Services</td>
<td>Copy of invoice and Payments</td>
<td>$10,000</td>
</tr>
<tr>
<td>Indirect Costs</td>
<td>Administration @ 8%</td>
<td>$5,407</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>$73,000</td>
</tr>
</tbody>
</table>

The Contractor may transfer funds between budget line items with prior County approval and in accordance with original contract requirements in Exhibit A, Item 2d, but under no circumstances will the Administration rate exceed 8%.

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 15th 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. This award is not research and development.

3. The Contractor shall submit invoices to (include contract #):
   Business Office – HL-BusinessOffice@co.whatcom.wa.us
   Whatcom County Health Department
   509 Girard St.
   Bellingham, WA 98225

4. 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.

5. 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.
6. **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 “F”
E-Verify Declaration

Firm Name: Whatcom Family & Community Network

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

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

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

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

DATE: Nov. 22, 2017

SIGNATURE: Kris i L. Sle t te

PRINTED NAME: Kris i L. Sle t te
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
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<th>Assigned to:</th>
</tr>
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<tbody>
<tr>
<td>Orig.: R. Ney</td>
<td>11.22.17</td>
<td></td>
<td>12.05.17</td>
<td>Finance/Council</td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**
Award of RFP#17-69, Audio Video System Upgrades for the Council Chambers

**ATTACHMENTS:**
Award of RFP and Memo

**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 County Executive requests Council approval to enter into the contract resulting from the Award of RFP #17-69 to complete the Council Chamber Audio Video System Upgrades.

**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.
DATE: November 22, 2017
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Award of RFP #17-69, Audio Video System Upgrades for the Council Chambers

- **Background & Purpose**

A Request for Proposal (RFP) was duly advertised for the Audio Video System Upgrades for the Council Chambers project. Three proposals were received on Tuesday November 21, 2017.

Administrative Services – Facilities Management is requesting approval to accept the proposal submitted by Dimensional Communications, of Mt. Vernon, Washington, and authorization for the Executive to enter into a contract with Dimensional Communications in the amount of $54,996.77, including sales tax.

- **Funding**

This is a planned purchase, and funds were approved in the Public Utilities Improvement Fund annual budget, with additional funding approved on Supplemental Budget Request #10, Ordinance 2017-047. I concur with this request.

[Signature]
AS Finance Manager

Approved as recommended:

____________________________________
County Executive

Date of Council Action ___________________
MEMORANDUM

TO: Brad Bennett, Finance Manager
FROM: Rob Ney, Project and Operations Manager
DATE: November 22, 2017
RE: Recommend to Award RFP/RFQ #17-69 Audio Visual System Upgrades for the Council Chambers

On Tuesday, November 21, 2017 three proposals were received in response to Whatcom County RFP #17-69, Audio Video Upgrades to the Council Chambers. The proposals were reviewed and scored based on the selection criteria listed in the RFP.

*Dimensional Communications* met all of the required specifications for performing the work required for this project. It is the recommendation of this office to accept the proposal submitted by *Dimensional Communications* for the Audio Video System Upgrades to the Council Chambers.

The amount needed for this project is $54,996.77 including WA State sales tax. Adequate funding is included in the current Public Utilities Improvement Fund budget for Council Chamber Improvements.

If you need additional information, please contact me at extension 5387.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<td>11/22/17</td>
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<td>12/05/17</td>
<td>Finance/ Council</td>
</tr>
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<td>Division Head:</td>
<td></td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>11/27/17</td>
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<td>Purchasing/Budget:</td>
<td>B3</td>
<td>11/27/17</td>
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<td>Executive:</td>
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</table>

**TITLE OF DOCUMENT:** Interlocal Cooperative Purchasing Agreement with King County

**ATTACHMENTS:** Memos from Finance

**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.)

Administrative Services – Finance requests approval to for the Executive to enter into an Interlocal Cooperative Purchasing Agreement with King County. This agreement will allow Whatcom County to utilize King County’s competitively bid supplies, goods, services, and equipment, per RCW Chapter 39.34, Interlocal Cooperation Act.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
DATE: November 22, 2017
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Approval for an Interlocal Cooperative Agreement with King County

- Background & Purpose
Administrative Services Finance is requesting approval to enter into a cooperative purchasing agreement with King County. This agreement will allow Whatcom County to utilize King County’s competitively bid contracts for purchases of supplies, goods, services, and equipment, per RCW Chapter 39.34 Interlocal Cooperation Act.

- Funding
There is no fee to enter into this agreement.

Approved as recommended:

[Signature]
AS Finance Manager

County Executive

Date of Council Action ___________________
After recording, return to:
Whatcom County AS Finance
Attn: Sara Winger, Purchasing Coordinator
311 Grand Ave Ste #503
Bellingham, WA 98225-4082

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN KING COUNTY AND WHATCOM COUNTY

This Agreement, made and entered into by and between KING COUNTY, State of Washington, a Washington municipal corporation (hereinafter referred to as "King County") and WHATCOM COUNTY, State of Washington, a Washington municipal corporation (hereinafter referred to as "Whatcom County"), (collectively "Parties"), and whereby the Parties agree to cooperative governmental purchasing upon the following terms and conditions:

1. Cooperative Purchases. The Parties hereto, pursuant to Chapters 36 and 39 bidding laws, Revised Code of Washington, and pursuant to Chapter 39.34 of the Revised Code of Washington do hereby agree to cooperatively purchase supplies, goods, services, and equipment as a result of competitive bidding and within the qualifications or specifications established by and for King County and Whatcom County.

Parties will finalize their own arrangements, including option selection, selections, trade-in, and delivery arrangements for goods, services, and equipment directly with the applicable contractor or vendor. King County and Whatcom County agree that each Party has no liability as far as the durability, serviceability, performance and warranty of the goods, services, and equipment selected. It is also agreed that the goods, services, and equipment selected shall be agreed upon by each individual Party and will not be perceived as selected by the other Party. King County and the Whatcom County accept no responsibility of the performance of any contracts by the contractor, and King County and Whatcom County accept no responsibility for payment of the purchase price for any contract entered into by the other Party.

2. Administration. No new or separate legal or administrative entity is created to administer the provisions of this Agreement. Each Party reserves the right to contract independently for the purchase of any particular class of goods or services with or without notice to the other Party. The Parties reserve the right to exclude the other Party from any particular purchasing or services contract, with or without notice to the other Party.

3. Term. This Agreement shall take effect immediately and shall continue in effect until terminated. It may be terminated by either Party by giving ten (10) days written notice to the other; provided, however, that termination shall not affect or impair joint purchases of the Parties that are agreed to on or before the date of termination.

4. Compliance with Laws. Each Party accepts responsibility for compliance with federal, state, or local laws and regulations including, in particular, that Party's bidding requirements applicable to the acquisition of any goods, services, or equipment obtained through the cooperative process agreed to herein.
5. **Indemnification.** Each Party shall be liable and responsible for the consequence of any negligent or wrongful act or failure to act on the part of itself and its employees. Neither Party assumes responsibility to the other Party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.

6. **Recording.** As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has (i) been duly executed by both parties, and (ii) either filed with the respective county Auditor or posted on the respective county's website.

7. **General Provisions.** This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of this agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs, and assigns.

8. Any provision of this Agreement which is declared invalid or illegal shall in no way effect or invalidate any other provision. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses.

9. The venue for any dispute related to this Agreement shall be in Whatcom County if the bid is issued by Whatcom County or in King County if the bid is issued by King County. Failure of either Party to declare any breach or default by the other Party immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

IN WITNESS WHEREOF, the parties have caused duplicate originals of this Agreement to be executed on the day and year the last signature hereto is affixed.

**WHATCOM COUNTY, WASHINGTON**

________________________
Jack Louws, County Executive

Dated: _____________________

Approved as to form:

By: [Signature]

Chief Civil Deputy

**KING COUNTY, WASHINGTON**

________________________
Title: _____________________

Dated: _____________________
# WHATCOM COUNTY COUNCIL AGENDA BILL

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<td>Division Head:</td>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
<td></td>
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</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Award Bid 17-71 Mini Excavators

**ATTACHMENTS:** Memos from Finance and Public Works

**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.)

Public Works Equipment Services is requesting approval to award bid 17-71 for the supply of two (2) mini excavators to the lowest bidder that met minimum specifications, Papé Machinery, located in Mt. Vernon, Washington. The total cost is $167,307.00.

In lieu of replacing a Gradall (rubber-tired ditch digging machine) identified in the 2017 ER&R capital budget replacement list at a budget amount of $325,000.00, Public Works requests to purchase the two mini excavators and two trailers at a total cost of $239,273.64. The Agenda Bill for the trailers is processed separately.

**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.*
DATE: November 21, 2017
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Award of Bid #17-71, Mini Excavators

- **Background & Purpose**

  Bids were duly advertised for two (2) mini excavators that will be used by the Maintenance and Operations Division of Public Works as part of the ditch maintenance program. Six responses were received on Tuesday November 14, 2017, and Papé Machinery, located in Mt. Vernon, Washington submitted the lowest bid (shown below) that met minimum specifications. The total price for this purchase is $167,307.00, including sales tax.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Make &amp; Model</th>
<th>Base Price</th>
<th>Sales Tax (% Rate)</th>
<th>Grand Total Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Papé Machinery</td>
<td>#1 John Deere 50-G</td>
<td>$ 71,600.00</td>
<td>$ 6,086.00 (8.5%)</td>
<td>$ 167,307.00</td>
</tr>
<tr>
<td></td>
<td>#2 John Deere 60-G</td>
<td>$ 82,600.00</td>
<td>$ 7,021.00 (8.5%)</td>
<td></td>
</tr>
</tbody>
</table>

- **Funding**

  In lieu of replacing a Gradall (rubber-tired ditch digging machine) identified in the 2017 ER&R capital budget replacement list at a budget amount of $325,000.00, Public Works requests to purchase the two mini excavators and two trailers at a total cost of $239,273.64. A memo from Eric Schlehuber and Rob Ney with explanation of the need for mini excavators instead of a Gradall is attached, and the Agenda Bill for the two trailers is submitted separately.

  [Signature]

  AS Finance Manager

Approved as recommended:

_________________________________________

County Executive

Date of Council Action______________________
MEMORANDUM

To: Brad Bennett, AS Finance Manager
Through: Jon Hutchings, Public Works Director
From: Eric L. Schlehuber, PW Equipment Services Manager
Date: November 27, 2017
Re: Purchase of (2) Mini Excavators (Whatcom County Bid #17-71: Mini Excavators)

Requested Action
After researching costs of mini excavators, I am requesting Executive and Council approval to purchase two (2) mini excavators to replace the following vehicle:

<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>HOURS</th>
</tr>
</thead>
<tbody>
<tr>
<td>M&amp;O</td>
<td>In lieu of #355</td>
<td>1998 Gradall – G3WD, 4x2</td>
<td>5,900</td>
</tr>
</tbody>
</table>

Background and Purpose
Unit #355 was approved for replacement in the 2017-2018 Equipment Rental and Revolving Capital Equipment Budget to be used by the Maintenance and Operations Division of the Whatcom County Public Works Department in the performance of county business.

Bids were duly advertised for the supply of two (2) separate mini excavators. Six (6) bid responses were received under Whatcom County Bid #17-71 for these units on Tuesday, November 14, 2017. Listed below is the detailed bid tabulation for the lowest responsive and responsible bid that met minimum specifications. The lowest bid responses did not meet minimum specifications in the following areas for each mini excavator: operating weight, dump height, broom swing angle, and bucket digging force.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>QTY</th>
<th>PRICE EACH</th>
<th>SALES TAX TOTAL (8.5%)</th>
<th>EXTENDED TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pape’ Machinery</td>
<td>John Deere 50-G</td>
<td>1</td>
<td>$71,600.00</td>
<td>$6,086.00</td>
<td>$77,686.00</td>
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<tr>
<td>Pape’ Machinery</td>
<td>John Deere 60-G</td>
<td>1</td>
<td>$82,600.00</td>
<td>$7,021.00</td>
<td>$89,621.00</td>
</tr>
<tr>
<td>GRAND TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$167,307.00</td>
</tr>
</tbody>
</table>

Funding Amount and Source
Funding was approved during the 2017-2018 ER&R Budget to replace unit #355 for $325,000 (10% allowance of $357,500). I am proposing replacing the 1998 Gradall (unit #355) with (2) mini excavators and (2) trailers. The bid for the (2) trailers is being processed concurrent to this request. I estimate that this same operating purpose equipment change will save approximately $75,000 from the cost of one replacement Gradall unit.

I am requesting Executive and Council approval to purchase these mini excavators from Pape’ Machinery of Mount Vernon, Washington for the price of $77,100.00 for a single unit plus 8.5% sales tax of $13,107.00 for a total purchase amount of $167,307.00.

Recommendation
Please approve this purchase and forward to the Executive and County Council for approval at the December 5, 2017 County Council Meeting. Please contact Eric L. Schlehuber at extension 6405, if you have any questions or concerns.

Attachment: Justification memo dated September 12, 2017.
MEMORANDUM

TO: Jon Hutchings, Director

From: Rob Ney, Special Programs Manager
       Eric Schlehuber, Equipment Services Manager

CC: Joe Rutan, County Engineer
    Jeff Gollen, Superintendent M&O

Date: September 12, 2017

RE: Conversion of Surplus Gradall to Mini Excavators

The purpose of this memorandum is to outline the evolving methods the Maintenance and Operations personnel are implementing maintenance activities within the NPDES boundary.

Ditching and Shoulder Picking Activity

Historically, most ditching activity has been performed by a Gradall (rubber tired ditch digging machine). The benefits of a Gradall are the operator could drive the piece of equipment to and from the job site, and no unloading or loading of equipment was necessary. The Gradall is most beneficial when ditching in miles of straight open ditches in a rural environment. The drawbacks of a Gradall are that it is a large piece of machinery that requires the road to be shut down while operating the equipment. If cars approach the job site, the operator must move the Gradall to allow the vehicles to pass. A Gradall is best utilized in a rural environment with few cars. Most of the NPDES area is located in urban levels of density, where congestion is more frequent and dense neighborhoods are more typical. A mini excavator is smaller and has a zero clearance chassis which allows the operator to maneuver the equipment within the confines of one lane, allowing vehicles to pass in the open lane (with flaggers if necessary). Further, the operator can use the blade on the mini to perform shoulder picking the same time they are ditching. This flexibility allows two major activities (ditching and shoulder picking, to be performed simultaneously with one piece of equipment, and with a substantially smaller crew.

V Ditch vs. U Ditch Profile

A Gradall typically creates a U shaped ditch due to its limited articulation and bucket. An excavator allows the operator to create a V shaped ditch, with 2:1 side slopes, and a flat bottom. Having angled side slopes is recommended and preferred over vertical-walled ditches, as it reduces erosion and sluffing of the ditch wall and promotes grass growth on the sloped wall which reduces pollution.
Classification of Use

The Gradall's classification requires an operator to function. There are a limited number of operators on the crew. A mini excavator is a Senior Road Maintenance worker classification, and opens this piece of equipment up to a majority of the crew to operate. Combining this piece of equipment together with a single axle dump truck allows an entire crew to utilize this equipment without an operator being present. This gives tremendous flexibility in achieving our work program.

NPDES Crew with No Assigned Equipment

The NPDES crew was created in 2015 with only two staff. It was understood that this crew would be increased in size, over time, as the work program developed. In 2017 the crew was fully staffed with five employees and the use of “summer help” to complete the robust work program. Over the past several years, the crew has utilized existing M&O equipment, and supplemented with rental equipment. To date, the NPDES crew has spent a total of $55,750 in rental fees for the use of a mini excavator ($28,750 in 2016 and $27,050 in 2017 to date). The rental fees alone nearly justify the purchase of a mini excavator for perpetual use by this crew.

ASR Converting One Gradall to Two Mini Excavators

This ASR request is to replace the 1998 Gradall #355 (rubber tired ditch digging machine) with two mini excavators and two trailers. One will be utilized by the NPDES crew, the other will be utilized by the remaining crews as needed. The purchase of two mini excavators, two trailers, and all associated attachments will cost approximately $250,000, which is $75,000 less than the purchase of a replacement Gradall which is already budgeted in the 2017 ER&R fund at $325,000.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
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<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>Prosecutor:</td>
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<td>Executive:</td>
<td>11/28/17</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:** Approval to Purchase Tilt Bed Trailers (2 qty.)

**ATTACHMENTS:** Memos from Finance and Public Works

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

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

Public Works Equipment Services is requesting approval to purchase two tilt bed trailers using the Washington State Contract #00816 (expires 12/31/2024). The vendor is Papé Machinery, located in Mt. Vernon. The total cost is $71,966.64.

In lieu of replacing a Gradall (rubber-tired ditch digging machine) identified in the 2017 ER&R capital budget replacement list at a budget amount of $325,000.00, Public Works requests to purchase the two trailers and two mini excavators at a total cost of $239,273.64. The Agenda Bill for the mini excavators is processed separately.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
DATE: November 21, 2017
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Approval to Purchase Tilt Bed Trailers (2 qty.)

- Background & Purpose

Public Works Equipment Services requests approval to purchase two 2018 Trail King TKT40LP Tilt Bed Trailers using Washington State Contract #00816 (expires 12/31/2024). These trailers will be used by the Maintenance and Operations Division as part of the ditch maintenance program.

The vendor is Papé Machinery, located in Mt. Vernon, Washington. The total price for this purchase is $71,966.64, including sales tax.

- Funding

In lieu of replacing a Gradall (rubber-tired ditch digging machine) identified in the 2017 ER&R capital budget replacement list at a budget amount of $325,000.00, Public Works requests to purchase the two trailers and two mini excavators at a total cost of $239,273.64. A memo from Eric Schlehuber and Rob Ney with explanation of the need for mini excavators instead of a Gradall is attached, and the Agenda Bill for the two mini excavators is submitted separately.

[Signature]
AS Finance Manager

Approved as recommended:

______________________________________________
County Executive

[Signature]
Date of Council Action ______________________
MEMORANDUM

To: Brad Bennett, AS Finance Manager
Through: Jon Hutchings, Public Works Director
From: Eric L. Schlehuber, PW Equipment Services Manager
Date: November 7, 2017
Re: Purchase of (2) Trailers (State Contract #00816: Trailers, Various Sizes)

- Requested Action
After researching costs of trailers, I am requesting Executive and Council approval to purchase two (2) 2018 Trail King TKT40 LP Tilt Bed Trailer from the Washington State Procurement List (Contract Number #00816: Trailers, Various Sizes). The current state contract is for the period of 01/09/2017 through 12/31/2024.

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<tr>
<th>DEPARTMENT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>HOURS</th>
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<tbody>
<tr>
<td>M&amp;O</td>
<td>in lieu of #355</td>
<td>1998 Gradall – G3WD, 4x2</td>
<td>5,900</td>
</tr>
</tbody>
</table>

- Background and Purpose
Unit #355 was approved for replacement in the 2017-2018 Equipment Rental and Revolving Capital Equipment Budget to be used by the Maintenance and Operations Division of the Whatcom County Public Works Department in the performance of county business.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>QTY</th>
<th>PRICE EACH</th>
<th>SALES TAX TOTAL (8.7%)</th>
<th>EXTENDED TOTAL</th>
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<tbody>
<tr>
<td>Pape’ Machinery, Inc.</td>
<td>2018 Trail King TKT40 LP Tilt Bed Trailer</td>
<td>2</td>
<td>$33,103.33</td>
<td>$5,759.98</td>
<td>$71,966.64</td>
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</tbody>
</table>

- Funding Amount and Source
Funding was approved during the 2017-2018 ER&R Budget to replace unit #355 for $325,000 (10% allowance of $357,500). I am proposing replacing the 1998 Gradall (unit #355) with (2) mini excavators and (2) trailers. The bid for the (2) mini excavators is being processed concurrent to this request. I estimate that this equipment change will save approximately $75,000 from the cost of a replacement Gradall unit.

I am requesting Executive and Council approval to purchase these trailers, utilizing the Washington State Procurement List (Contract #00816: Trailers, Various Sizes), from Pape’ Machinery, Inc. of Mount Vernon, Washington for the price of $33,103.33 for a single unit plus 8.7% sales tax of $5,759.98 for a total purchase amount of $71,966.64.

- Recommendation
Please approve this purchase and forward to the Executive and County Council for approval at the December 5, 2017 County Council Meeting. Please contact Eric L. Schlehuber at extension 6405, if you have any questions or concerns.

Attachment: Justification memo dated September 12, 2017.
MEMORANDUM

TO: Jon Hutchings, Director
From: Rob Ney, Special Programs Manager
       Eric Schlehuber, Equipment Services Manager
CC: Joe Rutan, County Engineer
      Jeff Gollen, Superintendent M&O
Date: September 12, 2017
RE: Conversion of Surplus Gradall to Mini Excavators

The purpose of this memorandum is to outline the evolving methods the Maintenance and Operations personnel are implementing maintenance activities within the NPDES boundary.

Ditching and Shoulder Picking Activity

Historically, most ditching activity has been performed by a Gradall (rubber tired ditch digging machine). The benefits of a Gradall are the operator could drive the piece of equipment to and from the job site, and no unloading or loading of equipment was necessary. The Gradall is most beneficial when ditching in miles of straight open ditches in a rural environment. The drawbacks of a Gradall are that it is a large piece of machinery that requires the road to be shut down while operating the equipment. If cars approach the job site, the operator must move the Gradall to allow the vehicles to pass. A Gradall is best utilized in a rural environment with few cars. Most of the NPDES area is located in urban levels of density, where congestion is more frequent and dense neighborhoods are more typical. A mini excavator is smaller and has a zero clearance chassis which allows the operator to maneuver the equipment within the confines of one lane, allowing vehicles to pass in the open lane (with flaggers if necessary). Further, the operator can use the blade on the mini to perform shoulder picking the same time they are ditching. This flexibility allows two major activities (ditching and shoulder picking, to be performed simultaneously with one piece of equipment, and with a substantially smaller crew.

V Ditch vs. U Ditch Profile

A Gradall typically creates a U shaped ditch due to its limited articulation and bucket. An excavator allows the operator to create a V shaped ditch, with 2:1 side slopes, and a flat bottom. Having angled side slopes is recommended and preferred over vertical-walled ditches, as it reduces erosion and sluffing of the ditch wall and promotes grass growth on the sloped wall which reduces pollution.
Classification of Use

The Gradall’s classification requires an operator to function. There are a limited number of operators on the crew. A mini excavator is a Senior Road Maintenance worker classification, and opens this piece of equipment up to a majority of the crew to operate. Combining this piece of equipment together with a single axle dump truck allows an entire crew to utilize this equipment without an operator being present. This gives tremendous flexibility in achieving our work program.

NPDES Crew with No Assigned Equipment

The NPDES crew was created in 2015 with only two staff. It was understood that this crew would be increased in size, over time, as the work program developed. In 2017 the crew was fully staffed with five employees and the use of “summer help” to complete the robust work program. Over the past several years, the crew has utilized existing M&O equipment, and supplemented with rental equipment. To date, the NPDES crew has spent a total of $55,750 in rental fees for the use of a mini excavator ($28,750 in 2016 and $27,050 in 2017 to date). The rental fees alone nearly justify the purchase of a mini excavator for perpetual use by this crew.

ASR Converting One Gradall to Two Mini Excavators

This ASR request is to replace the 1998 Gradall #355 (rubber tired ditch digging machine) with two mini excavators and two trailers. One will be utilized by the NPDES crew, the other will be utilized by the remaining crews as needed. The purchase of two mini excavators, two trailers, and all associated attachments will cost approximately $250,000, which is $75,000 less than the purchase of a replacement Gradall which is already budgeted in the 2017 ER&R fund at $325,000.
**TITLE OF DOCUMENT:** Approval to Purchase Replacement Tasers

**ATTACHMENTS:** Memo from Finance

**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 requests approval to use the Washington State Contract 02315 (Expires 06/02/2019) to purchase 25 replacement Tasers, and related accessories. Funding for this purchase was approved in the Drug Fund, ASR #2017-5556
DATE: November 20, 2017

TO: Jack Louws, County Executive

FROM: Brad Bennett, AS Finance Manager

SUBJECT: Approval to Purchase Replacement Tasers

BACKGROUND
The Sheriff's Office is requesting approval to purchase 25 replacement Tasers, miscellaneous accessories, and a 4-year extended warranty, using funds provided in the Drug Fund. The vendor is Axon Enterprise, of Scottsdale, Arizona.

Axon Enterprise, Inc. has been awarded the Washington State Contract #02315 (expires 06/02/2019), and the quoted pricing for these Tasers is at a price lower than the state contract pricing. The total cost for this purchase is $40,590.67, including all accessories, the extended warranty, freight, and sales tax.

FUNDING
Funding for this purchase was approved in the Drug Fund on ASR #2017-5556. I recommend approval.

[Signature]
AS Finance Manager

Approved as recommended:

________________________________________
County Executive

________________________________________
Date of Council Action
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>Originator:</td>
<td>SW</td>
<td>11/21/17</td>
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<td>Finance / Council</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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<tr>
<td>Executive:</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:** Approval to Purchase Truck Snow Plows (4 qty.)

**ATTACHMENTS:** Memos from Finance and Public Works

**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.)

Public Works Equipment Services is requesting approval to purchase four snow plows to be mounted on sign trucks using the Washington State Contract #12304 (expires 04/30/2018). The vendor is Northend Truck Equipment, located in Marysville. The total cost is $27,928.03. Adequate funds are available in the current ER&R budget.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
DATE: November 21, 2017

TO: Jack Louws, County Executive

FROM: Brad Bennett, AS Finance Manager

SUBJECT: Approval to Purchase Truck Snow Plows (4 qty.)

- **Background & Purpose**

Public Works Equipment Services requests approval to purchase four 8.5’ Boss Super Duty Reversible Steel Plows, using Washington State Contract #12304 (expires 04/30/2018). These replacement snow plows will be mounted on recently purchased sign trucks used by the Maintenance and Operations Division.

The vendor is Northend Truck Equipment, Inc., located in Marysville, Washington. The total price for this purchase is $27,928.03, including sales tax.

- **Funding**

Funds for this purchase exist within the current 2017-2018 budget for Equipment Services, as Public Works will not be replacing a pickup truck that was identified on the Capital Appropriations exhibit. I concur with this request.

[Signature]

AS Finance Manager

Approved as recommended:

______________________________

County Executive

Date of Council Action_________________________

291
MEMORANDUM

To: Brad Bennett, AS Finance Manager
Through: Jon Hutchings, Public Works Director
From: Eric L. Schlehuber, PW Equipment Services Manager
Date: November 17, 2017
Re: Purchase of Four (4) Truck Snow Plows (State Contract #12304, Dump Bodies – Various Sizes)

• Requested Action
After researching the cost for an 8.5’ truck plow, I am requesting Executive and Council approval to purchase four truck snow plows from the Washington State Procurement List (State Contract 12304, Dump Bodies - Various Sizes). The current state contract is for the period of 12/31/2015 through 4/30/2018.

<table>
<thead>
<tr>
<th>DEPARTMENT</th>
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<th>YEAR / MAKE / MODEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance &amp; Operations</td>
<td>196</td>
<td>2016 Chevrolet 3500, Extended Cab 4x4</td>
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<tr>
<td>Maintenance &amp; Operations</td>
<td>240</td>
<td>2017 Ford F450, Extended Cab 4x4</td>
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<tr>
<td>Maintenance &amp; Operations</td>
<td>241</td>
<td>2017 Ford F450, Extended Cab 4x4</td>
</tr>
<tr>
<td>Maintenance &amp; Operations</td>
<td>242</td>
<td>2017 Ford F450, Extended Cab 4x4</td>
</tr>
</tbody>
</table>

• Background and Purpose
The above units were approved for replacement in kind for existing equipment on these four trucks for the sign crew. The four sign trucks that were replaced had existing snow plows installed for plowing. This request would provide the new sign trucks with plows as well. The Maintenance and Operations Division of the Whatcom County Public Works Department will use these units in the performance of county business.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>QUANTITY</th>
<th>PRICE EACH</th>
<th>SALES TAX (8.5%)</th>
<th>EXTENDED TOTAL</th>
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<tbody>
<tr>
<td>Northend Truck Equipment, Inc.</td>
<td>8.5’ Boss Super Duty Reversible Steel Plow, with Smart Hitch II</td>
<td>4</td>
<td>$ 6,435.03</td>
<td>$ 2,187.91</td>
<td>$ 27,928.03</td>
</tr>
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</table>

• Funding Amount and Source
The total for all four truck plows is $27,928.03. These are additional make-ready costs on the four vehicles listed above, and adequate budget authority exists in the Equipment Rental and Revolving Budget with not replacing a road – M&O pickup #203 (1993 GMC C3500 Chassis 2WD) which was budgeted in 2017 for $50,000. I am requesting Executive and County Council approval to purchase these units from the Washington State Bid Procurement List through Northend Truck Equipment, Inc. of Marysville, Washington for the base price of $6,435.03 per unit, plus sales tax of $2,187.91, for a total of $27,928.03.

• Recommended Action
Please approve this purchase and forward to the County Executive and County Council for approval at the December 5, 2017 County Council Meeting. Please contact Eric L. Schlehuber at extension 6405 if you have any questions or concerns.
TITLE OF DOCUMENT: Purchase of 2WD Crew Cab Pickup Truck

ATTACHMENTS: Memos from Finance and Public Works

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.)

Public Works Equipment Services is requesting approval to use the Washington State Contract #05916 (expires 01/05/2021) to purchase a 2WD crew cab pickup truck. The total cost is $36,457.09. Adequate funds are available in the current ER&R budget.

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.
DATE: November 21, 2017

TO: Jack Louws, County Executive

FROM: Brad Bennett, AS Finance Manager

SUBJECT: Approval to Purchase a 2WD Crew Cab Pickup Truck

- Background & Purpose

Public Works Equipment Services requests approval to purchase one 2018 Ford F150 Crew Cab, 2WD, using Washington State Contract #05916 (expires 01/05/2021). This replacement truck will be used by the Sheriff's Office, Corrections Bureau for transporting personnel and supplies.

The vendor is Columbia Ford, located in Longview, Washington. The total price for this purchase is $36,457.09, including sales tax.

- Funding

This is not a planned replacement for 2017. However, the vehicle currently assigned to the Corrections Bureau has been pulled from service due to an ongoing exhaust leak that is no longer cost effective to repair based on the current value of the truck. Adequate funds exist in the current 2017-2018 capital budget for Equipment Services. I concur with this request.

[Signature]
AS Finance Manager

Approved as recommended:

______________________________
County Executive

______________________________
Date of Council Action
MEMORANDUM

To: Brad Bennett, AS Finance Manager
Through: Jon Hutchings, Public Works Director
From: Eric L. Schlehuber, PW Equipment Services Manager
Date: November 28, 2017
Re: Purchase of one (1) 2018 Ford F150 4x2 for Corrections Bureau
(State Contract #05916, Motor Vehicles)

• Requested Action
After researching the cost of a ½ Ton 2WD truck, I am requesting Executive and Council approval to purchase one (1) 2018 Ford F150 4x2 truck from the Washington State Bid Procurement List (Contract #05916, Motor Vehicles). The current state contract is for the period of January 5, 2017 through January 5, 2021. This truck will be used to replace the following unit:

<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>REPLACE UNIT</th>
<th>YEAR / MAKE / MODEL</th>
<th>EST. MILEAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corrections</td>
<td>902</td>
<td>1995 GMC Sierra ¾ Ton, 2WD</td>
<td>96,216*</td>
</tr>
</tbody>
</table>

*Pulled from service due to on-going exhaust leak and not cost effective to repair based on current value (age and mileage) of the truck.

• Background and Purpose
This unit was not budgeted for replacement, but (due to the immediate needs of the Corrections Bureau to utilize this vehicle to transport personnel and supplies) it is requested to be replaced in 2017, and adequate unspent capital budget authority exists in the 2017-2018 Equipment Rental and Revolving Capital Equipment Budget. The Corrections Bureau will use this vehicle regularly for public safety. Vehicle #902 is being requested for a vehicle payload downgrade change from a ¾ ton to a ½ ton pickup.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>YEAR / MAKE / MODEL</th>
<th>QTY</th>
<th>PRICE EACH</th>
<th>SALES TAX TOTAL (8.4%)</th>
<th>EXTENDED TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Columbia Ford</td>
<td>2018 Ford F150 Crew Cab, 2WD</td>
<td>1</td>
<td>$33,632.00</td>
<td>$2,825.09</td>
<td>$36,457.09</td>
</tr>
</tbody>
</table>

• Funding Amount and Source
Adequate unspent funding exists in the 2017 ER&R Capital Replacements Budget. I am requesting Executive and County Council approval to purchase this unit from Columbia Ford of Longview, Washington for the price of $33,632.00 per unit, plus 8.4% sales tax of $2,825.09 for a total amount of $36,457.09.

• Recommended Action
Please approve this purchase and forward to the County Executive and County Council for approval at the December 5, 2017 County Council Meeting. Please contact Eric L. Schlehuber at extension 6405 if you have any questions or concerns.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Initial</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>MK</td>
<td>11/21/17</td>
</tr>
</tbody>
</table>

Division Head:

<table>
<thead>
<tr>
<th>Dept. Head:</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>KSG</td>
<td>11/21/17</td>
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</table>

Prosecutor:

<table>
<thead>
<tr>
<th>Purchasing/Budget:</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>88</td>
<td>11/22/17</td>
</tr>
</tbody>
</table>

Executive:

<table>
<thead>
<tr>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/28/17</td>
</tr>
</tbody>
</table>

TITLES OF DOCUMENT:

Contract for Services – KEPRO Employee Assistance Program (EAP) Provider

ATTACHMENTS:

1. Letter to Executive Louws
2. Employee Assistance Program Contract for Services – effective January 1, 2018

SEPA review completed? ( ) Yes ( x ) NO

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

SEPA review completed? ( ) 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.)

Following Request for Proposal 17-51 process, this Administrative Services’ Contract for Services would continue a relationship with KEPRO as Whatcom County’s employee assistance program provider.

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: Melissa Keeley, HR Special Projects Manager

RE: EMPLOYEE ASSISTANCE PROGRAM (EAP)

DATE: November 21, 2017

Enclosed for your review and signature are two (2) originals of an Administrative Services Contract between KEPRO and Whatcom County for employee assistance program services commencing January 1, 2018.

- **Background and Purpose**
The County has contracted with KEPRO (formerly APS Healthcare) for employee assistance program services since 2008. For the past ten years, KEPRO has provided high quality services for our supervisors, employees, and employees' households, and as a result of a recent Request for Proposal process I recommend we continue this successful relationship for the next three-year contract period.

KEPRO is a national company with a strong team and presence in the Pacific Northwest. More than half of its Washington EAP business is with public sector clients. It provides a six-visit EAP model for employees and household members, excellent management consultation services, strong on-line services, good reporting, and competitive pricing.

- **Funding Amount and Source**
KEPRO proposed a three-year guaranteed rate at $2.45 per employee per month which is below its current rate in 2017 of $2.64. This amount is funded through annual charges to departments and participating junior taxing districts. Annual cost for this program for the current number of County and district employees is $27,342.

- **Differences from Previous Contract**
The recommended contract continues the same Scope of Work which includes 24/7 telephone access, six visits per incident per year, unlimited management consultations, ten hours per year of on-site training, three Critical Incident Stress Debriefings per year, legal and financial resources and on-line resources and support on a variety of topics. Optional services and fees increased from $250 to $275 per hour for on-site training beyond ten hours (rarely used).

Please feel free to call me at extension 5309 if you have questions or concerns regarding the terms of this agreement.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

**Originating Department:** Administrative Services

**Division/Program:** (i.e. Dept., Division and Program) Human Resources - BENEFITS

**Contract or Grant Administrator:** Melissa Keeley, HR Special Projects Manager

**Contractor’s / Agency Name:** KEPRO

---

**Is this a New Contract?** Yes [x] No [ ]

If not, is this an Amendment or Renewal to an Existing Contract? Yes [ ] No [x]

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

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

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

---

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

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

---

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

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

---

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

If yes, RFP and Bid number(s): 17-51 Contract

Cost Center: 507320

---

**Is this agreement excluded from E-Verify?** No [ ] Yes [x]

If no, include Attachment D Contractor Declaration form.

---

If YES, indicate exclusion(s) below:

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

---

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

$ 2,45 PEPM for 2018-2020 $27K per yr

**This Amendment Amount:**

$

**Total Amended Amount:**

$

---

**Summary of Scope:** Employee Assistance Program services for Whatcom County’s employees and families

---

**Term of Contract:** January 1, 2018

**Expiration Date:** December 31, 2020

**Contract Routing:**

1. Prepared by: M Keeley  Date: 10/13/2017
2. Attorney signoff: Daniel L. Gibson  Date: 10/27/17
3. AS Finance reviewed: bbennet  Date: 10/20/17
4. IT reviewed (if IT related): [N/A]  Date: 
5. Contractor signed: Joseph Dougher, CEO  Date: 11/22/17
6. Submitted to Exec.:  Date: 
7. Council approved (if necessary):  Date: 
8. Executive signed:  Date: 
9. Original to Council:  Date: 

---

V2.0 298
KEPRO Acquisitions, Inc., hereinafter referred to as "Contractor," and Whatcom County, hereinafter referred to as "County," agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 7,
Exhibit A (Scope of Work), pp. 8 to 9,
Exhibit B (Compensation), pp. 10 to 10,
Exhibit C (Certificate of Insurance), pp. 11 to 14
Exhibit D (Business Associate Agreement), pp. 15 to 22.

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 January, 2018, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2020.

The general purpose or objective of this Agreement is to: provide Employee Assistance Program services to employees and their families, 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 $2.45 per employee per month for all three years. 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 ______________, 20___.

CONTRACTOR:

KEPRO ACQUISITIONS, INC.

[Signature]
Joseph A. Dougher, President and Chief Executive Officer

STATE OF PENNSYLVANIA
)
) ss.
COUNTY OF DAUPHIN
)

On this ___ day of ______, 2017, before me personally appeared Joseph A. Dougher to me known to be the President and Chief Executive Officer, KEPRO Acquisitions, Inc., and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the Commonwealth of Pennsylvania, residing at __________________. My commission expires __________________.
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 11/22/2017
Karen S. Goens  Date

Approved as to form:

[Signature] 11/22/17
Prosecuting Attorney  Date

Approved:
Accepted for Whatcom County:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  
COUNTY OF WHATCOM  

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

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

CONTRACTOR INFORMATION:

KEPRO ACQUISITIONS, INC.

Michelle Palmer, J.D.
Contracts Director
KEPRO Acquisitions, Inc.
777 East Park Drive
Harrisburg, PA 17111

Telephone: 717-265-7080
Email: mpalmer@kepro.com

With copy to:

Susan Baker, Vice President, Operations
6085 Marshalee Drive, Suite 110
Elkridge, MD 21075

Contact Name: Alex Smith, Senior Account Executive

Contact Phone: 800-765-0770, ext. 4823
Contact FAX: 425-885-9190
Contact Email: asmith@kepro.com

Contract for Services
Employee Assistance Program (EAP)
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 three years, and for a total of no longer than six years from the inception of this contract.

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: Not Applicable

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:
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:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement: 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 insurance with the following minimums:

- Commercial General Liability - $1,000,000.00 each occurrence
- Automobile Liability - $1,000,000 combined single limit

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

Contractor shall also carry Managed Care Errors & Omissions coverage - $5,000,000 per claim, with $10,000,000 Aggregate. If this coverage 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:** Not Applicable

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

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

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

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: Not Applicable

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

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

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

   Melissa Keeley, HR Special Projects Manager
   311 Grand Avenue, Suite 107
   Bellingham, WA 98225
   (360) 778-5309

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: 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 \textbf{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 \textbf{Disputes:}

a. \textbf{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. \textbf{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 inssofar 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. \textbf{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. \textbf{Arbitration: Not Applicable}

43.1 \textbf{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 \textbf{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 \textbf{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.
EAP General Program Services

Employer wishes to provide an Employee Assistance Program (EAP) for its employees through which employees and their immediate family members or dependents are able to obtain appropriate and necessary care for problems they may suffer, and for such other personal problems as may interfere with their work productivity and general well-being. Immediate family members or dependents are defined as anyone living in the employee’s household, including significant others and any dependents living outside of the home.

KEPRO agrees to provide such program to Employer and consists of the following services:

a) A plan of assistance, including referral to local outside agencies, for employees and their dependents who seek assistance for personal problems, which includes problem assessment, education, information, and assistance with initial crisis management. Such personal problems may include, but are not limited to, family or relationship problems, parenting difficulties, work related problems, substance use and abuse, grief and loss, emotional and physical abuse, and anxiety and depression. Fees incurred by any employee or family member at agencies other than APS are not included in the EAP coverage and are the full responsibility of the employee or eligible family member.

b) Counseling sessions including an initial evaluation to identify problems, with follow-up contact as deemed appropriate by the counselor. KEPRO agrees to provide a maximum of six (6) counseling sessions (hours) per incident per year for each eligible employee and their family members. A counselor may deem it necessary to hold longer sessions to facilitate the needs of the client. If session length is extended, the number of sessions is reduced to equal a maximum of counseling hours.

c) KEPRO shall make EAP masters and doctorate level counselors available telephonically 24 hours a day, 365 days a year. When clinically appropriate, the EAP telephonic Counselor will arrange for an EAP assessment to take place in person.

d) KEPRO shall coordinate Critical Incident Stress Debriefing (CISD) services in the event Employer suffers a catastrophic event, including but not limited to violence in the workplace, injury or death of an employee, or natural disaster. Services provided, if clinically appropriate, include telephonic assessment, group debriefing of affected employees, and follow up. KEPRO will provide up to three (3) CISD services, not to exceed seven (7) hours total, per year throughout the term of this Agreement.

e) Management Consultations are also offered to Employer’s Managers and Supervisors for professional problems, which may include but are not limited to, performance problems, an employee’s personal problems, team-building and communication problems.

f) KEPRO shall provide Employer with Standard Utilization Reports at least on a quarterly basis. Such report shall include, but not be limited to, the following information: (a) Statistics on referrals; (b) Summary of presenting problems; (c) Statistics on utilization; and (d) Trends and recommendations. The parties agree that this report shall be provided in consideration of and in compliance with all applicable confidentiality laws. Occasionally, Employer may request special (non-standard) reports from KEPRO.

g) KEPRO shall designate one or more persons to serve as liaison with Employer for the implementation and maintenance of the Agreement.

h) KEPRO will assist in the promotion of the EAP services by making the following available:

- EAP Brochures, wallet cards and posters throughout the year.
- Employee Newsletters and Manager Newsletters sent via email from KEPRO to the Employer contact for distribution to employees.
- On-site training hours. These hours are a part of the yearly capita rate. Employer may choose, in any combination adding up to ten (10) hours per year, from the programs listed below. Additional services may be
purchased on a fee-for-service basis at any time during the year.

- EAP Supervisor Training
- EAP Employee Orientation, no charge for additional sessions during the 1st year
- Wellness Education Training

i) Legal and Financial Resources: KEPRO shall provide access to telephonic and face-to-face assistance by legal and financial specialists. Intake/requests for services shall be made via toll-free number through a KEPRO EAP counselor. Services shall include:

a. Free 30 minute telephonic or face-to-face consultation with local attorney. Topics of assistance include, among others: civil/consumer issues, personal/family issues, financial matters, real estate, criminal matters, IRS issues, consumer credit services, and estate planning. Twenty-five percent (25%) reduction in fees if network attorney is retained.

b. Free 30-minute telephone consultation with a financial representative for the following issues, among others: retirement planning, college funding, life insurance needs, charitable giving, deferred compensation, or debt. Consultations are provided at no cost to the employee or household member by certified and/or licensed, as applicable, financial organizations or independent agents. Following consultation, any services purchased from the organization or agent, if any, would be the responsibility of the employee or household member.

j) www.EAPHelpLink.com: KEPRO shall provide access to the EAPHelpLink.com site. Employer will have a specific company code for entering the site.

k) Optional Services provided on a fee-for-service basis at the request of the Employer.

l) Exclusions: The following services are specifically excluded from the Scope of Services provided under this Agreement.

- Services not listed as Covered Services.
- Biofeedback and hypnotherapy.
- Services required by court order, or as a condition of parole or probation, not, however, to the exclusion of services to which the Member would otherwise be entitled.
- Services for remedial education including evaluation or medical treatment of learning disabilities or minimal brain dysfunction; developmental and learning disorders; behavioral training; or cognitive rehabilitation.
- Medical treatment or diagnostic testing related to learning disabilities, developmental delays, or educational testing or training.
- Services received from a non-network Provider, unless pre-approved by APS.
- Psychological testing: (psychological testing is not necessary to determine an appropriate referral to a Network Provider to receive Covered Services, or alternatively, to determine appropriate referrals to community resources for non-covered services)
- Sleep therapy.
- Medical treatment of congenital and/or organic disorders associated with permanent brain dysfunction, including without limitation, organic brain disease, Alzheimer's disease and autism.
- IQ testing. (IQ testing is not necessary to determine an appropriate referral to a Plan Provider to receive Covered Services, or alternatively, to determine appropriate referral to community resources for non-covered services.)
- Medical treatment for chronic pain.
- Services involving medication management or medication consultation with a psychiatrist.
- Fitness for Duty
EXHIBIT "B"
(COMPENSATION)

Service Fee and Payment Terms

Employer shall remit payment to KEPRO on a monthly basis in advance of the service period according to the fee schedule listed below:

<table>
<thead>
<tr>
<th>Total Covered Employees</th>
<th>1/1/2018 – 12/31/2018 PEMP Rate</th>
<th>1/1/2019 – 12/31/2019 PEMP Rate</th>
<th>1/1/2020 – 12/31/2020 PEMP Rate</th>
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<tr>
<td>930</td>
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</table>

The service fee is due on the first (1st) day of each billing period during the initial term and for all subsequent renewal terms of this Agreement.

Employer shall annually remit written verification of the total number of employees.

The following is a list of Optional Services that may be purchased on a fee-for-service basis:

$275 per hour: On-site management training beyond the ten hours included in the capitated rate.

$275 per hour: Critical Incident Stress Debriefing services beyond the seven total hours included in the capitated rate.

Direct Cost: Travel Expenses: KEPRO direct cost for travel and related expenses (meals, lodging and miscellaneous expenses) for KEPRO staff to travel to Employer worksites for services in addition to covered contract implementation and administrative meetings. Travel expenses are not charged for KEPRO providers to render covered on-site services unless approved in advance by the Employer.

Negotiated Rates: Customized materials prepared at Employer’s request.

Scope of Coverage

It is noted that the Employer has offices in the following sites:

Whatcom County, WA
Skagit County, WA
# EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

## ACORD CERTIFICATE OF LIABILITY INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

**Important:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must 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 endorsements.

### PRODUCER
Marsh USA Inc.
Suite 400, 300 Pittsburgh Place
Pittsburgh, PA 15222
Att: Pittsburgh.verification@marsh.com

### INSURED
Keystone Peer Review Organization
Holdings, Inc.
Attention: Barb Shearer
777 E Park Dr.
Harrisburg, PA 17111

### CERTIFICATE NUMBER:
CLO-08012276-02

### REVISION NUMBER:
8

### COVERAGE

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.

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

Evidence of Coverage

### CERTIFICATE HOLDER
Whitcomb County
311 Grand Avenue, Suite 107
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 of Marsh USA Inc.

Marionie McFarland

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AGENCY CUSTOMER ID: 102338748
LOC: Pittsburgh

ADDITIONAL REMARKS SCHEDULE

AGENCY: March USA Inc

NAMED INSURED:
Keystone Peer Review Organization Holdings, Inc.
Attention: Barb Steurer
777 E Park Dr.
Hatfield, PA 19440

POLICY NUMBER:

CARRIER:
NANCY

EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance


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CERTIFICATE OF LIABILITY INSURANCE

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must 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
Marsh USA Inc.
600 PPG Place, Suite 300
Pittsburgh, PA 15222
Attn: Pittsburgh.certinfo@marsh.com

INSURED
Keystone Peer Review Organization
Holdings, Inc.
Attention: Barb Shearer
777 E Park Dr
Harrisburg, PA 17111

CONTACT
NAME: NA
PHONE: (412) 392-2600
E-MAIL: (412) 392-2600
ADDRESS: NA

INSURER(S) AFFORDING COVERAGE
NAIC #: NA
INSURER A: NA
INSURER B: NA
INSURER C: NA
INSURER D: Travelers Casualty and Surety Company of America
INSURER E: NA
INSURER F: NA

COVERAGEs
Certificate Number: CLI-00223319-01
Revision Number: 1

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 HERIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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<th>LIMIT</th>
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 131). Additional Remarks Schedule, may be attached if more space is required.

CERTIFICATE HOLDER
Whitcomb County
311 Grand Avenue, Suite 107
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
of Marsh USA Inc.
Manashi Mukherjee

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ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD
### ADDITIONAL REMARKS SCHEDULE

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>Marsh USA Inc.</th>
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<tbody>
<tr>
<td>NAMED INSURED</td>
<td>Keystone Peer Review Organization Holdings, Inc.</td>
</tr>
<tr>
<td>POLICY NUMBER</td>
<td>777 E Park Dr.</td>
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<td>CARRIER</td>
<td>Hamburg, PA 17111</td>
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**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** 26  **FORM TITLE:** Certificate of Liability Insurance


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EXHIBIT "D"
(BUSINESS ASSOCIATE AGREEMENT)

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement"), effective January 1, 2018 ("Effective Date"), is made by and between Whatcom County (hereinafter referred to as "Plan Sponsor" or "Employer") on behalf of the EAP Services Plan (hereinafter referred to as "the Plan") and KEPRO Acquisitions, Inc. (hereinafter referred to as "Business Associate") (collectively the "Parties"). In order to comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended and its implementing privacy, security and breach notification regulations ("HIPAA"), including as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act in Public Law 111-5, 42 U.S.C. § 17921-54 and its implementing regulations, each as amended (collectively, the "HITECH Act"), and any other applicable state and federal confidentiality laws, as they may be amended from time to time.

WHEREAS, the parties to this Agreement desire to establish the terms under which Business Associate may use or disclose Protected Health Information (as defined herein) such that the Plan may comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-164) ("HIPAA Privacy Regulation" and/or "HIPAA Security Regulation") and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"), that are applicable to business associates, along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services.

WHEREAS, Employer has established and maintains a EAP service plan of health care benefits which is an employee welfare benefit plan as defined by Section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), and, therefore, a health plan under HIPAA;

WHEREAS, Employer has contracted with Business Associate to provide certain EAP services with respect to the Plan which are described and set forth in the Employee Assistance Program Agreement ("EAP Agreement"), as amended from time to time;

WHEREAS, Employer is authorized to enter into this agreement on behalf of Plan;

ARTICLE 1
DEFINITIONS

Terms used herein, but not otherwise defined, shall have meaning ascribed by Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time. Should any term set forth in 45 CFR Parts 160 or 164 conflict with any defined term herein, the definition found in 45 CFR Parts 160 or 164 shall prevail.

1.1 Breach. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted which compromises the security or privacy of such information as defined and subject to the exceptions set forth in 45 CFR § 164.402.

1.2 Breach Notification Rule. "Breach Notification Rule" means the HIPAA Regulations pertaining to breaches of unsecured PHI as codified in 45 CFR Parts 160 and 164.

1.3 Designated Record Set. "Designated Record Set" means a group of records maintained by or for a covered entity, as defined by the HITECH Act, that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

1.4 Electronic PHI. "Electronic PHI" or "E PHI" means PHI that is transmitted by or maintained in electronic media as defined by the Security Rule.

1.5 Individual. "Individual" means the same as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502 (g).
1.6 Law. "Law" means all applicable federal and state statutes and all relevant regulations.

1.7 Privacy Rule. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.

1.8 Protected Health Information ("PHI"). "Protected Health Information" or PHI has the same meaning as the term "Protected Health Information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of the Plan.

1.9 Secretary. "Secretary" means the Secretary of the Department of Health and Human Services or his or her designee.

1.10 Security Incident. "Security Incident" shall have the meaning set out in the Security Rule. Generally, a "Security Incident" shall mean any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or systems operations in an electronic information system.

1.11 Security Rule. "Security Rule" means the Security Standards and Implementation Specifications at 45 CFR parts 160 and 164, subparts A and C, as they may be amended from time to time.

1.12 Unsecured PHI. "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of either the encryption method or the destruction method, as defined in Department of Health and Human Services ("HHS") guidance published on April 27, 2009 (74 FR 19006) and modified by guidance published on August 24, 2009 (74 FR 42740), as amended. Unsecured PHI can include information in any form or medium, including electronic, paper or oral.

ARTICLE 2
BUSINESS ASSOCIATE OBLIGATIONS

Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HITECH Act applicable to business associates (as defined by the HITECH Act), including:

2.1 Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use, maintain, transmit or disclose PHI except as necessary to provide services to or on behalf of the Plan and except as required by Law. Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:

2.1.1 Provide information to members of its workforce using or disclosing PHI regarding the confidentiality requirements in the HITECH Act and this Agreement;

2.1.2 obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held confidential and further used and disclosed only as required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached;

2.1.3 agree to notify the Plan of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HITECH Act.

2.2 Disclosure to Business Associate's Agents and Subcontractors. If Business Associate discloses PHI to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement and to comply with the applicable requirements of the Privacy Rule, Security Rule, HITECH Act, Breach Notification Rule and other Law with respect to such information. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, stores, uses or transmits on behalf of the Plan in accordance with Law. Business Associate shall be liable to the Plan for any acts, failures or omissions of the agent or
subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

2.3 Disclosure to Plan and Employer (and their Subcontractors). Other than disclosures permitted by Section 2.1 above, Business Associate will not disclose Individuals' Protected Health Information to the Plan, its Plan Sponsor or Employer, or any business associate or subcontractor of such parties except as set forth in Section 2.11.

2.4 Data Aggregation. In the event that Business Associate works for more than one covered entity, Business Associate is permitted to use and disclose PHI for data aggregation purposes, subject to the requirements of HIPAA and the HITECH Act.

2.5 Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the HITECH Act expressly applies.

2.6 Safeguards. Business Associate agrees to maintain appropriate safeguards as required by Law, including without limitation, a written security program that contains the necessary administrative, physical and technical safeguards to ensure that PHI or EPHI is not used, maintained, transmitted or disclosed other than as provided by this Agreement or as required by Law. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any EPHI it creates, receives, maintains, stores, uses, transmits or discloses on behalf of the Plan in accordance with Law.

Business Associate shall ensure, at a minimum, that:

2.6.1 PHI or EPHI will be maintained in locked and secured areas when PHI or EPHI is not in use;
2.6.2 Facsimile machines receiving EPHI shall not be located in a public area;
2.6.3 EPHI stored electronically shall be password protected;
2.6.4 PHI and EPHI will not be shared with outside organizations; and
2.6.5 PHI and EPHI will be used internally on a need to know basis only.

2.7 Individual Rights

2.7.1 Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of PHI as required by and in accordance with 45 CFR § 164.528 as amended by the HITECH Act and its implementing regulations. Business Associate, in accordance with 45 CFR § 164.528, does not need to document disclosures of PHI that are for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure. If Business Associate or its agents or subcontractors uses or maintains PHI in an electronic record of health-related information created, gathered or maintained or consulted by authorized health care clinicians and staff, then Business Associate and its agents and subcontractors shall document and make available to the Plan the information required to provide an accounting of disclosures to enable the Plan to fulfill its obligations under the HITECH Act as of the date compliance is required under the HITECH Act or its implementing regulations, including disclosures and uses relating to treatment, payment and health care operations.

2.7.2 Business Associate agrees to provide to the Plan, within thirty days of the request, in a mutually agreed upon form, information collected in accordance with 2.7.1 above to the extent required to permit the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528, as amended by the HITECH Act. The Plan shall provide to Business Associate within 30 days of the effective date of this

Contract for Services
Employee Assistance Program (EAP)
Agreement, a written explanation of the Plan’s requirements under this section (b) in sufficient detail to enable the Plan to comply with such requirements. The Plan agrees to respond promptly to requests from Business Associate for clarification of such requirements, and Business Associate may rely on such responses. The Parties agree to work together in good faith to resolve any disagreement over the requirements of 45 CFR § 164.528, as amended by the HITECH Act. The Plan will be responsible for the reasonable costs incurred by Business Associate to respond to a request for an accounting of disclosures. The Plan, rather than Business Associate, will directly handle all requests for accounting from an Individual. Business Associate shall promptly forward all requests for accounting it receives from Individuals to the Plan.

2.7.3 Business Associate shall, at the request of the Plan, provide PHI maintained in a Designated Record Set to the Plan or, as directed by the Plan, to an Individual in order to meet the requirements of an Individual’s right of access and requests for access to his or her PHI. An Individual’s right of access to PHI includes the right to access EPHI contained in an electronic health record. The Plan will be responsible for the reasonable costs incurred by Business Associate to respond to a request for access. The provision of access to the Individual’s PHI or EPHI and any denials of access to PHI or EPHI shall be the sole responsibility of the Plan. If Business Associate or its agents or subcontractors maintains or uses PHI, then promptly after receipt of a request from the Plan, Business Associate shall make a copy of such PHI available to the Plan in an electronic format in order to enable the Plan to fulfill its obligations under the HITECH Act and the Privacy Rule.

2.8 De-identified Information. Business Associate may use and disclose de-identified health information if (i) the use is disclosed to the Plan and permitted by law and (ii) the de-identification is in compliance with 45 CFR §164.502(d) and (iii) the de-identified health information meets the standard and implementation specifications for de-identification under 45 CFR §164.514(a) and (b).

2.9 Minimum Necessary. Business Associate shall attempt to ensure that all uses and disclosures of PHI are subject to the principle of “minimum necessary use and disclosure,” i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure or request is used or disclosed.

2.10 Notice of Privacy Practices. Business Associate shall abide by the limitations of the Plan’s notice of privacy practices (“Notice of Privacy Practices”) of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to the Plan’s Notice of Privacy Practices, provided, however, that the amended Notice of Privacy Practices shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice of Privacy Practices.

2.11 Disclosures of Protected Health Information. The following provisions apply to disclosures of Protected Health Information to the Plan, Employer and other business associates of the Plan.

2.11.1 Disclosure to Plan. Unless otherwise provided by this Section 2.11, all communications of Protected Health Information by Business Associate shall be directed to the Plan.

2.11.2 Disclosure to Employer. Business Associate may provide Summary Health Information regarding the Individuals in the Plan to Employer upon Employer’s written request for the purpose either (a) to obtain premium bids for providing health insurance coverage for the Plan, or (b) to modify, amend or terminate the Plan. Business Associate may provide information to Employer on whether an individual is participating in the Plan or is enrolled in or has disenrolled from any insurance coverage offered by the Plan.

2.11.3 Disclosure to Other Business Associates and Subcontractors. Business Associate may disclose Individuals’ Protected Health Information to other entities or business associates of the Plan if the Plan authorizes Business Associate in writing to disclose Individuals’ Protected Health Information to such entity or business associate. The Plan shall be solely responsible for ensuring that any contractual relationships with these entities or business associates and subcontractors comply with the requirements of 45 Code of Federal Regulations § 164.504(e) and § 164.504(f).

2.12 Security Incident / Unauthorized Disclosure of PHI.
2.12.1 Business Associate shall report to the Plan any instances, including Security Incidents, of which it is aware in which PHI or EPHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement. In the event that Business Associate knows of: (i) any suspected Breach of any individual PHI or EPHI; (ii) a Security Incident (i.e. PHI was inappropriately used, disclosed, released or obtained) or (iii) a Breach of Unsecured PHI, Business Associate shall notify the Plan in writing within five (5) calendar days of such Breach. Notification shall include detailed information about the Breach, including, but not limited to, the nature and circumstances of such Breach, the means by which PHI or EPHI was or may have been breached (e.g. stolen laptop; breach of security protocols; unauthorized access to computer systems, etc.), the names and contact information of all individuals affected or reasonably believed by the Business Associate to be affected, and such other information as the Plan may reasonably request. Any delay in notification must include evidence demonstrating the necessity of the delay. The notice shall also set forth the remedial action taken or proposed to be taken with respect to such prohibited use or disclosure. Business Associate and the Plan agree to act together in good faith to take reasonable steps to investigate and mitigate any harm caused by such unauthorized use or successful Security Incident. The Party responsible for the breach shall bear the cost of any required notifications and corrective actions (e.g. credit monitoring services). The Business Associate will provide the Plan with any reasonable information known by Business Associate that the Plan needs for the required notifications under the Breach Notification Rule. The Plan shall have responsibility for determining that an incident is a Breach, including the requirement to perform a risk assessment. However, the Business Associate is expected to perform a risk assessment and provide such assessment to the Plan. Further, Business Associate shall provide and pay for required notifications to Individuals, HHS and/or the media, as requested by the Plan.

2.12.2 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or EPHI by Business Associate in violation of the requirements of this Agreement.

2.13 Prohibited Actions. With respect to PHI and EPHI, Business Associate agrees to:

2.13.1 not directly or indirectly receive remuneration in exchange for any PHI as prohibited by, and subject to the exceptions under the HITECH Act, Privacy Rule, and state law as of their respective compliance dates.

2.13.2 not make or cause to be made any communication about a product or service that encourages recipients of the communication to purchase or use the product or service as prohibited by, and subject to the exceptions under the HITECH Act and the Privacy Rule, as of their respective compliance dates. Business Associate agrees to comply with applicable federal and state Law regarding marketing communications involving the use of disclosure of PHI; and

2.12.3 not make or cause to be made any written fundraising communications that is a Health Care Operation without provision, in a clear and conspicuous manner, of an opportunity for the recipient to elect not to receive further fundraising communications in accordance with the HITECH Act and the Privacy Rule as of their respective compliance dates. Business Associate further agrees to comply with all applicable Law regarding the use of PHI for fundraising communications.

ARTICLE 3
THE PLAN’S OBLIGATIONS

3.1 If applicable to the Plan under the Law, the Plan shall:

3.1.1 provide Business Associate a copy of its Notice of Privacy Practices produced by the Plan in accordance with 45 CFR 164.520 as well as any changes to such notice;

3.1.2 provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate’s permitted or required uses and/or disclosures;

3.1.3 notify Business Associate of any restriction to the use and/or disclosure of PHI to which the Plan has agreed in accordance with 45 CFR 164.522;

3.1.4 notify Business Associate of any amendment to PHI to which the Plan has agreed that affects a Designated Record Set maintained by Business Associate; and
3.1.5 if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI.

ARTICLE 4
MUTUAL OBLIGATIONS

4.1 Confidential Information. Both Parties acknowledge that in the course of performing under this Agreement, each Party may learn or receive confidential, trade secret or other proprietary information ("Confidential Business Information") concerning the other Party, or third parties to whom the other Party has an obligation of confidentiality. Each Party shall take all necessary steps to provide the maximum protection to the other Party's Confidential Business Information and records. Each Party agrees to take at least such precautions to protect the other Party's Confidential Business Information as it takes to protect its own Confidential Business Information, but shall in no instance less than a reasonable degree of care. Such information shall not be disclosed to third parties without the express written consent of the Party to whom the information belongs. The Parties shall not utilize any Confidential Business Information belonging to the other Party other than as expressly permitted by this Agreement or otherwise in writing. Each Party shall retain sole ownership of its own Confidential Business Information.

4.2 Electronic Transactions and Code Sets. Both Parties understand and agree that they are required to comply with the HIPAA Standards for Electronic Transactions, 45 CFR Parts 160 and 162 (HIPAA Electronic Transaction Law) as amended from time to time. The HIPAA Electronic Transaction Law requires Business Associate to conduct certain transactions as "standard transactions" using defined medical data code sets. Business Associate agrees that it will require its subcontractors, vendors, and independent contractors to comply with HIPAA Electronic Transaction Law as applicable. Business Associate agrees that it will not:

4.2.1 change the definition, data condition, or use of a data element or segment in a standard;

4.2.2 add any data elements or segments to the maximum defined data set;

4.2.3 use any code or data elements that are either marked "not used" or not included in the standard's implementation specification(s); or

4.2.4 change the meaning or intent of the standard's implementation specification(s).

4.3 Upon the enactment after the date of this Agreement of any Law or regulation affecting the use or disclosure of PHI, or the publication after the date of this Agreement of any decision of a court of the United States relating to any such Law, or the publication after the date of this Agreement of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such Law or regulation, the Plan and Business Associate shall jointly agree to negotiate in good faith to amend this Agreement in such manner as necessary to comply with such Law or regulation. If the Plan and Business Associate cannot come to an agreement within thirty (30) calendar days following the initial amendment discussion between the Plan and Business Associate, this Agreement will terminate upon written notice to the other Party.

ARTICLE 5
TERM AND TERMINATION

5.1 This Agreement will continue in full force and effect for as long as the EAP Agreement remains in full force and effect. This Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the EAP Agreement.

5.2 Termination for Breach. Either Party may terminate this Agreement in the event of material breach by the other Party, upon thirty (30) days’ prior written notice, unless the breach is cured during the notice period.

5.3 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform the Plan in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.
ARTICLE 6
MISCELLANEOUS

6.1 Rights of Proprietary Information. The Plan retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.

6.2 Survival. The respective rights and obligations of Business Associate with regard to the return of records to the Plan shall survive the termination of the Agreement.

6.3 Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party’s authorized representative at the respective address indicated herein or sent by means of a reputable overnight carrier or certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt.

6.4 Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. Amendments as determined by the Plan to be necessary to effect compliance with legislative, regulatory, or other legal authority do not require the consent of Business Associate and shall be effective immediately upon Business Associate’s receipt from the Plan of notice of amendment.

6.5 Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the Commonwealth of Pennsylvania, without regard to applicable conflict of laws principles.

6.6 Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, the Plan retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates, or successor companies. Assignments made in violation of this provision are null and void.

6.7 Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.

6.8 No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege, or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized officer of the Party making the waiver.

6.9 Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

6.10 No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not Party to this Agreement nor imposing any obligations on either Party hereto to persons not a Party to this Agreement.

6.11 Headings. The descriptive headings of the articles, sections, subsections, exhibits, and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

6.12 Entire Agreement. This Agreement, together with all the exhibits, riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous or contemporaneous written or oral understandings, agreements, negotiations, commitments, and any other writing and
communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits or Riders, the provisions of this Agreement shall control.

6.13 Regulatory References. A citation in this Agreement to the Code of Federal Regulations means the cited section as that section may be amended from time to time.

6.14 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Plan to comply with the HITECH Act. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HITECH Act.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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<tr>
<th>CLEARANCES</th>
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TITLE OF DOCUMENT:
Renewal - Stop Loss Insurance Protection for Self-Insured Medical Claims over $275,000 in 2018

ATTACHMENTS:
1. Memorandum to Jack Louws, County Executive
2. Renewal Proposal for Sun Life Assurance Company Group Policy 089876 January-December 2018

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.)

Following solicitation of quotes for stop loss (excess) medical plan insurance pursuant to Resolution 2007-058, Kibble & Prentice recommends renewing the County’s stop loss protection for the self-insured medical program with Sun Life Assurance Company for 2018.

RECOMMENDED MOTION:
Request authorization for the County Executive to accept Sun Life STOP-LOSS POLICY for insurance protection for the self-insured medical program for 2018.

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: Karen Goens, Human Resources Manager
RE: Medical – Stop Loss Insurance Policy
DATE: November 20, 2017

Enclosed is a recommended Renewal Proposal for Whatcom County’s Group Policy for Specific and Aggregate Stop Loss Insurance for your review and signature.

- **Background and Purpose**
The County is required by law to protect its financial assets in the self-insured medical program with reserves and excess insurance coverage (also called stop loss or reinsurance) [RCW 48.62.071(4)]. Each year our benefit consulting contractor, Kibble & Prentice, seeks bids from the market, obtains and analyzes quotes (pursuant to Resolution No. 2007-058), recommends coverage levels, and includes the rates in the medical plan renewal pricing.

For January 1, 2018, Kibble & Prentice recommends the County continue the same level of stop loss protection with the same company, Sun Life Assurance Company. This coverage is triggered if an individual’s medical costs are in excess of $275,000 in a plan year or if the plan’s aggregated costs exceed $13,799,690.

- **Funding Amount and Source**
The rates for stop loss in 2017 were $36.36 per single enrollee per month and $83.96 per family per month. The 2018 rates represent a **29.2% increase** based on projected enrollment with rates per single enrollee at $46.98 and $108.46 per family. The increase in premiums is due to high claims paid by this insurance relative to the premiums.

The anticipated annual premium for 2018 will be covered from cost center 507340.

- **Differences from Previous Contract**
The only difference is the cost and inclusion of prescription claims as described above.

Please feel free to contact me at extension 5305, if you have any questions or concerns regarding this recommendation.
## Renewal options

On this page, sign to authorize the rates and initial to select the renewal you want.

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<th>Whatcom County</th>
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### Current and renewal rate summary

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### Specific Stop Loss policy details and renewal options

#### Plan thresholds

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#### Specific rates

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Renewal rate action as a % increase to current monthly premium

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Renewal rate action as a % increase to current monthly premium

### Aggregate Stop Loss policy details and renewal options

#### Aggregate rates

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Renewal rate action as a % increase to current monthly premium

### Aggregate thresholds and rates

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<td>$1,802.72</td>
<td>$1,813.54</td>
<td>$1,820.75</td>
</tr>
<tr>
<td>- Rx Drug</td>
<td>$532.81</td>
<td>$866.40</td>
<td>$866.40</td>
<td>$866.40</td>
</tr>
<tr>
<td>Minimum Attachment Point</td>
<td>$932,211.81</td>
<td>$1,107,658.40</td>
<td>$1,112,473.30</td>
<td>$1,115,681.75</td>
</tr>
<tr>
<td>Estimated monthly renewal liability</td>
<td>$1,035,790.90</td>
<td>$1,107,658.40</td>
<td>$1,112,473.30</td>
<td>$1,115,681.75</td>
</tr>
</tbody>
</table>

Renewal rate action as a % increase to current monthly aggregate deductible factors

### Total estimated annual plan costs

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Renewal</th>
<th>Renewal option 1</th>
<th>Renewal option 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total annual premium</td>
<td>$394,240.68</td>
<td>$507,789.36</td>
<td>$460,953.00</td>
<td>$435,288.12</td>
</tr>
<tr>
<td>Annual Aggregate Attachment Point</td>
<td>12,429,490.80</td>
<td>13,291,800.30</td>
<td>13,349,679.00</td>
<td>13,388,191.00</td>
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<tr>
<td>Total estimated self-funded plan costs</td>
<td>$12,823,731.48</td>
<td>$13,796,690.16</td>
<td>$13,810,632.60</td>
<td>$13,823,469.12</td>
</tr>
</tbody>
</table>

Renewal rate action as a % increase to total estimated annual plan cost.

Select renewal option

Initial selected renewal option

The rates agreed upon in this renewal acceptance form are effective on the policy renewal date and take precedence over any billing statements that may be received in the interim.
Collective Bargaining Agreement Between Whatcom County and Whatcom County Deputy Sheriff’s Guild for the period December 5, 2017 through December 31, 2019.

ATTACHMENTS:
1. Memorandum to County Council
2. Collective Bargaining Agreement

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.)

Implements a three year successor agreement to one that expired December 31, 2016 for employees represented by the Whatcom County Deputy Sheriff’s Guild.
MEMO TO: Councilmembers Barbara Brenner, Rud Browne, Barry Buchanan, Todd Donovan, Ken Mann, Satpal Sidhu and Carl Weimer

CC: Jack Louws, County Executive

FROM: Nan Kallunki, HR Associate Manager

DATE: November 27, 2017

SUBJECT: Whatcom County Deputy Sheriff’s Guild Collective Bargaining Agreement

The County and the Guild began meeting in June of 2016 to negotiate a successor agreement to the July 7, 2015 to December 31, 2016 collective bargaining agreement for employees represented by the Whatcom County Deputy Sheriff’s Guild. The Guild represents 78 law enforcement Deputies and Sergeants within the Sheriff’s Office.

The parties engaged in ten bargaining sessions as well as additional seven sessions facilitated by a Public Employee Relations mediator. The parties were able to reach a three-year settlement agreement on November 3, 2017. The proposal was ratified by Guild members on November 24, 2017.

The most significant element of the new agreement is the Guild’s request to move off of the County self-insured medical plan to the LEOFF Health and Welfare Trust. The County agreed to the change with employees contributing 15% of the cost of dependent coverage. A 2018 mid-year wage increase settled an outstanding Unfair labor Practice allegation.

Below is a summary of the significant changes included in the new agreement:

<table>
<thead>
<tr>
<th>Contract Terms</th>
<th>Agreement</th>
</tr>
</thead>
</table>
| Compensation    | January 2017 – 2.5% [retroactive to January]  
                | January 2018 – 2.5%; July 2018 2.5%  
<pre><code>            | January 2019 – 2.0%; July 2019 1.0% |
</code></pre>
<p>| Duration        | December 5, 2017 through December 31, 2019. |</p>
<table>
<thead>
<tr>
<th>Contract Terms</th>
<th>Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Health and Welfare</strong></td>
<td>Beginning 2018, medical and vision coverage is provided by LEOFF Health Welfare Trust, Plan FX. The County contributes 100% of the cost for employees and 85% of the cost for dependents.</td>
</tr>
<tr>
<td><strong>Vacation Schedule</strong></td>
<td>Incorporated Memorandum of Understanding resulting from grievance arbitration of October 26, 2017 regarding vacation availability and vacation bidding.</td>
</tr>
<tr>
<td><strong>Discipline and Internal Investigations</strong></td>
<td>Prior to release of an employee’s name to the media, the Sheriff will provide eight (8) hours’ notice to the affected employee.</td>
</tr>
<tr>
<td><strong>Work Assignments</strong></td>
<td>Added categories of SWAT, CNT, CIT, and CSI to be eligible for premium pay. Employees receiving specialty assignments must make themselves available for callout. Employees will be paid a maximum of two premiums regardless of the number of specialty assignments.</td>
</tr>
<tr>
<td><strong>Non-Wage Reimbursements</strong></td>
<td>Employees may request practice ammunition up to 100 rounds per quarter. Employees certify the ammunition was used for practice and/or training before requesting additional rounds.</td>
</tr>
<tr>
<td><strong>Rules of Operations</strong></td>
<td>Added provisions for labor Management Committee. This provides a formal process to encourage collaborative communication between the Sheriff and the Guild for resolving operational issues.</td>
</tr>
</tbody>
</table>
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

**Whatcom County Contract No.: 201711025**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Administrative Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Human Resources (HR)</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Nanette Kallunki, HR Associate Manager</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Collective Bargaining Agreement between Whatcom County and Whatcom County Deputy Sheriff’s Guild</td>
</tr>
</tbody>
</table>

1. **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 #:  

2. **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)  

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

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

5. **Is this the result of a RFP or Bid process?**  
   - Contract  
   - Cost Center:  

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

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

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

### This Amendment Amount:  
- $  

### Total Amended Amount:  
- $  

**Summary of Scope:**  
2017-2019 Collective Bargaining Agreement between Whatcom County and Whatcom County Deputy Sheriff’s Guild  

**Term of Contract:**  
- Three Years  
- Expiration Date: December 31, 2019  
- Date: 11/27/17  
- Date: 11/30/17  
- Date: 11/27/17  
- Date: N/A  
- Date:  
- Date:  
- Date:  
- Date:  
- Date:  
- Date:  
- Date:  

**Last edited 10/31/16**
COLLECTIVE BARGAINING AGREEMENT

By and Between
WHATCOM COUNTY, WASHINGTON

AND

WHATCOM COUNTY DEPUTY SHERIFF’S GUILD
BARGAINING UNIT

December 5, 2017 – DECEMBER 31, 2019
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AGREEMENT
By and Between
WHATCOM COUNTY, WASHINGTON
AND
WHATCOM COUNTY DEPUTY SHERIFF'S GUILD

DECEMBER 5, 2017– DECEMBER 31, 2019

THIS AGREEMENT, MADE AND ENTERED INTO by and between Whatcom County, Washington, referred to as the County, and Whatcom County Deputy Sheriff’s Guild, hereinafter referred to as the Guild.

GENERAL PURPOSES

The County and the Guild do hereby reach agreement for the purpose of enhancing the employer-employee relationship and to promote service to the public and the general efficiency, morale and security in the Sheriff’s Office.

ARTICLE 1 - GUILD RECOGNITION AND SECURITY

1.1 Covered Employees. The County recognizes the Guild as the sole and exclusive representative for the purpose of collective bargaining for all full-time and regular part-time general authority peace officers (as defined in RCW 10.93.020) through the rank of sergeant of the Whatcom County Sheriff’s Office, excluding supervisors, confidential employees and all other employees.

1.2 Guild Dues. It shall be a condition of employment that all employees of the County covered by this Agreement who are members of the Guild in good standing on the effective date of this Agreement shall remain members in good standing and those who are not members on the effective date of this Agreement shall on the 31st day following the effective date of this Agreement become and remain members in good standing in the Guild. It shall also be a condition of employment that all employees covered by this Agreement hired on or after its effective date shall on the 31st day following the beginning of such employment, become and remain members in good standing in the Guild.

1.2.1 Religious Objection. PROVIDED THAT, if a public employee is a member of a church or religious body whose bona fide religious tenets or teaching forbid said employee to become a member of a labor Guild, such public employee shall pay an amount of money equivalent to the regular Guild dues and initiation fee of the Guild to a non-religious charity or to another charitable organization mutually agreed upon by the employee and the Guild. The employee shall furnish written proof to the Guild that such payment has been made. If the employee and the Guild do not reach an agreement on the non-religious charity to whom the Guild dues and initiation fees
are to be paid, the Public Employment Relations Commission shall designate the charitable organization.

1.2.2 Fair Share. PROVIDED FURTHER THAT, if an employee for any other reason does not wish to be a member of the Guild, that employee shall proportionally and fairly share in the cost of the collective bargaining process. Therefore, the cost for such bargaining unit member shall be fixed proportionally at the amount of dues uniformly required of each member of the bargaining unit to defray the cost of services rendered in negotiating and administering this Agreement. Payment of a maintenance fee in this amount shall be in lieu of any other obligation under this section.

1.3 Non-Discrimination Clause. No employees shall be discharged, suspended or discriminated against for upholding Guild principles or engaging in protected Guild activity and any employee working under instruction of the Guild or who serves on a committee may do so without losing their position for such activity. There shall be no discrimination against any individual employee of the County or member of the labor organization with whom the County has a bona fide collective bargaining agreement with respect to the hire, tenure, compensation or other terms and conditions of employment because of Guild membership or as required by law.

1.4 New Hire Notification to Guild. The Guild shall be notified within seven (7) working days of new hires. Notification shall be in writing and shall include the employee’s name, address, date of hire, classification, assignment, step and grade.

1.5 Reserves and Volunteer Duties. Appropriately trained volunteer members of the Sheriff’s Office and/or reserves may be used to perform the following duties: perform patrol, investigation and law enforcement functions; transport persons arrested by employees; transport paperwork and/or equipment to employees in the field, the Sheriff’s Office or other locations; assist with community education and crime watch organizing efforts; use radar reader board; take initial reports of relatively minor matters not requiring the presence of an employee such as thefts under $1,000 where suspects are unknown; instances of malicious mischief not amounting to a felony where suspects are unknown; reports of suspicious activity where suspects are not present and where supervisory approval is first received; instances of worthless checks or documents where losses are under $1,000; and, handling matters of disabled or abandoned vehicles and similar type incidents not requiring the presence of a fully commissioned and trained employee.

1.5.1 Reserves on Duty. No more than two (2) reserves will be allowed to work without being under the immediate control of an employee at any given time. Those two reserves working without being under the immediate control of an employee will at all times work together as a team. All other reserves will work under the immediate control of employees at a ratio of one reserve to one employee. Reserves will wear an insignia on their uniform identifying them as a reserve.
1.5.2 Emergencies. In cases of emergency, members of other agencies and/or reserves may be utilized by the Sheriff under the mutual aid agreement or under the Police Powers Act until the situation is controlled. An emergency is defined as an unplanned incident in which a strong possibility of harm to persons or property exists, requiring immediate response. Once the emergency is under control, members of the bargaining unit would be utilized as outlined above.

1.5.3 Bargaining Unit Security. The work by reserves and volunteers identified above is subject to the security of the bargaining unit. Specifically, reserves and volunteers may be utilized only to supplement and not supplant bargaining unit positions. In the event of any layoff in the bargaining unit, reserves may only be utilized on a one-to-one ratio with an employee until the displaced bargaining unit member is recalled or the position is refilled.

1.6 Definition of Employee. The term "employee," as used in this Agreement shall be defined as follows:

Employee: General Authority Peace Officers who have full powers of arrest and who are fully commissioned Deputy Sheriffs employed by the Whatcom County Sheriff's Office (not including reserve).

1.7 Collective Bargaining. All collective bargaining with respect to wages, hours and other working conditions of employment shall be conducted by authorized representatives of the Guild and the County. It is recognized between the parties that this Agreement covers the employees of the Sheriff's Office for wages, working hours, schedules, benefits, and general working conditions only.

1.8 Civil Service. Except where matters are covered by express provisions of this Agreement, bargaining unit employees are subject to the rules of the Whatcom County Civil Service Commission. Any alleged violations of contractual provisions also covered by Civil Service Rules may be adjusted either through the Civil Service appeals process or through the grievance procedure of this Agreement provided that the filing of a Civil Service appeal, either before or after the filing of a grievance, shall constitute an election of remedies and a waiver of the employee's right to further pursue the grievance or the Guild's right to request the County to arbitrate the grievance. Provided further that nothing in this section shall be construed as a waiver of any right the Guild may have to require the County to engage in collective bargaining on any mandatory subject of bargaining.

ARTICLE 2 – DISCIPLINE/INTERNAL INVESTIGATIONS

2.1 Just Cause. No employee will be disciplined or discharged except for just cause.

2.1.1 Probationary Employees. The provisions of this article shall not apply to newly hired employees serving a probationary period. Probationary employees
may be disciplined or discharged without just cause and without any recourse under this Agreement.

2.2 **Types of Discipline.** Discipline is defined to include verbal reprimand, written reprimand, disciplinary transfers, suspension, demotion (loss of rank) and termination.

2.3 **Progressive Discipline.** Discipline shall be progressive in nature for similar or substantially similar violations. In some instances, based upon the nature of the offense, discipline need not be progressive. Discipline shall not be used for purposes of progressive discipline after the maximum period as set out in the chart below.

<table>
<thead>
<tr>
<th>Type of Discipline</th>
<th>Maximum Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal Reprimand (Recorded to the employee's file)</td>
<td>2 years and no reoccurrence of similar misconduct</td>
</tr>
<tr>
<td>Written Reprimand</td>
<td>3 years and no reoccurrence of similar misconduct</td>
</tr>
<tr>
<td>Suspension (5 days or under), Disciplinary Transfer</td>
<td>5 years and no reoccurrence of similar misconduct</td>
</tr>
<tr>
<td>Suspension (over 5 days) or Demotion</td>
<td>7 years and no reoccurrence of similar misconduct</td>
</tr>
</tbody>
</table>

2.3.1 **Records Removal.** Pursuant to the chart above, records of discipline removed from the employee’s Sheriff’s Office personnel file shall be maintained in the Office of Professional Standards and shall not be divulged or released except as required by law or upon authorization from the Prosecuting Attorney.

2.4 **Supervisor Notes.** Supervisor notes and log entries in and of themselves are not considered discipline.

2.5 **Counseling.** Counseling shall not be considered discipline.

2.6 **Performance Evaluations.** A performance evaluation shall not be considered discipline.

2.6.1 **Disputes.** An employee who receives a written performance evaluation with an overall rating below “meets job requirements” may file a grievance pursuant to the provisions of Article 22, Grievance Procedure, of this Agreement in the event such evaluation would reduce the employee’s longevity/performance premium. Otherwise employees may write rebuttals or responses to their performance evaluations but may not grieve them.
2.7 Investigative Procedures. Employees whose conduct may be subject to discipline shall be afforded, at a minimum, the rights established by these procedures. This section shall not apply to any routine, supervisory contact with an employee for the purpose of counseling, instruction, training or delivering a performance evaluation.

2.7.1 Due Process. Employees shall be afforded due process of law, which includes the right to be informed in writing (using Addendum C – Advice of Administrative Investigation) of the specifically alleged acts of misconduct and alleged policy violations within fifteen (15) calendar days from the date that a supervisor who is at a level outside the bargaining unit was made aware of the facts or circumstances that could lead to discipline of an employee. Employees shall be afforded the opportunity to respond to such charges.

2.7.2 Constitutional Rights or Privileges. When the investigation reveals the possibility of prosecution for a criminal offense, the employee charged with or suspected of committing a criminal act shall be afforded the same constitutional rights, privileges or guarantees enjoyed by any person. This section shall not deprive the County of the right to pursue the investigation administratively under section 2.7 (Investigative Procedures).

2.7.3 Interview. The interview of any employee during the course of an investigation that could lead to disciplinary action as defined in section 2.2 (Types of Discipline) shall be conducted under the following conditions.

2.7.3.1 Interview Advisement. Interviews for employees subject to investigation shall be at a reasonable hour, preferably at a time when the employee is on duty, or during the normal waking hours for the employee, with at least two (2) hours’ notice. Upon request, the employee will be granted a twenty-four (24) hour delay, unless the exigency of the investigation requires otherwise prior to the commencement of any interview pursuant to section 2.7 (Investigative Procedures). The employee shall be provided Notice using Addendum D (Advice of Administrative Interview) which includes the following:

You are about to be questioned as part of an administrative investigation being conducted by the Whatcom County Sheriff's Office. You are hereby ordered to fully answer the questions that are put to you that relate to information you possess and/or your conduct and/or job performance, and to cooperate with this investigation. You are required to answer questions relating to the performance of your official duties or fitness for duties. Your failure to answer truthfully and cooperate with this investigation can be the subject of disciplinary action in and of itself, including dismissal. The statements you make or evidence gained as a result of this required cooperation may be used for administrative purposes but will not be used or introduced into evidence in a criminal proceeding.
2.7.3.2 **Length of Interview.** An interview session shall be for a reasonable period, taking into consideration the gravity and complexity of the issue being investigated.

2.7.3.3 **Conduct.** The employee being interviewed and the interviewer shall not be subjected to verbal abuse.

2.7.3.4 **No Inducements Allowed.** No promise of reward shall be made as an inducement to answer any questions.

2.7.3.5 **Recordings.** Employees shall be given reasonable notice that he/she will be interviewed as part of a Class I or Class II Administrative Investigation and they shall be informed whether or not the interview will be audio recorded. Audio recordings may be transcribed should either the County or Guild request such a transcription with the cost of the transcription borne by the requesting party. The subject or witness employee shall have the opportunity to review the transcript, if transcription is requested or, if not transcribed; listen to the recording of their Interview by appointment with the Sheriff or designee. The audio recording shall be available for review by the Guild or subject/witness employee for a reasonable time after all issues of the investigation have been resolved. The recording of Administrative Interviews shall not be a matter of “due process” and is ministerial in nature with no penalty for an inadvertent failure of the audio recorder attributable to any party or loss of audio recordings or recordings that didn’t work, etc.

2.7.3.5.1 **Recording Permission Not Required.** The investigator does not need to obtain permission from an employee at the time of the interview to audio record and/or otherwise record the Class I or Class II interview but must advise the employee that the interview is being recorded. The County and the Guild agree that the Advice of Administrative Interview attached to this Agreement (Addendum D) shall be provided to the subject or witness employees in all Administrative Interviews.

2.7.3.5.2 **Class II Investigation Interviews.** Class II investigations are generally not audio recorded but will be audio recorded at the request of either party. In a Class II interview should one party object to the use of an audio recording then a transcript shall be made and be the only official record. Class II transcription expenses shall be at the expense of the requesting party.

2.7.3.5.3 **Recording Device.** There shall be only one audio recording device used at the interview and all audio recordings shall be the sole responsibility of the County.

2.7.3.5.4 **Non-employee Witnesses.** To the extent possible, the County will record non-employee witness interviews.
2.7.3.5.5 **Guild Representation.** Any employee is entitled to Guild representation in an interview at the employee's request.

2.7.3.6 **Use of Force** – When an employee uses deadly force which results in the injury or death of a person, the employee shall not be required to make a written statement for seventy-two (72) hours after the incident. During the seventy-two (72) hour period, the employee may be ordered to verbally report to a superior a brief summary of the incident for the purpose of securing evidence, identifying witnesses, apprehending suspects, or any other exigent circumstances. The affected employee may waive the seventy-two (72) hour requirement. The County shall provide the employee with a private location for communication with any person for whom a legal privilege exists.

2.7.4 **Length of Investigation and Access to Investigatory File.** Disciplinary investigations, including the review and approval of the investigative report(s) by the Sheriff, shall not exceed ninety (90) calendar days. The County shall endeavor to complete the investigation prior to the expiration of ninety (90) days, however, the County reserves the right to extend the investigation timeline in section 2.7.4.1 (Extension of Timeline).

**Within the ninety (90) calendar day time frame:**
1. Notification of investigation shall be made to the employee within fifteen (15) calendar days as outlined in section 2.7.1 (Due Process).
2. Upon the determination by the Sheriff that the investigation is satisfactorily complete, the employee will be notified in writing of:
   a. Any intent to impose discipline and discipline contemplated;
   b. If discipline is to be imposed, the date and time when a pre-disciplinary hearing will be held;
   c. The Sheriff reserves the right to modify the initial determination as to the extent of discipline contemplated after a pre-disciplinary hearing.

2.7.4.1 **Extension of Timeline.** The length of an investigation may be extended where reasonably necessary by notice to and mutual agreement of the Guild. The Guild may not unreasonably withhold their agreement to extend the investigatory timeline. A request for extension must include the reason for the request and a reasonable number of days which does not prohibit the County from a reasonable request for additional extensions. Request for extensions shall not apply to notification of the investigation (section 2.7.1 – Due Process).

2.7.4.2 **Suspension of Timeline.** If an employee is investigated for suspicion of committing a criminal act, the Sheriff may suspend the investigative timeline upon notification of the Guild of the criminal investigation. The investigatory timeline may be suspended until a determination is made by the prosecuting authority on the underlying allegations. If the employee is subjected to criminal prosecution, the investigative timeline may be suspended until adjudication of the allegations is
completed. When the investigation is recommenced, the timeline shall start at the same point it was suspended.

2.7.5 Determination of Discipline. Any discipline to be taken as a result of the investigation shall be announced in writing within fifteen (15) calendar days after completion of the investigation. A copy of which will be served upon the Guild.

2.7.6 Media Access. Without their express consent, employees under investigation shall not be subjected to visits by the press or other news media, nor shall the home address or photograph of the employee be given to the press or other news media unless ordered by the Courts or required by law.

2.7.7 Access to Investigatory File. When an investigation is concluded by the Sheriff, and where discipline is contemplated by the Sheriff, the employee shall be afforded the opportunity to read the investigatory file, the conclusions reached, and any recommendations made, before official action is taken by the Sheriff. The Guild shall be afforded an opportunity to review and copy the file pursuant to section 16.5 (Access to Equipment). Upon notice to the Guild, the County may withhold from the employee information from, and the identity of, confidential informants and other witnesses which the County does not intend to rely; however such information shall be made available upon request of the Guild for review on the same basis as if a public record request would be satisfied at the conclusion of the investigation. If there is discipline issued, and the parties disagree as to the exculpatory nature of the evidence, it will be presented in camera through the grievance process to the Arbitrator.

2.8 Personnel File. Employee’s personnel file(s) shall be open for review by the employee provided that employees shall not have the right to review psychological evaluations, polygraph results, supervisor’s notes prepared for the purpose of preparing employee’s evaluations, medical records, pre-appointment interview forms or applicant background investigation documents. Employees shall be provided a copy of any material not excluded above that is placed in their personnel file at the time of submission. Employees must acknowledge receipt by signing for their copy. Employees may submit a written response, rebuttal or explanation to be included with any submission. All material, once submitted, remains a part of the permanent personnel file. The personnel file shall be considered the official record of an employee’s service. Employees shall be provided a copy of all material in their personnel file, upon request and except as noted above, shall have the right to attach statements in rebuttal or explanation.

2.9 Advance Notice of Public Disclosure Request. The County shall provide the employee at least seventy-two (72) hours (three business days) advance notice prior to releasing any personnel record information (including internal investigation files) to be provided through the Sheriff’s Office in response to a Public Disclosure request, discovery request, or subpoena duces tecum unless specifically mandated by law.
2.10 Media Release of Employee Name. Prior to the release of an employee’s name to the media, the Sheriff shall provide eight (8) hours’ notice to the affected employee.

ARTICLE 3 - WORK SCHEDULE

3.1 Workweek. The workweek is defined as the seven-day period between 12:00 a.m. Sunday through 11:59 p.m. the following Saturday. Standardized shifts shall be established on a ten-hour basis. All time worked over the regular shift or over forty (40) hours in any one (1) workweek shall be paid for at the rate of time and one-half the regular rate of pay. The parties agree and recognize that unforeseen circumstances may create conditions that may render the ten-hour schedule not practical in terms of providing adequate protection for employees or the public. These circumstances may include, but are not limited to: lay-offs, emergencies, shortages of personnel, unusual occurrences, unanticipated changes in workloads, special events, changes in sick time use patterns, and similar events. In the event the Sheriff reasonably determines that it is not practical to safely or efficiently provide law enforcement services on the ten-hour work schedule, he may elect to revert to a 5-day/8-hour schedule as circumstances require. When the Sheriff identifies and articulates the benefit to enhance staffing, an alternate shift schedule may be implemented by mutual agreement upon thirty (30) days’ notice to employees.

3.1.1 Work Breaks. Employees are employed in activities that may preclude the observance of routine lunch and/or break periods. It is agreed that statutory lunch and break requirements shall be satisfied by employee observance of lunch and breaks as their duty assignments permit during any fully compensated work period.

3.1.2 Delineation of days limiting floating days off and changes to bid vacation. Prior to the commencement of vacation bidding each year, the parties shall meet and negotiate with Command Staff the days where special staffing needs may require the limiting of floating days off or changes to bid vacation during those times. The parties recognize that in addition to those delineated days, situations may arise that would also require a limitation of time off. In the event of such an occurrence, the parties agree to meet and negotiate with Command Staff possible remedies prior to denying time off.

3.2 Shift Bidding. The following procedure shall apply: During the first 10 days of September of each year a shift schedule shall be posted and bid by seniority for the following calendar year. A shift bid period shall be defined as being of two (2) months duration. Employees can bid any shift indefinitely, but can be temporarily assigned to another shift for cause. Rules regarding the bidding process will be established by mutual agreement between the County and the Guild. Pursuant to section 5.4 (Vacation Selection), the first vacation bid shall be at the same time. Employees shall be allowed twenty-four (24) hours to make their bid, provided no one shall be skipped unless they have been personally notified it is their turn to bid.
Employees who know, or reasonably should know, that they will be absent when it is their turn to bid shall make a reasonable effort to make themselves available.

3.2.1 Scheduling of Probationary Employees. This section shall not apply to entry level probationary employees. Probationers will be assigned shifts by the administration and may not bid for shifts which occur before completion of their probation period. Probationary employees will be given fourteen (14) days’ notice of work schedule after completion of their FTO period. Probationary employees who are assigned to ride alone will not be assigned Friday – Saturday or Saturday - Sunday as their days off, except when necessary to maintain adequate staffing.

3.2.2 Shift Trades. Employees may request up to a total of two shift trade days in any calendar month. Requests shall not impede operational efficiencies and shall not be arbitrarily denied. Shift trades cannot cause an adverse impact with unreasonably extended work hours (more than 16 hours). Approval of the Operations Lieutenant may be obtained in special circumstances for the arrangement of more than two trades per calendar month. Shift Exchange Requests submitted in person at least ten (10) days in advance of the trade will be deemed approved unless denied within ten (10) days of the trade request. Trade requests must be approved by both affected shift supervisors and the Operations Lieutenant. A shift trade date must be listed at the time of request (no banking), and must be accomplished within twelve (12) months. Failure to show up for a shift trade will result in revocation of the privilege to exchange shifts for up to one year and the time is required to be made up as staffing dictates. Probationary employees are not allowed to exchange shifts except with prior approval of the Operations Lieutenant.

3.3 Call Back to Duty. Employees who are ordered back to duty or for court appearance shall be compensated as outlined in the following sections of this Article:

3.3.1 Between Shifts. Employees shall be guaranteed three (3) hours pay at the overtime rate of time and one-half. If work extends beyond three (3) hours, the employee will be paid the actual hours on duty at the overtime rate of time and one-half.

3.3.2 On Regular Days Off. Employees shall be guaranteed four (4) hours pay at the overtime rate of time and one-half. If work extends beyond four (4) hours, the employee will be paid the actual hours on duty at the overtime rate of time and one-half. Regular days off are defined as the time between the last on-duty hour following completion of an employee’s shift schedule until the first on-duty hour starting the employee’s next shift schedule.

3.3.3 During Vacation. Employees shall be guaranteed sixteen point six seven (16.67) hours of pay at their overtime rate. Employees shall also receive a return of their vacation day. Vacation is defined as the time between the end of the last on-duty hour of the shift scheduled prior to commencement of the vacation and the first on-duty hour starting the employee’s next scheduled shift following the vacation.
3.3.3.1 Stipulations. In order to be paid for a call back to duty during vacation, at the rate outlined in section 3.3.3 (During Vacation), including call backs in response to a subpoena, the call back must have been authorized in advance by the Sheriff, the Undersheriff, or the Chief Deputy. The vacation must be at least five work days in length for an 8 hour daily schedule and four days in length for a 10 hour schedule, not counting the adjoining scheduled days off, and have been scheduled at least thirty (30) days in advance of the subpoena date. The employee must have made a good faith attempt to notify their Bureau Chief, Undersheriff or Sheriff within three (3) days from his or her knowledge of the service of the subpoena. If notice is not given, no call back premium shall be paid.

3.3.3.2 Out-of-Pocket Expenses. In the event an employee's vacation is canceled or modified because they are required to return to work and as a consequence the employee suffers a loss such as nonrefundable deposits or cancellation fees or travel costs, the employee shall be made whole for any such loss.

3.3.4 Court Case Cancellation Notice. If an employee’s case still is scheduled at 5 p.m. the previous day, and canceled thereafter, the employee shall be paid the appropriate call-out rate.

3.3.5 Telephone Contact. Employees who are authorized to perform work when being reached by telephone during their off-duty time, shall be guaranteed a minimum of one-half hour at the overtime rate or actual time worked if over one-half hour. Employees who receive premium pay and are contacted in regards to their specialty are deemed to be compensated via the premium for reasonable initial consultation.

3.3.5.1 De minimis. For purposes of this section, the term, "perform work" shall mean any work-related telephone call that exceeds 7.5 minutes in duration.

3.3.5.2 Quiet Time. The parties recognize that quiet time is important and accordingly agree that all calls received during such hours, regardless of duration, are subject to section 3.3.5 (Telephone Contact). Each schedule shall have an associated quiet time. Recognizing there are various "standardized shifts," for purposes of illustration, the below chart demonstrates the principle where all time shall be considered “performing work” when the employee receives a phone call during the agreed quiet time or receives a call during a scheduled day off which is non-contiguous with their scheduled shift. The parties agree work hours other than described will follow the same principle.

<table>
<thead>
<tr>
<th>Assigned Shift</th>
<th>Work Hours during the Shift</th>
<th>Quiet Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days</td>
<td>0600 – 1600</td>
<td>8 pm to 5 am</td>
</tr>
<tr>
<td>Swing</td>
<td>1400 – 2400</td>
<td>Midnight to 9 am</td>
</tr>
<tr>
<td>Graveyard</td>
<td>2000 – 0600</td>
<td>7 am to 3 pm</td>
</tr>
</tbody>
</table>
3.4 Overtime. Overtime will be distributed as equally as possible among available employees. All such overtime will be authorized and assigned through the Sheriff’s Office and the employee will be paid his normal overtime rate. The Sheriff’s Office will maintain a system of recording overtime worked by all members of the bargaining unit with a current posting on the bulletin board accessible to the employees.

3.4.1 Overtime Chart. The Sheriff’s Office will select employees on the basis of seniority, provided that employees will be rotated so as to give each employee an equal opportunity for overtime work. It is understood between the parties that an employee may select normal duty overtime and/or extra outside employment overtime; however, the total of the combined overtime hours of both categories will be used in equalizing overtime distribution. Rules and/or methods of creating the overtime chart, updating hours worked, method of rotation, etc. shall be by mutual agreement of the parties (including those methods described in section 3.4.1.1 (Method of Selection) below. Overtime hours scheduled more than 14 calendar days in advance shall not be counted until actually worked.

3.4.1.1 Method of Selection. When an opportunity for overtime occurs, the supervisor tasked with assigning the overtime, will send out an email on the County email program to all members indicated on the chart listed in section 3.4.1 (Overtime Chart), listing the details for the overtime and a cutoff time for receiving responses. After the cutoff, the assigning supervisor shall use the method described in section 3.4.1 (Overtime Chart) to select the employee from the interested emails. As much notice as is reasonably possible will be given taking into consideration illness, minimum staffing and last minute requests. The assigning supervisor shall endeavor to contact employees on the chart by phone or in person, prior to arbitrarily assigning an employee the overtime.

3.4.1.1.1 Selection Exclusions. Nothing in this Agreement limits any right of the Sheriff or designee to assign overtime directly to, or call out employees related to a specialty assignment, major crime or emergencies.

3.4.2 Extended Periods of Overtime. Employees required to work overtime (includes special duty) for an extended period shall be entitled to a minimum of eight (8) hours’ time off before returning to duty.

3.4.3 Mandatory Meetings. Mandatory meetings called by the Sheriff for all employees shall be considered on-duty time. Overtime shall be paid to those entitled to it.

3.5 Compensatory Time. Employees earning overtime may elect to accrue such time to a compensatory time bank in lieu of overtime pay. The compensatory time bank shall be capped at eighty (80) regular-time hours. The Sheriff shall pre-approve the days on which compensatory time will be taken, upon consideration of staffing needs. Compensatory time requests shall be submitted seven (7) calendar days before the date requested for use. Any denial shall be returned to the employee with an
explanation for the denial within five (5) calendar days of receipt. Compensatory time
not scheduled is subject to being cashed out upon request of the employee. The
employee may make such a request once each year. The Employer may cash out all
unscheduled compensatory time, as accrued on November 30 of each year, and such
payment shall be made by December 31. Employees shall be paid their accrued
compensatory time upon termination or resignation and shall use or cash out all
accrued compensatory time before taking retirement.

3.6 Training Days. Every effort will be made to schedule training at least
thirty (30) or more days in advance. Scheduled training, which is posted thirty (30) or
more days before it occurs shall be considered the employee’s assigned shift for that
day. If such scheduled training is cancelled within thirty (30) days of occurring and no
other training is substituted, the employee has the option, with the approval of affected
supervisors, of either working the scheduled training hours for that day or moving back
to his or her regular shift.

ARTICLE 4 - PAID HOLIDAYS

4.1 Recognized Holidays. The following shall be recognized holidays:

New Year's Day               Veteran's Day
Martin Luther King Day       Thanksgiving Day
President's Day              Day after Thanksgiving
Memorial Day                 The day before Christmas
Independence Day             Christmas Day
Labor Day                    Personal Holiday

4.1.1 Scheduling the Personal Holiday. Each employee shall receive
one (1) Personal Holiday each calendar year which may be taken by the employee after
the employee has notified his or her supervisor two (2) weeks in advance of the
requested day off. The Sheriff’s Office shall provide a response to the request no later
than five (5) business days from the date of request. The Personal Holiday must be
taken during the year and cannot be cashed out upon separation. No employee shall
be eligible to receive the Personal Holiday until after completion of three (3) months of
employment. A Personal Holiday request may only be denied when it conflicts with
Sheriff’s Office minimum staffing requirements. Personal Holiday requests will not be
unreasonably denied.

4.2 Eligibility Criteria. Employees shall be entitled to accrue such paid
holidays as set out in section 4.3 (Holiday Accrual) in a month for which the employee
receives compensation. Compensation is defined as payment of wages for work
performed, vacation or accrued sick leave, other paid leave, or income for industrial
injury not to exceed twelve (12) months from the date of injury; provided that said work,
vacation, other paid leave and/or industrial injury income must equal or exceed payment
for eighty (80) hours in a calendar month.
4.2.1 Eligibility for Employees on Payroll on 6/15/94. Employees on the payroll on June 15, 1994, will remain subject to the eligibility requirement of 50 compensated hours.

4.2.2 Employees Working <1.0 FTE. Employees working less than an assigned eight-hour schedule shall receive holiday pay based on their average work assignment.

4.3 Holiday Accrual. All employees accrue in lieu of holidays, 7.34 hours per eligible month up to 88 hours (11 days @ 8 hours). These days shall be bid per section 5.4.1.1 (Holiday Accrual Bidding).

4.4 Pay on Designated Holidays Employees whose shift begins on Thanksgiving, the day after Thanksgiving, Independence Day, Veteran's Day, the day before Christmas or Christmas day (the actual holiday, not the County-observed holiday) will be paid at the overtime rate of time and one-half for that shift.

ARTICLE 5 - VACATION SCHEDULE

5.1 Vacation Accrual.

5.1.1 Vacation Accrual Rate. Eligible employees shall accrue vacation on a calendar month basis. The amount of vacation earned for each calendar month shall be determined by the number of years of continuous service completed by the employee immediately prior to the commencement of the calendar month in accordance with the following chart:

<table>
<thead>
<tr>
<th>During the following years of service</th>
<th>Hours of vacation accrued per month</th>
<th>Hours of Holiday accrued per month</th>
<th>Total Monthly Accrual</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 1</td>
<td>6.67</td>
<td>7.34</td>
<td>14.01</td>
</tr>
<tr>
<td>2</td>
<td>7.34</td>
<td>7.34</td>
<td>14.68</td>
</tr>
<tr>
<td>3</td>
<td>8.00</td>
<td>7.34</td>
<td>15.34</td>
</tr>
<tr>
<td>4</td>
<td>10.00</td>
<td>7.34</td>
<td>17.34</td>
</tr>
<tr>
<td>5,6,7</td>
<td>11.34</td>
<td>7.34</td>
<td>18.68</td>
</tr>
<tr>
<td>8,9</td>
<td>12.00</td>
<td>7.34</td>
<td>19.34</td>
</tr>
<tr>
<td>10</td>
<td>13.34</td>
<td>7.34</td>
<td>20.68</td>
</tr>
<tr>
<td>11</td>
<td>14.00</td>
<td>7.34</td>
<td>21.34</td>
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<tr>
<td>12</td>
<td>14.67</td>
<td>7.34</td>
<td>22.01</td>
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<td>14</td>
<td>16.00</td>
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<td>23.34</td>
</tr>
<tr>
<td>15</td>
<td>16.67</td>
<td>7.34</td>
<td>24.01</td>
</tr>
</tbody>
</table>

Vacation and holiday hours accrued in one year can be scheduled in accordance with section 5.4. (Vacation Schedule) the following year.

5.1.2 Accrual for Employees Hired Prior to 6/15/94. The monthly vacation accrual for employees hired prior to June 15, 1994, will be based on the years
of service they would have been given credit for on January 1, 1994, had the annual vacation accrual schedule remained in effect. January 1 will be the anniversary date for future vacation accrual for employees hired prior to January 1, 1994. For employees hired on or after June 15, 1994, the employee’s anniversary date will be used for vacation accrual purposes.

5.1.3 LEOFF I Retirement: LEOFF I employees shall cease the accrual of their vacation benefits provided for under this Agreement upon entry into the LEOFF Retirement System.

5.2 Eligibility Criteria. To be eligible to accrue vacation as provided herein, employees must receive compensation each month. The term compensation as used herein is defined to be payment of wages for work performed, vacation, accrued sick leave, other paid leave, or income for industrial injury not to exceed twelve (12) months from the date of injury; provided that said work, vacation, paid leave and/or industrial injury income must equal or exceed payment for eighty (80) hours in a calendar month.

5.2.1 Eligibility for Employees on Payroll on 6/15/94. Employees on the payroll on June 15, 1994, will remain subject to the eligibility requirement of 50 compensated hours.

5.3 Termination Cashout. When an employee leaves employment with the County for any reason, such employee will be paid for any unused vacation accrued to the date of termination at the appropriate schedule (see section 5.1.1 – Vacation Accrual Rate) for the years of service completed. Employees who terminate within four (4) calendar months of their employment date shall not receive pro-rated vacation pay.

5.4 Vacation Selection. During the month of September of each year, in conjunction with shift bidding (section 3.2), a vacation chart shall be posted by the Sheriff’s Office for the following year. The vacation chart must be completed by December 31st.

5.4.1 Vacation Bidding. Employees shall bid for vacation periods and days in lieu of holidays as follows: each individual, in seniority order, shall select their first two weeks of vacation time in a minimum of one week and a maximum of two-week blocks which need not be scheduled consecutively. Following the first vacation selection a similar bid selection shall be held for individuals entitled to more than two weeks and a third and fourth bid, if necessary, for those entitled to more than four weeks shall be held. It is understood that the second and third bids shall not displace selections made during prior bidding periods. K-9, Forest Patrol, Resident, Traffic, and Task Force assignments will not be included in the employee bidding list.

5.4.1.1 Holiday Accrual Bidding. Holiday accrual hours (per section 4.3 – Holiday Accrual) shall be accrued, bid, and cashed out as vacation. Once accrued, these hours can be used as bid, with the exception of new hires who would need to comply with section 5.4.6 (New Hires) and obtain supervisory approval. Holiday
hours accrued in one year must be scheduled in accordance with sections 5.1.1 (Vacation Accrual) and 5.4 (Vacation Selection). The Personal Holiday may be taken as outlined in section 4.1.1 (Scheduling the Personal Holiday).

5.4.2 Vacation Availability. Two (2) employees may bid for the same vacation period per shift. Beginning in the second round of vacation bidding, a third employee may also bid for the same vacation period per shift, but may only overlap two (2) vacation bid days per seven (7) day period. However, in no instance can the third employee’s bid cause staffing to fall below minimum staffing levels.

5.4.3 Expanded Availability. The Guild and the Sheriff may, at any time, increase the limit of section 5.4.2 (Vacation Availability) through mutual agreement. When it is anticipated that all vacation slots will be filled, four employees will be allowed to bid for the same vacation days and two employees from each shift will be allowed to be on vacation at the same time.

5.4.4 Floating Days. Employees will be allowed to not bid eight (8) of their vacation days (defined as hours assigned to work each day in the coming year) in lieu of holidays to be used the following calendar year as “floaters”, this is, eight (8) days may be kept (not bid) as days off to schedule later during the following calendar year subject to a first come, first served basis and availability of the time off determined by previously scheduled vacations and minimum staffing. The parties recognize there are days where special staffing needs will require that floating days off and days available for changes to a bid vacation may be limited or excluded. The parties will include the delineation of those possible dates in section 3.1.2 (Delineation of Days).

5.4.5 Annual Review. The Administration agrees to review operational requirements at least annually with a Guild-designated representative before commencement of vacation bidding to see if the number of persons allowed off on vacation at any one time as described in this section can be increased.

5.4.6 New Hires. New hires during their first calendar year of employment can utilize all hours that have been accrued in lieu of holiday time (as defined in section 4.3 – Holiday Accrual), subject to supervisory approval.

5.5 Vacation Earnings. Total vacation earnings to be scheduled include accrued vacation under Article 5, accrued hours in lieu of holidays pursuant to Article 4, and vacation bonus pursuant to Article 7.

5.6 Vacation Carryover. Employees shall be allowed to carry over up to two hundred and seventy (270) hours from one year to the next, which includes any hours defined in section 5.5 (Vacation Earnings), above.

5.7 Employees Working Part-Time. Employees working less than an eight-hour schedule shall accrue vacation benefits based on their average work assignment.
ARTICLE 6 - HEALTH & WELFARE

6.1 Eligibility Criteria. The County agrees to make contributions into the Plans, as outlined in the following Sections of this Article, on behalf of employees covered by this Agreement who are regularly scheduled to work and are compensated at least eighty (80) hours per month, with contributions to begin on the first of the month following eighty (80) compensated hours of employment in one (1) calendar month. The term compensation as used herein is defined to be payment of wages for work performed, vacation, accrued sick leave, other paid leave, or income resulting from industrial injury not to exceed twelve (12) months from the date of the injury; provided that said work, vacation, paid leave, and/or industrial injury income must equal or exceed payment for eighty (80) hours in a calendar month.

6.1.1 Eligibility for Employees on Payroll on 6/15/94. Employees on the payroll on June 15, 1994, will remain subject to the eligibility requirement of 50 compensated hours.

6.2 Health & Welfare. The County agrees to make monthly contributions for employees, their spouses and dependents towards the following plans.

Medical – LEOFF Health Welfare Trust, Plan FX
Vision – LEOFF Health Welfare Trust, Plan FX

6.2.1 Life Insurance. The County shall provide life insurance benefits for employees equivalent to one year’s base salary to a maximum of $50,000, through a carrier to be selected by the County.

6.2.2 Disability Plan. The County will pay a maximum of fifty dollars ($50) per month, on behalf of each LEOFF II employee enrolled in the "Enhanced Plan" provided through Trusteed Plans Service Corporation for coverage or through a carrier selected by the Guild upon no less than sixty (60) calendar days written notice to the County.

6.3 Change or Modification. The County and the Guild agree that carriers may be changed, or benefits modified upon mutual agreement and as provided herein.

6.4 LEOFF I.

6.4.1 Retirement. LEOFF I employees shall cease the accrual of their group insurance benefits provided for under this Agreement upon entry into the LEOFF retirement system.
6.5 Medical and Vision Premiums.

6.5.1 County Contribution. Effective January 1, 2018 or as soon as practical, for all eligible regular full-time employees, the County shall contribute one-hundred percent (100%) of the premium cost for employee only medical and vision coverage under the LEOFF Trust, Plan FX and eighty-five (85%) for dependent coverage. Employee shall contribute fifteen percent (15%) of the premium cost for dependent coverage via payroll deductions.

6.6 Dental and Life Insurance Premiums. The County agrees to pay the appropriate monthly premium amounts and such increases as required to maintain the dental, and life benefits listed in section 6.2 (Health & Welfare).

6.7 Flex 125. All bargaining unit employees are eligible to enroll in the County’s Flexible Spending Account Plan (“Flex 125 Plan”).

6.8 Retirement Health Savings Plan. The County agrees to make available to Guild members the County’s Retirement Health Savings Plan in accordance with and as allowed by IRS regulations. See section 7.1.2 (Excess Sick Leave Contributions).

ARTICLE 7 - SICK LEAVE ALLOWANCE

7.1 Sick Leave Usage. Sick leave shall include time off for the bona fide illness, accident or injury, dentist and doctor appointments of the employee. Use of sick leave for other than the purposes outlined in this Article may result in disciplinary action.

7.1.1 Family or Washington State Registered Domestic Partner. An employee may use sick leave to care for the child of the employee with a health condition that requires treatment or supervision or for the care of a spouse, Washington State registered domestic partner, parent, parent-in-law, or grandparent of the employee (as defined in WAC 296-130-020) who has a serious health condition or during a health emergency. Employees must register their domestic partner with the State of Washington before being able to utilize accrued sick leave.

7.1.2 Excess Sick Leave Contributions. Employees with at least 1440 hours in their sick leave bank at the beginning and end of the calendar year (or at the beginning of a calendar year and upon termination in that same year) receive a contribution into their County Health Savings Account (HSA), if they have one, or if they do not have an HSA, into a Retirement Health Savings (RHS) contribution based upon additional hours accrued during that year: Hours accrued (to a maximum of 48) minus hours used, multiplied by 25%, multiplied by hourly rate of pay at year-end, equals RHS contribution. Hours used in this calculation are no longer available to the employee.

7.2 Paternity Leave. In addition to any sick leave usage qualifying under section 7.1.1 (Family or Washington State Registered Domestic Partner), sick leave to a
maximum of forty hours shall be available for use by a male employee at the time of delivery of his child.

7.3 Notification. It is the employee’s responsibility to notify Dispatch of their inability to work because of illness or injury prior to the beginning of the work day. In the event no sick leave notification is made within one (1) hour after the beginning of the work day, the Sheriff or designee shall consider and handle the employee’s absence as an absence without pay, unless the employee later satisfactorily substantiates that it was impossible to make or cause such notification. In the case of an illness which will result in a protracted absence, a letter from the doctor giving an anticipated return date will waive the daily notification requirement.

7.4 Sick Leave Accrual. Cumulative sick leave shall accrue to each employee covered by this Agreement who has completed three (3) months of employment of eighty (80) compensated hours per calendar month, in the amount of one (1) day (8 hours) for each month of employment to a maximum of one thousand, four hundred and forty (1,440) hours PROVIDED FURTHER that no more than nine-hundred and sixty (960) hours shall be used as a base for calculating a LEOFF II employee’s sick leave cash out. In general, eight (8) hours of sick leave is accrued each month even if an employee has accrued the maximum sick leave permitted under a Guild contract. The employee’s total accrual reverts back to no more than one thousand, four hundred and forty (1,440) hours at the end of the year.

7.4.1 Employees Working <1.0 FTE. Employees working less than an assigned eight-hour schedule shall accrue sick leave benefits based on their average work assignment.

7.4.2 LEOFF I Accruals. LEOFF I employees may accrue sick leave up to a maximum of nine hundred and sixty (960) hours.

7.5 Eligibility Criteria. To be eligible to accrue sick leave as provided herein, employees must receive compensation each month. The term compensation as used herein is defined to be payment of wages for work performed, vacation, accrued sick leave, other paid leave or income resulting from an industrial injury to a maximum of twelve (12) months from the date of injury; provided that said work, vacation, paid leave and or industrial injury income must equal or exceed payment for eighty (80) hours in a calendar month.

7.5.1 Eligibility for Employees on Payroll on 6/15/94. Employees on the payroll on June 15, 1994, will remain subject to the eligibility requirement of 50 compensated hours.

7.6 Bonus Days. An employee having accrued six-hundred (600) hours of sick leave on December 31 of any year shall receive an additional forty (40) hours of vacation to be used in the following calendar year.
7.7 Termination Cashout. An employee with three (3) or more years of employment with the County shall be entitled to cash upon termination in the amount of twenty-five percent (25%) of their sick leave bank up to a maximum of thirty (30) days (240 hours) at time of termination; PROVIDED, however, such employee has given at least thirty (30) days’ notice prior to termination; PROVIDED FURTHER, that this section shall not apply to any employee terminated for cause.

Any employee hired before November 18, 1985 shall be entitled to cash upon termination in the amount of fifty (50%) percent of their sick leave bank up to a maximum of sixty (60) days (480 hours) at the time of termination; PROVIDED, however, such employee has given at least thirty (30) days’ notice prior to termination; and PROVIDED FURTHER, that this section shall not apply to any employee terminated for cause.

7.8 Proof of Illness. Upon request of the County, the employee will provide proof of illness. Such request shall be made only where the employer has good cause to request such medical verification. Any medical information obtained shall be maintained in compliance with the medical confidentiality requirements of state or federal law.

7.9 Accruals During Leaves or Layoff. Sick leave shall continue to accrue during periods of approved leave of absence with pay. If an employee is on layoff, sick leave shall not accrue during such layoff; however, upon return to work, the sick leave accrual remaining after cashout at the time of layoff shall be made available to the employee and additional days shall accrue from the first month the employee returns to work.

7.10 Accrual Deduction. An employee’s sick leave accumulation shall be reduced by the number of hours absent from work for the reasons set forth in section 7.1 (Sick Leave Usage).

7.10.1 LEOFF Impacts. This clause shall apply where sick leave compensation has been granted pursuant to the LEOFF System as well as for sick leave accrued pursuant to this Agreement. Nothing in this Agreement shall be construed as abridging any right employees may have under the LEOFF System. LEOFF employees shall cease the accrual of their sick leave benefits provided under this Agreement upon entry into the LEOFF Retirement System.

7.11 Workers’ Compensation. Use of sick leave and Worker’s Compensation time loss payments shall be as provided in RCW 41.04 and when combined shall not exceed 100% of the employee’s wages.

7.12 Sick Leave Sharing. The County agrees to allow a yearly donation of twenty-four (24) hours under the County’s Sick Leave Sharing Program.
ARTICLE 8 - FAMILY CARE

The County agrees to provide unpaid leave to any eligible employee covered by this Agreement, consistent with the Washington State Family Leave Act, RCW Chapter 49.78, the Federal Family and Medical Leave Act, and any other applicable state or federal law. Employees are not required to use accrued vacation time or compensatory time off before commencing unpaid family leave. An employee who has previously used twelve (12) weeks of unpaid FMLA will, for the following four (4) years, use all but forty (40) accrued hours of allowable compensatory, vacation, sick, and personal holiday time before beginning unpaid leave during any subsequent twelve-month FMLA period. Employees seeking family care leave must comply with physician certifications as required by law.

ARTICLE 9 - UNEMPLOYMENT COMPENSATION

The County agrees to provide unemployment compensation for any employee covered by this Agreement who may be laid off for any reason, consistent with the laws of the State of Washington and the rules and regulations of the Employment Security Department.

ARTICLE 10 - JURY DUTY

When a regular employee covered by this Agreement is called upon for jury service in any municipal, county, state or federal court, the employee shall advise the Sheriff or designee upon receipt of such call and if taken from work for such service, shall be reimbursed as provided herein for any loss in wages while performing such service; PROVIDED that there shall be deducted from the wages of such employee an amount equal to the amount such employee received for jury duty.

ARTICLE 11 - LEAVES

11.1 Bereavement Leave. If an employee suffers a death in the immediate family, the employee shall be allowed not more than five (5) days (not to exceed 40 hours) off without loss in pay for bereavement in the death of spouse, registered domestic partner, children, and parents, including step-parents and step-children of the employee and spouse or registered domestic partner. Employees must register their domestic partner with the State of Washington before being able to utilize bereavement leave. Three (3) days off for other immediate family members - defined to be brothers, sisters, grandchildren or grandparents of either the employee or the employee’s spouse or registered domestic partner. In the event of a funeral or other memorial occurring as a result of the death of a current, lawful brother- or sister-in-law, the affected employee may have up to eight (8) hours of paid time off to attend the funeral or memorial if not covered as “other immediate family.” Employees desiring additional days off without pay or using accrued leave shall make a request through the Sheriff or designee for approval. Days off without pay exceeding five (5) days in a calendar year require the approval of the Executive. For the purposes of bereavement leave only, a “day” is
defined as the number of hours an employee is assigned to work for the requested days off (not to exceed 40 hours).

11.2 Military Leave. Compensation and benefits during periods of military leave shall be as outlined in state law, USERRA and County policy. An employee taking military leave must give notice to his or her supervisor and Human Resources as far in advance as possible, pursuant to the law.

ARTICLE 12 - INITIATION FEE AND DUES CHECKOFF

12.1 Authorization for Deduction. For individuals who certify in writing that they authorize such deductions, Guild initiation fees and monthly dues shall be deducted from the employee’s payroll and remitted to the Guild. Accompanying said monies shall be a list of employees and amounts to be credited to their account.

12.2 Hold Harmless. The Guild and each employee authorizing the assignment of wages for the payment of Guild dues hereby undertake to indemnify and hold the County harmless from all claims, demands, suits, or other forms of liability that may arise against the County for or on account of any deduction made from the wages of such employee.

ARTICLE 13 - WORK ASSIGNMENTS AND NON-WAGE REIMBURSEMENTS AND PAYMENTS

13.1 Fair Labor Standards Act (FLSA). The FLSA requires that premium pays be included in the "regular rate of pay," and used in calculating the overtime rate. Therefore all monthly premiums covered in this Article are part of the regular rate of pay, and added to the monthly salary before determining the hourly rate for overtime purposes. The Dive premium is added to the regular rate of pay for the week in which the dive occurred. All overtime worked in that week is paid at this higher rate.

13.2 Premiums Employees assigned to Search and Rescue, SWAT, CNT, CIT, Range Officer, Traffic Unit, Detectives, CSI, Residents, Road Use, Field Training Officer, Marine Patrol Program Coordinator, Polygraph Operator, and Civil Deputy shall receive a premium of 3% of top-step deputy wage per month. Employees assigned to be a Dog Handler shall receive a 3.5% of top-step deputy wage per month.

13.2.1 Two Premium Maximum. Employees assigned to two or more of the specialties listed in 13.2 shall be entitled to a maximum of two full premiums.

13.2.2 Compensation for Flexibility and Readiness. Premiums constitute full compensation for all off-duty time spent by an employee that relates to the special assignment. There is an expectation that employees assigned to Specialty assignments are subject to off-duty availability from time to time, however, employees are generally not considered on-call or stand-by unless ordered.
13.3 Dives. Employees shall be paid fifty dollars ($50) for each authorized dive other than training dives. The County shall replace the air necessary for such dives.

13.4 Traffic Unit. Assignment to the Traffic Unit shall be for a four (4) year tour of duty. Provided, however, employees who have served on the Traffic Unit may re-qualify for selection through a single or series of two (2) year appointments.

13.5 Detectives. Assignment as a Detective (including Drug Task Force) shall be for a four (4) year tour of duty. Provided, however, employees who have served as detective may re-qualify for selection through a single or series of two (2) year appointments provided up to three (3) detectives may re-qualify beyond the eight (8) consecutive years. To be eligible for the position of Detective, an employee must have service as an employee for a period of five (5) years and will be selected from among a list of employees who have previously expressed in writing to the Sheriff their desire to become a Detective, provided; however, the Sheriff may assign an employee with three (3) years of service upon finding that the employee is otherwise qualified for the assignment. Rules applicable to the selection of Detectives shall be established by mutual agreement between the Sheriff and the Guild.

13.6 Field Training Officer. Employees appointed as Field Training Officers must have at least three (3) years of Washington State Peace Officer experience and have completed probation prior to application and prior to assignment, successfully complete the state Field Training Officer program.

13.7 Resident Assignment. The Sheriff shall determine the geographic location for resident deputies, but shall bargain with the Guild regarding such assignment over wages, hours, and working conditions not already provided for in this Agreement.

13.7.1 Assignment. Assignment shall be for a two (2) year tour of duty provided that the term may be for a lesser period at the discretion of the Sheriff. When a vacancy occurs, the employee whose tour of duty is ending may request assignment for another tour before the position is opened to bid. If the Sheriff declines to reappoint, or if the employee makes no such request, the position will be opened for bid, with the senior employee bidding being given first consideration. In the event no bids are received, the Sheriff will assign the most junior employee who has completed his/her probation period on or before the effective date of the opening. Provided no employee shall be required to serve a second tour prior to employees who have not served. Employees who have served four consecutive years may request to remain in this assignment through a single or series of one-year renewals, at the discretion of the Sheriff.

13.7.2 Housing. The County will furnish adequate housing at a mutually agreed upon location with the Guild and shall pay the costs of utilities which shall include electricity, water, garbage and basic telephone service. It is understood between the parties that housing, when furnished, is not considered a part of wages.
Employees must reside in County, contractor-provided, or other housing, that is acceptable to the Sheriff.

13.7.2.1 Housing Agreement. Employees living in County-owned or contractor-provided housing will sign and abide by a housing agreement mutually agreed to between the County and the Guild.

13.7.2.2 Basic Telephone Service. The County will provide residents with a telephone for basic service (local calls). The cost of the basic telephone service will be borne by the County. At the option of the employee, they may elect to use the County phone for local personal use. Employees agree to provide for their own personal long distance phone usage. The County has the option to provide either a “hard-wired phone” or a cellular phone for basic telephone service, whichever is preferred by the Sheriff.

13.7.3 Work Schedule. The work week and days off shall be established so as to provide maximum service to the area. The work week shall consist of forty (40) hours. On duty time need not be in a continuous block of time.

13.7.4 Court Appearance. It is understood between the parties that Residents are required, by the very nature of their assignments, to be available for duty at various hours and, therefore, because of the inconvenience placed upon such employee, it is agreed that on any day in which they are required to appear in court, such time shall be considered as on-duty time and they shall be compensated as outlined in section 3.3 (Call Back to Duty) above.

13.7.5 Other Overtime. If a resident employee is called out for a special assignment such as search and rescue, or riot duty, or works in excess of forty (40) hours in a work week, the overtime and compensatory time provisions of Article 3, when pertinent, shall apply provided that the compensatory time bank maximum for residents shall be two hundred and forty (240) hours.

13.7.6 Vacation Bidding. Residents are not included on the seniority list for uniform employees for the purpose of Section 5.4.1 (Vacation Bidding) bidding for vacations.

13.7.7 Moving Expenses. The cost of moving of approved household goods only, for residents (both to and from County-provided residences) will be borne by the County per the Guidelines provided by the Washington State Department of General Administration, Office of State Procurement.

13.8 Marine Patrol Program Coordinator. The Coordinator will complete program-related reports and documents, maintain boats and related equipment, develop operations plans and coordinate marine patrols, training, and assignments.
13.9 Crime Prevention Coordinator. Because of the nature of this job, which includes evening and weekend meetings, hours will be adjusted by the assigned employee within a work week so that there will not be more than 40 hours in any one work week, without prior approval of overtime. Should the Department require attendance at a meeting outside normal work hours and there is less than three (3) days’ notice, overtime will be paid for such hours. Overtime will not be paid for hours over eight (8) hours worked in a day if it is a result of the assigned employee flexing time. Flexing time will be defined as the employee scheduling to work more than eight (8) hours in one day which is off-set by working less than eight (8) hours another day, in order to accommodate meetings or other activities within the forty (40) hour week.

13.10 Clothing & Equipment Allowance. New employees shall be allowed one thousand, three hundred dollars ($1,300) as an initial clothing & equipment allowance. In addition, the Sheriff’s Office will issue a duty belt and the following to new employees: two handcuff cases, a magazine pouch, two sets of handcuffs, one aerosol restraint case, four gun belt keepers, a duty weapon, and a holster. These issued items are the property of the Sheriff’s Office and are to be returned upon the employee’s separation, unless an employee elects to purchase any item provided above at the original purchase price.

13.10.1 Annual Allowance. After the first year of employment and annually thereafter, a clothing & equipment allowance in the amount of eleven hundred dollars ($1,100) shall be paid to all employees.

13.10.2 Use of Clothing & Equipment Allowance. The clothing & equipment allowance shall be used to purchase uniforms and clothing required by the Sheriff’s Office including all equipment for the safety and performance of the employees, including equipment for hazardous duty, except as provided elsewhere in section 13.10 (Clothing & Equipment Allowance). Equipment purchased by deputies with this allowance shall be the deputy’s property.

13.10.3 Special Clothing and Equipment. Upon authorization by the Sheriff of specialized clothing or equipment required by an employee in the performance of their assigned duties, such clothing or equipment shall be provided to employees by the County upon the processing of such payment authorization form provided by Finance and individually approved by the Sheriff. Such clothing or equipment shall remain the property of the County.

13.10.4 Payment of Clothing & Equipment Allowance. Clothing & equipment allowance when due, shall be included with regular monthly pay and per IRS regulations shall be subject to tax. Clothing & equipment allowance shall be paid the first pay period in February each calendar year.

13.10.5 Mandated Changes. Mandated changes in uniform and equipment by the Sheriff will coincide with the annual clothing & equipment allowance. If a mandated change is over the annual allowance, this section of the Agreement will be reopened for negotiations.
13.10.6 Clothing & Equipment Allowance “Ordinary Income.” It is agreed between the parties that all clothing & equipment allowance payments shall be considered “ordinary income” for income tax purposes, the plan will be considered a non-accountable plan, and Deputies will not be required to turn in receipts to the County.

13.10.7 Quartermaster or Warrant System Option. It is further agreed that the Sheriff’s Office reserves the right to establish a quartermaster or warrant system whereby uniforms, clothing and equipment covered by the allowance are procured and/or paid for by the County, provided the County will give the Guild sixty (60) days’ notice of its intent to do so and, on request, will meet and discuss the decision.

13.10.8 Firearms. The County shall supply each employee with a firearm selected by the Sheriff’s Office. Employees who have not been issued a department firearm will receive a department-issued firearm upon request, by seniority, provided that the department will not be required to fulfill more than ten (10) requests per year. The Sheriff’s Office shall replace department-issued firearms when the Office determines it is necessary.

13.10.9 Practice Ammunition. Employees may request practice ammunition up to 100 rounds per quarter. Employees shall certify on a form provided by the Sheriff that the ammunition was used for practice and/or training before requesting additional rounds of ammunition under this Section.

13.11 Repair and Replacement. The cost of repair or replacement of clothing, including bullet proof vests, or personal equipment used in furtherance of job related duties and damaged or destroyed in the line of duty will be borne by the County including up to $100 for watches, but does not include jewelry or similar items. The Sheriff’s Office will determine whether an item shall be repaired or replaced. The Employer will repair or replace other authorized personal items damaged or destroyed beyond normal wear and tear while on duty. Personal items other than watches must be authorized by the Employer to be eligible for repair or replacement. For the purposes of this section: (1) an employee must notify the Employer in writing that he/she intends to carry the item while on duty and state the replacement value of said item and (2) the Employer must have given written authorization to repair or replace such item.

13.11.1 Amount of Replacement. The amount paid for replacement of a damaged item will be based on the general condition of the article. Whether damage was done in line of duty will be determined by the Sheriff’s Office, subject to the grievance procedure outlined herein.

13.12 Vehicle Assignment. It is understood between the parties that assignment of a County vehicle to an employee is not part of the employee’s wages.
13.13 Civil. Applicants must have two (2) years’ experience with the Whatcom County Sheriff’s Office. Assignments shall be for a two-year rotational tour of duty. Employees who have served in a Civil assignment may re-qualify for selection through a single or series of one-year appointments up to a maximum of four (4) years. Because of the nature of this job, which on occasion includes evening and weekend assignments, hours will be adjusted by the assigned employee within a work week so that there will not be more than 40 hours in any one work week, without prior approval of overtime. Should the Department require related assignments outside normal work hours and there is less than three (3) days’ notice, overtime will be paid for such hours. Flexing time will be defined as the employee scheduling or being assigned to work more than eight (8) hours in one day which is offset by working less than eight (8) hours another day, in order to accommodate other related civil assignments. Flextime is also defined as adjusting the standardized eight (8) hour shift to allow working an eight-hour block other than 0830 to 1630 hours. The schedule may be flexed by mutual agreement between the assigned employee and the Department with less than three days’ notice. Assigned flextime shall be limited and reasonable to facilitate standard operations of the position. Responsibilities shall include, but not be limited to: service of civil process, warrants, fugitive tracking, domestic violence papers and restraining orders. The Civil premium does not apply to civil documents, harassment orders or warrants assigned to Patrol nor to probationary employees assigned to the Civil Division for training purposes.

13.14 Courthouse and Station Assignments. The Courthouse and Station Deputy shall be allowed to schedule up to one week of vacation for every two months worked so long as they are not on vacation at the same time. Assignment as a Courthouse or Station Deputy shall be for a two (2) month time period with the option for multiple assignments. Starting time for the two positions may vary, but will be eight (8) hours per day, Monday through Friday. On days when the Courthouse is closed, and employees are not assigned to duty, they may request duty if available and if not, shall use accruals.

13.15 Work Schedules. The County retains the right to make changes in scheduled working hours of specialty assignments as follows:
- For a purpose stated in this Agreement, if applicable;
- For a business necessity purpose, after notice to the Guild;
- By voluntary agreement with the employee and the Guild; and
- For temporary duration due to an emergency.

ARTICLE 14 - PHYSICAL EXAMS

14.1 Physical Examination. Any person to be newly employed or to be re-employed as a full commissioned employee shall be required to take and pass a physical examination in accordance with the requirements of the Civil Service Commission.
14.2 Frequency of Exams. Employees may have one (1) physical exam paid by the County each year that their health plan does not provide them with a physical.

14.2.1 Exams Ordered by the Sheriff’s Office. Additional physical and/or mental examinations may be ordered and will be paid for by the Sheriff’s Office, where reasonable concern exists about the employee’s ability to perform the essential functions of the job. The first physical shall be administered by the doctor of the employee’s choice. Any second or subsequent exam ordered by the Sheriff’s Office will be administered by a physician or psychiatrist selected by the Sheriff. No employee shall lose pay because a required physical and/or mental examination is scheduled during all or part of their normal work day. The County will comply with any confidentiality requirements of the Americans with Disabilities Act.

ARTICLE 15 - LABOR MANAGEMENT AND OPERATIONS

15.1 Labor Management Committee. The purpose of the Labor Management Committee is to increase communication between the parties through discussions of issues of concern to either party and to collaboratively reach solutions in an informal environment. The parties recognize that agreements reached at a LMC meeting may be subject to ratification by membership or the County. Any agreements reached at a LMC meeting must be reduced to writing and signed by each party to have an effect.

15.1.1 The parties agree that there shall be a Labor Management Committee (LMC) to be convened on a regular basis. A meeting of the LMC shall be convened at the request of either the Guild President and/or his/her designee and the Sheriff and/or his/her designee. Alternatively, the parties may set a regular schedule for the LMC meetings in January of each year. Prior to each meeting, either party shall submit any matter of concern for the agenda for the LMC meeting.

15.1.2 The Guild shall designate the bargaining unit members participating in the LMC and the Sheriff shall designate management members. The membership need not be equal. Up to three (3) bargaining unit members shall be granted release time without loss of pay or benefits. Bargaining unit members assigned to attend such meetings on their days off shall be compensated time and one-half (1.5) for all time spent in attendance with a two-hour minimum assigned on a day off.

15.1.3 A LMC meeting may be cancelled for lack of any agenda items or by the agreement of both parties. Nothing in this article shall prevent the parties from reaching solutions to any issue submitted to a collaborative meeting prior to the date of the meeting.

15.2 Rules of Operation. The Sheriff’s Office may adopt reasonable written rules of operating the Sheriff’s Office and the conduct of employees provided, however, before such rules are posted, a copy shall be furnished to the Guild. The Guild shall be allowed not less than thirty (30) days in which to make known any objection they may have concerning such rules, except in the case of emergency, provided those rules are not subject to collective bargaining.
ARTICLE 16 - GUILD ACTIVITY

16.1 Guild Activity.

16.1.1 Negotiations. It is agreed that up to three (3) bargaining unit employees shall be allowed to participate in negotiations at any one time without loss in pay. Bargaining team members assigned to night shift will be released from the night shift immediately preceding or after the daytime meeting. Release time shall be four hours prior to the first negotiating meeting for a new contract and two hours prior to each scheduled negotiating meeting through the conclusion of negotiations. By mutual agreement, such times may be extended by the Sheriff or designee. Such employees shall not receive overtime pay while serving on the negotiating committee. The Guild will keep Human Resources advised of current members of the negotiating committee. The parties agree that at all times employees on duty are subject to a call to duty to meet staffing requirements.

16.1.2 Representation. Those members of the bargaining unit selected to serve as authorized representatives of the Guild shall be certified in writing to the County. The County shall afford designated bargaining unit members a reasonable amount of time while on duty to consult with or represent aggrieved employees and to engage in official Guild business related to collective bargaining purposes, provided that the Guild officers or the aggrieved employee contacts the appropriate command level officer (or immediate supervisor, if not on duty) if meeting requires leaving assigned post. On-duty consultations with aggrieved employees or other protected Guild business shall be allowed up to thirty (30) minutes in any one day. Additional time will require the approval of the Sheriff or his designee. Such request shall be approved, provided the meeting can be conducted without unreasonably interfering with Sheriff's Office operations.

16.2 Access Privilege for Guild's Attorney. The Guild's attorneys shall be allowed on the premises of the County to attend Civil Service meetings, grievance meetings, and collective bargaining sessions but shall only conduct business in conference rooms, interview rooms, or other places in the Sheriff's Office approved by command staff on a case-by-case basis and shall not interfere with on-duty employees.

16.3 Bulletin Board. The County shall provide space for a bulletin board to be used by the Guild for official Guild business.

16.4 Special Conferences. An employee or employees designated by the Guild in writing to attend Guild-sponsored conventions and seminars shall be granted leave without pay for scheduled work hours lost for such purposes, provided that the total leave granted to all employees under this section shall not exceed eighty (80) hours per calendar year. The Guild must notify the County in writing, at least thirty (30) calendar days in advance of such seminar or convention, of the name(s) of the employees designated to attend the seminar or convention, and the dates of their absence. The County may refuse to grant leave to more than one (1) employee per shift under this section if, in the judgment of the County, the employee's absence would adversely impact the operations of the County.
16.5 Access to Equipment. The County shall allow Guild representatives reasonable access to the telephone and photocopiers provided that no cost is incurred to the County. Appropriate uses will be determined by Guild officials and the Sheriff or his designee. The Employer shall allow Guild officials reasonable access to the telephone and photocopiers and computer e-mail system only for purposes of processing and gathering of information needed to evaluate, file or settle grievances, engage in collective bargaining and for the purpose of processing and gathering of information needed to evaluate, file and settle Civil Service complaints. The Guild agrees not to use the County’s photocopiers for other purposes, unless agreed to by the Sheriff. All email communications on the County email system shall comply with applicable Department policy.

ARTICLE 17 - NOTIFICATION OF SHERIFF’S OFFICE CHANGES

The Sheriff will notify the Guild in writing in advance of any intended changes that may affect wages, hours or working conditions of employees within the bargaining unit as required by RCW 41.56.

ARTICLE 18 - SEPARABILITY AND SAVINGS

If any article or section of this Agreement should be held invalid by operation of law or by any tribunal of competent jurisdiction, the balance of this Agreement shall continue in full force and effect. The article or section held invalid shall be modified as required by law or the tribunal of competent jurisdiction, or shall be re-negotiated for the purpose of an adequate replacement.

ARTICLE 19 – LONGEVITY/PERFORMANCE PREMIUM

Upon completion of the following years of service, employees shall receive longevity/performance premium in the amount indicated based on the top-step deputy wage. If an employee fails to achieve a rating of "satisfactory" on his/her annual performance evaluation, the applicable Longevity/Performance Premium shall be reduced by one percent (1%) for the year following the rating.

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<td>24</td>
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ARTICLE 20 - GENERAL CONDITIONS

20.1 Range Placement. Employees shall be placed in a pay range that is consistent with their duties, responsibilities, and job content. When a promotion to a higher level of responsibility occurs, the employee will be placed in the pay step of the higher pay range that will provide not less than a three percent increase in salary.

20.1.1 Step Placement & Timing. Employees will be placed in the first step of their assigned pay schedule. All steps are annual.

20.1.2 Date of Step Advancement. Advancement to the next pay step shall occur on the first day of the month in which the anniversary date falls.

20.1.3 Promotion Anniversary Date. When an employee is promoted to a higher classification, the promotion date becomes the anniversary date for step advancement purposes.

20.1.4 Step Placement Above Entry. It is understood between the parties that the Sheriff may place employees in a higher pay step at his discretion, subject to the approval of the County Executive. The Guild shall be notified when this occurs.

20.2 Work in Higher Classification. Any employee required to perform work as a sergeant shall be paid at the entry rate of pay for sergeant.

20.3 Part-Time and Temporary Employees. Hourly rates shall be established for employees working less than full-time by placing the employee in the appropriate salary range based upon their employment with the County.

20.4 Travel Expenses. Employees traveling out of the County on official business will be reimbursed for the reasonable cost of meals and expenses as may be authorized by County policy.

20.5 Electronic Funds Transfer. All regular employees hired after the date of ratification shall authorize paycheck deposit by electronic funds transfer (EFT) within thirty (30) days of hire. Employees may temporarily stop EFT in emergency situations with at least seven (7) days' notice before a scheduled payday, but must restart EFT within three (3) months.

20.6 Assigned Cell Phone. Commencing in 2013, the Sheriff will assign cell phones as part of the Sheriff's Office issued and owned equipment when assignment of a Deputy reasonably requires such equipment. The Sheriff has sole discretion to establish policy for the use of assigned cell phones.

20.7 Ability to Cross Border. All employees must maintain the ability to cross the Canadian border. If an employee is unable to maintain his/her ability to cross the
border, the County and the Guild agree to meet and bargain the impact on said employees, if necessary. Failure by an employee to comply with this section does not, in and of itself, subject an employee to discipline.

**ARTICLE 21 - SALARY SCHEDULE**

21.1 **Annual Salary Schedules.** Employees on the payroll on the date of ratification or hired after the date of ratification, shall be classified pursuant to Addendum A and paid pursuant to Addendum B, which are a part of this Agreement by reference.

21.1.1 **Wages.** Effective January 1, 2017, all ranges of the 2016 hourly matrix shall be increased by 2.5%.

Effective the first full pay period in January 2018, all ranges of the 2017 hourly matrix shall be increased by 2.5%. Effective the first full pay period in July, 2018, all ranges in the 2018 hourly matrix shall be increased by 2.5%.

Effective the first full pay period in January 2019, all ranges of the 2018 hourly matrix shall be increased by 2.0%. Effective the first full pay period in July, 2019, all ranges in the 2019 hourly matrix shall be increased by 1.0%.

**ARTICLE 22 - GRIEVANCE PROCEDURE AND ARBITRATION**

22.1 **Definition.** Grievance as used herein shall mean any dispute or controversy which might arise as to the interpretation or application of this Agreement.

22.2 **Grievance Procedure.** The processing of grievances shall be according to the following steps:

**Step 1 – Initial Complaint.** The employee and/or Guild representative must take up the complaint with the employee’s immediate supervisor within thirty (30) calendar days of when the employee or Guild knew, or reasonably should have known of the facts giving rise to the alleged contract violation, or it shall be deemed null and void. The supervisor shall attempt to resolve the grievance within fifteen (15) calendar days. If it is not resolved within fifteen (15) calendar days after submission, the matter may proceed to Step 2. The Sheriff’s Office will notify the Guild of its response. Absent written agreement to the contrary settlements at this Step shall be deemed informal and without precedential value.

**Step 2 – Written Grievance.** If there is no response at Step 1 or the grievance is not resolved at Step 1, the employee or Guild representative, within the next fifteen (15) calendar days may present the grievance, in writing to the next supervisor who is at a level outside the bargaining unit in the chain of command. The writing shall include the section of the agreement violated; a statement of the facts as seen by the grieving party, the remedy sought and should be signed by the employee or Guild member. If the grievance is not resolved at this level
within twenty (20) calendar days from the date it is received by a supervisor who is at a level outside the bargaining unit, the matter may proceed to Step 3. The Sheriff’s Office will notify the Guild of its response.

**Step 3 - Grievance to the Sheriff or to the Guild.** If the grievance is not resolved at Step 2 the employee or the Guild, within the next fifteen (15) calendar days, may present the written grievance to the Sheriff and a copy will be provided to Human Resources. Grievances by the County shall be presented to the Guild at Step 3. If not resolved at this level within the next twenty (20) calendar days, the filing party may refer the dispute to arbitration as provided below.

**22.3 Grievances of General Concern.** Grievances of general concern to the bargaining unit brought by the Guild may be initiated at Step 2 of section 22.2 (Grievance Procedure). Grievances of discipline greater than a written reprimand and grievances of the County may start at Step 3 of section 22.2 (Grievance Procedure).

**22.4 Failure to Respond.** Failure by the responding party to respond within stated timeline at any step shall permit the filing party to advance the grievance to the next step without a response.

**22.5 Arbitration.** The Guild or County may demand arbitration within thirty (30) calendar days following the conclusion of Step 3 above by filing such demand by the County with the Guild and by the Guild with Human Resources. The County shall notify the County Executive of the dispute prior to arbitration.

**22.5.1 Arbitrator Selection.** The parties shall select an impartial arbitrator within ten working days after service of the demand for arbitration. If the parties fail to agree within this period upon an arbitrator who is able and willing to serve, either party may, within five (5) working days thereafter, request the State or Federal Mediation and Conciliation Service or AAA to submit a list of eleven (11) disinterested persons who are qualified and willing to act as an impartial arbitrator. From this list the County will strike two names, then the Guild two names until the single name remaining is appointed as the arbitrator.

**22.5.2 Hearing Commencement.** The arbitrator shall commence the hearing within a reasonable time after his selection and shall render his award in writing within thirty (30) days after the close of the arbitration hearing. The award of the arbitrator shall be rendered in writing together with his written findings and conclusions and shall be final and binding upon the parties to this Agreement and upon the complaining employee and employees, if any.

**22.5.3 Arbitrator’s Fees.** The arbitrator’s fees and expenses, the cost of any hearing room and the cost of the shorthand reporter and of the original transcript, if requested by the arbitrator, shall be borne equally by the County and the Guild. All other expenses and costs shall be borne by the parties incurring them.
22.5.4 Arbitration Venue. Venue for all grievance arbitrations shall be Whatcom County unless otherwise mutually agreed.

22.6 Time Limitations. The County and the Guild agree to comply with the time limitations set forth above and either party shall have the right to insist that the time limitations be complied with, provided, however, said time limitations may be waived by mutual agreement.

22.7 No Lockout, Strike or Slow Down. All grievances as herein defined shall be settled in accordance with the procedures outlined above and there shall be no lockout, strike, interruption of work, slow down, or other interferences with production during the life of this Agreement.

22.8 Election of Remedies. Any action appealed to the Civil Service Commission shall not be subject to the grievance procedure herein. Any matter taken to the grievance procedure may not be appealed to the Civil Service Commission.

ARTICLE 23 - SENIORITY DEFINITION

Seniority lists for each unit covered by this Agreement will be maintained separately for the purpose of layoff, recall, vacation, extra overtime, and shift bidding. Employees transferring from one unit to another will have their names placed at the bottom of the new unit list, provided however, total length of the service with the County will be credited to such employee for the purpose of vacations, sick leave, and longevity accrual. Seniority units shall consist of the following two units: (1) Sergeants; (2) all other deputy sheriff’s in bargaining unit.

ARTICLE 24 – MANAGEMENT RIGHTS

Any and all rights concerned with the management operations of the County and its Sheriff’s Office are exclusively that of the County unless otherwise provided by the terms of this Agreement. The County has the authority to adopt reasonable rules for the operation of the Sheriff’s Office and the conduct of its employees; provided, such rules are not in conflict with the provisions of this Agreement, bargaining rights, or with applicable law. The County has the right to discipline, temporarily lay off or discharge employees; to assign work and determine duties of employees; to schedule hours of work, to determine the number of employees to be assigned to duty at any time and such other rights as are normal to County government and not expressly limited in this Agreement or applicable laws.

ARTICLE 25 - INDEMNITY AND HOLD HARMLESS AGREEMENT

The Employer agrees to hold harmless employees for all damages, including attorney fees, in accordance with the terms of the County’s general liability policy (a copy of which has been provided to the Guild) or a policy which is substantially similar.
ARTICLE 26 - TERMINATION CLAUSE

26.1 Duration. This Agreement shall be in full force and effect from date of adoption to and including December 31, 2019 except as noted in this Agreement and shall continue in full force and effect from year to year thereafter, unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration.

THIS AGREEMENT IS EXECUTED THIS 5th day of December, 2017 by the duly authorized representative of the parties hereto.

WHATCOM COUNTY DEPUTY SHERIFF'S GUILD

By: Rodger Funk
President

WHATCOM COUNTY, WASHINGTON

By: Jack Louws
Whatcom County Executive

APPROVED AS TO FORM:

By: Daniel L. Gibbons
Chief Civil Deputy Prosecutor

Date of Council Approval
ADDENDUM A

TO THE AGREEMENT
by and between
WHATCOM COUNTY, WASHINGTON
and
WHATCOM COUNTY DEPUTY SHERIFF’S GUILD

POSITION TITLE INDEX

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## ADDENDUM B

### SERGEANT

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ADDENDUM C

ADVICE OF ADMINISTRATIVE INVESTIGATION

Date:

To:

From:

Subj:

As required by section 2.7.1 (Due Process) of the Guild Collective Bargaining Agreement this document notifies you that you are the subject employee in connection with an Investigation that has been authorized by the Sheriff.

An interview will be performed at a later date. Prior to the interview, you will receive an Advice of Investigative Interview providing you with the name of the investigating officer, the name and rank of the interviewer and the names of others who will be in attendance, the specific allegations and the policy violations. All involved parties shall be bound to the NOTICE provisions contained at the end of this Advisement.

☐ THIS IS A CLASS I ADMINISTRATIVE INVESTIGATION

☐ THIS IS A CLASS II ADMINISTRATIVE INVESTIGATION

This investigation is to determine the facts and possible violations of Sheriff’s Office Policy/Procedure, Rules and Regulations regarding:

Alleged Acts of Misconduct:

Alleged Policy Violations:
NOTICE:
Effective immediately, you are directed to have no communication regarding this matter, either on-duty or off-duty, with any person including potential witnesses or persons who may be materially involved with the administrative investigation.

This directive means you are prohibited from communicating to these individuals about this matter by any means to include, but not be limited to: fax, telephone, mail, electronic messaging, in-person, person to person relay or any other form of communication.

Failure to comply with this directive shall be considered Insubordination, and may result in discipline up to and including termination.

You are not prohibited from discussing this matter with your Guild/union representative, Guild legal advisor, or your personal attorney.

This directive will remain in effect until either the adjudication or conclusion of the administrative investigation. Adjudication or conclusion of the case is when the employee has been notified by the appointing authority of a finding.

Acknowledgment:
I certify that I have read this advisement form in its entirety (2 pages). I acknowledge that I understand the contents and that I have received a copy of this document.

Printed name

________________________________________   ____________________________
Signature                                      Date

Investigation Advisement made by: ______________________________(Print name)

________________________________________   ______________   __________________________
Date                                           Time                         Place
ADDITIONAL REMARKS

ADVICE OF ADMINISTRATIVE INTERVIEW AS REQUIRED BY SECTION 2.7.3.1 (Interview Advisement) OF THE GUILD COLLECTIVE BARGAINING AGREEMENT

Date:

To:

From:

Subj:

☐ YOU ARE THE SUBJECT EMPLOYEE

☐ YOU ARE A WITNESS EMPLOYEE

in connection with an Investigation that has been authorized by the Sheriff.

The Officer in Charge of this Investigation is: ________________________________

This interview is to be performed by ________________________________ (name, rank) and also in attendance will be ________________________________, all of whom shall be bound to the NOTICE provisions contained at the end of this Advisement.

☐ THIS IS A CLASS I ADMINISTRATIVE INVESTIGATION

☐ THIS IS A CLASS II ADMINISTRATIVE INVESTIGATION

A. This investigation is to determine the facts and possible violations of Sheriff’s Office Policy/Procedure, Rules and Regulations regarding:

Allegations:
For a Subject of the investigation, state the specific factual nature of investigation
For a Witness in the investigation, state the purpose of interview

Possible Policy/Rules/Regulations Violations include but are not limited to:
(this section is optional for notice to a witness employee)
B. Failure to fully cooperate by truthfully answering all questions specifically and directly related to the matter under investigation and/or by providing investigators with all potentially relevant information will result in disciplinary action, which may include discharge from the Sheriff’s Office.

C. All Class I Administrative Investigations shall be audio recorded. Class II investigative interviews are generally not recorded, but will be audio recorded at the request of either party. In a Class II interview, should one party object to the use of an audio recording then a transcript shall be made and be the only official record. Class II transcription expenses shall be at the expense of the requesting party.

D. You may request and obtain the presence of a Guild/Union representative during the investigatory interview (if no request is made there shall be no obligation of representative presence) provided that:

1. The Guild/Union representative shall not disclose the nature or content of the interview to any person, except as necessary for the Guild to meet its duty of fair representation. The Guild/Union representative shall not obstruct the investigation, including revealing information to others except as permitted herein.

2. In addition to observing the interview, the Guild/Union representative, may reasonably participate in accordance with 1 above, by:
   a. Consulting with the employee before the interview begins;
   b. Reasonably raising valid objections and consulting with/advising the employee about a privilege she/he has the right to assert once questioning starts;
   c. Assisting the employee if questions are ambiguous or misleading by rephrasing the question or asking that the question be rephrased;
   d. Interceding if questions become harassing or intimidating; and
   e. Asking additional questions and seek to clarify responses.

3. During the investigatory interview, the Guild/Union representative may not;
   a. Interrupt if the employee is asked to give an initial version of events;
   b. Consult with the employee before he/she answers every question;
   c. Otherwise interfere with appropriate questioning by the investigator.

4. The Guild/Union representative may not be the spouse of the subject employee or a witness in the matter under investigation.

E. Employees subject to investigation shall be given at least two (2) hours’ notice before an interview. The failure of an employee subject to investigation to obtain a Guild/Union representative within a reasonable time, (generally two hours) is not an acceptable basis for unreasonably delaying an investigative interview with the understanding the interview shall be conducted at a reasonable hour, preferably at a time when the employee is on duty, or during the normal waking hours for the employee. Upon request, the employee will be granted a twenty-four (24) hour delay, unless the exigency of the investigation requires otherwise.
F. You have the right to suggest specific witnesses to be interviewed by the investigator. Upon notice of completion, you have the right to review and make corrections and/or additions to your transcript prior to the conclusion of the investigation.

G. Statements made to the investigator during an Administrative Investigation:

1. Will become part of the investigative file for the use of the Sheriff only to the extent permitted by law and subject to all legal protection available as a private confidential and privileged communication to the extent permitted by law; and

2. Will not be provided to other witnesses or interviewees involved in the investigation by the investigator such that the information is attributable to any individual identified by the investigator; and

3. Are not to be communicated to any person by you except to a Guild/Union representative if necessary to protect the legal rights of a witness or subject. You may consult with your private attorney.

4. Provided, that the referral of the summary of facts and findings to the involved employee's chain of command, Human Resources, or the Prosecuting Attorney's Office shall not constitute a breach of any privilege, privacy, or confidentiality; and provided further that should the involved employee choose to appeal the resulting personnel or disciplinary action and thus put at issue the merits of that action, statements given, and persons involved in the investigation may be asked by the Sheriff's Office or the subject employee to give a sworn testimony regarding their involvement. If other disclosure is necessary, notice will be given to the Guild.

H. The investigator will read the following warning into the recording at the start of the interview:

You are about to be questioned as part of an administrative investigation being conducted by the Whatcom County Sheriff's Office. You are hereby ordered to fully answer the questions that are put to you that relate to information you possess and/or your conduct and/or job performance, and to cooperate with this investigation. You are required to answer questions relating to the performance of your official duties or fitness for duties. Your failure to answer truthfully and cooperate with this investigation can be the subject of disciplinary action in and of itself, including dismissal. The statements you make or evidence gained as a result of this required cooperation may be used for administrative purposes but will not be used or introduced into evidence in a criminal proceeding.
NOTICE:
Effective immediately, except as otherwise provided above, you are directed to have no communication regarding this matter, either on-duty or off-duty, with any person including potential witnesses or persons who may be materially involved with the administrative investigation.
This directive means you are prohibited from communicating to these individuals about this matter by any means to include, but not be limited to: fax, telephone, mail, electronic messaging, in-person, person to person relay or any other form of communication.

Failure to comply with this directive shall be considered Insubordination, and may result in discipline up to and including termination.

You are not prohibited from discussing this matter with your Guild/union representative, Guild legal advisor, or your personal attorney.

This directive will remain in effect until either the adjudication or conclusion of the administrative investigation. Adjudication or conclusion of the case is when the employee has been notified by the appointing authority of a finding.

Acknowledgment:

I certify that I have read this advisement form in its entirety (4 pages). I acknowledge that I understand the contents and that I have received a copy of this document.

__________________________
 Printed name

__________________________
 Signature

Advisement made by: ___________________________ (Print name)

__________________________
 Date

__________________________
 Time

__________________________
 Place

Whatcom County Sheriff’s Office ADVICE OF ADMINISTRATIVE INTERVIEW Page 4 of 4

Deputy Sheriff’s Guild CBA – December 5, 2017 – December 31, 2019

Deputy Initials

Page 52 of 52
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Update on Point Roberts Solid Waste Management System

**ATTACHMENTS:**
Project Proposed Timeline

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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.)

Provide update on community feedback and proposed recommendations to improve solid waste management service delivery in Point Roberts.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
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<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt, Director
DATE: November 21, 2017

SUBJECT: Update on Point Roberts Solid Waste Management System

Please find attached a Public Works, Health and Safety Committee update on work currently in progress to develop the Point Roberts Solid Waste Management System.

Background and Purpose

Since May, 2016 solid waste program staff have been meeting with the Point Roberts Community Advisory Committee (PRCAC) and the community to review the solid waste management system, and ensure that waste management needs were being met. As a result of this work, the PRCAC has now requested that staff implement specific recommendations to improve solid waste services in Point Roberts.

Recommendations

At the October 10, 2017 PRCAC meeting, recommendations were made to eliminate the exemption option from mandatory residential curbside solid waste collection services for all developed parcels, and include a fee on the annual property tax statement to pay for these services. A description of these recommendations is attached, along with a project timeline.

Please call Jeff Hegedus at x6044 if there are any questions.

End.
Update on Point Roberts Solid Waste Management System

Background and Purpose

The approved 2016 Comprehensive Solid and Hazardous Waste Management Plan includes a recommendation to ‘Conduct a community involvement and engagement process to identify potential adjustments to infrastructure and regulatory requirements to improve levels of service’ in Point Roberts. In May 2016 solid waste program staff met with the Point Roberts Community Advisory Committee (PRCAC) and inquired as to how staff could best work with the community to conduct a review and ensure that waste management needs were being met.

Point Roberts is a unique locale, abundantly rich in natural beauty with a friendly, independent and diverse culture. It is also remote and not populous, with a high degree of seasonal residency, which presents challenges to the solid waste management system. Low economy of scale and increased transportation costs, combined with unique regulatory requirements, results in challenges to providing quality levels of service at acceptable costs, which in turn increases illegal dumping and threatens the stability and continuity of service provision.

At the recommendation of PRCAC, in June 2016 a community survey was conducted, and 314 local respondents provided extensive feedback regarding curbside collection services, transfer station operations, commercial service levels, recycling, illegal dumping, and other system elements. The robust feedback was used to inform subsequent PRCAC meetings and community discussions regarding infrastructure and regulatory mechanisms, with emphasis on 1) levels of service, 2) costs of service, 3) illegal dumping, 4) recycling services and 5) service provider viability. The meetings were well attended, with thoughtful discourse and good coverage by the local media.

Following a year of engaging and productive discussions with PRCAC and the community, the committee made formal motion requesting staff to pursue specific recommendations regarding curbside collection services.

Recommendations

At the October 10, 2017 PRCAC meeting recommendations were made to:

- Eliminate the exemption from mandatory residential curbside solid waste collection services for all developed residential parcels with an operating on-site sewage system
- Require a minimum residential curbside collection service level of every other week, with 32 gallon can, bundled with recycling, for these parcels
- Collect payment for the minimum service level as a fee on annual property tax bills
- The service provider will invoice directly for requested services above the minimum service level, such as for larger can size, more frequent collection, or carry out/drive in services
Currently, every other week curbside collection, with 32 gallon can, bundled with recycling costs $16.33 monthly as per the approved Washington Utilities and Transportation (WUTC) tariff. The approved tariff rates have not increased for eight years and, combined with a current average participation rate of only 300 curbside collection customers, were slated to necessarily increase significantly. With the exemption option available, it is predicted that the participation rate would thus decrease, further reducing economy of scale. Requiring the minimum curbside collection service level implemented at the 2,254 developed residential parcels would provide significantly improved economy of scale, support cost structures, enable higher service levels, and reduce illegal dumping.

To accommodate seasonal residents, who may visit on the weekend but not be available to set out and pick up cans and recyclables on the weekly scheduled service days, carry out and drive in services will be further developed. Currently, in the approved tariff, the service provider will go up to the house, deliver containers to the truck, empty the containers, and return the containers to the house. The currently approved tariff fee for the carry out service is $1.00 per 25 feet of carry, round trip. Under the current tariff the minimum level of service fee, with carry out service of 25 feet, would be $18.33. This fee would likely change pending review by the WUTC in a tariff renewal, but be essentially similar value.

PRCAC also requested a critical path analysis for implementation of these recommendations. This analysis is attached. If approved by council, which is the governing body of the disposal district, the requirements would be effective January 1, 2019.

In this continuing effort, staff will meet with PRCAC and the community to review transfer station operations and capital improvement requirements.
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**TITLE OF DOCUMENT:**
Present Final Phase 3 Report from Incarceration Prevention & Reduction Task Force

**ATTACHMENTS:**
Final Phase III Report

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Presentation of the Incarceration Prevention and Reduction Task Force Initial Phase III Report, as required by Ordinances 2015-037 and 2017-004.

**COMMITTEE ACTION:**

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**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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Whatcom County Incarceration Prevention and Reduction Task Force

Phase III

12/5/2017
INCARCERATION PREVENTION REDUCTION TASK FORCE MEMBERS

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

TASK FORCE ALTERNATES OR PROXIES

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

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

BEHAVIORAL HEALTH AD HOC COMMITTEE
Anne Deacon, Chair
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Byron Manering
Greg Winter

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

This is third report of the Incarceration Prevention and Reduction Task Force (Task Force) as required by the Whatcom County Council in the establishing ordinance. In the future, the Task Force will provide the County Council with annual reports due in June. The Task Force has organized itself into three ad hoc committees to focus on specific areas of interest:

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

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

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

The Task Force recently received the final report from the Vera Institute of Justice (Vera) analyzing Whatcom County’s Jail Use and recommending opportunities to reduce incarceration. The Vera report is attached as Appendix E. Vera’s findings will inform the Task Force’s future efforts.

TRIAGE FACILITY AD HOC COMMITTEE

In the Phase II report, the Triage Ad Hoc Committee made the following recommendations:

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

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

3. Focus efforts on redeveloping the Division Street location.

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

The Committee, with active and ongoing staff support from the Health Department and the Executive’s Office, has developed preliminary operational and facility plans and made significant progress on both capital and operational funding. Total capital cost is now projected to be approximately $7-9 million, of which $5.5 million has been committed. The regional Behavioral Health Organization requested the balance from the State Legislature. That request remains subject to the State capital budget impasse. Operational funding is projected to be nearly $5 million annually and expected to be funded primarily by
the regional Behavioral Health Organization with Medicaid and state dollars. The committee will continue to provide input on this planning process.

Over the last several months, progress has been made on developing a public outreach framework and securing Council approval of funding authority for a schematic design and associated services. The current proposal is to redevelop and expand the current Division Street facility. However, the Task Force recommends that the County explore and strongly consider the option of making the triage and crisis respite facility as a new, free-standing facility for three reasons:

1. The cost differential for the remodel and a new facility is only 16 percent;
2. Hidden problems often occur with remodels, so the new construction forecast will be more accurate; and
3. It gives better use of the existing building by not eliminating the existing facilities.

Health Department staff have had initial meetings with the state Department of Health’s Construction Review Committee. During the facility design process, these discussions will continue to ensure the final design meets all new state and local building and fire codes for treatment facilities.

LEGAL & JUSTICE SYSTEM AD HOC COMMITTEE

The Legal & Justice System Ad Hoc Committee has focused on the need for an evidence-based, pretrial risk assessment tool and pretrial monitoring unit. The report from the Vera Institute indicated that as much as 59% of jail’s population on any given day is being held pre-trial. Establishment of a pretrial risk assessment tool and supervision unit could have a significant impact on that portion of the population. This was a major recommendation of Vera, and the Task Force recommends Whatcom County develop a plan, including cost estimates and implementation strategies, to adopt and validate a data-based pretrial risk assessment instrument; and to establish a pretrial monitoring program to serve Courts in all Whatcom County jurisdictions.

The committee also extensively reviewed the County’s Drug Court program and identified several steps that could potentially improve the program, which include additional professional staffing; improving teamwork and cooperation; funding for participant incentives; reviewing eligibility for referral to Drug Court; and exploring expanding supportive housing. The Task Force recommends the County Council appropriate additional programmatic funding for Drug Court to provide additional support and education to drug court participants.

BEHAVIORAL HEALTH AD HOC COMMITTEE

Since the Phase II report, the Behavioral Health Ad Hoc Committee focused on the Opioid epidemic; Whatcom Ground-level Response And Coordinated Engagement (GRACE) program planning activities; and reviewing existing programming. The committee has also recognized the need to hear from individuals with direct experience in our criminal justice system to broaden perspective and gain more knowledge about system shortcomings.
The GRACE program will provide wraparound services to some of the community's most vulnerable residents. The Task Force recommends support of the Whatcom GRACE program and encourages community leaders to offer financial support for its development and implementation.

The national opioid epidemic has reached Whatcom County and criminal activity is often associated with illegal drug use. As addiction progresses, people are challenged to hold down full-time jobs or function successfully in the community. The driving need to obtain and use the drug of addiction does not subside. Without money to purchase, people may commit illegal acts to secure their next use. To address these challenges, the Task Force has endorsed the Whatcom County Opioid Abuse Prevention & Response Plan, included in this report as Appendix C.
INTRODUCTION

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

The ordinance structured the work of the Task Force into three phases and several objectives. All previous reports from the Task Force are available on the Task Force webpage (http://www.co.whatcom.wa.us/2052/Incarceration-Prevention-and-Reduction-T).

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

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

The interim Phase III report was delivered in July 2017, as set by Ordinance 2017-004. The report highlighted the ongoing work of the Task Force to develop Crisis Triage Facility specifications and preferred location and investigations on expanding alternatives to incarceration. This final Phase III report explores the Vera recommendations and further efforts to develop alternatives to incarceration, including updates on the triage facility, behavioral health programing, and the recommendations of the Vera Institute of Justice.

The Task Force is composed of three ad hoc committees which discuss, review and develop proposals. The committees then make recommendations to the larger Task Force which further reviews the recommendations and makes recommendations to the County Council. The three committees are organized as follows:

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

LEGAL & JUSTICE SYSTEM AD HOC COMMITTEE

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

BEHAVIORAL HEALTH AD HOC COMMITTEE

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

VERA INSTITUTE OF JUSTICE REPORT

The Incarceration and Prevention Task Force engaged the Vera Institute of Justice to provide technical analysis of Whatcom County’s criminal justice system and to identify and recommend best practices for achieving the Task Force’s goals. With significant data and support from the County, cities and other stakeholders, Vera conducted a comprehensive analysis of jail use to determine who uses the jail, how long they stay, and why they are there. Additionally, Vera conducted extensive interviews with stakeholders and mapped case flow for a number of courts in Whatcom County. Vera produced a systematic report of their findings and recommendations for reducing incarceration. The report in full is attached as Appendix E.

VERA DATA ANALYSIS

After extensive analysis of data provided by the Whatcom County jail and other major criminal justice actors in the county, Vera identified the following major data takeaways. Further detail can be found in the Vera report.

1. Most admissions (62 percent) into the jail had non-felony charges as the most serious change. The majority of these booking involved warrants.
2. Charges related to substance use are a significant driver of both admissions and lengths of stay. Driving under the influence (DUI) is the most common top criminal traffic charge that
resulted in a jail admission and, for felony charges, three of the five most common top charges that resulted in jail admissions involved drugs.

3. People who are pretrial make up a significant portion of the average daily population of the jail. On any given day, almost 60 percent of the people detained in jail were held pretrial, awaiting resolution of their cases. Nearly all (82 percent) of those being held pretrial had financial bail amounts they had not yet posted, and a large percentage of them would not post bail prior to their cases being resolved. Financial bail\(^1\) lengthens the amount of time people stay in jail.

4. It is likely that some people in the jail have behavioral health needs that would be better served in the community.

5. The Whatcom County Superior, Whatcom County District, and Bellingham Municipal courts are not meeting prescribed time standards for resolving cases. The Superior Court resolves 65 percent of felony cases within 180 days, whereas Washington State calls for resolving 98 percent of felony cases within 180 days, and the National Center for State Courts (NCSC) calls for resolving 90 percent within the same timeframe. Similar patterns hold for Whatcom County District Court and Bellingham Municipal Court.

6. Native American people, black people, and people who identify as Hispanic are overrepresented in the jail population. Native American and black individuals made up 14 percent and 7 percent of the average daily jail population in 2016, respectively, even though Native American people make up only 4 percent and black people make up only 2 percent of the county population, according to 2015 U.S. Census estimates.

VERA RECOMMENDATIONS

The data analysis led Vera to six recommendations. Details relating to all recommendations, as well as analysis of the potential impact of responding to each recommendation can be found in Appendix E.

1. Reduce jail admissions, focusing primarily on non-felony charges, by providing greater opportunities to deflect and divert people away from jail.

**KEY FINDINGS:**

- Most jail admissions in Whatcom County involve non-felony charges;
- It is likely that some people in the jail have behavioral health needs that would be better served in the community; and
- More than half of jail admissions for probation/parole violations had no new charges

**RESPONSIVE STRATEGIES:**

1(a) Remove select low-level offenses from municipal codes;
1(b) Expand “book and release” practices;
1(c) Facilitate opportunities for individuals to pay off fines associated with previous moving violations – Vera particularly identified those who have fines associated with driving with a suspended license;

\(^1\) Financial bail requires individuals to provide funds to the court, reimbursable upon appearing in court, or contract with an bond agent who will provide the funds in exchange for a fee, generally 10% of the bail amount.
1(d) Pursue opportunities to coordinate care between county agencies for people with behavioral health needs who come in contact with the justice system;  
1(e) Establish a sobering center for people arrested on DUI and other charges related to substance use as an alternative to jail booking;  
1(f) Equip law enforcement throughout Whatcom County with the tools needed to de-escalate and divert people experiencing behavioral health crises; and  
1(g) Develop mechanisms to prevent jail admissions for technical violations of probation or parole.

2. Curtail the number of new and outstanding warrants for lower-level charges.  

Key Findings:  
- Arrests on warrants are contributing significantly to the number of bookings into the Whatcom County jail;  
- Many admissions involve bench warrants for failure to appear; and  
- People with warrants consume more than half of pretrial jail beds on an average day.

Responsive Strategies:  
2(a) Analyze warrant data to understand the scope of the problem and to target responses appropriately;  
2(b) Implement policies and practices that will reduce the number of bench warrants issued for failure to appear in court; and  
2(c) Increase opportunities for people to resolve outstanding warrants

3. Create a pretrial release process that is individualized and based on data-driven risk assessment to reduce unnecessary pretrial detention.  

Key Findings:  
- The majority of people incarcerated in the Whatcom County jail are held pretrial;  
- In Whatcom County, pretrial release is often determined by a person's ability to pay financial bail;  
- Even low bond amounts are too high for many people; and  
- Washington State Court Criminal Rule 3.2 provides for non-financial conditions of release; these options are underutilized in Whatcom County.

Responsive Strategies:  
3(a) Ensure defense counsel is present at all bail determinations;  
3(b) Develop a policy for early and meaningful bail review;  

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1 County and City of Bellingham efforts to create and implement the Ground-Level Response and Coordinated Engagement (GRACE) program could fulfill this recommendation. More information on this program can be found in the Behavioral Health Ad Hoc Sub-committee section.
3(c) Implement a court date reminder system to allow for greater use of release on personal recognizance;
3(d) Adopt and validate a data-driven pretrial risk assessment instrument; and
3(e) Establish a regional pretrial services program to serve all Whatcom County courts.

4. Develop a caseflow management plan to reduce time to disposition and shorten people’s length of stay in jail.

**KEY FINDINGS:**

- The Whatcom County Superior and District Courts and the Bellingham Municipal Court are not meeting state and national model time standards for case processing;
- While limitations to available Whatcom County and Bellingham Municipal Court data prevented a thorough case processing analysis, members of the Task Force consistently expressed that case processing delays, such as the routine use of continuances, extend the time it takes for cases to reach disposition; and
- People with cases in multiple courts are detained longer in jail on average.

**RESPONSIVE STRATEGIES:**

4(a) Collaboratively, Whatcom County justice system agencies can develop a plan to ensure efficient and fair caseflow management; and
4(b) Develop and track case processing performance measures.

5. Create oversight and accountability mechanisms to ensure successful and sustained jail population reduction.

**KEY FINDINGS:**

- Whatcom County stakeholders have not yet come to consensus about who should be in the jail, and who can be safely managed in the community;
- Whatcom County established a Law and Justice Council in 2000 as required by Washington State law, but it no longer meets; and
- Challenges with data collection, extraction, sharing, and analysis have limited Whatcom County’s ability to rely on systemic data to inform decision making.

**RESPONSIVE STRATEGIES:**

5(a) Reconvene a Law and Justice Council and institutionalize the Council with regular meetings, sufficient staffing, and research capacity;
5(b) Report and publish data regularly to ensure transparency and accountability; and
5(c) Collect data regarding race, ethnicity, and gender at all system points.

**NEXT STEPS**

The Task Force will undertake efforts to identify which recommendations are appropriate to implement and work to prioritize those efforts.
INTRODUCTION

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

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

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

3. Focus efforts on redeveloping the Division Street location.

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

Although the original proposal was to redevelop the existing triage center, further consideration has led the Task Force to recommend the County consider developing a new facility on the Division Street Property. The Committee, with active and ongoing staff support from the Health Department and the Executive's Office, has developed preliminary operational and facility plans and has made significant progress on both capital and operational funding.

FACILITY PLAN

LOCATION

In the Phase II report the Committee reviewed the alternatives to the current Division Street location, and recommended that the County move forward with redevelopment at Division Street. There were three issues noted in the Phase II report that needed to be addressed:

1. Ensuring adequate public transportation;
2. Assurances given to the City of Bellingham and neighborhood concerning the long-term disposition of the property after the termination of its temporary use as a Work Center; and
3. The need to close the current triage center during construction.

As noted in the Phase II Report, expansion of WTA service addresses the first issue, and recent discussions between the County and City coupled with the planned public outreach addresses the second issue. The third issue remains a concern that is being factored into the planning options.
As an alternative to redeveloping the current facility, the Task Force recommends the County consider making the Triage and Crisis Respite facility a new, free-standing facility. There are four reasons to pursue this alternative:

1. The cost differential for the remodel and a new facility is only 16 percent;
2. Hidden problems often occur with remodels, so the new construction forecast will be more accurate;
3. It gives better use of the existing building by not eliminating what they currently have; and
4. There will be a savings from not needing to move people from the existing facility during construction.

The Phase II Report called out the need to proactively engage the public, including people living in close proximity to the anticipated program site. To ensure a transparent, open process for stakeholders, citizens and decision makers, the County Executive's Office has worked with the Task Force to develop a Public Involvement Plan, attached to this report as Appendix B. It includes:

- Public briefings with the Incarceration Prevention Task Force and the Triage Committee, the Bellingham City Council and the County Council;
- Neighborhood notice/meeting discussions;
- Key stakeholders discussions; and
- The permit process.

DESIGN

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

In the Interim Phase III Report, it was noted that a regulatory issue regarding the interpretation of fire code by two different departments of state government was holding up the development of architectural drawings. This problem has been resolved, and the County has engaged an architect to complete program and conceptual designs as outlined below.

Programming design will include the following:

- Confirmation of project scope, including a detailed description of the facilities programming requirements and verification of State Department of Social and Health Services (DSHS) and Department of Health licensing requirements;
- Confirmation of structural, mechanical, and electrical requirements for the project;
- Verification of building code issues with the City of Bellingham, Washington State Department of Health, Department of Social and Health Services, Washington State Fire Marshal, International Building Code (as adopted by the State of Washington and the City of Bellingham)
and / or others as applicable;

- Development of a detailed project schedule, incorporating provisions for the continued operation of the existing facility;
- Preparation of an estimate of probable construction cost, based upon the facility program and the established project time schedule;
- Confirmation of the overall project schedule; and
- Revisions and updates as required to the overall project budget.

Conceptual designs will be offered for the following two options:

1. Renovation and addition to the existing building to accommodate the Triage Facility Program; and
2. Development of an independent new building adjacent to the existing building, incorporating the complete Triage Facility Program.

Both options will be presented, including a detailed cost comparison that incorporates both hard construction cost and soft development costs.

A scope of work that includes the above items has been successfully negotiated with architect Ron Wright.

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<th>CAPITAL FUNDING</th>
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In the early stages of planning, the estimated cost has ranged from $6.5 to $9 million. The more specific project budget as developed by Ron Wright Associates in August, 2017 is for $7 million. That budget is attached as Appendix A.

The County and its partners have made significant headway toward securing the needed capital funds. A regional request was submitted to the legislature, with a specific line item for the triage facility expansion. The State House of Representatives’ capital budget proposes fully funding the request. The State Senate capital budget proposes to direct the Department of Commerce to grant funds for such projects through a competitive process. As of November 2017, the legislature has not passed a capital budget.

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

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| PROGRAM DESIGN |

The program design recommendations of the proposed 16-bed crisis stabilization and 16-bed withdrawal stabilization facility are outlined in the Phase II report and are affirmed in this report. These include:
• Because of the greater flexibility and lower cost provided by a voluntary facility, the Task Force recommends the facility remain voluntary. (The current state statute [RCW 10.31.110] and administrative codes defining and guiding the operations of an Involuntary Crisis Triage Facility are restrictive. An individual who is admitted to the facility on an involuntary basis may be held up to twelve hours only. Within three hours of arrival, the individual must be evaluated by a Mental Health Professional. If the individual is found to require civil commitment under the Involuntary Treatment Act [RCW 71.05], then s/he must be transferred to an Evaluation & Treatment facility. Two other disposition options include being discharged to the community, or remaining in the facility on a voluntary basis until the mental health crisis is stabilized.)

• The withdrawal stabilization facility should be designed as an Acute Stabilization Center, i.e., there should be medical staff and other supports available on site on a 24/7 basis to treat severe withdrawal.

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

**OPERATIONAL COST**

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

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

Since the Phase II report was presented to the Council in October 2016, the North Sound five-county region has chosen to integrate behavioral and medical Medicaid financing a year ahead of the legislatively-mandated deadline for integration. At the Federal level, efforts to repeal and replace the ACA have fallen short, and at least for now Medicaid expansion remains.

While the committee recognizes that the County must carefully consider the uncertainties at play in the North Sound Region and at the Federal level, there is reason to believe that the Triage facility could rely on Medicaid funding despite regional changes in Medicaid financing and possible shifts in the Federal
Medicaid program. People who are in sub-acute behavioral health crisis will need to be served, and, regardless of the payer, triage and crisis stabilization facilities are less expensive than sending someone in mental health- or substance-induced crisis to an emergency room.

**NEXT STEPS**

The Task Force has recommended the Division Street location for two, adjacent 16-bed facilities, one for mental health crisis triage and one for withdrawal stabilization. Upon completion of the Architectural services scope of work (projected to be December 2017), the Public Involvement Plan should be put into action.

In the meantime, the County Executive’s office and the Council will no doubt be carefully monitoring the State capital budget situation. The committee stands ready to assist in the development of a “Plan B” in the event that the needed capital funds are not secured through the legislative capital budget.

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**LEGAL & JUSTICE SYSTEM AD HOC COMMITTEE REPORT**

**INTRODUCTION**

In Phase III, the Legal and Justice Systems Ad Hoc Committee continued to evaluate implementation of a pretrial release program and how to ensure there are reliable expectations for those persons to appear later for their case and forego criminal activity while released. The committee and the Task Force now endorse the importance of pretrial release based on an individualized, evidence-based risk assessment and a monitoring program to minimize possible harms and call for the beginning of concrete planning for such measures by relevant stakeholders.

The Task Force recommends Whatcom County develop a plan, including cost estimates and implementation strategies, to adopt and validate a data-based pretrial risk assessment instrument and to establish a pretrial monitoring program to serve courts in all Whatcom County jurisdictions.

The committee also reviewed and facilitated steps to improve the effectiveness of the Drug Court Program. These include additional professional staffing; improving teamwork and cooperation; funding for participant incentives; reviewing eligibility for referral to Drug Court; and exploring expanding supportive housing.

To support Drug Court, the Task Force recommends that the County Council appropriate additional programmatic funding for Drug Court to provide additional support and education to drug court participants.
EVIDENCE-BASED RISK ASSESSMENT TOOL

BACKGROUND

Data analysis by Vera indicates that up to 59% of the jail population at any time is awaiting trial. Those persons have not been convicted of a crime. The Court Rules in Washington direct that individuals who are charged with a non-capital crime be released without bail unless the Court is reasonably assured that this release will:

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

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

This legal directive, along with the sheer number of persons in jail before being tried, suggest that this group should be one of the primary focuses of any effort to reduce the jail population. Moreover, the potential harms of not releasing those who pose little risk to the community are substantial. Research results reported by Vera establish that keeping a person in jail for even one or two days increases the chances the person will not appear later in court or may commit new crimes, even up to two years after the resolution of his or her current case.

GROWING TREND TOWARD PRETRIAL RELEASE

Spokane County, Yakima County, King County and other jurisdictions in Washington State and across the country have chosen to develop policies for the release of pretrial detainees without financial conditions. Members of the committee have made visits to Spokane and Yakima and interviewed key participants in those jurisdictions. A committee member now participates on a new statewide task force beginning to explore expanding pretrial release methods. In addition, the Task Force recently received a presentation from Zachary Hamilton, PhD, a criminal justice expert from the faculty of Washington State University who has worked with Spokane County, King County and others. He provided the Task Force with information about best practices in the growing field of pretrial risk assessment and release.

LOCAL APPROACHES TO PRETRIAL RELEASE

The Bellingham Municipal Court recently implemented self-generated selection process for releasing and monitoring persons facing charges. This program has shown promising results with little negative
effect on failures to appear back in court or the commission of new crimes. The judicial officers and the administrator of Whatcom District Court are actively developing a similar process using a standardized system created in Ohio, for which staff training certification has been achieved. The Lummi Nation judicial system has also adopted a range of innovative measures to reduce the incarceration of its pretrial defendants.

Whatcom County Superior Court judicial officers currently use their experience, the factors listed in CrR 3.2 (above), and their best judgement to make bail determinations. They do not have an objective tool to assist them in determining the risk level defendants pose of failing to appear or committing new crimes and thus the ability to release pretrial defendants without financial conditions. This can make it difficult to release more than a small percentage of pretrial defendants. For the vast majority of Superior Court defendants, the only condition available to Superior Court judicial officers for pretrial release is to set bail.

As a condition of release, bail presents two significant challenges. First, the ability to pay a bail amount the court sets may not ensure that the person will return to court when required nor does it necessarily deter him or her from committing a new violent crime while on release. In this regard, releasing an individual on bail provides only minimal protection for community safety. Second, relying on bail as a condition of pretrial release divides defendants on the basis of their wealth: those with adequate financial resources can secure their release, whereas those who are poor and many who are middle-income are more likely to have to remain incarcerated because they cannot afford the bail set for them. Vera found that people with very low bail amounts, less than $500, spent an average of one week in jail. Twenty percent of people with bail under $1000 were not able to post bail before the disposition of their case.

BEST PRACTICES

The Task Force’s consultants from the Vera Institute and Mr. Hamilton present three best practices for the release of pretrial individuals.

1. Create a standardized, evidence-based risk assessment instrument to calculate the chances that an individual (a) will not appear back in court or (b) will become involved in new criminal activity. Generally, a pretrial risk assessment instrument gathers specific information considered relevant to those two determinations, such as past criminal history, previous failures to appear, seriousness of the current charge, and connections to the community like having family nearby or being employed. This information is assigned a weight, the sum of which yield an overall risk “score.” In recent years, multiple instruments (such as the Ohio system being explored by District Court) have been developed and localities can acquire the right to use them, and in some cases to modify them. It is important to emphasize that the assessment process does not override the professional judgment and discretion vested in judicial officers. Rather, the risk assessment is a guide, not a mandate, for the judicial officer considering an individual’s pretrial release.
2. **Statistically validate the risk assessment instrument.** The purpose of statistical validation is to ensure that the information obtained and the weights assigned accurately predict the two key risk factors (appearing back in court and no criminal activity) for the local population where it is to be used. These factors can vary depending on a variety of local factors. This validation process often entails several stages: an initial validation is done with historical data from the jurisdiction and, once the finalized pretrial risk assessment instrument is in use, it is periodically re-validated to verify its continued accuracy.

3. **Establish a decision-making framework for applying the scores provided by the instrument.** Often, a collective local decision is made to create risk categories—low, medium, and high, perhaps—from the weighted scores and with each category to assign a range of possible non-financial conditions for release that a judicial officer can impose.

The Washington State Supreme Court recently ruled that pretrial release conditions cannot be punitive, since the individual has not been convicted of the charges and retains a presumption of innocence. Best practice in this area calls for the least restrictive oversight of the individual that is possible, and the Committee has consensus that this should entail indirect monitoring approaches only and should avoid more intensive supervision. This is also consistent with the requirements for pretrial release provided in CrR 3.2. Examples of indirect monitoring are phone or text reminders of upcoming court appearance dates, periodic check-ins by the individual with court personnel, and various monitoring devices such as GPS-enabled bracelets and similar hardware than can detect the presence of alcohol or drugs through the person’s skin. All of these examples are currently being employed to some extent in Whatcom County.

Both the pretrial screening tool being used by Bellingham Municipal Court and the one being contemplated by Whatcom County District Court draw on instruments in wide use elsewhere. However, neither of these instruments has been statistically validated for predictive accuracy with Whatcom County’s population.

### CHALLENGES

1. **Charges in multiple jurisdictions:** Many persons currently incarcerated in the jail face multiple charges, including charges in more than one jurisdiction that must be adjudicated in multiple courts. Little is gained if one court system uses a validated pretrial risk assessment instrument to make release decisions, while another court handling charges against the same individual uses a different approach and reaches different conclusions or imposes different conditions. To the fullest extent possible, the goal of reducing pretrial incarceration will be best served if the courts in Whatcom County work together toward a unified approach to pretrial release that is consistently applied. To date, several local court systems have indicated their willingness to consider aligning their practices with those other courts developing a risk assessment instrument.
2. **Cost**: Statistical validation, including the necessary software to accomplish it and to manage assessments comprehensively, is expensive. The cost of adopting a validated pretrial risk assessment instrument need to be investigated further and weighed carefully in moving toward a goal of safely and appropriately releasing more persons from jail prior to their trials.

**PRETRIAL MONITORING**

A decision-making framework that guides the terms of pretrial release acknowledges that some persons awaiting trial may be released even if there is some risk they will not appear again later or may engage in new crimes. A pretrial risk assessment is not sufficient without the support provided by a menu of monitoring activities. In other words, any risk must be adequately managed to promote the ends of the judicial process and the community's well-being.

The Superior Court judicial officers who have endorsed proceeding with planning for a pretrial risk assessment instrument have also emphasized that employing such an instrument will be useful to them and will be able to reduce the jail population only if it works in conjunction with staff dedicated to pretrial monitoring.

Coordination between evidence-based risk assessment, pretrial release with non-financial conditions, and pretrial monitoring has been recommended by Vera. It forms a key part of pretrial release programs being developed in Spokane County, Yakima County, and King County, as well as the program operating in the Lummi Nation. It is also included in the focus of the state-level pretrial risk assessment work group now underway.

Deciding on the options for conducting pretrial monitoring, how many staff will be necessary for that work, what protocols should be adopted, and where staff should be assigned will be critical future tasks in establishing a sound program in Whatcom County. The same considerations cited previously for cost-effectiveness and for making monitoring services available to multiple local jurisdictions will need to be addressed as planning proceeds.

**DRUG COURT IMPROVEMENTS**

Whatcom County created a Drug Court program approximately 20 years ago. Since then, the program has successfully offered persons with substance use problems an opportunity for support and treatment instead of incarceration. Questions were raised in the committee about whether the original policies and procedures being employed were contributing as much as reasonably possible towards diverting individuals from the jail. The committee invited an analysis and recommendations for improving the Drug Court program from the Superior Court judge presiding and the administrator of the local therapeutic courts programs. Considerable discussion about these recommendations has yielded positive results, improved communication between public systems, and identified potential steps to achieve further improvements in the program in the future.

1. **Additional professional staff**: Because of limited staffing, the drug court administrator is forced to do middle-level tasks (including in some cases administering random urinalysis tests to
participants) that prevent her from more productive work such as pursuing available grants to better fund the program. An additional part-time position to support the work of the program administrator would allow the administrator to focus on those higher level tasks. The County Executive has proposed an amendment to the 2018 budget which includes funding for this part-time position.

2. **Improving teamwork and cooperation:** The Drug Court team includes the Prosecutor’s Office, the supervising judge, the therapeutic courts administrator and support staff, and the Public Defender’s Office. This team has never attended a national training together to enhance and upgrade their collective knowledge and coordination. A discussion on this topic lead to planning for the team to attend such a training in 2018. This would be an eligible expense for Behavioral Health Sales Tax revenue and the County Executive has included funding in the budget adjustment.

3. **Participant Incentives:** The drug court program does not have the resources to provide drug court participants with minimal but motivational positive incentives (for example, a gift card for a free coffee drink or a movie pass) to acknowledge incremental progress in the program. Positive incentives are a best practice for drug court programs, according to the standards established by the National Association of Drug Court Professionals (NADCP). As with the cost of training, dedicated Behavioral Health Sales Tax revenue could also be used for this purpose and is included in the budget proposal.

4. **Eligibility for referral to Drug Court:** It is the responsibility of the Prosecutor’s Office to determine which individuals should be referred to the drug court program for evaluation of whether they are promising candidates for participation. This referral is a discretionary decision which the Prosecutor’s Office takes very seriously and for which it uses its own professional judgment.

Current best practices set by the NADCP call for use of an evidence-based, validated eligibility screening tool to inform the Prosecutor’s referral decision. Such a tool has not been adopted in Whatcom County. This and other best practices may increase competitiveness for federal drug court program grants. However, these practices also carry costs for implementation and operations. Such costs and other complications should be balanced against the opportunity cost associated with the County’s reduced competitiveness for grants. The Prosecutor’s Office and the Superior Court are committed to ongoing discussions about drug court improvements and this step may be reconsidered at an appropriate future time.

5. **Exploring expansion of supportive housing:** The drug court program generally requires a new participant to live in a “clean-and-sober” supported housing environment for the first several months of involvement in the program. This is intended to separate the participant from people and circumstances related to their substance use. Unfortunately, the availability of such housing in Whatcom County is limited. In addition, the agencies that provide “clean-and-sober”
housing tend to operate with a zero-tolerance approach to relapses that may lead directly to the loss of the housing. This approach is at odds with current best practices for drug court which consider relapses part of the recovery process and a signal for more services, not less.

Following the analysis and recommendations of the drug court administrator, further conversations began in the community about exploring the development of additional supported housing. This effort quickly engaged a non-profit housing development agency, a non-profit supported housing provider, a community-based foundation committed to criminal justice improvements, the County Health Department, and a non-profit property owner. Much more specific work needs to be done to advance this prospect, but progress is being made and everyone in these conversations to date is gratified by the support engendered so far.

NEXT STEPS – COORDINATED DATA MANAGEMENT

The committee takes note that two common barriers throughout its work to date have been the acknowledged inadequacy of available data to support programmatic efforts for preventing and reducing incarceration and the inability of multiple existing data systems to communicate with each other. Accessible and coordinated data management across multiple systems has been understood locally to be a key component of effective law enforcement, criminal justice, and local incarceration practices for at least the past ten years. An extensive and costly effort was made through the County's former Law and Justice Council to establish an electronic interface among data systems from relevant entities, including the Sheriff's Office, the jail, and various jurisdictions within the county. This effort was ultimately unsuccessful in engaging the participation of all necessary partners to make data accessibility a reality. The committee has agreed to raise the need for revisiting this issue to the Task Force in 2018.

BEHAVIORAL HEALTH AD HOC COMMITTEE REPORT

INTRODUCTION

Since the Phase II report, the Behavioral Health Ad Hoc Committee focused on the Opioid epidemic, the Whatcom Ground Level Response And Coordinated Engagement (GRACE) program planning activities, and reviewing current programming. The committee has also recognized the need to hear from individuals with direct experience in our criminal justice system to broaden perspective and gain more knowledge about system shortcomings.

OPIOID ADDICTION

The national opioid epidemic has reached Whatcom County, and criminal activity is often associated with illegal drug use. As addiction progresses, people are challenged to hold down full-time jobs or function successfully in the community. The driving need to obtain and use the drug of addiction does
not subside. Without money to purchase, people may commit illegal acts in order to secure their next use.

The criminal justice system is tasked with addressing the criminal activity itself, but it is ill-equipped, and not the right system, to provide the treatment interventions needed. While we may not be able to avoid the criminal justice system at times, the committee understands the importance of ensuring a robust care delivery system of prevention and treatment.

The committee reviewed community activities focused on educating the public about the importance of safe storage and disposal of opiate medications and prevention of opiate/heroin overdose deaths. A current campaign of education and awareness include posters on each Whatcom Transit Authority bus, printed materials providing guidance on safe storage of prescriptions, and information about locations where people can bring back unused medications. A community-based committee staffed by the Health Department has broad participation in planning and implementing these strategies. Committee members contributing to the efforts include health care and social service providers, schools, tribes, law enforcement, and defense and prosecuting attorneys. Wide-spread distribution of naloxone (brand name, NarCan) is also been a primary strategy. This medication prevents an opiate overdose death. All EMS units and most of the Law Enforcement agencies now carry naloxone. Sixteen county pharmacies have a standing order for dispensing naloxone, wherein a prescription specific to an individual is not required to purchase the life-saving medication.

The committee acknowledges that addiction is a disease of the brain. More than half of people who are addicted to heroin began by abusing prescription medications. Take-back programs for unused medications and medication-assisted treatment are being expanded in the community. The Health Department hopes to introduce an ordinance to the Health Board at yearend aimed at launching a program for safe and secure medicine return throughout the county. It is hoped that all pharmacies will participate in this effort to reduce access to unused prescription medications. Science has proven that treatment for opiate addiction with the use of medications is effective in reducing or eliminating the use of illegal drugs as well as the likelihood of overdose death.

The committee reviewed and support the county’s Opioid Response Plan. The plan is attached to this report as reference as Attachment C.

THE GRACE INITIATIVE

The GRACE project continues to move forward. This project will provide intensive wraparound services to some of the community's most vulnerable residents who frequent the criminal justice system. The Health Department has taken the lead in operationalizing the program and has convened both the Leadership Team and the Program Team to begin finalizing the details. Community members are actively involved in this process from the areas of law enforcement, jail, treatment and social service providers, PeaceHealth hospital, EMS, and crisis responders.

GRACE will have many programmatic components to ensure a multi-pronged approach to the familiar faces it will serve. Elements of the project will include coordination of intensive case management,
mental health and substance use disorder treatment, housing and employment support, medical care, and legal system navigation. More information about this program can be found in the interim Phase III report, available on the Task Force website.

The committee will be instrumental in supporting funding opportunities and ensuring the project meets its expected outcomes. It is hoped that an agency that can serve as the “Hub” for this project will be identified by early next year. In support of this effort, the committee recommends funding and implementation of the Whatcom GRACE Program, and encourages stakeholders to continue to support and all Whatcom County community leaders to offer financial support for its development and implementation.

CURRENT PROGRAMMING

The committee recognized numerous services that focus on preventing and reducing incarceration. The committee reviewed a fact sheet prepared by the Health Department showing local behavioral health programs. The identified programs include those that are funded with strictly local dollars, as well as those that have multiple funding sources, including federal and state.

More than forty programs or program areas are listed on the fact sheet must be improved in order to realize significant improvements in diverting people into effective treatment.

The fact sheet shows that programs have been designed and implemented along a continuum from Prevention and Intervention to Treatment and Aftercare (PITA). This PITA continuum was adopted by our community to ensure some equity in programming across the spectrum. A focus on preventing incarceration, especially in terms of diverting from arrest or jail booking, is a priority for the Task Force. Once the Crisis Triage Facility is expanded, law enforcement will have increased options for diversion. At that point, the committee will seek additional programs that can offer connection and engagement to services upon discharge from the Triage Facility.

The PITA fact sheet is attached as Appendix D.

Finally, the committee has been pursuing the creation of a focus group to gather information from individuals who have direct experience with our criminal justice system. It is hoped that this effort will provide insight on system failures and gaps in critical behavioral health interventions, as well as guidance on the community supports necessary to keep people out of the criminal justice system and on a path to recovery and health.
Ron Wright and Associates / Architects, P.S.
8/28/17

Whatcom County Crisis Triage Center
PROJECT BUDGET WORKSHEET

SITE AND BUILDING CONSTRUCTION COSTS

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TOTAL ESTIMATED PROJECT COSTS

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25

411
Whatcom County Crisis Triage Facility Expansion

Draft Public Involvement Plan

Whatcom County Triage Facility
2030 Division St.
Bellingham, Wa 98226

May 2017
(Amended)
Public Involvement Plan

Introduction

As part of planning for the expanded Whatcom County Mental Health and Acute Detox Triage Facility (Crisis Triage Facility), it has been identified that there is a need to prepare a Public Involvement Plan (PIP). The Plan is intended to provide a transparent, open process for stakeholders, citizens and decision makers.

The Executive, Sheriff and County Council, as recommended by the Incarceration Prevention and Reduction Task Force (IPRTF), want to ensure that there is community understanding of the proposed expansion of the Crisis Triage Facility. Additionally, when Whatcom County purchased the Division Street property for the Work Center, it was imagined as an interim location until a new jail was built and the Work Center services moved there. The County indicated to the City of Bellingham and the neighbors in the area that the location would be sold and returned to commercial use at that time. It is still contemplated that Work Center Facility would move into a new jail facility, however, the recommended option of expansion to the triage facility would all but preclude a private, commercial future for the property. Given the success of the current facility and limited impact of the Work Center and current triage facility on the neighbors, this may not be an issue.

With this and other aspects in mind, the County has identified the need to perform public outreach to ensure that community input is heard and understood to accomplish a fully informed decision of the future use of the Division Street Property.

This Public Involvement Plan is principally for use by Whatcom County and the IPRTF to guide outreach efforts during development of the Crisis Triage Facility. It is a dynamic document, subject to change as circumstances warrant. Coordination of the Plan's updating and implementation will be done by Whatcom County in coordination with the IPRTF Triage Facility Ad Hoc Committee.

Objectives

The primary objective of a Public Involvement Plan is to foster understanding in the process leading to a decision of siting the expanded Crisis Triage Facility at the Division Street property. An expanded facility will play an important role in behavioral health treatment in Whatcom County and help to address the mental health and substance use challenges facing the community, including the criminal justice system, by creating a more robust diversion option for those whose primary interaction with law enforcement is a result of problematic symptoms of mental illness and/or substance abuse.
After initial review and input it has been determined that the priority location of the expanded Crisis Triage facility is the Division Street property that houses the current triage facility and the County’s Work Center. The advantages of such a location were identified by the IPFTF, as recommended in the Phase I report to the County Council:

- The land is owned by the County, this makes the entire project more affordable.
- Preliminary design work for remodel and addition was done in 2010, reducing the cost of design.
- The location is close enough to downtown, the hospital, and the freeway to not create significant difficulties for law enforcement and emergency medical services (EMS) over other locations. This is especially true if the time it takes first responders to drop off individuals is sufficiently brief.

Recognizing the advantages that the property at Division Street brings to the siting of the expanded Crisis Triage Facility, it is important to provide the public information on the project and garner public input to help form the decision making process.

The Public Involvement Plan

Various mechanisms will be used to inform and involve stakeholders, consistent with the County’s goals. As a first priority, the Public Involvement Plan will reach out to those most affected by the project and those neighbors that live in the vicinity. Overall, the County will include those individuals seeking information on the project.

Public involvement will be an informational activity educating the public on the need to enhance the Crisis Triage Facility, provide information on the site selection process and explain what the neighbors can expect the facility's impact is on the neighborhood in the future. It will be conducted in a respectful, responsive manner. The County will work with the City of Bellingham in a “no surprises” manner to understand how their policies and regulations affect the design, location and permitting process, including public outreach of the proposed project.

Key Messages

Key Messages are the overarching themes that define more specific statements regarding the project.

- Expand the existing Triage Facility located at the Division Street property
- Develop two 16 bed units joined in one building off a common foyer with a common intake space; each unit licensed as a Residential Treatment Facility.
- One unit will provide mental health crisis stabilization services as a Crisis Triage Facility.
- The 16 bed mental health Crisis Triage Unit will be certified as voluntary with enhanced security.
- The other unit will provide for a 16 bed acute substance detoxification services.
- The land is owned by the County, this makes the entire project more affordable.
- Preliminary design work for remodel and addition was done in 2010, reducing the cost of design.
- The location is close enough to downtown, the hospital, and the freeway to not create significant difficulties for law enforcement and emergency medical services (EMS) over other locations. This is especially true if the time it takes first responders to drop off individuals is sufficiently brief.
Public transportation is limited in the areas, which can make it difficult for self-referral/walk-in patients. Additional transit options will be important for the project to function appropriately.

This project is important to reinforce an ongoing process of recovery by connecting people to supportive services in the community. An adequate continuum of care includes community based mental health counseling, residential and outpatient substance use disorder services, recovery house level of care, longer term supportive housing, case management, and access to primary care and dental services.

Methods

Following are several methods that will achieve the Objectives listed above. They will be implemented as soon as possible and continue through the site and design selections; and final permitting.

- **Objective**: Providing convenient means for citizens to ask questions or express opinions.

- **Methods**
  - E-Mail through the Whatcom County Executive Office and Health Department;
    - Tyler Schroeder, Deputy Executive – tschroed@co.whatcom.wa.us
    - Anne Deacon, Human Services Manager adeacon@co.whatcom.wa.us
    - Additional email contacts as appropriate, to be determined
  - A dedicated website address created for the updates to the expanded crisis triage facility project.
    - [http://www.whatcomcounty.us/2075/Crisis-Triage-Center](http://www.whatcomcounty.us/2075/Crisis-Triage-Center)
  - Compass Health Flyer on existing Whatcom County Triage Center
  - **Briefings** - Throughout the planning, permitting and State Environmental Policy Act (SEPA) process, there should be briefings of stakeholders and key officials. These should be scheduled to allow input prior to important stages of the process. Key meetings would be as follows:
    - Incarceration Prevention Task Force – Triage Facility Subcommittee
    - Incarceration Prevention Task Force – Full Committee
    - Bellingham City Council Briefing
    - County Council Briefing
  - **Neighborhood Notice/Meeting discussions**
    - Identify addresses of neighbors within 500’ ft. of property
      - Other contacts ([neighborhood and media list](#)) similar to City of Bellingham’s community meeting requirements
    - Ensure that all addresses in Orchard Street area are included
    - Identify a community meeting day and space, to be determined
      - Explain the project and permit process
      - Obtain opinions on site
      - Discuss the uses on the site
      - Listen to concerns about impacts
- **Key Stakeholders Discussions**
  - Incarceration Prevention Task Force members
  - Whatcom County Council
  - Whatcom Crisis Oversight Committee

- **Permit Process**
  - Property is zoned Public to allow governmental operations
  - Outright allowed in the Public zone
  - Pre-Application Process (or, waiver)
  - SEPA process, two week public comment period
  - Building permit process application
Whatcom County

Opioid Abuse

Prevention & Response Plan

Prepared by the Whatcom County Health Department on behalf of Whatcom has HOPE

March 2017
INTRODUCTION

On September 6, 2016, twenty-seven stakeholders in Whatcom County met to discuss to growing concerns around opioid misuse and abuse. A number of topics were explored, including:

- Current local efforts focused on opioid abuse
- Identification of services and programs that could be reinforced or better coordinated
- New strategies that could address unmet needs
- Existing and needed resources that could support a collective response

Concerns from that meeting were concentrated in multiple areas. This document captures some of the early work stemming from this meeting and from workgroups that have been subsequently formed. This paper is intended to serve as a living document that will continue to evolve as stakeholders endeavor to meet the ongoing needs of the community.

BACKGROUND

Prescription opiate and heroin abuse continues to be a significant problem nationally, as well as within Washington State. Research has shown that 4 out of 5 heroin users began first with non-medical use of prescription pain relievers, and nearly half of young people who inject heroin start by abusing prescription drugs.

Whatcom County continues to experience these issues. In fact, local data has shown:

- Rates of admission to substance use disorder treatment for opiate abuse have significantly grown in the past five years
- The demographics of visitors attending the Syringe Services Program (SSP) in Whatcom County have shifted to younger ages, with 18-24 being a primary recipient of services
- Nearly 10% of Whatcom County 12th grade students reporting using prescription drugs not prescribed to them in the past 30 days
- More than 2 out of 3 (66%) adults surveyed in a recent Whatcom County survey indicated they felt prescription drugs were a “moderate to serious” problem for youth
- 78% of Whatcom County adults felt that youth have a “high risk” for harming themselves if they use medication without a prescription or in a way other than prescribed
- 47% of adults indicated they did not know where to dispose of prescription drugs
- Only 4 in 10 adults have talked to youth about the risks of harm from using prescription drugs not prescribed to them in the past three months

These are only a few examples of the challenges Whatcom County continues to face. Abuse of opioids continues to contribute to emergency room visits, jail incarcerations, and other costly community resources. Local concerns repeatedly focused on easy accessibility of pharmaceutical medications, as well as a lack of perceived harm from their use or their potential for abuse.

PARTNERSHIP

Partnership is a critical component of this collaborative effort. Each work group has dedicated time to identifying the stakeholders necessary to implement successful strategies. Coordinated recruitment of additional key partners will be an ongoing effort. As of February 22, 2017, twenty-eight individuals have participated in initial planning efforts on a designated work group, representing fifteen different entities. Representation has included, but is not limited to:

1. Bellingham School District
2. Bellingham Police Department
3. City of Bellingham
4. Chuckanut Health Foundation
5. Northwest Youth Services
6. PeaceHealth
7. Parents Matter
8. Phoenix Recovery
9. SpicerDent Productions
10. Valley Drug
11. Unity Care Northwest
12. W.C. Health Dept.
13. W.C. Public Defender’s Office
14. W.C. Sheriff’s Office
15. Whatcom Family & Community Network
16. Whatcom Medical Society

Additional stakeholders participated in the September meeting and are still being provided with updates and opportunities to participate. Local materials that are developed from these efforts will be marked with “Whatcom has HOPE (Heroin and other Opiate Prevention & Education),” which represents the collective efforts of these partners.

STRATEGIES

Substance Use:
Whatcom County currently possesses a number of programs and services that are designed to serve individuals with prevention, intervention, treatment, and aftercare services. These include school-based and community-based services that are delivered on a Continuum of Care. These services are designed to prevent abuse from starting, support those needing intervention or treatment services, and to support recovery. These services provide a foundation that addresses all forms of substance abuse and addictions. While this document outlines some strategies that can be implemented in direct response to opioid issues, it is also critical to provide ongoing support of the systems that create a comprehensive continuum of care.

Opioid Abuse:
In response to growing concerns directly related to opioids, local stakeholders have been engaged in strategic planning to respond to the crisis. This collaborative approach developed into three separate workgroups, each having identified strategies to implement locally. In part, the SAFETY workgroup focuses on preventing opioid misuse and abuse by addressing issues of securing, monitoring, and disposing of unused medications. The NALOXONE workgroup focuses on preventing overdose by educating about how to use and where to access naloxone (overdose reversing medication), as well as the Good Samaritan Law (protections from civil liabilities when trying to help in a medical emergency). The MARKETING workgroup currently serves as the hub of all media and marketing messaging, ensuring effective coordination of efforts.

Whatcom County has identified local objectives that support the Washington State Interagency Opioid Working Plan. Although individuals and agencies in Whatcom County actively participate in state and regional efforts that address all four state goals, the Whatcom County workgroups
primarily focus on two state goals that were identified as ‘locally actionable.’ Efforts around prescribing practices, expansion of treatment services, evaluation, and other important efforts will continue to be supported by local partners, at the state level. The following graphic illustrates the state’s plan, and how Whatcom County workgroups specifically connect to state goals.

### 2017 Washington State Interagency Opioid Working Plan

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<td><strong>GOAL 2:</strong> Treat opioid dependence</td>
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<td><strong>GOAL 3:</strong> Prevent deaths from overdose</td>
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<td><strong>GOAL 4:</strong> Use data to monitor and evaluate</td>
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- Improve prescribing practices
- Expand access to treatment
- Distribute naloxone to people who use heroin
- Optimize and expand data sources

Stakeholder and workgroups meetings created an opportunity to review and analyze local data in-depth, driving the process of identifying needs and potential strategies that could be implemented in Whatcom County. The following plan was developed as the starting point for a comprehensive and collaborative approach to addressing public health issues related to opioid misuse and abuse in the community.

#### SAFETY

**State Goal 1: Prevent opioid misuse and abuse.**

**Objective 1.1:** Create a “Medicine Inventory tool” that Whatcom County residents can use to monitor and track their medications.

**Objective 1.2:** Acquire and distribute medicine lock bags/boxes to Whatcom County residents.

**Objective 1.3:** Convene stakeholders that will work to research and review potential for a local Stewardship Ordinance (reverse-distributor process for drug disposal).

**Objective 1.4:** Increase public awareness through appropriate messaging, including:
   a) Secure your medications (lock them up)
   b) Monitor your medications
   c) Properly dispose of unwanted, unneeded medications (promote Take Back sites)
MARKETING

Addresses multiple goals and strategies identified in the state plan.

Objective 2.1: Coordinate efforts between workgroups to deliver a comprehensive marketing plan.

Objective 2.2: Increase public awareness through appropriate messaging, including:
   a) Increase the awareness of harms of prescription drug abuse, as well as prevalence of abuse.
   b) Reduce stigma around addictions while increasing awareness that prescription drugs can lead to addiction (i.e., it can happen to anyone).
   c) Promote appropriate use of prescription drugs, as well as alternatives to pain management.
   d) Promote the importance of adults talking to children about the harms of using medications inappropriately, or medications not prescribed to them.

NALOXONE

State Goal 3: Prevent deaths from overdose.

Objective 3.1: Develop Naloxone policy standards for agencies to adopt and encourage securing kits.

Objective 3.2: Create an inventory of Naloxone carriers/distributors.

Objective 3.3: Identify access gaps to Naloxone in the county.

Objective 3.4: Recruit additional pharmacies to carry Naloxone for public access.

Objective 3.5: Secure Naloxone for time-limited distribution.

Objective 3.6: Increase public awareness through appropriate messaging, including:
   a) Promote the Good Samaritan Law.
   b) Educate about proper Naloxone use and access.

Workgroups will continue to refine their action plans through the planning and implementation process, and will be able to scale efforts as resources are available.

IMPLEMENTATION & EVALUATION

Implementation of the project will be done in three phases, including planning, development, and implementation. Each workgroup will establish action steps and timelines for each strategy to be delivered.

Evaluation of efforts will be identified by each workgroup, and may include the data collection of output and outcome data, collected through either a quantitative or qualitative process. Aside from project specific measures, ongoing data sources in the community will be reviewed to track ongoing opioid abuse impacts. This will include the annual Community Adult Survey, the Healthy Youth Survey administered every two years, and other community indicators (treatment admissions, arrest records, emergency room visits, etc.).
RESOURCES

State and federal resource currently provide some useful tools and information. Whatcom County will work to promote these available resources to support identified local needs. A sample of these resources includes, but is not limited to:

Stopoverdose.org http://stopoverdose.org/

Partnership for Drug-Free Kids http://www.drugfree.org/

Take back your meds http://www.takebackyourmeds.org/

We acknowledge there are many other agencies, programs, and services that are working on reducing issues associated with opioid abuse. This is not an exhaustive list of efforts in Whatcom County, but does represent some collaborative work being coordinated to establish a collective impact. We thank all that have been involved in this process, and others that will be in the future. If you would like more information, contact the Whatcom County Health Department at 360-778-6002.
Preventing and Reducing Incarceration in Whatcom County

An individual's chance of being incarcerated is influenced by a number of factors and experiences that may happen even before birth. From parenting classes to school-based gang prevention services, to mental health and vocational counseling, there are many identified opportunities to increase the chances of success. The programs (on reverse) highlight efforts to reduce negative experiences, strengthen individuals, and build supportive communities. Agencies across Whatcom County work together promoting health and crime reduction through prevention, intervention, treatment, and aftercare (PITA) programs to improve both individual and community wellbeing.

The PITA continuum, shown at right, is a complex interaction of dozens of programs (see reverse) implemented by numerous agencies across Whatcom County.

Prevention programs build foundations for healthy lives at the individual, family, and community level. They create protective factors to build resilience, improve home lives, and strengthen relationships with community support systems.

Intervention programs identify emerging problems, target unhealthy behaviors, and support individuals with mental illness, substance use disorder, housing instability and/or legal problems.

Treatment programs give more intense support to those who have struggled with mental illness or substance use, or have been incarcerated without the skills needed to rejoin the community on a new trajectory. These programs reduce chances of committing further crimes and promote healthier lives for participants.

Aftercare programs focus on mental health support and housing stability. These programs reinforce healthy behaviors and crime-free lifestyles.

In addition to these programs, Whatcom County, the City of Bellingham, and other partners engage in development and review of policy and system-wide coordination using public advisory boards, the Incarceration Prevention and Reduction Task Force, and other opportunities for community input.
PROGRAMS & SERVICES

PARENTING SUPPORT FOR HEALTHY CHILDHOODS AND
UPSTREAM PREVENTION
  o Nurse Family Partnership*
  o Strengthening Families*
  o Building Healthy Communities*
  o Community Coalitions*
  o Youth And Family Behavioral Health*
  o Youth Street Outreach Team
  o In-School Prevention / Intervention Services*
  o Communities in Schools*
  o Parenting Academy
  o Growing Together and Parent Child Assistance Program
  o Youth Marijuana Prevention And Education

DRUG ABUSE PREVENTION FOR ADULTS
  o Prescription Take Back Pilot Program*
  o Pharmaceutical Stewardship Ordinance
  o Prescription Lockboxes And Safe Storage*
  o Opiate Addiction Outreach & Education*

BEHAVIORAL HEALTH SUPPORT
  o Mental Health Crisis Triage Services*
  o Detox Services*
  o Crisis Prevention / Intervention Teams
  o Program for Assertive Community Treatment (PACT)
  o Behavioral Health Access Program (BHAP)*

SPECIALTY COURT PROGRAMS AND OTHER LEGAL ALTERNATIVES
  o Teen Court
  o Drug Court*
  o Family Treatment Court*
  o Mental Health Court*
  o Non-Incarcerated Pretrial Supervision
  o Electronic Home Detention / Monitoring
  o DUI Victim Impact Panel
  o Cite and Release

BEHAVIORAL HEALTH INTEGRATION WITH PUBLIC SAFETY
AND FIRST RESPONDERS
  o Neighborhood Police Officers and Deputies
  o Community Paramedic
  o Crisis Intervention / Hostage Negotiation Training for First Responders*

BEHAVIORAL HEALTH SUPPORT FOR OFFENDERS IN
CRIMINAL JUSTICE SYSTEM
  o Jail Behavioral Support and Re-Entry*
  o Psychotropic Medications and Community-Based Connections Upon Release*
  o Interim Housing*
  o Case Management*
  o Special Behavioral Health Unit in Probation*
  o Juvenile Court Behavioral Health Services*

OTHER SUPPORT OPTIONS FOR OFFENDERS INVOLVED IN
THE CRIMINAL JUSTICE SYSTEM
  o Work Release and School Release
  o Offender Work Crews
  o GED Program for Offenders
  o Financial Literacy for Offenders

MORE INTENSE HOUSING AND BEHAVIORAL HEALTH ASSISTANCE
  o Community Outreach and Recovery Support (COR!)
  o Project for Assistance in Transition from Homelessness (PATH)
  o Staffed Permanent Supported Housing*
  o Transitional and Semi-Independent Housing Support*
  o Mental Health Services*
  o Substance Use Disorder Services*
  o Homeless Outreach Team (HOT)

POLICY DEVELOPMENT AND SYSTEM COORDINATION
  o Incarceration Prevention/Reduction Task Force*
  o Ground-level Response And Coordinated Engagement (GRACE)*

(*programs supported by 1/10 Sales Tax Revenue)
BEGINS ON FOLLOWING PAGE
Whatcom County Incarceration Prevention and Reduction Task Force

INTRODUCTION

The Incarceration Prevention and Reduction Task Force (IPR Task Force) received consultation services from the Vera Institute of Justice, nationally-renowned experts in criminal justice based in New York City. This research institute is committed to promoting improvements in our nation’s criminal justice systems focusing on equal justice, reductions in jail populations, and public safety. The attached report is a result of their findings and recommendations to the Task Force.

This report is one component of the vast work the IPR Task Force has undertaken. The reader is advised not to take this report as the entirety of the information the Task Force is using to generate recommendations for improvements in Whatcom County’s criminal justice systems.

Vera Institute consultants based their analyses on data available from a variety of sources and that was collected through the normal course of business. The report suggests that significant reductions in jail population can occur, however it is important to manage expectations. The absence of certain data limited the consultants’ ability to fine-tune their analyses, and the Task Force will necessarily need to work to further analyze the meaning and the import of the data provided. The report highlights many opportunities for new programs and improvements in local criminal justice systems. The resources needed to implement them may require policy change and additional funding.

The IPR Task Force will review the report’s recommendations. Upon further review of local statistics and processes, the Task Force may determine that some recommendations already exist in the community or that other recommendations would not be viable at this time. This report provides the Task Force with a number of starting points for future work.

The IPR Task Force is committed to continuing its work to improve systems and safely reduce jail population. The Vera Institute Report will inform the Task Force in its in-depth review of the drivers of jail population and further exploration of appropriate programs that will reduce and prevent incarceration in Whatcom County.
November 2017

Report to Whatcom County Stakeholders on Jail Reduction Strategies

Elizabeth Swavola, Kristine Riley, Vedan Anthony-North, and Stephen Roberts
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Executive Summary

Between 1970 and 2014, the number of people in jail in Whatcom County grew almost nine-fold—from 45 to 391 on any given day—while the overall county population only grew two-and-a-half times. With the county’s jail population surging, local government leaders, justice system practitioners, and community members have become increasingly concerned about the public safety, fiscal, and human costs of jail overcrowding. To begin exploring ways to reverse the trend, the county convened the Incarceration Prevention and Reduction Task Force (Task Force), a multidisciplinary group of justice system and community member stakeholders.

Building on the efforts of the Task Force, Whatcom County hired the Vera Institute of Justice (Vera), an independent nonprofit organization, to develop a more thorough understanding of the factors driving the growing number of people in jail and to identify opportunities for reduction. Over the past year, in partnership with the Task Force, Vera conducted an in-depth examination of the local justice system, including on-site observations and meetings with Task Force members and other key elected officials, an exercise to map the flow of cases and potential outcomes in the county’s three court levels, and an analysis of 2016 administrative data from the jail and the Whatcom County Superior Court, the Whatcom County District Court, and the Bellingham Municipal Court.

Through this process, Vera has identified the following factors that are contributing to jail overuse in Whatcom County:

- **Most admissions (62 percent) into the jail had non-felony charges as the most serious charge.** The majority of these bookings involved warrants.

- **Charges related to substance use are a significant driver of both admissions and lengths of stay.** Driving under the influence (DUI) is the most common top criminal traffic charge that resulted in a jail admission and, for felony charges, three of the five most common top charges that resulted in jail admissions involved drugs.

- **People who are pretrial make up a significant portion of the average daily population of the jail.** On any given day, almost 60 percent of the people detained in jail were held pretrial, awaiting resolution of their cases. Nearly all (82 percent) of those being held pretrial had financial bail amounts they had not yet posted, and a large percentage of them would not post bail prior to their cases being resolved.

- **It is likely that some people in the jail have behavioral health needs that would be better served in the community.** Nearly one-third (32 percent) of people admitted to jail were referred to jail behavioral health services.

- **The Whatcom County Superior, Whatcom County District, and Bellingham Municipal courts are not meeting prescribed time standards for resolving cases.**
The superior court resolves 65 percent of felony cases within 180 days, whereas Washington State calls for resolving 98 percent of felony cases within 180 days, and the National Center for State Courts (NCSC) calls for resolving 90 percent within the same timeframe. Similar patterns hold for Whatcom County District Court and Bellingham Municipal Court.

- **Native American people, black people, and people who identify as Hispanic are overrepresented in the jail population.** Native American and black individuals made up 14 percent and 7 percent of the average daily jail population in 2016, respectively, even though Native American people make up only 4 percent and black people make up only 2 percent of the county population, according to 2015 U.S. Census estimates.

To safely reduce unnecessary jail use, Vera recommends that Whatcom County:

1. Reduce jail admissions, focusing primarily on non-felony charges, by providing greater opportunities to deflect and divert people away from jail;
2. Curtail warrants by preventing issuance of new warrants and creating opportunities to clear existing warrants;
3. Limit pretrial detention by establishing a pretrial system guided by risk, not financial bail;
4. Develop a caseflow management plan to shorten case processing times and the length of jail stays; and
5. Create oversight and accountability by re-convening the Law and Justice Council and publishing data regularly, including data on race, ethnicity, and gender.

The full report offers a number of responsive strategies that Whatcom County can undertake to reduce the number of people in its jail without compromising public safety. Though some of these strategies will require additional data analysis, collaborative decision making, and investment of resources, justice system agencies within Whatcom County could implement many of them immediately. More than any other factor, including the economy and crime rates, jail size is a function of system policies and practices. With cross-agency partnerships and community engagement, local justice systems nationwide have reduced their jail use and achieved safer, more equitable, and more effective system outcomes.
Introduction

Whatcom County has experienced dramatic growth in its local jail population over the past five decades: between 1970 and 2014, the number of people in jail in Whatcom County at any given time grew from 45 to 391, nearly a nine-fold increase. During that same time period, the incarceration rate—the number of people incarcerated in jail per 100,000 county residents—more than tripled, from 87 to 276. (See Figure 1.) As the jail population has surged, both county and city governments, as well as community stakeholders, have become increasingly concerned with the fiscal, safety, and social consequences of an overcrowded jail. In an effort to understand the factors driving the growing number of people in jail and to reverse these trends, community and government have come together, forming the Whatcom County Incarceration Prevention and Reduction Task Force.

Figure 1. Jail incarceration rates, 1970-2014

In September 2016, Whatcom County contracted with Vera, an independent nonprofit organization, to provide assistance to the Task Force in developing a more thorough understanding of the local justice system and drivers of jail population growth in order to identify and prioritize recommendations for safely reducing unnecessary jail use. Vera has worked over the last five decades to transform justice systems through research, policy, practice, and public engagement. Vera has assisted counties and local justice systems across the United States to achieve their jail reduction goals. This report presents the findings from Vera’s assessment and recommendations for how Whatcom County can reduce its jail population and create a safer, more effective local justice system.
A brief history of the Whatcom County jail

**Jail capacity and growth**

Built in 1983, the current downtown jail facility can hold up to 212 people. In 2004, when the jail population was 289, the county passed a ballot measure to impose a 0.1 percent sales tax for "costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of jail facilities." In 2006, the county used a portion of the funds raised by the tax increase to open an interim work center, a temporary minimum security facility that can hold up to 150 people, to alleviate overcrowding. The total jail population continued to swell, however, reaching a peak of 487 in 2009. The interim work center remains in operation today.

Authors of a 2011 assessment requested by Sheriff Bill Elfo and coordinated by the National Institute of Corrections found the physical conditions of the jail and work center—and lack of programming at both—cause for concern. They noted limited levels of supervision and lack of activity and recreation for people incarcerated in the jail. The authors recommended greater use of supervised pretrial release and alternatives to incarceration to alleviate capacity pressures by reducing the jail population.

In 2015, in an attempt to ease overcrowding, the county added a stipulation to jail use contracts requiring municipalities to relocate in-custody pretrial individuals—those awaiting resolution of their cases—within hours after their first appearance in court to jails in other counties, such as Yakima and King counties. The sheriff's office also reinstated restrictions that had been in place in various forms since 1995 on booking people arrested on gross misdemeanors and misdemeanors into jail when it approached capacity limits. To reduce its need to send people to other counties, Bellingham contracted with Friendship Diversion Services to provide electronic home monitoring of some pretrial individuals and some people serving municipal court sentences.

In July 2016, the county hired architecture firm design2LAST, inc., to analyze the cost of renovating the existing jail and work center. The firm estimated a cost of approximately $10.5 million to correct current building deficiencies at the jail and work center and an additional $32.4 million for a longer-term, 20-year renewal plan. With the total average daily jail population hovering around 324 in 2016, Whatcom County continues to face challenges with overcrowding and a deteriorating jail infrastructure.

**Whatcom County Incarceration Prevention and Reduction Task Force**

In May 2015, recognizing the need to identify alternatives to detaining people in jail, the Whatcom County Council (Council) established the Whatcom County Incarceration Prevention and Reduction Task Force (Task Force). The Council charged the Task Force with developing plans for a new or expanded crisis triage center, recommendations for programs that would reduce the incarceration of people with substance use and mental health challenges, and an array of jail diversion programs and alternatives to
incarceration. In July 2015, the Council included within the Task Force's responsibilities expansion of existing alternatives and programs, such as probation, home monitoring, and crisis intervention teams.

The Task Force, which meets monthly, is made up of 24 multidisciplinary members and has four subcommittees: the Steering Committee, the Behavioral Health Ad Hoc Committee, the Legal and Justice System Ad Hoc Committee, and the Crisis Triage Ad Hoc Committee. Membership on the Task Force includes health care providers; community-based organizations; community members, including people who have been personally impacted by the justice system; and representatives from county, city, and tribal governments and justice system agencies.

In three phased reports, the Task Force has recommended development of two adjoined 16-bed units—one for crisis stabilization and one for withdrawal stabilization—to replace the current, smaller Crisis Triage Center; further exploration of pretrial risk assessment and supervision; and implementation of the Ground-level Response and Coordinated Engagement (GRACE) program, a coordinated intervention and care model for people with frequent involvement with criminal justice and behavioral health agencies. Since September 2016, Vera has worked with the Task Force to gain a deeper understanding of challenges contributing to jail population growth in Whatcom County and identify additional opportunities for reduction.

## Building a new jail

Simultaneous to other efforts to alleviate the problem of jail overcrowding, the county began exploring the possibility of building a new jail facility. In April 2011, the Council established the Jail Planning Task Force to recommend a size, location, and funding mechanism for the new jail. Issuing its final report in March 2012, this task force recommended that the county move forward with plans to build a new jail with between 500 and 700 beds, but determined the other tasks, such as financing and location, were beyond the scope of the group's expertise.

In 2013, the county hired an architecture consultant, DLR Group, to assess property the county intended to purchase for construction of a new jail facility. On completion of the consultant’s review, the county purchased the property for nearly $6.1 million and obtained a conditional use permit from the City of Ferndale, where the site is located. In November 2015, the county presented voters with a ballot measure to increase a sales tax to provide for construction of a new 521-bed jail on the Ferndale property to replace the existing jail and work center, at an estimated cost of $100 million. With 51 percent of voters rejecting the sales tax increase, the measure failed.

Deciding to revisit the ballot measure in the 2017 election cycle, the Council established the Jail Stakeholder Workgroup, a 16-member body made up of city and county government officials, law enforcement, tribal representatives, and community members, to develop a funding proposal for a new jail. The workgroup recommended a sales tax measure to fund a $110 million new jail construction, and expressed its support for an agreement that established the size of the new jail at 476 beds, including 36
medical and behavioral health beds. The county would contribute 78 percent of the capital costs, and the cities would contribute 22 percent, the majority of which would be paid by Bellingham (71.6 percent). To address concerns that incarceration reduction remain a priority, Bellingham and the county crafted a separate agreement stating that, annually, Bellingham would commit a portion of its net sales tax revenue to fund incarceration prevention programs, and the county would make a dollar-for-dollar match.

In July 2017, the Council voted four to three to approve the agreement and to submit a ballot proposition to Whatcom County voters to raise a 0.2 percent sales tax for “costs associated with financing, construction, maintenance, and operation of jail facilities, plus incarceration prevention programs, including medical and behavioral health facilities and programs.” In November 2017, voters will decide whether the county can raise a sales tax to fund a new, larger jail.

Vera’s process

Working collaboratively with the Task Force and county and city leadership, Vera conducted an in-depth examination of the local justice system to understand how Whatcom County uses its jail and to identify viable reduction strategies. Many jurisdictions across the country have safely reduced their use of jail using a data-driven approach to understand and address drivers of jail population growth, while also increasing fairness and efficiency. Vera’s work to accomplish these goals in Whatcom County can be broken down into three main components:

**Administrative data analysis:** The size of the jail population is determined by two key factors: who goes into the jail (admissions) and how long they stay (length of stay, or LOS). To understand these factors, Vera reviewed two different aspects of the data: (1) **admissions to jail**—information about everyone booked into jail; and (2) **average daily population (ADP)**—a snapshot of who is detained in jail at any given time and how long, on average, they have been there as of the snapshot date.

**Mapping caseflow:** To understand the various outcomes a person may have when entering the Whatcom County justice system, Vera convened a diverse group of system and community stakeholders to map the process. The system mapping exercise memorialized the flow of cases through the county’s three court levels, with the intention of building a common understanding of how the existing system actually functions. It also served as a facilitation tool for the group to identify challenges within the local justice system that may be contributing to jail population growth, as well as opportunities for change.

**Qualitative research:** Vera conducted four site visits, which included individual and group meetings with key stakeholders; tours of the jail, work center, crisis triage and detox facilities; and observations of first appearances in Whatcom County Superior, Whatcom County District, and Bellingham Municipal
courts. Vera supplemented site visits with written memoranda about evidence-based jail reduction practices—such as actuarial pretrial risk assessment, pretrial services and supervision, and risk management.

The recommendations included in this report are based on Vera’s quantitative and qualitative research. They should be seen as a starting point, understanding that reform takes time, dedicated cross-system collaboration, ongoing data analysis, and leadership. While the county can implement some of the recommendations right away, some will take more planning, further research, and a deeper investment of resources. Moreover, these recommendations are not the only steps the county can take to reduce the number of people in jail. To realize the benefits of jail population reduction fully, jurisdictions must continuously engage in data-driven processes to develop consensus on who should be in the jail and whom they are willing to release and/or divert at various system touch points. Whatcom County must capitalize on the momentum the Task Force’s work has generated, and the commitment among county and city officials to rethink how the entire Whatcom community uses the jail.
Data findings: Drivers of jail population growth in Whatcom County

Using data provided by the Whatcom County Sheriff’s Office, Vera’s analysis examined admissions to and releases from the Whatcom County jail for calendar year 2016. Where possible, the analysis excludes admissions involving holds from other jurisdictions, including the Washington State Department of Corrections (DOC), other counties, and the federal government, because those holds tend to take longer to resolve, which can complicate timely release from jail, and therefore skew trends upward, particularly for length of stay. Excluding holds also has the benefit of focusing attention on cases that reflect policies and practices within the exclusive control of local system actors. Limitations in the data prevented more in-depth analyses of some aspects of the population, such as behavioral health needs and the nature of warrants involved in bookings.

Booking restrictions have been in place at the jail since the beginning of 2016, which presumably kept a certain number of people who otherwise would have been booked from going to jail, but the data available to Vera are not sufficient to estimate this number. County administrative reports provided counts of people being held in Yakima County for Bellingham and the Lummi Nation.

Vera analyzed court data provided by the Washington State Administrative Office of the Courts for Whatcom County Superior and District Courts and Bellingham Municipal Court to learn about case processing. These three courts accounted for 84 percent of the cases in courts within Whatcom County for people admitted to jail in 2016. The Lummi Tribal Court accounted for another 6 percent, but Vera was not able to examine the necessary court data from that court. The remaining municipal and tribal courts in Whatcom County accounted for the other 10 percent of cases. Court data allowed for an assessment of the time from case filing to result. Notably, there was no reliable link between the court data and the jail data to show whether people were being detained while their cases were pending. Vera was also able to supplement its analysis with data from the Bellingham Police Department, from publicly available crime reporting sources, publicly available data from the Whatcom County Jail Behavioral Health Program, and from Vera’s Incarceration Trends project, which uses the U.S. Department of Justice’s Bureau of Justice Statistics Census of Jails to provide historical context from the last four-and-a-half decades on both overall jail incarceration and pretrial detention rates in counties as compared to state and national averages.

In 2016, there were, on average, 324 people in the Whatcom County jail—including both the downtown facility and the work center. As mentioned above, in response to jail overcrowding, some municipalities had to use jail bed space in other county jails. Over the second half of 2016, an average of about 33 people from Whatcom County were held in the Yakima County jail on any given day—22 people from the Lummi Nation and 11 people from Bellingham. Combined, the total jail population from Whatcom County on an average day was 357 people.
What follows are the key findings from Vera’s analysis of the administrative data addressing who was detained in the Whatcom County jail in 2016, what charges sent them there, and how long they stayed. All averages of the daily population and all percentages are rounded to the nearest whole number. Due to rounding, the sums of percentages may not add up precisely to 100 percent, and the sums of averages may not add up precisely to the reported total.

Who was detained in the jail in 2016?

1. **Nearly 4,300 people entered the Whatcom County jail in 2016.** There were 6,298 bookings of 4,273 unique individuals, as some people were booked into the jail more than once in 2016.

2. **Most people (73 percent) were booked into the jail only once in 2016, but those who were booked more than once (27 percent of all individuals) accounted for 51 percent of the bookings (3,197).** A smaller number of people booked into the jail (11 percent) were admitted three or more times, accounting for 28 percent of all bookings. (See Figure 2.) Warrants may be driving the subsequent bookings for those booked more than once: of all first bookings in 2016, 51 percent had warrants, but for people who were booked more than once, 73 percent of the bookings after the first had warrants.

Figure 2. Count of people and admissions into the jail, 2016

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<tr>
<th></th>
<th>Individuals</th>
<th>Bookings</th>
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<tr>
<td>People with one booking</td>
<td>3,101 (73%)</td>
<td>3,101 (49%)</td>
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<tr>
<td>People with two bookings</td>
<td>705 (16%)</td>
<td>1,410 (22%)</td>
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<tr>
<td>People with three or more bookings</td>
<td>467 (11%)</td>
<td>1,787 (28%)</td>
</tr>
<tr>
<td>Total</td>
<td>4,273 (100%)</td>
<td>6,298 (100%)</td>
</tr>
</tbody>
</table>
3. Almost 60 percent of the people detained in the jail in 2016 were held pretrial. On an average day in 2016, of the 324 people in the jail, 192 people (59 percent) were pretrial, 78 people (24 percent) were sentenced, and 54 people (17 percent) had various holds.\textsuperscript{17} (See Figure 3.) People held pretrial are legally presumed innocent and are awaiting resolution of their cases.\textsuperscript{18}

Figure 3. Breakdown of average daily population by legal status, 2016

4. On an average day, most people in the jail had been booked by the Whatcom County Sheriff's Office, followed closely by the Bellingham Police Department. Of the law enforcement agencies using the Whatcom County jail, the sheriff's office and Bellingham Police Department accounted for 74 percent of the average daily population (ADP), state agencies occupied 10 percent, followed most closely by Ferndale (5 percent) and the Lummi Nation (4 percent).\textsuperscript{19} (See Figure 4 on page 14.)
5. **The number of women incarcerated in the Whatcom County jail was high as compared to the national average.** Women made up 26 percent of total admissions to the Whatcom County jail in 2016, compared to 21 percent of admissions nationally.20 On an average day in 2016, women made up 18 percent of the jail population, higher than the national average of 14 percent.21

6. **Native American people, black people, and people who identified as Hispanic are overrepresented in the jail.** Native American people and black people made up 14 and 7 percent of the average daily jail population in 2016, respectively, even though Native American people make up only 4 percent and black people make up only 2 percent of the county population, according to 2015 U.S. Census estimates.22 (See Figure 5 on page 15.)
Disparities existed among all gender breakdowns, as evidenced in Figure 6, below. The starkest disparities existed with black men and Native American women: black men were admitted to the jail at a rate 4.2 times the rate of white men, and Native American women were admitted to the jail at five times the rate of white women. Looking across all races, people who identified as Hispanic were admitted to the jail at a rate about 3.5 times the rate of non-Hispanic people.
Figure 6. Racial and ethnic disparities in jail admission rates per 100 county residents, 2016

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th></th>
<th>Women</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Admission rate</td>
<td>Disparity</td>
<td>Admission rate</td>
<td>Disparity</td>
</tr>
<tr>
<td>White</td>
<td>4.0</td>
<td>n/a</td>
<td>1.4</td>
<td>n/a</td>
</tr>
<tr>
<td>Black</td>
<td>16.9</td>
<td>4.2</td>
<td>3.9</td>
<td>2.8</td>
</tr>
<tr>
<td>Native American</td>
<td>14.8</td>
<td>3.7</td>
<td>7.0</td>
<td>5.0</td>
</tr>
<tr>
<td>Non-Hispanic</td>
<td>3.6</td>
<td>n/a</td>
<td>1.3</td>
<td>n/a</td>
</tr>
<tr>
<td>Hispanic</td>
<td>13.5</td>
<td>3.7</td>
<td>4.4</td>
<td>3.3</td>
</tr>
</tbody>
</table>

Disparities were similar when looking at people instead of all bookings, counting each person only once even if that person had been booked multiple times. Because there was not much variation by race in the likelihood of being booked multiple times, this analysis revealed similarly disparate impacts. (See Figure 7.)

Figure 7. Racial disparities by individuals, eliminating the effect of multiple bookings, 2016

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th></th>
<th>Women</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Admission rate</td>
<td>Disparity</td>
<td>Admission rate</td>
<td>Disparity</td>
</tr>
<tr>
<td>White</td>
<td>2.8</td>
<td>n/a</td>
<td>1.0</td>
<td>n/a</td>
</tr>
<tr>
<td>Black</td>
<td>11.1</td>
<td>4.0</td>
<td>2.7</td>
<td>2.8</td>
</tr>
<tr>
<td>Native American</td>
<td>9.1</td>
<td>3.3</td>
<td>4.4</td>
<td>4.5</td>
</tr>
</tbody>
</table>

Tribal nations may have different criminal justice practices than Whatcom County and its municipalities. To account for these differences, Vera also analyzed disparities excluding bookings made by the Lummi Nation Police Department. With those bookings removed, disparities in admissions rates still existed: Native American men were admitted to the jail at a rate 2.3 times the rate of white men, and Native American women were admitted to the jail at a rate 3.4 times the rate of white women.
What charges sent people to jail?

1. **Most admissions to the jail had non-felony charges as the most serious charge.**
   Felony charges accounted for 31 percent of all jail admissions in 2016. Sixty-eight percent of all admissions in 2016 involved gross misdemeanor (21 percent), misdemeanor (7 percent), or criminal traffic charges (23 percent) as the most serious charges, or holds from other jurisdictions (17 percent). (See Figure 8.)

   Figure 8. Admissions by most serious charge, 2016

<table>
<thead>
<tr>
<th>Admissions</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
</tr>
<tr>
<td>Felony</td>
<td>1,976</td>
<td>31%</td>
</tr>
<tr>
<td>Gross</td>
<td>1,320</td>
<td>21%</td>
</tr>
<tr>
<td>misdemeanor</td>
<td>470</td>
<td>7%</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>1,459</td>
<td>23%</td>
</tr>
<tr>
<td>Criminal</td>
<td>755</td>
<td>12%</td>
</tr>
<tr>
<td>traffic</td>
<td>318</td>
<td>5%</td>
</tr>
<tr>
<td>Total</td>
<td>6,298</td>
<td>100%</td>
</tr>
</tbody>
</table>

2. **For felony charges, three of the five most common top charges that resulted in a jail admission involved drugs.** The top three felony drug charges accounted for 291 admissions in 2016, and consumed 19 beds (6 percent) on an average day. (See Figure 9.)

   Figure 9. Most frequent top felony charges resulting in an admission to jail, 2016


<table>
<thead>
<tr>
<th>Statute code</th>
<th>Felony statute</th>
<th>Admissions</th>
<th>ADP</th>
</tr>
</thead>
<tbody>
<tr>
<td>69.50.000</td>
<td>CONTROLLED SUBSTANCE VIOLATION</td>
<td>122</td>
<td>6</td>
</tr>
<tr>
<td>69.50.401.2</td>
<td>CONTROLLED SUBSTANCE-MFG/DEL/POSS W/INTENT</td>
<td>99</td>
<td>9</td>
</tr>
<tr>
<td>9A.36.021</td>
<td>ASSAULT 2ND DEGREE</td>
<td>87</td>
<td>10</td>
</tr>
<tr>
<td>9A.52.030</td>
<td>BURGLARY 2ND DEGREE</td>
<td>83</td>
<td>7</td>
</tr>
<tr>
<td>69.50.4013.2</td>
<td>CONTROLLED SUBSTANCE-POSSESSION</td>
<td>70</td>
<td>4</td>
</tr>
</tbody>
</table>

3. **Twenty-two percent of the average daily pretrial population (43 individuals) was detained on non-felony charges and 11 percent (22 individuals) was detained on**
**felony drug charges.** Sixty-six percent of the pretrial population (127 individuals) was detained on felony charges other than drugs. (See Figure 10.)

Figure 10. Average daily pretrial population by charge level, 2016

- Felony drug (11%)
- Felony other (66%)
- Gross misdemeanor (12%)
- Misdemeanor (4%)
- Criminal traffic (6%)

4. **A large percentage of the non-felony charges that resulted in an admission to the jail involved warrants.** Fifty-five percent of the average daily pretrial population had warrants—which require law enforcement officers to make a custodial arrest rather than issue a citation—at the time they were booked into the jail. Fifty percent of all admissions with felony charges as the most serious had warrants. Figure 11 shows the percentage of jail admissions that involved a warrant, broken out by charge class. When driving under the influence (DUI) charges—which almost always result in a custodial arrest, are removed from the analysis—62 percent of the remaining non-felony bookings into the jail had outstanding warrants.

Figure 11. Jail admissions with warrants by charge class, 2016

- Felony: 50%
- Gross misdemeanor: 53%
- Misdemeanor: 75%
- Criminal traffic (excl. DUI): 73%

■ Warrants ■ No warrants
As shown in Figure 12, an analysis of the most frequent gross misdemeanor and misdemeanor charges that resulted in a booking into the jail further demonstrates the impact of warrants on the jail: two of the top five gross misdemeanor charges and one of the top five misdemeanor charges involved an arrest for a failure to appear (FTA) warrant.

Figure 12. Most frequent top gross misdemeanor and misdemeanor charges resulting in an admission to jail, 2016

<table>
<thead>
<tr>
<th>Statute code</th>
<th>Gross misdemeanor</th>
<th>Admissions</th>
<th>ADP</th>
</tr>
</thead>
<tbody>
<tr>
<td>9A.36.041</td>
<td>ASSAULT 4TH DEGREE</td>
<td>393</td>
<td>8</td>
</tr>
<tr>
<td>9A.56.050</td>
<td>THEFT 3RD DEGREE &lt;$750.00</td>
<td>118</td>
<td>4</td>
</tr>
<tr>
<td>9A.56.050.A</td>
<td>THEFT 3RD DEGREE/FTA</td>
<td>103</td>
<td>3</td>
</tr>
<tr>
<td>9A.36.041.A</td>
<td>ASSAULT 4TH DEGREE/FTA</td>
<td>98</td>
<td>4</td>
</tr>
<tr>
<td>9A.52.070</td>
<td>CRIMINAL TRESPASS 1ST</td>
<td>53</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Statute code</th>
<th>Misdemeanor</th>
<th>Admissions</th>
<th>ADP</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.95.220</td>
<td>PROBATION/PAROLE VIOLATION</td>
<td>149</td>
<td>13</td>
</tr>
<tr>
<td>B10.12.020</td>
<td>SHOPLIFTING GOODS LESS THAN $50</td>
<td>42</td>
<td>1</td>
</tr>
<tr>
<td>9A.52.080</td>
<td>CRIMINAL TRESPASS 2ND DEGREE</td>
<td>33</td>
<td>0</td>
</tr>
<tr>
<td>9A.52.080.A</td>
<td>CRIMINAL TRESPASS 2ND DEGREE/FTA</td>
<td>29</td>
<td>0</td>
</tr>
<tr>
<td>9A.84.030</td>
<td>DISORDERLY CONDUCT</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

5. Three of the top five criminal traffic charges that resulted in a booking into the jail related to driving with a license suspended (DWLS). (See Figure 13 on page 20.) DWLS charges in the first, second, and third degrees together accounted for 362 admissions into the jail. DWLS 1st degree—which applies to those deemed “habitual offenders”—and DWLS 2nd degree—which applies to those who are currently ineligible for license reinstatement due to the nature of the underlying reason for license suspension—are more serious charges.25 A closer look at the 275 bookings on DWLS 3rd degree, which is the least serious DWLS charge, revealed that all but five included no other charges. Of the 270 bookings with no other charges, 244 (90 percent) had outstanding warrants, which is likely the reason the person was booked into the jail rather than issued a citation in the field.
Figure 13. Most frequent criminal traffic charges resulting in an admission to jail, 2016

<table>
<thead>
<tr>
<th>Statute code</th>
<th>Criminal traffic</th>
<th>Admissions</th>
<th>ADP</th>
</tr>
</thead>
<tbody>
<tr>
<td>46.61.502</td>
<td>DUI</td>
<td>942</td>
<td>19</td>
</tr>
<tr>
<td>46.20.342.1C</td>
<td>DWLS 3RD DEGREE</td>
<td>275</td>
<td>2</td>
</tr>
<tr>
<td>46.61.500</td>
<td>RECKLESS DRIVING</td>
<td>59</td>
<td>3</td>
</tr>
<tr>
<td>46.20.342.1B</td>
<td>DWLS 2ND DEGREE</td>
<td>46</td>
<td>0</td>
</tr>
<tr>
<td>46.20.342.1A</td>
<td>DWLS 1ST DEGREE</td>
<td>41</td>
<td>3</td>
</tr>
</tbody>
</table>

6. **More than half (56 percent) of jail admissions for probation or parole violations had no new charges.** People may be booked into the jail for violations of the conditions of their supervision in the community that are not by themselves a criminal offense (for example, missing appointments with the supervising officer or a positive drug screen). Although Washington State’s Sentencing Reform Act of 1981, RCW 9.94A et seq., eliminated parole in Washington, in the jail data, admissions pursuant to RCW 9.95.220 are labeled as “Probation/Parole Violation.” Vera uses that label as it appears in the data to avoid introduction of errors. More than 80 percent of these bookings were for violations of local probation.

On an average day, the jail held seven people admitted on probation/parole violations with no new charges. Their average length of stay was 18 days. Forty-four percent of the jail admissions for probation/parole violations did include new criminal charges. (See Figure 14.)

Figure 14. Most common new charges accompanying probation/parole violations, 2016

<table>
<thead>
<tr>
<th>Charge</th>
<th>Admissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>DUI</td>
<td>30</td>
</tr>
<tr>
<td>DWLS 3RD DEGREE</td>
<td>15</td>
</tr>
<tr>
<td>ASSAULT 4TH DEGREE</td>
<td>9</td>
</tr>
<tr>
<td>POSSESSION OF DRUG PARAPHERNALIA</td>
<td>8</td>
</tr>
<tr>
<td>DWLS 2ND DEGREE</td>
<td>8</td>
</tr>
</tbody>
</table>

7. **People who were charged with a felony or who had a felony sentence occupied the most beds in the jail on any given day.** When examining both pretrial and sentenced populations, and excluding individuals detained in the jail on holds from other jurisdictions, felony cases accounted for 68 percent of the average daily population but only 38 percent of
admissions. Conversely, gross misdemeanor, misdemeanor, and criminal traffic cases accounted for 32 percent of the average daily population but 62 percent of admissions. (See Figure 15.)

Figure 15. Admissions & ADP without holds by charge class, 2016

<table>
<thead>
<tr>
<th>Admissions</th>
<th>58%</th>
<th>25%</th>
<th>9%</th>
<th>28%</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADP</td>
<td>68%</td>
<td>15%</td>
<td>7%</td>
<td>10%</td>
</tr>
</tbody>
</table>

- All felonies  - Gross misdemeanor  - Misdemeanor  - Criminal traffic

How long did people spend in jail?

1. **Fifty-seven percent of those released from the jail in 2016 were released within three days.** Forty-one percent of admissions stayed in the jail one day or less. Due to a number of individuals with longer stays, however, the average length of stay for people admitted into the jail was 19 days, which is shorter than the national average.26 When examining pretrial populations exclusively, the average length of stay in the jail was 14 days.

2. **Of those who were not released within three days, the average length of stay was 43 days.** Only 15 percent of admissions resulted in people staying in jail for more than one month, but on any given day, they account for 53 percent (172 individuals) of the population. The same pattern holds for the daily pretrial population. On any given day, 51 percent of the pretrial population (96 individuals) has been in jail for more than one month awaiting the outcomes of their cases. (See Figure 16 on page 22.)
3. Small differences in length of stay exacerbate disparities within the jail's average daily population. While the differences in lengths of stay were not large between racial categories, even slightly longer stays in the jail and disparate admissions rates can exacerbate disparities in the average daily population. For example, because black men stayed in jail longer on average, they were overrepresented in the average daily population by a factor of 5.2 compared to white men. (See Figure 17.) As mentioned above, the admission disparity was 4.0.

Figure 17. Length of stay and racial disparities in the average daily population, 2016

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Avg. LOS</td>
<td>ADP disparity</td>
</tr>
<tr>
<td>White</td>
<td>20</td>
<td>n/a</td>
</tr>
<tr>
<td>Black</td>
<td>23</td>
<td>5.2</td>
</tr>
<tr>
<td>Native American</td>
<td>23</td>
<td>3.8</td>
</tr>
</tbody>
</table>
4. On an average day, at least 82 percent of the pretrial jail population had a bail amount that they had not yet posted; many would not do so and would remain in jail until their cases were disposed. This indicates their incarceration likely had more to do with their inability to post the set bail amount than any other factor. Sixty-four people on average (33 percent) were facing bail of up to $10,000. Another 30 people (16 percent) were facing bail between $10,000 and $25,000.28 (See Figure 18.)

Figure 18. Average daily pretrial population by bail level, 2016

<table>
<thead>
<tr>
<th>Bail level</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1 - $2,500</td>
<td>25</td>
</tr>
<tr>
<td>$2,501 - $10,000</td>
<td>39</td>
</tr>
<tr>
<td>$10,001 - $25,000</td>
<td>30</td>
</tr>
<tr>
<td>$25,001 - $100,000</td>
<td>34</td>
</tr>
<tr>
<td>$100,000 +</td>
<td>30</td>
</tr>
<tr>
<td>None or unknown</td>
<td>35</td>
</tr>
</tbody>
</table>

5. Nineteen percent (660) of the 3,549 people admitted for whom bail was set were eventually released on personal recognizance (PR), which is a promise to appear in court; 44 percent (1,560) were released after posting bail; and 37 percent (1,329) remained in jail until the disposition of their cases. Another 444 who were admitted into the jail were released on PR without bail having been set.29 (See Figure 19.)

Figure 19. Pretrial bail and release, 2016

<table>
<thead>
<tr>
<th>Assessed bail</th>
<th>3,549</th>
<th>67%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Released on PR after bail set</td>
<td>660</td>
<td>19%</td>
</tr>
<tr>
<td>Released on bond</td>
<td>1,560</td>
<td>44%</td>
</tr>
<tr>
<td>Detained until disposition</td>
<td>1,329</td>
<td>37%</td>
</tr>
<tr>
<td>Released on PR with no bail set</td>
<td>444</td>
<td>8%</td>
</tr>
<tr>
<td>Other</td>
<td>1,286</td>
<td>24%</td>
</tr>
<tr>
<td></td>
<td>5,279</td>
<td></td>
</tr>
</tbody>
</table>
6. Of those who were released after posting bail, 84 percent did so within a week of their booking. Sixteen percent spent more than a week in jail before making their bail.

7. People with low bond amounts ($500 or less) spent, on average, a week in jail.
Thirty-four percent of people assessed bail amounts of $500 or less remained in jail prior to the resolution of their cases. Seventy-three percent of them had non-felony charges.

8. Nearly half (48 percent) of people with A and B felony charges were able to post bail prior to their case resolution. In contrast, one-third (34 percent) of all admissions to the jail with non-felony charges as the most serious charge were not able to post bail prior to the disposition of their cases.

9. Twenty percent of people with bail of $1,000 or less were not able to post bail prior to the disposition of their cases. In contrast, 41 percent of people with bail between $10,000 and $100,000 were able to post bail to secure their release. (See Figure 20.)

Figure 20. Bail outcomes by bail level, 2016

<table>
<thead>
<tr>
<th>Admissions</th>
<th>$500 or less</th>
<th>$501 - $1,000</th>
<th>$1,001 - $2,500</th>
<th>$2,501 - $5,000</th>
<th>$5,001 - $10,000</th>
<th>$10,001 - $25,000</th>
<th>$25,001 - $100,000</th>
<th>Greater than $100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>$500 or less</td>
<td>19%</td>
<td>43%</td>
<td>44%</td>
<td>46%</td>
<td>44%</td>
<td>42%</td>
<td>39%</td>
<td>8%</td>
</tr>
<tr>
<td>$501 - $1,000</td>
<td>15%</td>
<td>42%</td>
<td>44%</td>
<td>46%</td>
<td>44%</td>
<td>42%</td>
<td>39%</td>
<td>8%</td>
</tr>
<tr>
<td>$1,001 - $2,500</td>
<td>17%</td>
<td>17%</td>
<td>44%</td>
<td>44%</td>
<td>42%</td>
<td>39%</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>$2,501 - $5,000</td>
<td>9%</td>
<td>9%</td>
<td>44%</td>
<td>42%</td>
<td>39%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>$5,001 - $10,000</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>$10,001 - $25,000</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>$25,001 - $100,000</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Greater than $100,000</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
</tr>
</tbody>
</table>

- Paid bond
- PR
- Not released
10. In Whatcom County Superior and District Courts and in Bellingham Municipal Court, the number of cases resolved within benchmark timeframes is lower than prescribed standards. The National Center for State Courts (NCSC) calls for resolving 90 percent of felony cases within 180 days, while Washington State calls for resolving 98 percent of felony cases within 180 days. Vera’s conservative estimate is that no more than 65 percent of felony cases are being resolved within 180 days in Whatcom County Superior Court. (See Figure 21.)

Figure 21. Resolution of cases in Whatcom Superior Court compared to prescribed standards

<table>
<thead>
<tr>
<th>Within:</th>
<th>NCSC standard</th>
<th>WA standard</th>
<th>Whatcom Superior</th>
</tr>
</thead>
<tbody>
<tr>
<td>90 days</td>
<td>75%</td>
<td>90%</td>
<td>45%</td>
</tr>
<tr>
<td>120 days</td>
<td>90%</td>
<td>98%</td>
<td>53%</td>
</tr>
<tr>
<td>180 days</td>
<td>90%</td>
<td>98%</td>
<td>65%</td>
</tr>
<tr>
<td>270 days</td>
<td>100%</td>
<td>98%</td>
<td>77%</td>
</tr>
<tr>
<td>1 year</td>
<td>98%</td>
<td>100%</td>
<td>84%</td>
</tr>
</tbody>
</table>

In both Whatcom County District Court and Bellingham Municipal Court, 73 percent of cases were resolved within 180 days compared to the prescribed standards of 98 percent of cases. (See Figure 22.)

Figure 22. Resolution of cases in Whatcom District Court and Bellingham Municipal Court compared to prescribed standards

<table>
<thead>
<tr>
<th>Within:</th>
<th>NCSC standard</th>
<th>WA standard</th>
<th>Whatcom District</th>
<th>Bellingham Municipal</th>
</tr>
</thead>
<tbody>
<tr>
<td>60 days</td>
<td>75%</td>
<td>90%</td>
<td>47%</td>
<td>42%</td>
</tr>
<tr>
<td>90 days</td>
<td>90%</td>
<td>90%</td>
<td>54%</td>
<td>50%</td>
</tr>
<tr>
<td>180 days</td>
<td>98%</td>
<td>98%</td>
<td>73%</td>
<td>73%</td>
</tr>
<tr>
<td>270 days</td>
<td>100%</td>
<td>98%</td>
<td>85%</td>
<td>86%</td>
</tr>
</tbody>
</table>

Due to data limitations, Vera was unable to determine which defendants were in custody while their cases were pending. The model time standards do not, however, differentiate between cases in which people are in custody and out of custody, and are intended to apply to all cases.
11. **People with cases in multiple courts are detained longer in jail on average.** People with cases only in Whatcom County Superior Court spent an average of 27 days in jail and accounted for 96 people in the average daily population, while people with cases in both the Whatcom County Superior Court and at least one other court remained in jail an average of 56 days and accounted for 131 people in jail on an average day.

**Key data takeaways**

The details of the data are important, and additional analysis can provide further guidance to stakeholders in Whatcom County seeking to understand how their local justice system is functioning. Here, however, are some general takeaways from the analysis above:

1. People who are pretrial make up a significant portion of the average daily jail population, and in order to reduce the population of the jail, focusing on this group is vital. This can be accomplished by decreasing the number of people entering the jail who have not been convicted of a crime, and by decreasing the time people spend in jail before their cases are resolved.
2. People arrested on charges related to substance use are a significant driver of both admissions and length of stay. Approaches to reducing the jail population will need to address this issue.
3. Financial bail lengthens the amount of time people stay in jail.
4. To reduce the number of people booked into the jail, reforms must address the drivers of non-felony admissions, especially those involving warrants.
5. In order to reduce the average daily population, case processing times must be shortened, especially for felony cases.
6. Addressing the racial disparities in the average daily population of the jail can only begin by understanding and reducing the disparities in admissions—and the various pathways to admissions—which are the largest contributing factor.
Recommendations

The recommendations that follow are informed by the quantitative data analysis as well as Vera's qualitative data collection, with the goal of safely reducing the jail population and decreasing disparate contact with the justice system.

1. Reduce unnecessary admissions to the jail.

Key findings and challenges

1. Most jail admissions in Whatcom County involve non-felony charges.
   - Sixty-eight percent of all admissions in 2016 involved holds from other jurisdictions or gross misdemeanor, misdemeanor, or criminal traffic charges as the most serious charges.
   - There were 184 jail admissions with municipal shoplifting charges and 30 admissions with municipal disorderly conduct charges in 2016. While most of these charges were accompanied by other state charges, they often had a separate bond amount attached, increasing the total bond amount.
   - Two of the top five gross misdemeanor charges and one of the top five misdemeanor charges involved an arrest for a failure to appear (FTA) warrant.
   - All but five of the 275 bookings for DWLS 3$^{rd}$ degree charges in 2016 included no other charges.
   - DUI was the most frequent criminal traffic charge resulting in an admission to jail, accounting for 942 admissions (and 19 jail beds on any given day) in 2016.

2. It is likely that some people in the jail have behavioral health needs that would be better served in the community.
   - Data provided by the Human Services Division of the Whatcom County Health Department indicates nearly one-third of all individuals admitted into the jail in 2016 were referred to the Jail Behavioral Health Program (JBHP). It is important to note that referrals do not necessarily indicate an ongoing health need or diagnosis.
   - Research indicates a weak statistical association between mental illness and violence, despite public perceptions to the contrary. Indeed, the vast majority of people with mental illness are nonviolent, and the transformation of the mental health system over the last 30 years has been built on evidence that community-based treatment options are effective, and that recovery and full community participation is possible for people with mental illnesses.
   - Pursuant to the Americans with Disabilities Act of 1990 (ADA), 42 U. S. C. §12132, public entities are to administer services and programs "in the most integrated setting appropriate..."
to the needs of qualified individuals with disabilities,” including those diagnosed with mental illness. The U.S. Supreme Court ruled in *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999), that as long as providing community-based services does not fundamentally alter public systems, people have a right to receive the services they need outside of an institution, and “unjustified isolation” is “discrimination based on disability.”

3. More than half of jail admissions for probation/parole violations had no new charges.
   - People may be booked into the jail for violations of the conditions of their community supervision that are not by themselves a criminal offense (for example, missing appointments with the supervising officer or a positive drug screen).
   - On an average day, the jail held seven people admitted on probation/parole violations with no new charges, and their average length of stay was 18 days.

**Responsive strategies**

*Strategy 1 (a): Remove select low-level offenses from the municipal codes.*

When aiming to reduce admissions to jail, many counties start by increasing their use of citations in lieu of arrest. Stakeholders in Whatcom County reported, however, that law enforcement is already in the habit of using citations whenever possible, in part due to the booking restrictions in place at the jail. To provide law enforcement with another option in lieu of arrest, government and community stakeholders from the cities should identify low-level municipal offenses that could be decriminalized and reclassified as civil charges, like nuisance offenses. By removing certain low-level offenses from their criminal codes, municipalities within Whatcom County can safely reduce their jail use while continuing to hold people accountable.
Decriminalizing nuisance offenses in Philadelphia, Pennsylvania

Last year, Philadelphia decriminalized certain nuisance offenses, such as disorderly conduct, allowing police officers to issue a ticket with a fine instead of making an arrest. Converting low-level criminal violations to civil citations has the dual benefit of avoiding arrest and diverting cases completely from the criminal court system to civil courts. It is important with such efforts, however, to ensure that: (1) people who cannot afford fines do not end up incarcerated due to their failure to pay and have other options such as payment plans or community service; and (2) fines are not issued excessively to fund the local justice system.


b Alexandra Natapoff, "Misdemeanor Decriminalization," Vanderbilt Law Review 68, no. 4 (2015): 1055-1116. Many jurisdictions use the funds generated from fines and fees to fund the local criminal justice budget. This can create perverse incentives to increase or maintain a certain number of arrests or tickets, even when crime decreases. For example, the U.S. Department of Justice found officials in Ferguson, Missouri directed the police to increase law enforcement efforts specifically to increase revenue. See United States Department of Justice Civil Rights Division (DOJ), Investigation of the Ferguson Police Department (Washington, DC: DOJ, 2015), 9-15.

Strategy 1 (b): Expand the use of “book and release” practices, including from police stations.

“Book and release” is an intermediate step between citation in the field and full jail booking. Individuals are arrested and, when certain criteria are met, released on PR directly from either the jail or a police station. The process is particularly appropriate when an officer would typically issue a citation, but cannot determine the identity of the person in the field. The criteria often include the level or type of charge and the absence of any holds or warrants.

Book and Release in Milwaukee, Wisconsin

The Milwaukee Police Department recently developed a protocol allowing officers to bring people arrested on nonviolent misdemeanor charges to a police station for fingerprinting and a background check, a practice that was already in use in suburban police departments. Following a supervisor’s approval, people will be released from custody on personal recognizance with a citation and court date. These defendants will avoid the jail altogether, yet will still be held responsible for their alleged offenses.

In September 2017, Sheriff Elfo worked with judges to establish a policy in some of the lower courts of issuing book-and-release warrants when people facing certain misdemeanor and gross misdemeanor charges, primarily DWLS 3rd degree, fail to appear but do not have a prior history of failing to appear. This policy will allow jail staff to book and release people on PR after they are arrested on the FTA warrant. Building on these efforts, Whatcom County justice stakeholders should expand this policy, including charges that are driving FTA jail admissions—such as Theft 3rd degree and Criminal Trespass 2nd degree—and charges that are not in warrant status to allow for book and release on new misdemeanor and gross misdemeanor charges that drive admissions—such as Malicious Mischief 3rd degree.

The police departments should also explore whether they could book and release eligible people directly from their stations without taking them to the jail, and institutionalize any current informal practices by developing protocols for law enforcement officers when booking and releasing someone. To reduce the risk of FTAs for people who are booked and released, first appearance court dates that occur promptly, and court date reminders (see Strategy 3(c)), have been found to be effective.

**Strategy 1 (c): Facilitate opportunities for individuals to pay off fines associated with previous moving violations.**

To address the underlying causes of DWLS charges and admissions to the jail, Whatcom County can develop mechanisms for individuals to pay off fines and fees, including payment plans, and can explore opportunities to remove debt from collections agencies, eliminating unnecessary interest and fees. Many counties across Washington State have developed similar programs, which allow individuals to reinstate their licenses and drive legally as long as payments are made.

One challenge that has arisen in previous attempts in Whatcom County to address DWLS 3rd degree is that some people are not able to make payments even with this assistance due to obligations in multiple jurisdictions. To assist people with reinstating their licenses, the county should explore alternatives to payment, such as community service or work crew opportunities, and develop consistent criteria across all courts for accepting and rejecting requests for payment relief.

**Strategy 1 (d): Pursue opportunities to coordinate care between county agencies for people with behavioral health needs who come into contact with the justice system, in order to prevent jail admissions.**

Recognizing the need to better serve people with health needs and to divert them from the justice system, the Task Force’s Behavioral Health Ad Hoc Committee has proposed a program designed to improve care coordination for some people who frequently utilize the county’s justice and health systems. The Ground-level Response and Coordinated Engagement (GRACE) program seeks to stabilize people—primarily through case management, housing, and treatment—who are referred to the program through multiple
health and justice pathways. As the Task Force and GRACE leadership team continue to refine the programmatic design, they should:

- Define “high utilizers” as people who have had significant contact with law enforcement or are admitted to the jail with frequency, in order to impact the jail population. While heavy utilization of other local systems, like the health system, is an important consideration as well, to reduce the jail population, Whatcom County will need to identify individuals who rotate between the jail and other systems, linking them to services that stabilize and support them in the community rather than the jail.

- Develop a clear understanding of how people graduate from the program. In addition to outlining criteria for program eligibility, Whatcom County will need to design exit ramps from the program. The GRACE leadership team should have benchmarks for when someone ceases to be a frequent utilizer and a plan to transition them from the program.

- Connect people to legal services to support them with any criminal or civil charges they may have, as well as immigration challenges that may be preventing them from accessing services.

- Incorporate harm reduction principles into the GRACE program design. While some people who have substance use disorders and who are involved in GRACE will be prepared and ready to abstain from future drug use, some individuals will not and will continue to use substances. To ensure GRACE is inclusive of both categories of people, Whatcom County should build a program centered on reducing the negative consequences of drug use (such as social isolation, incarceration, overdose, and death). Providing access to clean syringes, medication-assisted treatment options, and naloxone—which can reverse opioid overdoses—are some of the ways GRACE can meet the needs of people with substance use disorders.

- Ensure participation is non-compulsory. If people are to be diverted from the justice system, any programmatic participation must be the decision of the individual alone and cannot have immediate justice consequences if they decide not to participate. Without this framework, GRACE runs the risk of being seen as a supervision mechanism, and could potentially lead to more justice involvement rather than less.

- Emphasize transparency to help people feel safe about their decision to participate. Continuing to include community members—especially people with behavioral health needs and prior justice involvement—in the planning and development of the GRACE program will help county leadership to design an effective program.

- Consider diversion opportunities for those who do not rise to the level of a “high utilizer” but whose substance use has brought them into contact with the justice system. For example, Law Enforcement Assisted Diversion (LEAD) programs—piloted in Seattle and replicated in jurisdictions across the country—allow officers to exercise discretion at the point of contact to
divert people to community-based, harm-reduction interventions for unlawful conduct—most commonly, drug possession, sales, and prostitution—that is driven by unmet behavioral health needs.\textsuperscript{44} In these programs, people suspected of engaging in drug possession and other low-level offenses are offered client-centered case management in lieu of being booked into jail, and are linked to community resources, including housing placement, medical care, legal advocacy, job training, mental health counseling, and treatment programs for chemical dependency.\textsuperscript{45} Preliminary evaluations of the Seattle LEAD program have found that participants were nearly 60 percent less likely to be arrested after enrollment than people who went through the traditional criminal justice process, and more likely to obtain stable housing and employment.\textsuperscript{46}

\textit{Strategy 1 (e): Establish a sobering center where law enforcement officers can bring people arrested on DUI and other charges related to substance use.}

As DUI charges—the most frequent criminal traffic charge resulting in a jail booking—almost always result in a custodial arrest, Whatcom County should develop a sobering center as an alternative option for people who are arrested on DUI charges and do not have a prior DUI conviction within 10 years or pending charges that would qualify as a prior offense on conviction.\textsuperscript{47} A sobering center is a safe environment other than a hospital or jail at which intoxicated people can sober up, and can offer an opportunity to connect individuals to longer-term treatment.\textsuperscript{48} Locating the center conveniently to allow access to both people who have not come into contact with law enforcement as well as law enforcement officers will increase its use and prevent jail admissions.

\textbf{Sobering centers to divert people arrested on DUIs}

Santa Barbara, California established the Santa Barbara Community Sobering Center as an alternative to jail for people “detained for being intoxicated in public and driving under the influence of alcohol within city limits.” The center, run by a local nonprofit called Threshold to Recovery, is open 24 hours and holds people for a minimum of four hours. Both police and hospital staff can refer people to the center. While the sobering center allows people to avoid booking into jail, it does not mean people are free from a citation or, when necessary, prosecution. Evaluations of sobering centers have been positive, and a 2005 report found the Santa Barbara initiative saved the county $47,400 in a one-year period. A study of a similar sobering center in Grand Rapids, Michigan found the center saved taxpayers more than $280,000 annually.\textsuperscript{8}

\textsuperscript{8} To learn more about county sobering centers, see Santa Barbara County Grand Jury, \textit{A Sobering Thought: The Santa Barbara Community Sobering Center—An Alternative to Jail} (Santa Barbara, CA: Santa Barbara County, 2005), B2-3; and Marin County Civil Grand Jury, \textit{A Sobering Center In Marin: One Small Step in Solving a Big Problem} (Marin County, CA: County of Marin, 2013), 3-4.
Strategy 1 (f): Equip law enforcement officers throughout the county with the tools needed to de-escalate and divert people experiencing behavioral health crises.

Law enforcement officers frequently come into contact with people who have mental health needs, and many of those people end up in the jail because officers have limited resources to respond to people in crisis. In order to divert people in crisis from the justice system effectively, it is important that police officers know how to de-escalate crises and understand the service landscape in Whatcom County. To support law enforcement in those efforts, Whatcom County should:

- **Increase the availability of Crisis Prevention and Intervention Teams (CPIT)—**community-based outreach teams that are trained to respond to behavioral health crises—to law enforcement. The Bellingham Police Department reported CPIT is a helpful resource to its officers, but is not available on a regular or consistent basis. Ensuring officers know about CPIT is also critical. Furthermore, CPIT should be available to other municipalities throughout Whatcom County as well as the Lummi Nation and the sheriff’s office.

- **Expand the use of a mental health liaison beyond the Bellingham Police Department.** The Bellingham Police Department has a mental health liaison who is available five days a week to work with officers responding to people in crisis and assess whether these individuals have needs that can be addressed in the community. This co-responder approach allows people in crisis to be connected with services rather than arrested and brought to the jail. Replicating this model at other law enforcement agencies, especially the sheriff’s office, is an important tool to reduce the jail population.

  **Co-responder models**

Some departments deploy officers paired with a behavioral health specialist to respond to crises. Milwaukee’s Crisis Assessment Response Team (CART) can be requested through the Milwaukee Police Department’s dispatch or through the county’s Behavioral Health Division Crisis Line. Teams consisting of officers and a medical or behavioral health clinician are deployed to assess whether individuals in crisis can be diverted to community resources. On average, teams are able to divert people to community-based supports and resources in 85 percent of cases. One assessment found CART intervention also decreased emergency room admissions in the county by 50 percent between 2011 and 2017.¹

¹ To learn about Milwaukee’s CART program, see Milwaukee Police Department (MPD), *Milwaukee Police Department Crisis Intervention Services* (Milwaukee, WI: MPD, 2013); and Chris Abele, “Milwaukee County’s Approach to Mental Health Reform is a National Success Story,” *Milwaukee Courier*, February 18, 2017.
- Train officers on crisis intervention. Originally developed in Memphis, Tennessee, Crisis Intervention Team (CIT) training is a law enforcement-based model of de-escalation for individuals experiencing mental health crises, allowing officers to direct those in crisis toward appropriate services.\textsuperscript{49} CIT is recognized both nationally and internationally as a best practice for law enforcement.\textsuperscript{50} Studies have found a lack of CIT training among officers increases the risk of harm to mentally ill people during law enforcement interactions.\textsuperscript{51} Additionally, CIT provides the opportunity for behavioral health providers and officers to share knowledge; has been proven to increase officers' confidence in their ability to intervene; and has resulted in a reduced number of arrests, admissions to jail, and fatalities.\textsuperscript{52} The Bellingham Police Department began the initial eight-hour core CIT training for officers in 2014, with the plan to have all officers complete the full 32 hours of training by 2018.\textsuperscript{53} The sheriff's office has requested funding to establish a CIT unit, on a pilot basis, staffed with officers who have advanced training in de-escalating crises and connecting people experiencing crises to behavioral health services. Opportunities for law enforcement agencies throughout Whatcom County to receive CIT and de-escalation training will likely strengthen the county's ability to move people in crisis toward behavioral health resources in the community and away from the jail.

\textit{Strategy 1 (g): Develop mechanisms to prevent jail admissions for technical violations of supervision in the community.}

Whatcom County can reduce the jail population by decreasing the number of people who are admitted for violations of the terms of their supervision in the community. While some violations may be more serious in nature, others are likely technical violations. Whatcom County District Court Probation is working to establish evidence-based policies and to institutionalize procedures that provide alternatives to jail incarceration for people on local probation who commit technical violations. Staff should continue to build on those efforts and conduct further data analysis to determine factors driving violations. In addition, the county should consider making probation available to a greater number of people, including, for example, through expanded use of "felony drop down," which provides the opportunity to plead to a gross misdemeanor instead of a felony, allowing the individual to be supervised by District Court Probation in lieu of incarceration.

A portion of bookings for community supervision violations are for violations of DOC supervision. Although Whatcom County stakeholders cannot change state policy, they can advocate for reform with their state partners.

Responses to community supervision violations should emphasize reconnecting people with their supervising officers when they miss appointments rather than relying on arrest and incarceration, and can offer opportunities to identify underlying challenges that may have contributed to violation (such as
challenges with transportation to and from appointments or childcare needs). This shift in focus away from detention can encourage people who pose little risk to public safety to reengage in their case plans.

Reducing warrants for technical violations in Santa Cruz, California
In California, the Santa Cruz County Probation Department partners with a local nonprofit, Friends Outside, to help low- and moderate-risk individuals who miss probation appointments reconnect with their probation officers. The Warrant Reduction Advocacy Project (WRAP) allows Friends Outside staff and volunteers to contact individuals under supervision and encourage them to check in with their probation officers. If a person reschedules a missed appointment within 30 days, no warrant is issued for the technical violation. WRAP also offers case management and resource referrals for people who need extra support. In 2014, a conservative estimate projected the warrants averted through WRAP saved 2,260 jail bed days during the 2013-14 fiscal year (using a 30-day average length of stay per individual), which translated to a reduction of six jail beds on any given day.a

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a Santa Cruz County Probation Department—Adult Division (SCPD), Jail Alternatives Annual Report-2013 (Santa Cruz, CA: SCPD, 2013), 9.

2. Curtail the number of new and outstanding warrants for lower-level charges.

**Key findings and challenges**

1. Arrests on warrants are contributing significantly to the number of bookings into the Whatcom County jail.
   - Fifty-three percent of gross misdemeanor bookings had outstanding warrants, as did 75 percent of misdemeanor bookings, and 40 percent of criminal traffic bookings.
   - The overall percentage of criminal traffic bookings with warrants (40 percent) includes bookings with DUI charges, which almost always result in custodial arrest, regardless of whether the individual has outstanding warrants. If DUI bookings are excluded, then 73 percent of the remaining criminal traffic bookings had outstanding warrants.
   - For people booked into the jail more than once, 73 percent of the bookings after their first booking had warrants.
   - Ninety percent of the bookings into the jail on DWLS 3rd degree with no other charges involved a warrant.

- Two of the top five gross misdemeanor charges that resulted in a booking into the jail involved an arrest for an FTA warrant; and one of the top five misdemeanor charges that resulted in a booking into the jail involved an arrest for an FTA warrant.

3. People with warrants consume more than half of pretrial jail beds on an average day.
   - Fifty-five percent of the average daily pretrial population had warrants at the time they were booked into the jail.

**Responsive strategies**

Warrants can lead to jail population challenges because they require law enforcement to make an arrest, driving up admissions to local jails. When a warrant is issued, any future contact with law enforcement will result in a person’s arrest—even if this contact is unrelated to new criminal activity. Warrants therefore prevent law enforcement from utilizing pre-arrest and pre-booking deflection opportunities and limit their ability to issue citations. In addition to increasing admissions, warrants can lengthen the time people spend in jail due to case processing delays, particularly when warrants and new charges have to be addressed in different courts.

There are numerous ways the quantity of outstanding warrants can be reduced while maintaining public safety, thereby decreasing the number of people who enter the jail. The recommendations below begin, however, with trying to get a better understanding of the warrants themselves—from which court or agency they originate, for what charges, the reason for issuance, etc.—in order to best target the county’s response.

*Strategy 2 (a): Analyze warrant data to understand the scope of the problem and to target responses appropriately.*

Examining data from all the courts regarding warrants will allow the county to determine the number, nature, and age of outstanding warrants. Attention should also be paid to how warrants and new charges are resolved, and how those processes impact case processing times in order to identify opportunities for streamlining case processing. Once these questions are answered, Whatcom County can develop strategies that reduce the number of new and outstanding warrants while maintaining public safety.

*Strategy 2 (b): Implement policies and practices that will reduce the number of bench warrants issued for FTAs.*

To reduce the number of bench warrants for FTAs, Whatcom County will need to reduce the overall number of FTAs. See Strategy 3 (c) for suggestions on how to reduce FTAs.
Strategy 2 (c): Increase opportunities for people to resolve outstanding warrants.
As the county analyzes its data, it may discover that a large number of outstanding warrants—perhaps from many years prior—are for underlying charges or violations that pose relatively little public safety risk (such as outstanding fines for motor vehicle violations, or failure to appear on public nuisance charges). Many jurisdictions have chosen simply to clear these warrants to get rid of backlogs, or to host warrant resolution events where people can clear outstanding warrants without fear of arrest. In some jurisdictions, court is held in places other than the courthouse—locations where people with these types of warrants live or work—or court hours are extended so people who are not available during normal operating hours have the opportunity to resolve their cases. The King County District Court issued an order that allows court clerks to quash warrants when an individual who has missed a court date requests a hearing. Quashing the warrant prevents the individual from being arrested on the warrant while awaiting the requested hearing. Some of the municipal courts in Whatcom County have adopted this practice, and the remaining courts of limited jurisdiction should do so as well.
Warrant clearing events to reduce backlogs of outstanding warrants

Three cities offer examples of how to reduce backlogs by hosting warrant clearing events.

- Spokane, Washington hosts “WarrantFest,” a periodic event that allows people who have outstanding warrants in the Spokane Municipal Court to schedule a new court date and have eligible warrants recalled. A judge, court clerk, prosecutor, and public defender travel to multiple locations throughout the city, with an emphasis on reaching transient communities, and reschedule hearings within a week’s timeframe for individuals with outstanding FTA warrants.

- The Atlanta Municipal Court held a “warrant amnesty” period between April and May 2017. This program allowed eligible individuals, who would otherwise face arrest or other penalties, to resolve their outstanding cases and reduce the amount owed in fines and fees. The initiative was only open to people with FTAs, which may have resulted from outstanding traffic tickets or city ordinance or misdemeanor violations.

- Since 2015, the district attorney’s office in Brooklyn, New York has held five “Begin Again” events where people can resolve outstanding summonses and bench warrants. Hosted in different community churches throughout Brooklyn, defendants first meet with a representative from the public defender’s office and then enter a makeshift courtroom with a judge, prosecutor, and police officer. The events have cleared 1,700 warrants with no arrests made.

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3. Create a pretrial release process that is individualized and based on data-driven risk assessment to reduce unnecessary pretrial detention.

Key findings and challenges

1. The majority of people incarcerated in the Whatcom County jail are held pretrial.

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Almost 60 percent of the people detained in the jail on an average day in 2016 were held pretrial. Of the average daily pretrial population, 22 percent was detained on non-felony charges, 11 percent was detained on felony drug charges, and 66 percent was detained on other felony charges.

2. In Whatcom County, pretrial release is often determined by a person’s ability to pay financial bail.
   - A financial bond amount is set on most people who are booked into the jail. Of the people without holds who were released from the jail in 2016, at least 67 percent had been assessed bail; just eight percent were released on PR without a bond amount having been set.
   - Of those assessed bail, 44 percent were released after posting bail, 37 percent remained in jail until the disposition of their cases, and 19 percent were eventually released on PR.
   - In Washington, when someone is arrested, a judicial determination of probable cause must be made within 48 hours—unless made prior to arrest—or that person must be released from custody. Most people appear before a judicial officer the day after they are booked into the Whatcom County jail; although, those arrested and brought to the jail for some non-felony offenses can bond out immediately without appearing before a judicial officer by posting the bond amount set by a bond schedule.
   - If a person is arrested and booked on a Friday or over the weekend, the county prosecutor and a rotating judge conduct probable cause hearings over the phone, without the individual or defense counsel present. The person can then bond out by posting the amount set by the judge. In Whatcom County Superior Court, people charged with a felony who are in custody have a first appearance on the first court day after arrest. The prosecutor makes a recommendation regarding bail and the conditions of release, and defense counsel can counter. An arraignment date must be set within 14 days of first appearance. In Whatcom County District and Bellingham Municipal Courts, first appearances and arraignments are combined. The person is advised of the charges, bail is addressed, and pleas of guilty or not guilty are taken. In the smaller municipalities, public defenders are typically not available until after arraignment, although the court may accept a guilty plea at arraignment after advising the person of potential negative implications of the plea.

3. Even low bond amounts are too high for many people.
   - Thirty-four percent of people assessed bond amounts of $500 or less remained in jail prior to the resolution of their cases. Seventy-three percent of them had non-felony charges. People with bail amounts of $500 or less spent, on average, a week in jail.
4. Washington State Court Criminal Rule 3.2 provides for non-financial conditions of release. These options are underutilized in Whatcom County.

- In keeping with constitutional principles of due process and safeguards against excessive bail, Rule 3.2 establishes a presumption of pretrial release on personal recognizance (PR) in all but capital cases, unless the court determines recognizance will not ensure a person’s appearance, or it is likely the person will commit a violent crime, seek to intimidate witnesses, or “unlawfully interfere with the administration of justice.” As mentioned above, only eight percent of releases from the jail in 2016 were releases on PR without a bond amount having been set.

- Rule 3.2 mandates that after making an individualized release determination based on relevant factors, courts impose the least restrictive conditions that will reasonably ensure a person’s appearance in court, and may impose listed conditions on a finding of substantial danger. Non-financial conditions include unsecured bonds and pretrial supervision, but the courts in Whatcom County do not use unsecured bonds, and pretrial services are not available to people in superior court. Currently, on any given day, Whatcom County District Court Probation supervises approximately 200 people whom a district court judge has released pretrial, and 100 people whom five of the municipal courts have released.54

**Responsive strategies**

Whatcom County, like many jurisdictions, has relied on financial bail to ensure that people appear for court and do not commit crimes while in the community awaiting case resolution. This means that individuals’ ability to pay bail often determines whether they remain in jail, rather than their risk for failure to appear (FTA) or to public safety. Jurisdictions around the country are moving away from this approach because it is not supported by research.

Assessing a financial bond is not necessary to prevent people from failing to appear in court or committing offenses while in the community on pretrial release (known as the public safety rate). For example, a key study of Colorado counties found after release on an unsecured bond—which does not require individuals to deposit any money, but holds them liable for the full amount if they FTA—people did not have statistically significant different FTA rates or public safety outcomes as compared to those released on secured bonds (cash bonds and commercial bail bonds).55 People with secured bonds did, however, have significantly longer lengths of stay in jail before securing release than did those with unsecured bonds.56

Research suggests that rather than improving public safety, detaining people who pose low or moderate risk to the community—even for just two to three days—makes them more likely to commit new offenses, and that this result holds not only while their cases are pending, but also years later.57 A 2013 study of pretrial individuals in the state of Kentucky found that when held in jail for two to three days,
low-risk people were almost 40 percent more likely to commit new crimes than equivalent people (in terms of criminal history, charge, background, and demographics) held no more than 24 hours, both while their cases were pending and within two years after completion of their cases. These negative outcomes can become worse the longer people are held in custody pretrial. Holding people in jail can disrupt employment, housing, education, caregiving for children, and any community-based treatment or services in which they may have been engaged, leaving them destabilized on their release.

Nor does jail incarceration necessarily reflect the outcome desired by victims and survivors of crime. While some may want a punitive criminal justice response, many do not. A national survey of victims on safety and justice concluded that “the overwhelming majority of crime victims believe that the criminal justice system relies too heavily on incarceration, and strongly prefer investments in prevention and treatment to more spending on prisons and jails.” Crime victims preferred investments in mental health treatment and substance use treatment over prisons and jails by a seven-to-one and a four-to-one margin, respectively.

Pretrial justice systems grounded in financial bail have also been shown to result in greater costs for jurisdictions than risk-based systems. A recent study compares financial and risk-based pretrial systems using three-and-a-half years of criminal case data from two counties in Texas. Tarrant County determines pretrial release almost exclusively by means of financial bond, while Travis County uses a validated risk assessment tool to identify lower-risk people for release without financial requirements. In Travis County, total pretrial costs were 30 percent lower due to a decrease in the inappropriate release of people assessed as high-risk—and a concomitant decrease in new criminal activity, coupled with an increase in the release of low-risk individuals on PR with shorter detention periods following arrest. Victim costs, case processing costs, and detention costs were all higher in Tarrant County. Risk-based practices allow system actors to allocate criminal justice resources effectively by identifying which people can be released safely from jail with little oversight or with moderate supervision, and conserving resources for more intensive supervision of those identified as high risk.

Whatcom County should shift from a cash-based to risk-based pretrial justice system that provides for individualized release decisions informed by a validated risk assessment instrument and a range of pretrial release and supervision options. This is considered best practice in the field. The Task Force has already begun exploring ways to adopt evidence-based pretrial practices and should continue toward implementation of policies that support risk-based decision making and reduce the justice system’s harmful reliance on cash bail. Although the shift requires long-term commitment and reallocation of local resources, there are more immediate steps Whatcom County can take to mitigate the negative consequences of a system based on financial bail.
Short-term Strategies

Strategy 3 (a): Ensure defense counsel is present at all bail determinations.
Public defenders should be present for weekend probable cause hearings between the county prosecutor and judicial officers, and at all municipal court first appearances and arraignments. When present, counsel can help to secure appropriate pretrial release by providing additional, relevant context about the individual. The presence of defense counsel at bail hearings has been shown to reduce jails' ADP by increasing pretrial release, due to greater use of release on PR and lower bond amounts, and thereby shortening people's LOS. In a study in Baltimore, making counsel available at bail hearings contributed to a decrease in the jail population from 50 percent above capacity to 20 percent below capacity over the course of nine months.64 Individuals who had representation at their bail hearings were more than 2.5 times more likely to be released on PR and almost twice as likely to be released on the day of arrest as compared to those who were not represented.65

Moreover, representation at arraignments in the smaller municipal courts would ensure that people who wish to enter a guilty plea have the assistance of counsel at this critical stage. The Sixth Amendment right to counsel attaches at a person's initial appearance before a judicial officer and, once that right attaches, he or she is entitled to counsel during any "critical stage"—those court events that "amount to 'trial-like confrontations,' at which counsel would help the accused 'in coping with legal problems or meeting [the] adversary."66

Strategy 3 (b): Develop a policy for early and meaningful bail review.
People sometimes wait in jail for up to two weeks before a judge reviews the bond amount initially set. In superior and district courts, for example, there is just one motion calendar per week, at which judges will review bail and release conditions. Stakeholders identified this as a challenge because people remain in jail awaiting bail review until the next motion calendar. In some cases, a person must wait two weeks because there is delay in defense counsel receiving the case file and counsel misses the deadline for filing a motion.
To ensure that people who could be safely released do not remain in jail due to inability to afford financial bail, the courts in Whatcom County should take steps to institutionalize bond review processes. In some jurisdictions, pretrial services or other court staff identify individuals with low bond amounts who are still detained a certain number of days after first appearance—typically five to seven—and share this list with the public defenders’ office sufficiently ahead of the time needed to file a motion to request a review. In others, courts have a policy requiring an automatic hearing on bail for anyone charged with a misdemeanor or nonviolent felony who has not posted bail after a set number of days.

**Early bail review hearings in Philadelphia, Pennsylvania**

In July 2016, Philadelphia’s Municipal Court, in collaboration with the Defender Association and the District Attorney’s Office, started conducting early bail review hearings within five days for people in jail on nonviolent charges who have bail amounts of $50,000 or less and no other holds. Since the program started, 84 percent of those who received a hearing were granted release and, of those, 90 percent appeared at their next court dates.

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Strategy 3 (c): Implement a court date reminder system to allow for greater use of release on personal recognizance.

Currently, there is no systematic way of reminding people who are not detained in jail pretrial of upcoming court dates. In many cases, defense counsel will remind clients, or district court probation will notify those under pretrial supervision of upcoming court appearances, but the courts lack a consistent means of reminding all out-of-custody individuals of upcoming court dates. As the courts increase the use of non-financial pretrial release options, implementing a court date reminder system will help to keep FTA rates low. In particular, research has shown that people assessed as low-risk can be released to the community with supervision limited to calls or text reminders of upcoming court dates. A reminder system would replace the practice of setting low bond amounts on low-risk individuals, in keeping with the principles set forth in Rule 3.2. Moreover, actively preventing FTAs has the added benefit of reducing workloads related to warrants for judges, court staff, law enforcement, attorneys, and jail staff; and mitigates tangible and intangible costs for victims, witnesses, and people charged with crimes.
Court date notification systems to reduce failure to appear

Counties that have adopted court date reminder systems have seen a significant FTA reduction. In a pilot program in Jefferson County, Colorado (which was designed to replicate programs in King County and Seattle Municipal Courts, where FTA rates had declined 60 percent), court staff contacted people scheduled for upcoming court appearances. The result was a 43 percent reduction in the FTA rate. When the live caller left a message or was able to speak with the individual directly, the appearance rate rose from an overall rate of 79 percent to 87 and 92 percent, respectively.\(^a\) Court staff also began notifying people one day after an FTA that a warrant was issued, and the percentage of people who returned to court on their own initiative within five business days increased from 10 to 50 percent.\(^b\) Multnomah County, Oregon uses the Court Appearance Notification System (CANS), an automated calling system, and has reported an overall decrease in FTAs of 37 percent with the target population.\(^c\) Other counties use email and text-based notification systems.\(^d\)

\(^a\) Timothy R. Schnacke et al., "Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program," *Court Review: The Journal of the American Judges Association* 48, no. 3 (2012): 86-95.

\(^b\) Ibid. at 89-90.

\(^c\) Ibid. at 88.

\(^d\) For example, the City of Spokane Municipal Court provides courtesy text reminders to people who opt in for the service. See Municipal Court of the City of Spokane, Washington, *Authorization for Court to Transmit Courtesy Text Reminders* (Spokane, WA: Municipal Court, 2016).

Long-term strategies

*Strategy 3 (d): Adopt and validate a data-driven pretrial risk assessment instrument.*

Pretrial risk assessment tools that have been validated—meaning that the tool has been determined to be predictive with the local population—provide judicial officers with more accurate estimates of an individual’s risk of FTA and of committing a crime while the case is pending.\(^6^9\) Actuarial (or data-driven) risk models tend to outperform unaided judgments of individual practitioners in assessing risk accurately.\(^7^0\) A growing body of research suggests, for example, that high-quality risk assessment determines risk for future crime more accurately than professional judgment alone.\(^7^1\) Not meant to replace professional judgment, formal risk assessment tools can assist justice system actors in making more informed decisions.

When a jurisdiction plans to adopt a risk assessment tool, stakeholders must take several additional steps. Training for all impacted staff on the tool and how to use it is critical. The tool will not work as intended if judicial officers, attorneys, pretrial staff, and court staff are not properly trained and refreshed on an ongoing basis. Stakeholders should put in place quality assurance processes to ensure fidelity with the tool, including tracking performance measures such as the rate at which both pretrial and judicial

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officers follow or deviate from the tool’s recommendation (known as concurrence rates), release rates, appearance rates, and public safety rates. Additionally, stakeholders should consider developing guidelines or a decision making framework to assist judicial officers in determining whether to release someone pretrial and what level of supervision is warranted in an individual case based on the risk assessment. Once the risk assessment tool has been in use for some period of time, jurisdictions should partner with experienced quantitative researchers to conduct a validation study, which ensures that the tool is working appropriately and as anticipated, and not introducing any disparities into pretrial decision making.

**Strategy 3 (c): Establish a regional pretrial services program to serve all Whatcom County courts.**

When assessed using a validated pretrial risk assessment instrument, individuals’ scores will range from very low-risk to high-risk. Whatcom County will then need a range of options to respond appropriately to each category of risk. National organizations—such as the American Bar Association, National Association of Pretrial Services Agencies, and the National Association of Counties—recommend that *every jurisdiction* in the country establish a pretrial services program. This is to assess risks to public safety and for FTA, make release recommendations to judicial officers based on that assessment, offer a range of release options, supervise people, and ensure compliance with pretrial release conditions. These programs are the most effective way to ensure people appear for all court hearings and do not engage in illegal activity while in the community awaiting resolution of their cases.

Individuals who are assessed to be low risk can be released to the community with limited supervision—reminders for upcoming court dates are generally sufficient. Those who present moderate risk will be more successful in the community with oversight by pretrial services matched to level of risk. This includes phone and in-person check-ins, as well as voluntary linkages to services. Release conditions that include alternatives to pretrial detention, such as electronic monitoring and intensive programming or treatment, should be used only sparingly and with higher-risk people because they generally increase pretrial failure rates for lower-risk people. It is important to remember that participants in pretrial programming are legally presumed innocent, and efforts to link them to mandatory services must account for this reality. To maximize participation in a pretrial services program, jurisdictions should avoid charging fees. A pretrial program’s net cost or savings depends on the extent to which it serves people who otherwise would have remained in jail.

Pretrial services officers in many jurisdictions also conduct indigence assessments, which can help to ensure assignment of counsel at the earliest stage of a case. They assist with making sure people—both those released on recognizance and those under supervision—appear for court with reminders and, in some cases, transportation, such as free bus passes. When a person does miss a court date, pretrial officers can follow up and work to return that individual to court as soon as possible. By using graduated sanctions like more frequent check-ins—and positive incentives, like less intensive supervision—pretrial programs serve to improve people’s chances of completing pretrial supervision successfully. Finally,
many pretrial programs help to facilitate early and efficient diversion by identifying appropriate candidates at the very beginning of a case, based on risk assessment, and provide supervision for those who are diverted.78

4. Develop a caseflow management plan to reduce time to disposition and shorten people’s length of stay in jail.

**Key findings and challenges**

1. The Whatcom County Superior and District Courts and the Bellingham Municipal Court are not meeting state and national model time standards for case processing.
   - While Washington recommends courts resolve 100 percent of felony cases within nine months, and the National Center for State Courts (NCSC) recommends 98 percent within one year, the superior court resolves 84 percent of felony cases within one year.
   - Washington State and NCSC recommend courts resolve 98 percent of misdemeanor cases within six months; Whatcom County District and Bellingham Municipal Courts each resolve 73 percent of misdemeanor cases within six months.

2. While limitations to available Whatcom County and Bellingham Municipal Court data prevented a thorough case processing analysis, members of the Task Force consistently expressed that case processing delays, such as the routine use of continuances, extend the time it takes for cases to reach disposition.

3. People with cases in multiple courts are detained longer in jail on average.
   - People with cases only in superior court spent an average of 27 days in jail and accounted for 96 people in the average daily population, while people with cases in the superior court and at least one other court remained in jail an average of 56 days and accounted for 131 people in jail on an average day.

**Responsive strategies**

Unlike other decision points that focus on a particular moment in a criminal court proceeding, the processing of a case encompasses its entire adjudication, from initial appearance through disposition and sentencing. Given the large proportion of people held in jail pending the resolution of their cases, the pace at which cases proceed through the courts directly impacts the jail population. Despite laws meant to guarantee people a speedy trial, postponements or continuances occur regularly.79 Cases are postponed or continued for a host of reasons, including lack of readiness, logistical challenges, and tactical use of delay. These delays in justice can impact all parties—victims of crime and their families, who are waiting for closure; prosecutors and their cases, which become more difficult to prove as time goes on and memories
fade; and those accused of crimes, who must keep coming back to court or who remain in jail while their cases are pending.⁸⁶

According to the NCSC, court control of case processing—or "caseflow management"—"promote[s] quality of justice, timeliness, and avoidance of wasted resources," particularly with felony cases.⁸⁷ Though the judiciary must lead the way in reducing case processing delays, all justice agencies have a role to play. Prosecutors, for example, can turn discovery information over to the defense soon after they obtain it and make better and earlier plea offers and diversion decisions, and defense attorneys can engage in earlier plea negotiations in earnest.

**Strategy 4 (a): Collaboratively, Whatcom County justice system agencies can develop a plan to ensure efficient and fair caseflow management.**

To evaluate the effectiveness of caseflow management efforts, jurisdictions should first establish case processing time standards. These standards should not be based on the most complex cases and should be aspirational—not reflective of the current situation. Systems can establish both overall case processing time standards and intermediate case event time standards. Adopting case processing standards demonstrates a justice system's commitment to timely case resolution.⁸⁸

In an effort to unify various national time standards from case filing to resolution for state trial courts, NCSC developed the Model Time Standards cited in the Data Findings section above.⁸⁹ The National Association for Court Management (NACM), the Conference of Chief Justices, the Conference of State Court Administrators, and the American Bar Association have all endorsed the NCSC Standards. When NCSC adopted its standards, the Washington Court Management Council had in place its own more ambitious set of advisory time standards for case filing to resolution.⁹⁰ All courts in Whatcom County should monitor their compliance with, and strive to adhere to, the NCSC Model Standards, if not the state’s advisory time standards.

Vera's qualitative and quantitative data analyses revealed delays in case processing in Whatcom County, which may keep people in the jail longer than necessary. To reduce delays, system stakeholders should develop a caseflow management plan that establishes internal processes and measures to facilitate timely and fair disposition, standards for intermediate court events, and performance monitoring, and adjust the plan as needed.⁹¹ High-performing courts follow the basic principles of giving every case individual attention, treating cases proportionately, and exercising judicial control over the legal process.⁹² The following recommendations flow from those principles:

- **Exercise early court involvement and continuing control.** Early control enables the court to monitor progress as soon as a case is filed and at certain intervals to ensure the case is progressing in line with established time standards.⁹³ In cooperation with the attorneys, beginning at the earliest appearance, involvement allows judges to encourage resolution of cases
as early as reasonable without sacrificing any party's rights and to establish a realistic schedule for key pretrial events, such as completion of motions, discovery, and plea negotiations, to minimize unnecessary delay. Early case screening with the prosecution and defense counsel can also facilitate earlier determinations of indigency, whether the defendant has mental health challenges, and whether the case can be resolved by an early plea or referred to a diversion program or problem-solving court. Court management of court events should continue after disposition to ensure timely sentencing and to control the pace of post-sentence events, such as those relating to probation violations and post-conviction review.86

- **Treat cases proportionately.** High-performing courts use “differentiated case management.”99 This means screening cases upfront for their level of complexity and priority needed—distinguishing those that are likely to go to trial, those that pose complex discovery issues, and those that may be appropriate for diversion—and allocating time, court resources, and proceedings accordingly.90 The least complex cases should be fast-tracked for rapid disposition, and more complex cases have a separate track with different intermediate time standards.

- **Establish a practice of “meaningful court events.”** NCSC recommends that courts make deliberate efforts to create and maintain the expectation that case processing events will occur as scheduled and will contribute significantly toward case resolution. When court events do not occur as scheduled or do not serve to move the case forward, respect for the judicial process erodes, and participants are less likely to appear or prepare for future hearings.92 A fundamental principle of caseflow management is that cases are not interrupted without good cause once initiated.92 The practice of ensuring that court events are meaningful includes encouraging the parties to reach a plea agreement, but also setting a firm trial date when there is no agreement and balancing the need for reasonable time to prepare with the need to resolve cases promptly.93

- **Apply a continuance policy with reasonable consistency.** The NACM recommends courts have a strict written policy to limit continuances.94 To help enforce the policy, courts should actively encourage hearing readiness, reprimand attorneys for lack of preparation, and limit the length of continuances.95 Each continuance should have a purpose, and courts should hold attorneys accountable for completing tasks between appearances.96 Generally, appearances should be reset for the soonest date possible to complete the necessary tasks, with an established upper limit on the number of days allowed—such as 30—and fewer days allowed at the very beginning and end of cases (prior to sentencing).97 Courts should monitor continuances closely, tracking: (a) the type of event continued; (b) the party making the request; and (c) the reason for granting the request.98

**Strategy 4 (b): Develop and track case processing performance measures.** High-performing court systems increasingly rely on performance measurement—collecting, analyzing, and reporting on performance data—to inform system leaders and managers about how internal
operations are functioning and to drive court success. Performance measurement also builds public trust and confidence in the courts' use of public resources. NCSC has a performance measurement program called CourTools, which many courts have used to develop quality performance measures.

As mentioned above, court systems can track overall measures—such as filing to disposition time, the number of cases pending (also broken down by court and by judge), and the number of cases beyond the time standard (the backlog)—and interim measures—such as time to gather discovery, number of appearances per case, time between court events, and continuances. Attention should be paid to how these measures compare for people who are in custody versus out of custody.

Tracking these measures can pinpoint causes of delay and suggest solutions by answering questions such as: how many appearances per case would there be if continuances were reduced or eliminated, and how would that impact case processing times? To supplement the quantitative data analysis, stakeholders can conduct reviews of case files to shed light on practices and procedures, and to set a direction for further analysis of the administrative data.

5. Create oversight and accountability mechanisms to ensure successful and sustained jail population reduction.

Key findings and challenges

1. Whatcom County stakeholders have not yet come to consensus about who should be in the jail, and who can be safely managed in the community.
   - The system-mapping exercise facilitated by Vera, along with follow-up discussions with key stakeholders, revealed that there are competing ideas about how the local justice system is currently functioning. These inconsistencies were never resolved, indicating an ongoing need for collaboration and communication among justice system actors in Whatcom County.
   - Past attempts to address jail overcrowding have resulted in differing solutions and tension between city and county agencies—and have not resulted in jail population reductions.

2. Whatcom County established a Law and Justice Council in 2000 as required by Washington State law, but it no longer meets.

3. Challenges with data collection, extraction, sharing, and analysis have limited Whatcom County's ability to rely on systemic data to inform decision making.
   - Data concerning race and ethnicity are not collected consistently across agencies, making analysis difficult.
Responsive strategies
The following recommendations support the implementation of responsive strategies and ensure the overall sustainability of efforts to prevent and reduce incarceration.

Strategy 5 (a): Reconvene a Law and Justice Council and institutionalize the Council with regular meetings, sufficient staffing, and research capacity.
Many counties have convened standing multi-agency bodies, most commonly referred to as criminal justice coordinating councils (CJCCs) to guide justice system reforms, coordinate responses to agreed-upon challenges, and oversee implementation. CJCCs meet regularly, monitor local justice operations, collect data, track performance measures, and set budget priorities to address systemic challenges. These councils are meant to be permanent and ongoing advisory boards that both resolve issues as they arise and manage the local justice system’s collective workload on an ongoing basis. A permanent, full-time staff that can provide administrative and planning support to CJCC members is essential to a successful CJCC. Other staffing considerations can include:

- the capability to fundraise, including the ability to write grants;
- an understanding of data, research methods, and cross-system data matching; and
- comprehensive knowledge of best practices and data-driven decision making.

Strategy 5 (b): Report and publish data regularly to ensure transparency and accountability.
Regularly reporting on key justice system trends and benchmarks is critical to achieving the accountability that leads to public confidence in the justice system. Either through a CJCC or independently, local justice system agencies should establish performance measures and develop mechanisms to report their key data points to the public.

Whatcom County criminal justice agencies such as the police, jail, and courts collect abundant data, but have limited capacity for extraction and analysis. There appears to be little sharing of data between these agencies or communication between computer systems. Key data elements that are necessary for matching records across systems, such as case numbers, are input inconsistently. The CJCC could become a place for coordinating sharing and analysis of data, either with its own research staff or in partnership with a local university. Additionally, the CJCC or partners could identify inconsistencies in data entry between agencies and establish standards to ensure accuracy in reporting.

Vera also recommends focus groups to allow for people who have experienced the local justice system and jail directly—or who have a loved one with direct experience—to provide their perspectives on which system practices currently work well and which do not, and their suggestions for improvements. Such research should be conducted by professional researchers with qualitative research experience.
Strategy 5 (c): Collect data regarding race, ethnicity, and gender at all system points.

Vera's analysis showed substantial disparities for people of color in jail bookings and in the average daily population. Because pathways into jail are complex, this analysis did not determine particular causes for disparities. The county should take on this challenge and continue to monitor disparities to determine if reforms are reducing or increasing them. Data inquiries should examine disparities both across racial and ethnic groups and by gender. The analysis should include, but not be limited to:

- law enforcement records to determine if similar infractions are met with similar responses (citations, arrests, or bookings);
- booking data to build a more nuanced understanding of the possible causes for disproportionate admissions into jail;
- bond amounts and individuals' abilities to post bail—and to post bail quickly—to determine if bail contributes to fewer releases and longer stays for people of color;
- charging and sentencing data to determine if similar infractions are met with similar responses (dismissal, diversion, prosecution, or custodial versus community sentences); and
- associations between bookings and indicators of behavioral health needs to determine where needs are not being met and greater outreach may be warranted.

To improve practices regarding the collection of data on race, ethnicity, and gender, Whatcom County should undertake the following steps:

- Allow people to self-identify. To get the most accurate understanding of the racial, ethnic, and gender identities of the people who come into contact with the justice system, people should be asked how they identify, or asked to confirm how their demographic information is recorded.
- Update methods of recording and reporting data. Many justice system databases have pre-programmed options for the person entering the information to choose from, in an attempt to reduce human error in data entry. These categories, however, can create challenging limitations in recording data that do not conform to the predetermined categories. Updating technology to reflect current standards is an important step in accurately recording data.
- Standardize data collection practices through official policies. To the extent possible, justice system agencies within the same jurisdiction should collect data in similar ways to allow them to review disparities across every point of the justice system—arrest, charge, pretrial outcomes, case processing, sentencing, reentry, recidivism—and all the diversion or alternative options in between. It may be helpful to standardize practice with other county government agencies or social services that are frequented by people in the justice system, including hospitals, behavioral health providers, and public assistance programs.
- Institutionalize systems of review. Periodic review of data can help Whatcom County understand disparity trends, and can help answer outstanding questions (such as differences in case processing times, bail amounts, etc.).
- Be transparent. Sharing findings with the larger community is important in building trust in the justice system and collaboratively generating solutions to challenges.
Impact Analysis

This impact analysis is offered to show that the recommendations above can lead to real and substantial reductions in the daily population of the jail. It is not a projection of population reductions in coming years but instead, using the 2016 jail population data, it illustrates how achieving even modest gains from these recommendations could have reduced the number of people in jail.

How to read the tables
The impact tables show alternative outcomes that could have happened for a segment of the jail population if Vera’s recommendations were in place, compared to what actually occurred in 2016.

The “2016 Admissions” and “2016 ADP” columns show the actual number of admissions or the actual average daily population for the bookings described. The last three columns show how much smaller the jail population would have been if 25, 50, or 75 percent of the described segment of the jail population had the alternative outcome.

Recommendation 1: Reduce unnecessary admissions to the jail

The recommendations in this section are focused on the types of charges that frequently lead to arrests and bookings, but for which the length of stay is most often quite short. This table demonstrates that implementation of Recommendation 1 will lead to a substantial reduction in admissions.

<table>
<thead>
<tr>
<th>Alternative outcome</th>
<th>2016 admissions</th>
<th>Admissions impact opportunity 25%</th>
<th>50%</th>
<th>75%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bring people arrested on DUI with no warrants and at most one other criminal traffic charge to a sobering center</td>
<td>709</td>
<td>-177</td>
<td>-355</td>
<td>-532</td>
</tr>
<tr>
<td>Divert people booked for probation/parole violations with no new charges, and who were not eventually sentenced to serve jail time</td>
<td>48</td>
<td>-12</td>
<td>-24</td>
<td>-36</td>
</tr>
<tr>
<td>Book and release people with only misdemeanor or criminal traffic charges and no warrants</td>
<td>252</td>
<td>-63</td>
<td>-126</td>
<td>-189</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>-252</strong></td>
<td><strong>-505</strong></td>
<td><strong>-757</strong></td>
<td></td>
</tr>
</tbody>
</table>
Recommendation 2: Curtail the number of new and outstanding warrants

In 2016, 53 percent of gross misdemeanor, 75 percent of misdemeanor, and 73 percent of non-DUI criminal traffic bookings involved warrants, possibly as the sole driver of the bookings. Together, these bookings contributed 31 people to the jail population on a given day. The recommendations in this section aim to substantially reduce bookings driven by warrants alone.

<table>
<thead>
<tr>
<th>Alternative outcome</th>
<th>ADP</th>
<th>25%</th>
<th>50%</th>
<th>75%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduce bookings for gross misdemeanor, misdemeanor, and non-DUI criminal traffic arrests with warrants</td>
<td>31</td>
<td>-8</td>
<td>-15</td>
<td>-23</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>31</strong></td>
<td><strong>-8</strong></td>
<td><strong>-15</strong></td>
<td><strong>-23</strong></td>
</tr>
</tbody>
</table>

Recommendation 3: Create a pretrial release process based on data-driven risk assessment

With almost 60 percent of the ADP being held pretrial, moving away from reliance on financial bail affords the largest opportunity to reduce the jail population.

<table>
<thead>
<tr>
<th>Alternative outcome</th>
<th>2016 ADP</th>
<th>ADP impact opportunity</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase release rates and shorten time to release for those being held pretrial on gross misdemeanor, misdemeanor, and criminal traffic charges</td>
<td>43</td>
<td>-11</td>
<td>-21</td>
</tr>
<tr>
<td>Increase release rates and shorten time to release for those being held pretrial on felony drug charges</td>
<td>22</td>
<td>-5</td>
<td>-11</td>
</tr>
<tr>
<td>Increase release rates for the remaining people being held on non-drug felony charges</td>
<td>127</td>
<td>-32</td>
<td>-64</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>192</strong></td>
<td><strong>-48</strong></td>
<td><strong>-96</strong></td>
</tr>
</tbody>
</table>
Recommendation 4: Develop a caseflow management plan

A reduction in case processing times for those remaining in jail pretrial could deliver substantial reductions in the average daily population. The ADP column shows the number of people with cases lingering for the described number of days. Expediting case processing will reduce the time they spend in jail.

<table>
<thead>
<tr>
<th>Alternative outcome</th>
<th>ADP</th>
<th>25%</th>
<th>50%</th>
<th>75%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expedite case processing for felony cases pending 90 to 180 days or more</td>
<td>37</td>
<td>-9</td>
<td>-18</td>
<td>-28</td>
</tr>
<tr>
<td>Expedite case processing for felony cases pending 181 days or more</td>
<td>42</td>
<td>-10</td>
<td>-21</td>
<td>-31</td>
</tr>
<tr>
<td>Expedite case processing for misdemeanor cases pending 60 days or more</td>
<td>14</td>
<td>-3</td>
<td>-7</td>
<td>-10</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>92</strong></td>
<td><strong>-23</strong></td>
<td><strong>-46</strong></td>
<td><strong>-69</strong></td>
</tr>
</tbody>
</table>
Conclusion

This report provides a range of strategies that Whatcom County can undertake to safely reduce the number of people in its jail and create a fairer, more efficient local justice system. These strategies include deflection of people away from the justice system before they enter jail; eliminating backlogs of outstanding warrants and preventing new warrants from issuing; shifting from relying on financial bail to data-driven, risk-based pretrial justice; and increasing case processing efficiency. More than any other factor, including the economy and crime rates, jail size is a function of these system policies and practices. Change has been possible in communities across the country due to strong leadership, collaboration, and willingness among justice system actors to take a hard look at how the justice system is currently functioning, and in partnership with the community, envision a new way forward. In Whatcom County, the foundation has already been laid for this process, but continued investment and commitment will be needed to truly transform how the local jail is used.
Appendix: System Maps
Superior Court
Page 1

Law Enforcement Response:

- Crisis Respite/Triage
- Detox
- Refer to Behav. Health
- Emergency Room

No Probable Cause
- Refer to Prosecutor

Probable Cause
- 1st Appearance Summons
- Warrant
- Probable Cause
- Arrest
- Booking
- Warrants

Admin Booking (For Processing)

DOC Admin Hearing (See p. 6)

Hospital w/ Jail & Judicial Approval

Prevention
- Homeless Outreach Team (HOT)
- Dispute Resolution
- Case Manager at Detox
- CIT
- CRF
- Housing
- Schools
- LAW Advocates
- Choices and Consequences

Important Process Point

Significant Decision Point

Process Continues Out of Custody

Process Continues in Custody

System Exit

Pathway Available to Select Populations

Pathway Available to Most Populations

Decision Point in Dispute

Current as of June 2017
**Weekend & Holiday Probable Cause**

**Apply for Assignment of Counsel**

**First Appearance & Weekday Probable Cause**

- **Release (PR)**
  - **Bail Out**
  - **Bail Set**
    - **Held on Bail**
    - **Held in Custody for DCC or Other Jurisdiction**
      - **w/o Prejudice**
      - **Discharged**
      - **w/ Prejudice**

- **Bail/Conditions Review**

**Weekend PC: Superior Court**

- On Sunday or a holiday, a rotating judge and the prosecutor conduct a probable cause and bail hearing telephonically for bookings that came in on the previous Friday, Saturday, or weekday preceding the holiday.

**Assignment of Counsel**

- Private
- Pro Se
- Referred to Public Defender
- Bench Appt at Arraignment
- Assigned Counsel
District Court

Page 2

Weekend & Holiday Probable Cause

Apply for Assignment of Counsel

First Appearance & Weekday Probable Cause

Bail Out

Pretrial Supervision (DC Probation)

Release

Other Conditions

Release on PR

Bail/Conditions Review

Weekend PC: District Court:
- On Sunday (or a holiday), a rotating judge and the prosecutor conduct a probable cause and bail hearing telephonically for bookings that came in on the previous Friday and Saturday.

Assignment of Counsel
- Private
- Pro Se
- Referred to Public Defender
- Bench Appt at Arraignment
- Assigned Counsel

Competency

Bail Set

Plea = Go to Sentencing

Held on Bail

w/o Prejudice

Dismissed

w/ Prejudice

IPRTF Phase III Report - page 105
**Municipal Court**

**Page 2**

**Probable Cause**

- **Municipal Court:**
  - Officers issue charging document in the field and file the citation with a probable cause statement

**First Appearance/Arraignment**

- **Municipal Court:**
  - First Appearances occur mostly over the weekend.
  - During the week, First Appearance is combined with Arraignment.
  - Counsel available in Bellingham Muni. Court

**Competency**

- Release
  - Pretrial Supervision (DC Probation)
  - Other Conditions
  - Release on PR

**Bail Set**

- Bail Out
  - Held on Bail
    - Yakima & Other Jurisdiction

- Plea = Go to Sentencing
  - Dismissed
    - w/o Prejudice
    - w/ Prejudice

**Bail/Conditions Review**

**Attorney Decision**

**Counsel:**
- Private
- Pro Se
- Apply for Assigned Counsel
- Bench Appoints Assigned Counsel at Arraignment
Endnotes

1 Vera Institute of Justice analysis of the Bureau of Justice Statistics Census of Jails and Annual Survey of Jails, available at http://trends.vera.org/rates/whatcom-county-wa/incarcerationData=all&incarceration=count. During this same time period, the overall population of Whatcom County experienced a two-and-a-half-fold increase.

2 Ibid. A jail incarceration rate is a ratio that measures the number of people in jail for a geographical area (county, state, or nation) as a proportion of the population of that area. Jail incarceration rates allow for comparison between different sized geographical areas or within one area as the population grows. Due to substantial variations between geographical areas in the number of people younger than age 15 and older than 64—two age groups that have very low risk of jail incarceration—Vera only uses the area population between ages 15 and 64 in calculating jail incarceration rates.


5 design2LAST, Inc., Building Assessment Studies and Cost Estimates for Capital Improvements at the Jail (Public Safety Building) and Work Center (Edmonds, WA: design2LAST, Inc., 2016), 4-5.

6 Whatcom County Council Ordinance No. 2015-025. Whatcom County’s Health Department oversees the operation of a Crisis Triage Center that provides short-term stabilization services to people experiencing mental health crises or who need detoxification. The Crisis Triage Center’s current capacity is 13 beds, but the county is seeking to expand to 32 beds—16 for voluntary crisis triage and stabilization, and 16 for detox services. See Whatcom County, "Crisis Triage Center," http://www.whatcomcounty.us/2075/Crisis-Triage-Center.

7 Whatcom County Council Ordinance No. 2015-037.


10 Whatcom County JPTF, JPTF Final Recommendation on Size of the New Jail (Whatcom County, WA: JPTF, 2011).


12 Whatcom County Council Resolution No. 2016-021.


14 City of Bellingham and Whatcom County, "Memorandum of Agreement Between City of Bellingham and Whatcom County Regarding their Commitment to Incarceration Reduction and Prevention,"

15 Whatcom County Council Ordinance No. 2017-037.

16 For examples of jurisdictions that have committed to safely reducing their jail populations and addressing racial and ethnic disparities, see Safety and Justice Challenge, "The Challenge Network," http://www.safetyandjusticechallenge.org/challenge-network-2017/.

17 "Holds" refers to people detained in the jail for the Washington State Department of Corrections (DOC), the federal government, or other jurisdictions.

18 A judicial determination of probable cause is usually made within 48 hours of arrest, unless probable cause was determined prior to the arrest.

19 In 2016, booking restrictions presumably kept a certain number of people from going to jail who otherwise would have been booked into the facility, but the data available to Vera were not sufficient to estimate this number.

20 Vera Institute of Justice analysis of the Bureau of Justice Statistics Census of Jails and Annual Survey of Jails.

21 Ibid. The proportion of women booked into jail is typically higher than the proportion of women in the average daily population because, on average, women do not stay in jail as long as men do.

22 United States Census Bureau, “American Fact Finder,” https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml. Pathways into the jail are complex, with many factors and decision points contributing to whether someone is booked into jail. This analysis describes the outcomes of bookings; it does not assess the determinants for those outcomes or make inferences about causality.

23 In these tables, the admission rate is the number of admissions (or unique people admitted) into the jail per 100 people in the Whatcom County population. Disparities are a comparison between the admission rates for black or Native American people and the admission rate for white people (or between the admission rates for Hispanic and non-Hispanic people); specifically, it is the ratio between these two numbers. Percentages may not add up to 100 due to rounding.

24 “DOC holds” include bookings on “Swift & Certain” (20 percent), “DOC Detainers” (77 percent), and other charges (3 percent). “Other holds” refers to holds from other counties, state agencies, or federal agencies. Percentages may not add up to 100 due to rounding.

25 RCW 46.20.342.

26 In 2013, the average length of stay in jail was 23 days nationally. See Ram Subramanian et al., Incarceration’s Front Door: The Misuse of Jails in America (New York: Vera Institute of Justice, 2015), 10.

27 In the table, disparities are a comparison between the rates at which black or Native American people are represented in the jail compared to their presence in the county population and the comparable rate for white people; specifically, it is the ratio between these two numbers.

26 Population averages are rounded to the nearest whole number.

Vera Institute of Justice
The 2016 release cohort included 5,279 bookings that did not have DOC holds, federal holds, or holds from other jurisdictions. Vera researchers were able to associate assessed bail amounts with 3,549 (67 percent) of these bookings. Of the remainder, 444 (8 percent) were released on personal recognizance (PR) without bail having been assessed, bringing the PR total to 1,104 (21 percent) of non-hold bookings. Researchers were unable to determine assessed bail amounts for the remaining 1,286 (24 percent). Some of these arrived in jail as sentenced and were not eligible for bail. Others may have been assessed bail, but data entry inconsistencies prevented Vera from associating the amounts with the bookings and charges. Percentages may not add up to 100 due to rounding.

Researchers only considered the 1,373 felony cases closed in 2016 that had been open for two years or less. Another 113 cases were closed in 2016 that had been open for more than two years. Because Vera could not determine if extenuating circumstances caused these cases to remain open as long as they did, Vera eliminated them from the dataset to provide a more conservative estimate of cases that remained open beyond the model time standards.

Researchers only considered the 2,780 criminal cases in Whatcom County District Court and the 2,680 criminal cases in Bellingham Municipal Court closed in 2016 that had been open for two years or less. Another 322 cases in district court and 317 cases were closed in 2016 in municipal court that had been open for more than two years. Because Vera could not determine if extenuating circumstances caused these cases to remain open as long as they did, they were eliminated from the dataset to provide a more conservative estimate of cases that remained open beyond the model time standards.

Bellingham's criminal code defines disorderly conduct as using abusive language, disrupting a lawful assembly, obstructing traffic, fighting, and disturbing the peace. See Bellingham Municipal Code 10.24.010.

Because people may be referred to the JBHP multiple times, the total number of referrals is likely higher than the number of distinct individuals referred. Vera analyzed the number of distinct individuals referred to the JBHP in 2016 (1,364 people) and compared that to the number of distinct individuals who were booked into the jail in 2016 (4,287 people).


Sheriff Bill Elfo, e-mail to authors, September 8, 2017.

New York City uses a form of book and release called Desk Appearance Tickets (DAT) for misdemeanors and some felonies. When first appearance court dates were held within 15 days of the DAT, the FTA rate was just 4 percent. See Mary T. Phillips, The Past, Present, and Possible Future of Desk Appearance Tickets in New York City (New York: Criminal Justice Agency, 2014), 42.

40 King County District Court, "Relicensing Program," http://www.kingcounty.gov/courts/district-court/citations-or-tickets/relicensing-program.aspx; Jill Bernstein and Jane Boman, Report of Drive Legal Whatcom Pilot Project (Bellingham, WA: LAW Advocates, 2016), 6-7. It is important to keep in mind that those performing community service can often be supervised by a local nonprofit or community-based organization, and that supervision by law enforcement is not necessary in every case.


44 The LEAD National Support Bureau, "How does LEAD work?," https://www.leadbureau.org/about-lead.

45 Seema L. Clifasefi and Susan E. Collins, LEAD Program Evaluation: Describing LEAD Case Management in Participants’ Own Words (Seattle, WA: University of Washington Harborview Medical Center, 2016), 4-6.

46 Susan E. Collins et al., LEAD Program Evaluation: Recidivism Report (Seattle, WA: University of Washington Harborview Medical Center, 2015), 2; Seema L. Clifasefi et al., LEAD Program Evaluation: The Impact of LEAD on Housing, Employment and Income/Benefits (Seattle, WA: University of Washington Harborview Medical Center, 2016), 14-16.

47 RCW 10.31.100(16)(a).


54 Whatcom County, Washington, "Jail Diversion Programs," http://www.whatcomcounty.us/1438/Jail-Diversion-Programs; and Bruce Van Glunt, e-mail to authors, September 8, 2017. On September 8, 2017, the number of people under Whatcom County District Court Probation pretrial supervision was: Bellingham, 81; Blaine, 5; Everson, 5; Lynden, 13; Sumas, 4; and District Court, 198.


56 Ibid., pp. 14-15. People with secured bonds remain in jail until they or someone else negotiates a payment contract with a commercial bail bond company or posts the full monetary amount of a cash bond.


59 Ibid. When held eight to 14 days, low-risk individuals were 51 percent more likely to commit a crime within two years of case completion than equivalent individuals held no more than 24 hours. Low-risk individuals held for two to three days were also 22 percent more likely to FTA than equivalent individuals held for less than 24 hours. The number jumped to 41 percent for those held 15 to 30 days.

60 Additionally, incarceration can have significant impacts on health and is increasingly seen as a social determinant of health, or "the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life," as defined by the World Health Organization. See World Health Organization, "What are Social Determinants of Health?," http://www.who.int/social_determinants/en/. Even short stays in jail disrupt healthy lifestyles and have major health consequences for individuals and communities: suicide and self-harm has been the leading cause of death in jail since 2000, with a suicide rate that is 3.5 times higher than the U.S. average; connections to community-based treatment, like medication-assisted treatment (MAT), is typically halted on entry into correctional settings; Medicaid benefits are frequently terminated or suspended; and lost income, the termination of employment, and criminal justice debt can lead to financial challenges, not only for incarcerated individuals but also for their families. For information about suicide rates in jails, see Margaret Noonan et al., Mortality in Local Jails and State Prisons, 2000-2013-Statistics Tables (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015), 1; and American Foundation for Suicide Prevention, "Suicide Statistics," https://afsp.org/about-suicide/suicide-statistics/. For information regarding access to MAT, see Peter D. Friedmann et al., "Medication-Assisted Treatment in Criminal Justice Agencies Affiliated with the Criminal Justice-Drug Abuse Treatment Studies (CJ-DATS): Availability, Barriers & Intentions," Substance Abuse 33, no. 1 (2012): 9-18. For information about Medicaid benefits and incarceration, see Families USA: the Voice for Health Care Consumers, "Medicaid Suspension Policies for Incarcerated People: 50-State Map," http://familiesusa.org/product/medicaid-suspension-policies-incarcerated-people-50-state-map. For information regarding the financial consequences of incarceration on families, see Saneta deVuono-powell et al., Who Pays? The True Cost of Incarceration on Families (Oakland, CA: Ella Baker Center, Forward Together, and Research Action Design, 2015), 7-37.

62 Ibid., p. 5.


65 Ibid., p. 1753. The median time in jail for represented individuals was seven days fewer than for those who were unrepresented (down from nine days to two). Representation for those who would not have been able to post bond and would have remained in jail until disposition without attorney negotiations at the bail hearing prevented an average of 67.6 days in jail. Ibid., p. 1756.


69 A risk assessment tool uses past patterns to predict future behavior. Most risk assessment tools used for criminal justice purposes weigh factors such as prior arrests and/or convictions, prior failures to appear, the severity of the charges, previous community supervision revocations, and demographic characteristics like age and gender. Some assessments use an interview to gain additional information about individuals’ circumstances and needs. For an example of the validation process, see Brian Lovins and Lori Lovins, *Riverside Pretrial Assistance to California Counties (PACC) Project: Validation of a Pretrial Risk Assessment Tool* (Boston: Crime and Justice Institute and Correctional Consultants Inc., 2016), 3-4.


71 Ibid.

72 For a full list of pretrial performance measures, see Pretrial Justice Institute (PJI), *Pretrial Services Program Implementation: A Starter Kit* (Rockville, MD: PJI, 2009), 41-45.

73 A study in Virginia, which uses its own tool called the Virginia Pretrial Risk Assessment Instrument (VPRAI), demonstrated that using a risk assessment tool with a decision making framework produced better results than using the tool alone: people were 30 percent less likely to be re-arrested or FTA pending trial in jurisdictions that used the framework for pretrial recommendations, compared to those that did not. See LIAF Blog, "Improving risk-based decision making," October 15, 2015, http://www.arnoldfoundation.org/improving-risk-based-decision-making/.
For more on pretrial best practices and enhancing pretrial services agencies, see PJI, *Pretrial Services Program Implementation: a Starter Kit* (Rockville, MD: PJI, 2009).


Though somewhat dated, PJI’s 2009 report *Pretrial Services Program Implementation: A Starter Kit* includes estimated program budgets based on survey results from existing programs. See PJI, 2009, p. 18.


In Milwaukee County, for example, the district attorney’s office has a diversion program for eligible people who are determined to be low-risk and a deferred prosecution agreement (DPA) program for eligible people found to be at medium- to high-risk for re-offense. A diversion agreement, which generally lasts up to six months, may include restitution payment and refraining from committing a crime for the diversion term. Those who successfully meet the conditions are not subject to a criminal charge. Participants in the DPA program, which lasts for at least six months, enter a guilty plea and sign an agreement, and the judgment of conviction is deferred. Conditions can include cognitive behavioral therapy, substance use or mental health treatment, and restitution payment, and must be directly connected to the individual’s needs as determined by a risk-needs assessment. When a person successfully completes the DPA program, the charges are dismissed or reduced, depending on the signed agreement. Programs like these reroute cases from the criminal justice process to ease overloaded court dockets and the pressures of jail overcrowding. See Milwaukee County District Attorney’s Office, “Milwaukee County Early Intervention Programs,” [http://milwaukee.gov/Imagelibrary/Groups/2014.10.31MilwaukeeCountyEarly.pdf](http://milwaukee.gov/Imagelibrary/Groups/2014.10.31MilwaukeeCountyEarly.pdf).

Washington State Criminal Court Rule 3.3. Pursuant to Rule 3.3, a person detained in jail shall be brought to trial within 60 days of the “commencement” of the case, which is typically arraignment unless commencement is reset for a variety of reasons, including the person’s failure to appear, disqualification of counsel, and the waiver of the right to a speedy trial. A person who is not detained in jail must be brought to trial within 90 days. Under Rule 3.3, these time limits can be extended for several reasons, including competency proceedings, continuances, and unforeseen circumstances.


Van Duizend et al., 2011, pp. 1-2.
For more on intermediate time standards, see Van Duizen et al., 2011, pp. 6-7.


Van Duizen et al., 2011, pp. 6-7.


Ibid., p. 7.


Raaen, 2015, p. 8.

Ibid., p. 6.

Ibid., p. 7.


Steelman and Griller, 2013, p. 15.


Ibid.

Steelman and Griller, 2013, p. 12.

Raaen, 2015, p. 5.

Ibid.

For resources and tools for court management strategies, see CourTools, "Trial Court Performance Measures," http://www.courtools.org/Trial-Court-Performance-Measures.aspx.

Van Duizen et al., 2011, pp. 5-7.

Whatcom County, Law and Justice Plan: 2008 Plan Update (Bellingham, WA: Whatcom County Law and Justice Council, 2008), 2; and RCW 72.09.300.

TITLE OF DOCUMENT:
Discussion Regarding CM Donovan's resignation and process for filling position

ATTACHMENTS:

SEPA review required? ( ) Yes ( ) No  
SEPA review completed? ( ) Yes ( ) No

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Discussion regarding Councilmember Todd Donovan's resignation from his current position on the Whatcom County Council (effective January 8, 2018) and establishing a process for filling the vacant position

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.
Hon. Barry Buchanan, Whatcom County Council Chair  
311 Grand Avenue, Ste. 105  
Bellingham, WA 98225  

cc: Hon. Jack Lowes, Whatcom County Executive  
    Dana Brown-Davis, Clerk of the Council  
    Karen Frakes, Prosecuting Attorney’s Office  
    Members of the Council  

Barry,  

It has been an honor serving with you as one of the two representatives of the now defunct Whatcom County Council District 1, but it is time that I move on.  

At 4:54 this afternoon, the Whatcom County Auditor formally certified that I was elected as the sole representative for the new Whatcom County Council District 2, by a 2:1 margin.  

As you know, in 2015 I was elected to a 4-year term as the one of the representatives of the now-defunct Council District 1. Further, and contrary to crabby claims on social media, I cannot serve in two Council positions simultaneously.  

In order to honor the wishes of the voters of the new Whatcom County Council District 2, I hereby resign as a representative of the now-defunct Council District 1, effective of 11:59pm, January 8.  

I hope that this January 8 date allows for a process where our newly elected Councilmember will have every opportunity to participate in filling the vacancy I have created.  

It has been, and will be, a pleasure serving with you,  

Best,  

Todd Donovan  

PS: Does your recent election to one of the At-Large positions mean you and Rud will be sharing the windowless at-large office?
FILLING A VACANCY ON THE WHATCOM COUNTY COUNCIL

Whatcom County Code 2.02

2.02.015 Council vacancies – Announcement.  
A. The council shall publicly announce any vacancy and shall provide a reasonable period for interested candidates to contact councilmembers and request that his or her name be considered for the vacant position.

B. Such announcement shall be made at least 10 days before the vacancy is filled. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.020 Council vacancies – Qualifications. 
A. A vacancy on the county council shall be filled by a qualified registered voter resident of the district he or she represents, meeting all of the qualifications of Section 4.20 of the Whatcom County Charter.

B. Any information provided by a nominee shall be checked to verify qualifications, and submission of a personal resume may be requested. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.025 Council vacancies – Nominations. 
A. Nominations to fill a vacancy on the county council shall be made by any councilmember who may place an individual’s name into nomination in a regular open meeting. No councilmember may nominate himself or herself.

B. All names submitted may be referred to a committee of the whole for consideration.

C. Nominees may be personally interviewed by a committee or any councilmember or councilmembers chosen by the council to conduct such interviews. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.030 Council vacancies – Procedures. 
A. An appointment to fill a vacancy on the council shall be approved by an affirmative roll-call vote by a majority of the council. The council majority shall be four votes.

B. A nominated councilmember shall be allowed to vote for other nominees.

C. If at any time, by virtue of vacancies on the council, the membership of the council is reduced below that required to constitute a quorum (four members), the council may nevertheless fill the vacancies by an affirmative roll-call vote by a majority of the remaining council.

D. If a council vacancy remains unfilled for a period of 30 days because of the inability of the council to make the appointment, the vacancy shall be filled within 15 additional days by the county executive from among those persons nominated by the members of the council. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

2.02.035 Council vacancies – Term of appointee. 
Section 4.50 of the Whatcom County Charter shall govern the term for which the appointee may serve. (Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

Whatcom County Charter Article 4 – Elections

Section 4.20 Qualifications. 
Each County officer holding an elective office shall be, at the time of his appointment or election and at all times while holding office, a citizen of the United States and a resident and registered voter of Whatcom County and councilmembers shall be residents of the districts which they represent. Any change in the boundaries of the councilmember’s district which shall cause that member to be no longer a resident of the district which that councilmember represents shall not disqualify that councilmember from holding office during the remainder of the term for which that councilmember was elected or appointed. (Amended by referendum 1986; Amended by Ord. 2005-075 Exh. A).

Section 4.50 Vacancies. 
An elective office shall become vacant on the death, resignation, recall of the officer; a councilmember’s absence from three (3) consecutive regular meetings of the County Council, without being excused by the Council; any elected official’s absence from the County for thirty (30) days without being excused by the Council, or for other causes. The vacancy shall be filled by the Council as it deems appropriate.

Vacancies in elective office shall be filled at the next November general election, unless the vacancy occurs after the last day for filing declarations of candidacy, in which case the vacancy shall be filled at the next succeeding November general election. The person elected shall take office upon certification of the results of the election and shall serve the unexpired term of the vacated office. Until a successor has been elected and certified, a majority of the Council shall fill the vacancy by appointment. All persons appointed to fill vacancies shall meet the qualifications of Section 4.20. (Amended by referendum 1986; Amended by Ord. 2005-075 Exh. A; Amended by referendum 2005).

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**TITLE OF DOCUMENT:**
Discussion with Dan Gibson regarding 2015 Charter Amendment

**ATTACHMENTS:**

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

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

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Discussion with Dan Gibson regarding 2015 Charter Amendment

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

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<td>J</td>
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**RECEIVED**

NOV 13 2017

WHATCOM COUNTY COUNCIL

**TITLE OF DOCUMENT:**
Ordinance amending the 2017 Whatcom County Unified Fee Schedule by adding a Density Credit fee.

**ATTACHMENTS:**

1. Memorandum with attachments
2. Draft Unified Fee Schedule Ordinance Amendment No. 2 and Exhibit A

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

This proposed ordinance amends the 2017 Unified Fee Schedule by adding a Density Credit fee. The density credit program would allow increased land use intensity under the Zoning Code if a developer contributes funds to the County’s Purchase of Development Rights Program. The proposed density credit program only applies to specific areas and uses set forth in the Zoning Code. The density credit program would be entirely voluntary. If a developer chooses not to use the program, they can simply develop as currently allowed by the Zoning Code.

**COMMITTEE ACTION:**
11/21/2017: Discussed and recommended introduction

**COUNCIL ACTION:**
11/21/2017: Introduced 7-0

**Related County Contract #:**
**Related File Numbers:**
AB No. 2017-319

**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

November 6, 2017

TO: The Honorable Jack Louws, Whatcom County Executive
    The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Assistant Director

RE: Unified Fee Schedule Amendment / Density Credits

The Whatcom County Council is considering a proposed new “Density Credits” chapter in the Zoning Code that would allow increased residential density in the Birch Bay Urban Growth Area (UGA) if the developer contributes funds to the County’s Purchase of Development Rights or PDR Program (see Agenda Bill No. 2017-319). The proposed density credit program is entirely voluntary. If a developer chooses not to use the program, they can simply develop at the density currently allowed by the Zoning Code.

The Density Credit chapter, along with proposed changes to the Planned Unit Development (PUD) chapter, would allow doubling the density from 7 units/acre to 14 units/acre for single family residential development in the Birch Bay Resort Commercial zones if:

- The dwellings are located outside the floodplain; and
- No other residential density increases are granted; and
- Density credits are acquired.

The draft Density Credit chapter states that “The price per density credit is set by the County Council in the Unified Fee Schedule. . .” (proposed WCC 20.91.030). Any revenue raised from developers purchasing density credits to increase density would go to the County’s PDR program, which purchases easements from willing land owners to retire development rights in agricultural and rural areas.
Two County advisory committees have issued recommendations on the price of a density credit:

- The Purchase of Development Rights Oversight Committee recommended a density credit price of $4,000 at their August 25, 2017 meeting.

- The Transfer of Development Rights/Purchase of Development Work Group recommended a density credit price of $4,000 per additional residential unit in the Birch Bay Urban Growth Area at their November 1, 2017 meeting.

Therefore, an ordinance has been drafted for consideration by the County Council that would set a fee of $4,000 for each bonus dwelling unit. For comparison, we would note that the City of Bellingham has a voluntary PDR program that charges $5,000 for each bonus unit in the city. The money raised from the Bellingham program goes towards Lake Whatcom Watershed preservation.

Thank you for your review and consideration of the draft proposal. We look forward to discussing it with you.
## PDR Oversight Committee

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## Ex-Officio Members

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# TDR / PDR Work Group

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ORDINANCE NO. __________
AMENDMENT NO. 2 TO ORDINANCE NO. 2016-049 ADOPTING THE 2017 WHATCOM COUNTY UNIFIED FEE SCHEDULE

WHEREAS, the County Council approved the 2017 Unified Fee Schedule on November 22, 2016, and

WHEREAS, a new Density Credit fee is proposed in accordance with WCC 20.91.030.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Planning and Development Services section of the Whatcom County Unified Fee Schedule is hereby amended as presented on Exhibit A.

ADMITTED this _____ day of ________________________, 2017

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____________________________  ______________________________
Dana Brown-Davis, Council Clerk          Barry Buchanan, Chair

APPROVED as to form:

( ) Approved  ( ) Denied

___________________________  ______________________________
Civil Deputy Prosecutor          Jack Louws, Executive

Date: ______________________
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<tr>
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<td>New</td>
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<td>WCC 20.91.030</td>
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TITLE OF DOCUMENT:
Secure Medicine Return Regulation

ATTACHMENTS:
- Memo to Executive Secure Medicine Return Ordinance and WCC Chapter 24.15
- Ordinance Secure Medicine Return
- Exhibit A County Code 24.15 Secure Medicine Return
- Community Feedback on Secure Medicine Return

SEPA review required? ( ) Yes ( ) NO
SEPA review completed? ( ) Yes ( ) NO
Should Clerk schedule a hearing? ( X ) Yes ( ) NO
Requested Date: 12/5

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 ordinance to be considered by council establishes Whatcom County Code Chapter 24.15 Secure Medicine Return. The ordinance and code will expand secure medicine disposal options for Whatcom County residents by expanding the number of locations where people can drop off their unused medicines. It also ensures financial sustainability through a pharmaceutical industry-financed system.

COMMITTEE ACTION:
11/21/2017: Amended and forwarded to Council for Introduction

COUNCIL ACTION:
11/21/2017: Substitute Introduced 7-0

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

TO: JACK LOUWS, WHATCOM COUNTY EXECUTIVE

FROM: Regina A. Delahunt, Director

DATE: November 9, 2017

RE: ESTABLISHING SECURE MEDICINE RETURN ORDINANCE AND WCC CHAPTER 24.15

The attached ordinance to be considered by Council establishes Whatcom County Code Chapter 24.15 Secure Medicine Return as specified in Exhibit A.

The ordinance and code will do the following:

- Expand secure medicine disposal options for Whatcom County residents to reduce risks of medicine poisonings and misuse, and reduce pollution from waste pharmaceuticals.
- Improve convenience for residents by expanding the number of locations where people can drop off their unused medicines.
- Ensure financial sustainability through a pharmaceutical industry-financed system.

The draft policy is modeled after regulations passed by the local boards of health in King, Snohomish, Kitsap, and Pierce Counties. Pharmaceutical producers have combined their resources and developed a stewardship organization, to coordinate and implement the secure medicine return system.

These regulations will positively impact emerging concerns that have been identified in Whatcom County over the past several years, as outlined in the ordinance.

In July of 2017, the Public Health and Safety Committee recommended County staff to develop policy language that will create and fund a comprehensive medicine return system. Public feedback collected through community surveys, public listening sessions, and other means, demonstrated support for regulation.

Please contact Erika Nuerenberg at ext. 6007 if you have any questions.
ORDINANCE NO. ________

AN ORDINANCE ADOPTING A SECURE MEDICINE RETURN REGULATION

WHEREAS, residents of Whatcom County benefit from the authorized use of medicines, however, abuse, fatal overdoses and poisonings from prescription and nonprescription medicines used in the home have emerged as an epidemic in recent years; and

WHEREAS, nationally about two-thirds of teens say it is easy to obtain prescription opioid medications and prescription stimulants; and

WHEREAS, prescription and nonprescription medicines are a leading cause of poisonings in the home in Washington State, with children and seniors especially at risk; and

WHEREAS, unused, expired and leftover medicines that accumulate in homes increase risks of drug abuse, overdoses, and preventable poisonings and secure disposal of unwanted medicines is an element of a comprehensive strategy to prevent prescription drug abuse; and

WHEREAS, the existing limited medicine take-back programs in Whatcom County provide secure collection and safe destruction of unwanted medicines, but lack sufficient resources to serve all residents of the county and to accept controlled substances at pharmacy locations; and

WHEREAS, a 2016 survey of Whatcom County residents found that 57% of all respondents, and 63% of parents with youth living with them, have expired, leftover, or unwanted medicines in their homes; and

WHEREAS, flushing unwanted medicines down toilets and sinks is an inappropriate disposal practice because wastewater treatment facilities and septic systems cannot effectively remove or degrade all pharmaceutical compounds; and

WHEREAS, disposing of unwanted medicines in trash cans is not secure and unwanted medicines are household hazardous wastes that should be properly disposed of separately from the solid waste and wastewater streams to protect the health and safety of county residents, as promoted by the Whatcom County Hazardous Waste Management Plan; and

WHEREAS, a final rule adopted by the Drug Enforcement Administration (DEA) in October 2014 allows the collection of legally prescribed controlled medicines, as well as non-controlled medicines, from residents at the locations of retail pharmacies, clinics, hospitals, and other DEA authorized collectors, in addition to law enforcement; and
WHEREAS, 84% of respondents in a 2016 survey of Whatcom County residents indicated being likely to use a convenient location for medicine disposal; and

WHEREAS, drug producers are well-positioned to efficiently develop and operate a secure medicine return program, working with other stakeholders such as pharmacies, health care facilities, and law enforcement, within standards to ensure safety and security of the system, and in compliance with pertinent federal and state laws and regulations; and

WHEREAS, the Whatcom County Health Board finds it in the interest of public health and safety to establish a county-wide secure medicine return program providing convenient and equitable access for all of the county's residents that is financed and operated by drug producers selling medicines in or into Whatcom County for residential use.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council, acting as the Whatcom County Health Board, that the Whatcom County Code Chapter 24.15 Secure Medicine Return as specified in Exhibit A be adopted and be effective immediately.

BE IT FURTHER ORDAINED that the Whatcom County Health Code is amended by adding a new Chapter 24.15 entitled Secure Medicine Return in the form attached as Exhibit A.

ATTEST:

WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

WHATCOM COUNTY EXECUTIVE
APPROVED AS TO FORM:

WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

( ) Approved    ( ) Denied

Date Signed: ____________________________
Chapter 24.15
SECURE MEDICINE RETURN

Sections:
24.15.010 Authority, Purpose, and Intent.
24.15.020 Definitions.
24.15.030 Participation.
24.15.040 Plan Components.
24.15.050 Collection of Covered Drugs.
24.15.060 Promotion.
24.15.070 Disposal of Covered Drugs.
24.15.080 Administrative and Operational Costs and Fees.
24.15.090 Reporting Requirements.
24.15.100 Identification of Producers of Covered Drugs.
24.15.110 Review of Proposed Plans.
24.15.120 Prior Approval for Plan Changes.
24.15.130 Enforcement Procedures and Penalties.
24.15.150 Plan Review and Annual Operating Fees.
24.15.160 Appeals.
24.15.170 Severability.

24.15.010 Authority, Purpose, and Intent.

A. The Whatcom County Board of Health (Board of Health) enacts the regulations set forth in this Chapter under the authority of RCW 70.05 to preserve, promote, and improve the public health and under the general authority of Article 11, §11 of the Washington Constitution.

B. The purpose of these regulations is to provide for and promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of person who will or should be especially protected or benefited by this Chapter. The provisions of this Chapter shall be liberally construed for the accomplishment of its purposes.

C. It is the specific intent of this Chapter to place the obligation of complying with its requirements upon drug producers, wholesalers and others designated within the scope of this Chapter, and no provision nor term used in this title is intended to impose any duty whatsoever upon the Board of Health, Whatcom County Health Department (Health Department), or any of its officers or employees, for whom the implementation or enforcement of this Chapter shall be discretionary and not mandatory.

D. Nothing contained in this Chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the Board of Health, the Health Department or any of its officers, employees, or agents for any injury or damage resulting from the failure of any person subject to this Chapter to comply with this Chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this Chapter of the part of the Board of Health, the Health Department, or its officers or employees.

24.15.020 Definitions.

The following definitions apply throughout this Chapter unless the context clearly indicates otherwise.
A. "Authorized collector" means any person authorized as a collector by the United States Drug Enforcement Administration pursuant to 21 CFR 1317, such as manufacturers, distributors, reverse distributors, retail pharmacies, hospitals/clinics with an on-site pharmacy, or narcotic treatment programs that gather unwanted drugs, including controlled substances, from covered entities for the purpose of collection, transportation and disposal. For purposes of this Chapter, "authorized collector" shall also include law enforcement agencies.

B. "Covered drug" means a drug sold in any form and used by covered entities, including prescription and nonprescription drugs, brand name and generic drugs, drugs for veterinary use, and drugs in medical devices and combination products, including pre-filled injector products with a retractable or otherwise securely covered needle. Covered drug does not include:

1. Vitamins or supplements;
2. Herbal-based remedies and homeopathic drugs, products or remedies;
3. Cosmetics, shampoos, sunscreens, toothpaste, lip balm, antiperspirants or other personal care products that are regulated as both cosmetics and nonprescription drugs under the federal Food, Drug and Cosmetic Act (Title 21 U.S.C. Chapter 9);
4. Drugs for which producers provide a pharmaceutical product stewardship or take-back program as part of a federal food and drug administration managed risk evaluation and mitigation strategy (Title 21 U.S.C. Sec. 355-1);
5. Drugs that are biological products as defined by 21 CFR 600.3(h) as it exists on the effective date of this regulation if the producer already provides a pharmaceutical product stewardship or take-back program;
6. Injector products and medical devices or their component parts or accessories that contain no covered drug or no more than trace residual amounts of covered drug; and
7. Pet pesticide products contained in pet collars, powders, shampoos, topical applications, or other forms.

C. "Covered entities" means residents of Whatcom County, including individuals living in single and multiple family residences and other residential settings, and including other non-business sources of prescription and nonprescription drugs that are unused, unwanted, disposed of or abandoned by residents as identified by the Health Department. "Covered entities" does not include business generators of pharmaceutical waste, such as hospitals, clinics, doctor's offices, veterinarian clinics, pharmacies, or airport security and law enforcement drug seizures.

D. "Director" means the administrative director of Whatcom County Health Department or a duly authorized representative.

E. "Drop-off site" means the location of an authorized collector where a secure drop box for all unwanted covered drugs is provided for residents of the county, or the location of a long-term care facility at which a hospital/clinic or retail pharmacy is authorized by the United States Drug Enforcement Administration to maintain a secure drop box for unwanted covered drugs from residents of the long-term care facility.

F. "Drug wholesaler" means a corporation, individual or other entity that buys drugs or devices for resale and distribution to corporations, individuals or entities other than consumers.

G. "Drug" means:
1. Articles recognized in the official United States pharmacopoeia, the official national formulary; the official homeopathic pharmacopoeia of the United States or any supplement of the formulary or those pharmacopoeias as published by the U.S. Pharmacopeial Convention and the Homeopathic Pharmacopoeia Convention of the United States;

2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

3. Substances, other than food, intended to affect the structure or any function of the body of humans or other animals; or

4. Substances intended for use as a component of any substances specified in 1., 2. or 3. of this subsection.

H. "Independent stewardship plan" means a plan other than the standard stewardship plan for the collection, transportation and disposal of unwanted covered drugs that:

1. May be proposed by a producer or group of producers; and

2. If approved, is financed, developed and implemented by the participating producer or group of producers, and operated by the participating producer or group of producers or a stewardship organization.

I. "Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients and, for the purposes of this Chapter, a facility where covered drugs that may be disposed in a secure drop box pursuant to 21 CFR 1317.80 are in the lawful possession of the resident.

J. "Mail-back services" means a collection method for the return of unwanted covered drugs from covered entities utilizing prepaid and preaddressed mailing envelopes.

K. "Manufacture" means "manufacture" as defined in RCW 18.64.011 that is the production, preparation, propagation, compounding or processing of a drug or other substance or device or the packaging or repackaging of the substance or device, or the labeling or relabeling of the commercial container of such substance or device, but does not include the activities of a practitioner who, as an incident to his or her administration or dispensing such substance or device in the course of his or her professional practice, prepares, compounds, packages, or labels such substance or device.

L. "Manufacturer" means a person, corporation or other entity engaged in the manufacture of drugs or devices, as defined in RCW 18.64.011.

M. "Nonprescription drug" means a drug that may be lawfully sold without a prescription.

N. "Person" means a firm, sole proprietorship, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, association, cooperative or other entity of any kind or nature.

O. "Pharmacy" means a place licensed by the Washington State Pharmacy Quality Assurance Commission where the practice of pharmacy, as defined in RCW 18.64.011, is conducted.

P. "Potential authorized collector" means any person, such as manufacturers, distributors, reverse distributors, retail pharmacies, hospitals/clinics with an on-site pharmacy, or narcotic treatment programs, that may modify their registration with the United States Drug Enforcement Administration to
be authorized for collection of drugs, including controlled substances. For purposes of this Chapter, "Potential authorized collector" shall also include law enforcement agencies.

Q. "Prescription drug" means any drugs, including controlled substances that are required by an applicable federal or state law or regulation to be dispensed by prescription only or are restricted to use by practitioners only.

R. "Producer" means a manufacturer that is engaged in the manufacture of a covered drug sold in or into Whatcom County, including a brand-name or generic drug. Producer does not include:

1. A retailer whose store label appears on a covered drug or the drug's packaging if the manufacturer from whom the retailer obtains the drug is identified under section 24.15.030 subsection C. of this regulation;

2. A pharmacist who compounds a prescribed individual drug product for a consumer; or

3. A drug wholesaler who is not also the manufacturer.

S. "Regulation" means the "Secure Medicine Return" Regulation adopted by Whatcom County Board of Health.

T. "Retail pharmacy" means a pharmacy licensed by the Washington State Pharmacy Quality Assurance Commission for retail sale and dispensing of drugs.

U. "Standard stewardship plan" means the plan for the collection, transportation and disposal of unwanted covered drugs that is:

1. Financed, developed, implemented and participated in by producers;

2. Operated by the participating producers or a stewardship organization; and

3. Approved as the standard stewardship plan.

V. "Stewardship organization" means an organization designated by a producer or group of producers to act as an agent on behalf of each producer to develop and implement and operate the standard stewardship plan or an independent stewardship plan.

W. "Unwanted covered drug" means any covered drug no longer wanted by its owner, that:

1. Has been abandoned or discarded; or

2. Is intended to be discarded by its owner.

24.15.030 Participation.

A. Each producer shall participate in the standard stewardship plan approved by the Health Department except that a producer may individually, or with a group of producers, form and participate in an independent stewardship plan approved by the Health Department.

B. The standard stewardship plan and any independent stewardship plan shall be approved by the Health Department before collecting unwanted covered drugs. Once approved, stewardship plans must have prior written approval of the Health Department for proposed changes as described under section 24.15.120 of this regulation.
C. Within 60 days after the date of adoption of this regulation:

1. A producer shall notify the Health Department in writing of the producer's intent to participate in the standard stewardship plan or to form and participate in an independent stewardship plan; and

2. A retailer whose store label appears on a covered drug or the drug's packaging shall notify the Health Department of intent to participate or provide written notification that the manufacturer from whom the retailer obtains the drug has provided its notice of intent to participate.

For a covered drug not sold in or into Whatcom County at the date of adoption of this regulation, the producer of the covered drug, and, if applicable, the retailer whose store label appears on a covered drug or the drug's packaging, shall have 180 days from the date of initiating sales of the covered drug in or into the county to make this notification to the Health Department.

D. A producer or group of producers participating in the standard stewardship plan or an independent stewardship plan shall:

1. Within 120 days after this regulation is adopted, identify in writing to the Health Department a plan operator, including the plan operator's telephone, mailing address and email contact information, who is authorized to be the official point of contact for the stewardship plan;

2. Within 120 days after this regulation is adopted, notify all potential authorized collectors in the county of the opportunity to participate as a drop-off site in accordance with section 24.15.050 subsections A., E., and F. of this regulation, and provide a process for forming an agreement between the plan and interested potential authorized collectors; and
   a. Annually thereafter, make the same notification to any nonparticipating potential authorized collectors in the county; and
   b. Commence good faith negotiations with each potential authorized collector expressing an interest in participating as a drop-off site within 30 calendar days of the expression of such interest.

3. Within 180 days after this regulation is adopted, submit a proposed stewardship plan as described in section 24.15.040 of this regulation to the Health Department for review and approval;

4. Within 90 days after the Health Department's approval of the stewardship plan:
   a. Provide documentation to the Health Department confirming that all potential authorized collectors participating in the approved stewardship plan, not including law enforcement, have amended their registrations with the United States Drug Enforcement Administration; and
   b. Begin operation of the approved stewardship plan and provide the collection system for unwanted covered drugs required under this Chapter.

5. At least every four years after each plan initiates operations, submit an updated plan to the Health Department explaining any substantive changes to components of the stewardship plan required in section 24.15.040 of this regulation, and accompanied by the review fee in accordance with section 24.15.150 of this regulation. The Health Department shall review updated stewardship plans using the process described in section 24.15.110 of this regulation.
6. Pay all administrative and operational costs and fees associated with their stewardship plan as required under sections 24.15.080 and 24.15.150 of this regulation.

E. A producer or group of producers participating in the standard stewardship plan or an independent stewardship plan may:

1. Enter into contracts and agreements with stewardship organizations, service providers, or other entities as necessary, useful or convenient to provide all or portions of their stewardship plan;

2. Notify the Health Department of any producer selling covered drugs in or into the county that is failing to participate in a stewardship plan; or

3. Perform any other functions as may be necessary or proper to provide the stewardship plan and to fulfill any or all of the purposes for which the plan is organized.

F. After the first full year of operation of the approved standard stewardship plan, a producer or group of producers participating in the standard stewardship plan may notify the Health Department in writing of intent to form an independent stewardship plan, and identify a plan operator, including the plan operator's telephone, mailing address and email contact information, who is authorized to be the official point of contact for the proposed independent stewardship plan. Within 90 days of such notification, the producer or group of producers may submit a proposed independent stewardship plan as described under section 24.15.040 of this regulation to the Health Department for review and approval.

G. The Health Department may approve in writing extensions to later dates for the submission dates and deadlines in this section.

H. The Health Department may upon request provide consultation and technical assistance about the requirements of this Chapter to assist a producer, group of producers or stewardship organization in developing its proposed plan.

24.15.040 Plan Components.

The standard stewardship plan or any independent stewardship plan, which must be submitted and reviewed according to section 24.15.110 of this regulation, shall include:

A. Contact information for all drug producers participating in the stewardship plan;

B. A description of the proposed collection system to provide convenient ongoing collection service for all unwanted covered drugs from covered entities in compliance with the provisions and requirements in section 24.15.050 of this regulation, including:

1. A list of all collection methods and participating potential authorized collectors;

2. A list of drop-off sites with addresses;

3. A description of how periodic collection events will be scheduled and located, if applicable;

4. A description of how mail-back services will be provided and an example of the prepaid, preaddressed mailers to be utilized;

5. A list of potential authorized collectors contacted by the plan under section 24.15.030 subsection D.2. of this regulation, and a list of all potential authorized collectors who offered to participate, and, if any potential authorized collector who offered to participate was not included in the plan, an explanation for the reasons for such decision;
6. A description of proposed alternative collection methods for any covered drugs that may not be acceptable in secure drop boxes, collection events or mailers; and

7. An example of the agreement that the stewardship plan provides to a potential authorized collector to arrange services at a drop-off site.

C. A description of the handling and disposal system, including identification of and contact information for potential authorized collectors, transporters and waste disposal facilities to be used by the stewardship plan in accordance with sections 24.15.050 and 24.15.070 of this regulation.

D. A description of the policies and procedures to be followed by persons handling unwanted covered drugs collected under the stewardship plan, including:

1. A description of how all authorized collectors, transporters and waste disposal facilities utilized will ensure the collected, unwanted covered drugs are safely and securely tracked from collection through final disposal;

2. How all entities participating in the stewardship plan will operate under all applicable federal and state laws, regulations and guidelines, including those of the United States Drug Enforcement Administration; and

3. How any pharmacy drop-off site will operate under applicable regulations and guidance of the Washington State Pharmacy Quality Assurance Commission;

E. A description of how patient information on drug packaging will be kept secure during: collection; transportation; and recycling or disposal;

F. A description of the public education effort and promotion strategy required in section 24.15.060 of this regulation, including a copy of standardized instructions for covered entities, signage developed for authorized collectors and required promotional materials;

G. A proposal on the short-term and long-term goals of the stewardship plan for collection amounts and public awareness; and

H. A description of how the stewardship plan will consider:

   a. Use of existing providers of waste pharmaceutical services;

   b. Separating covered drugs from packaging to the extent possible to reduce transportation and disposal costs; and

   c. Recycling of drug packaging to the extent feasible.

24.15.050 Collection of Covered Drugs.

A. This Chapter does not require any person to serve as an authorized collector in a stewardship plan. A person may offer to participate as an authorized collector voluntarily, or may agree to participate as an authorized collector in exchange for compensation offered by a producer, group of producers or stewardship organization. Retail pharmacies, hospitals/clinics with an on-site pharmacy, law enforcement agencies, and any other entities participating as authorized collectors in a stewardship plan, shall operate in accordance with state and federal laws and regulations for the handling of unwanted covered drugs, including those of the United States Drug Enforcement Administration, and in compliance with this Chapter. A pharmacy drop-off site shall operate under applicable regulations and guidance of the Washington State Pharmacy Quality Assurance Commission.
B. The collection system shall be convenient on an ongoing, year-round basis to adequately serve the needs of covered entities and shall be designed in consideration of equitable opportunities for all Whatcom County residents for the safe and convenient return of unwanted covered drugs, in accordance with this section.

C. The collection system for all unwanted covered drugs shall be safe and secure, including protection of patient information on drug packaging.

D. The service convenience goal for the standard stewardship plan and any independent stewardship plan is a system of drop-off sites distributed to provide reasonably convenient and equitable access for all residents in incorporated and unincorporated areas of the county, and meeting the requirements of this subsection.

1. In establishing and operating a stewardship plan, a producer, group of producers or stewardship organization shall give preference to having drop-off sites located at retail pharmacies, hospitals/clinics with an on-site pharmacy, and law enforcement agencies. A stewardship plan shall include, within 90 days of their offer to participate, any retail pharmacy, any hospital/clinic with an on-site pharmacy or any law enforcement agency willing voluntarily to participate as a drop-off site for unwanted covered drugs and able to meet the requirements of this Chapter, unless the collector requests a longer time frame. A producer or group of producers establishing and operating a stewardship plan may also accept any potential authorized collector, narcotic treatment program, or long-term care facility willing to participate as a drop-off site for unwanted covered drugs and able to meet the requirements of this Chapter.

2. In every city and town with a potential authorized collector and in the unincorporated county, the system of drop-off sites shall provide one drop-off site and a minimum of at least one additional drop-off site for every twenty thousand residents at the locations of retail pharmacies, hospitals/clinics with an on-site pharmacy, or law enforcement agencies, geographically distributed to provide reasonably convenient and equitable access.

3. If the minimum number of drop-off sites in 2. of this subsection cannot be achieved by the standard stewardship plan or any independent stewardship plan due to a lack of potential drop-off sites in specific areas of the county, then service to those areas shall be supplemented by periodic collection events and mail-back services.

4. In the following communities in unincorporated areas of the county, a stewardship plan shall provide these services:

   a. In Acme, Birch Bay-Lynden, Deming, Glacier, Kendall, Lummi Island, Maple Falls, Newhalem, Point Roberts, and Sudden Valley, if no drop-off site can be arranged, mail-back services shall be provided to residents through distribution of prepaid, preaddressed mailers at libraries and fire stations serving each community. Pre-paid, preaddressed mailers shall also be provided upon request to grocery stores located in these communities.

   b. In Birch Bay and Columbia Valley, if no drop-off site can be arranged, at least one collection event shall be provided to residents annually.

5. In determining the collection services required under this subsection, the annual population estimate provided by the Washington State Office of Financial Management shall be utilized to define the population of cities, towns and unincorporated areas of Whatcom County. The current Whatcom County Comprehensive Plan shall be utilized to define communities in unincorporated areas of the county.

E. Drop-off sites shall accept all covered drugs from covered entities during all hours that the authorized collector is normally open for business with the public. Drop-off sites at long-term care facilities shall
only accept covered drugs from individuals who reside, or have resided, at the long-term care facility, pursuant to 21 CFR 1317.80.

F. Drop-off sites shall utilize secure drop boxes in compliance with all applicable federal and state laws, including requirements of the United States Drug Enforcement Administration. A producer, group of producers, or stewardship organization shall provide a service schedule that meets the needs of each drop-off site to ensure that each secure drop box is serviced as often as necessary to avoid reaching capacity and that collected covered drugs are transported to final disposal in a timely manner, including a process for additional prompt collection service upon notification from the drop-off site. Secure drop box signage shall include a prominently displayed 24 hour, toll-free telephone number and website for the stewardship plan, by which any resident can provide feedback on collection activities, including but not limited to the need to empty the receptacle.

G. Mail-back services shall be free of charge, and shall be made available to differentially-abled and home bound residents upon request through the stewardship plan's toll-free telephone number and website. An adequate and ongoing supply of prepaid, preaddressed mailers shall be:

1. Provided upon request to persons providing services to differentially-abled and home bound residents, including hospice service providers;

2. Provided to each long-term care facility in the county; and

3. Provided to libraries, fire stations, and any other mailer distribution locations according to subsection D of this section.

H. Periodic collection events, if utilized as a collection method according to subsection D of this section, must be arranged with law enforcement personnel through voluntary agreements, and shall be conducted in compliance with United States Drug Enforcement Administration protocols, any additional requirements of participating law enforcement agencies, and in compliance with this Chapter.

I. Alternative collection methods shall be provided for any covered drugs that cannot be accepted or comingle with other covered drugs in secure drop boxes, in mailers, or at collection events. Such collection methods shall be reviewed and approved by the Health Department and shall operate in compliance with applicable regulations.

24.15.060 Promotion.

A. A producer or group of producers participating in the standard stewardship plan or an independent stewardship plan must develop and provide a system of promotion, education, and public outreach about safe storage and secure collection of covered drugs. Each stewardship plan shall include and have a plan for performing the following activities:

1. Promote the use of their stewardship plan so that where and how to return unwanted covered drugs to drop-off sites and how to use other collection options for unwanted covered drugs are widely understood by residents, pharmacists, retailers of covered drugs, health care practitioners including doctors, dentists, and other prescribers, veterinarians, and veterinary hospitals;

2. Discourage the disposal of unwanted covered drugs in the garbage;

3. Promote the safe storage of prescription and nonprescription drugs by residents before secure disposal through their stewardship plan;

4. Work with authorized collectors participating in their stewardship plan to develop clear, standardized instructions for residents on the use of drop boxes and a readily recognizable,
consistent design of drop boxes. Whatcom County Health Department may provide guidance to producers and authorized collectors on the development of the instructions and design;

5. Establish a toll-free telephone number and web site where collection options and current locations of drop-off sites will be publicized and prepare educational and outreach materials promoting safe storage of prescription and nonprescription drugs and describing where and how to return unwanted covered drugs to the stewardship plan. These materials must be provided to pharmacies, health care facilities, county agencies, and other interested parties for dissemination to residents. Plain language and explanatory images should be utilized to make use of medicine collection services readily understandable by all residents, including individuals with limited English proficiency. The web site and all materials shall discourage disposal of unused, expired, or contaminated pharmaceutical wastes in the solid waste system in Whatcom County;

6. Conduct a survey of residents of Whatcom County and a survey of pharmacists, health professionals, and veterinarians in the county who interact with residents on use of prescription and nonprescription drugs and law enforcement, prior to the start of operation of the approved plan, after the first full year of operation of the plan, and again biennially thereafter until such time as the Health Department designates a less frequent schedule. Survey questions shall measure percent awareness of drop-off sites in the county for unwanted covered drugs, assess to what extent drop-off sites, mail-back services, and other collection methods are convenient and easy to use, and assess knowledge and attitudes about risks of abuse, poisonings and overdoses from prescription and nonprescription drugs used in the home. Draft survey questions shall be submitted to the Health Department for review and comment at least 30 days prior to initiation of the survey. All survey data and results shall be reported to the Health Department and made available to the public on the stewardship plan’s website within 90 days of the end of the survey period;

7. Annually evaluate the effectiveness of its promotion, outreach, and public education, and include this evaluation in its annual report; and

8. All educational and outreach materials and surveys required in this section shall be provided in English, Russian, Spanish, Punjabi, Mandarin, and Vietnamese, and any additional languages that may be designated by the Health Department on an annual basis.

B. If more than one stewardship plan is approved then all approved stewardship plans shall coordinate their promotional activities to ensure that all residents can easily identify, understand and access the collection services provided by any stewardship plan, including providing residents with a single toll-free telephone number and a single web site to access information about collection services for every approved plan.

C. Pharmacies and other entities selling prescription and nonprescription drugs in or into Whatcom County are encouraged to promote secure disposal of covered drugs by covered entities through the use of an approved stewardship plan or plans. Pharmacies must provide materials explaining the use of approved stewardship plans to customers upon request.

D. Whatcom County Health Department and government agencies throughout the county responsible for health, solid waste management, and wastewater treatment shall promote safe storage of prescription and nonprescription drugs by residents, secure disposal of covered drugs by residents through the use of the stewardship plans, and the toll-free telephone number and web site for approved stewardship plans through their standard educational methods.

24.15.070 Disposal of Covered Drugs.
A. Covered drugs collected under a stewardship plan must be disposed of at a permitted hazardous waste disposal facility as defined by the United States Environmental Protection Agency under 40 CFR parts 264 and 265.

B. The Health Department may grant approval for a producer or group of producers participating in the standard stewardship plan or an independent stewardship plan to dispose of some or all collected covered drugs at a permitted large municipal waste combustor, as defined by the United States Environmental Protection Agency under 40 CFR parts 60 and 62, if use of a hazardous waste disposal facility described under subsection A. of this section is deemed not feasible for the stewardship plan based on cost, logistics or other considerations.

C. A producer or group of producers participating in the standard stewardship plan or an independent stewardship plan may petition the Health Department for approval to use final disposal technologies that provide superior environmental and human health protection than provided by the disposal technologies in subsections A. and B. of this section, or equivalent protection at lesser cost. The proposed technology must provide equivalent or superior protection in each of the following areas:

1. Monitoring of any emissions or waste;
2. Worker health and safety;
3. Air, water or land emissions contributing to persistent, bioaccumulative, and toxic pollution; and
4. Overall impact to the environment and human health.

24.15.080 Administrative and Operational Costs and Fees.

A. A producer or group of producers participating in the standard stewardship plan or an independent stewardship plan shall pay all administrative and operational costs related to their stewardship plan, except as provided under this section. Administrative and operational costs related to the stewardship plan include:

1. Collection and transportation supplies for each drop-off site;
2. Purchase of secure drop boxes for each drop-off site;
3. Ongoing maintenance or replacement of secure drop boxes, as requested by authorized collectors;
4. Providing mail-back services and providing prepaid, preaddressed mailers to differentially-abled and home bound residents and their services providers, to long-term care facilities, and to libraries, fire stations, and other mailer distribution locations in specific areas of the county under section 24.15.050;
5. Operating periodic collection events, including costs of law enforcement staff time if necessary;
6. Transportation of all collected drugs to final disposal;
7. Environmentally sound disposal of all collected drugs under section 24.15.070 of this regulation; and
8. Program promotion, surveys, and evaluation under section 24.15.060 of this regulation, including costs of providing materials to pharmacies to fulfill customer requests.
B. No person or producer may charge a specific point-of-sale fee to consumers to recoup the costs of their stewardship plan, nor may they charge a specific point-of-collection fee at the time the covered drugs are collected from covered entities.

C. Producers are not required to pay for costs of staff time at drop-off sites provided by authorized collectors volunteering for a stewardship plan, but may offer compensation to authorized collectors for their participation.

24.15.090 Reporting Requirements.

A. Quarterly Report. Within 30 days after each 90-day period of operation, the plan operator of the standard stewardship plan and of any independent stewardship plan shall submit a quarterly report to the Health Department on behalf of participating producers that provides the total amount, by weight, of unwanted covered drugs collected during the previous 90-day period. After the first two years of operation of an approved stewardship plan, the Health Department may determine that quarterly reporting of the collection amount is no longer required and shall notify the plan operator of any change in the reporting schedule.

B. Annual Report. Within 180 days after the end of the first one-year period of operation, and annually thereafter, the plan operator of the standard stewardship plan and of any independent stewardship plan shall submit an annual report to the Health Department on behalf of participating producers describing their plan’s activities during the previous annual reporting period to comply with this Chapter. The annual report must include:

1. A list of producers participating in the stewardship plan;

2. The total amount, by weight, of unwanted covered drugs collected during the annual reporting period, and the amount by weight from each collection method during each 90-day period of the annual reporting period;

3. A list of drop-off sites with addresses, and the amount by weight of unwanted covered drugs collected at each drop-off site during each 90-day period of the annual reporting period;

4. The number of mailers provided for differentially-abled and home bound residents, a list of locations where mailers were provided, and the number of mailers received by the plan during each 90-day period of the annual reporting period;

5. A list of dates and locations of any collection events held and the total amount, by weight, of unwanted covered drugs collected at each event;

6. A list of transporters used, and the disposal facility or facilities used;

7. Whether any safety or security problems occurred during collection, transportation or disposal of unwanted covered drugs during the annual reporting period and, if so, what changes have or will be made to policies, procedures or tracking mechanisms to alleviate the problem and to improve safety and security in the future;

8. A description of the public education, outreach, survey, and evaluation activities implemented during the reporting period;

9. A description of how collected packaging was recycled to the extent feasible, including the recycling facility or facilities used;

10. A summary of the stewardship plan’s goals for collection amounts and public awareness, the degree of success in meeting those goals during the previous annual reporting period and, if any goals have not been met, what effort will be made to achieve the goals in the next year; and
11. The total expenditure of the stewardship plan during the annual reporting period.

C. The Health Department may specify a report format or form that plan operators shall use for quarterly or annual reports. The Health Department shall make reports submitted under this section available to the public.

D. For the purposes of this section, "annual reporting period" means the period from January 1 through December 31 of the same calendar year, unless otherwise specified to the plan operator by the Health Department.

24.15.100 Identification of Producers of Covered Drugs.

A. Within 60 days of a request from the Health Department, any drug wholesaler that sells any covered drug in or into the county must provide a list of producers of covered drugs to Whatcom County Health Department in a form agreed upon with the Health Department. Wholesalers must update the list, no more than annually, if requested by the Health Department.

B. Any person receiving a letter of inquiry from the Health Department regarding whether or not it is a producer under this Chapter must respond in writing within 60 days. If such person does not believe it is a producer under this Chapter, it must state the basis for such belief and provide a list of any covered drugs it sells, distributes, repackages, or otherwise offers for sale within the county, and identify the name and contact information of the manufacturer of the covered drug.

24.15.110 Review of Proposed Plans.

A. Within 180 days after the date of adoption of this regulation, a producer, group of producers or stewardship organization shall submit its proposed stewardship plan to the Health Department for review, accompanied by the plan review fee in accordance with section 24.15.150 of this regulation and indicating whether the plan is proposed as the standard stewardship plan or an independent stewardship plan. If multiple proposals are submitted for the standard stewardship plan, the Health Department shall designate the standard stewardship plan at time of plan approval.

B. The Health Department shall review each proposed stewardship plan and determine whether the proposed plan meets the requirements of section 24.15.040 of this regulation and other applicable sections of this regulation. In reviewing a proposed stewardship plan, the Health Department shall provide opportunity for written public comment and consider any comments received.

C. After the review under subsection B. of this section and within 90 days after receipt of the proposed stewardship plan, the Health Department shall either (1) approve as submitted, (2) approve subject to conditions, or (3) reject the proposed stewardship plan in writing to a producer, group of producers or stewardship organization and, if approved subject to conditions or rejected, provide reasons for the decision.

D. Plan Rejection. If the proposed stewardship plan is rejected, a producer, group of producers or stewardship organization must submit a revised stewardship plan to the Health Department within 60 days after receiving written notice of the rejection. The Health Department shall review and approve or reject a revised stewardship plan as provided under subsections B. and C. of this section.

E. Conditional Plan Approval. If the proposed stewardship plan is approved subject to conditions, the Health Department shall provide a written notice to the plan operator that lists the conditions that must be addressed by the producer or group of producers participating in the stewardship plan or their stewardship organization. The Health Department shall define the timeframe, which shall not be less than 30 days, of each required action that must be taken or each revision to the stewardship plan that shall be made by the producer, group of producers or stewardship organization. The Health Department
will identify any conditions that must be addressed prior to operation of the stewardship plan as required under Section 24.15.030 subsection D.4.

F. Revised Plan Rejection. If the Health Department rejects a revised stewardship plan, or any subsequently revised plan, the Health Department may deem the producer or group of producers out of compliance with this Chapter and subject to the enforcement provisions in this Chapter.

1. If a revised proposal for the standard stewardship plan is rejected, the Health Department may require the submission of a further revised standard stewardship plan or develop and impose changes to some or all components of the rejected plan to constitute an approved standard stewardship plan. If the Health Department imposes some or all of the approved plan, the Health Department may not deem the producers participating in and complying with the approved standard stewardship plan in accordance with this Chapter out of compliance with this Chapter.

2. If a revised independent stewardship plan is rejected, the producer or group of producers submitting the independent stewardship plan shall participate in the standard stewardship plan and are not eligible to propose an independent stewardship plan for 180 days after the rejection. The Health Department may not deem out of compliance with this Chapter a producer whose revised independent stewardship plan is rejected if the producer participates in and complies with the standard stewardship plan.

G. In approving a proposed stewardship plan, the Health Department may exercise reasonable discretion to waive strict compliance with the requirements of this Chapter that apply to producers in order to achieve the objectives of this Chapter.

H. The Health Department shall make all stewardship plans submitted under this section available to the public and shall provide an opportunity for written public comment on each plan as described in subsection B.

24.15.120 Prior Approval for Plan Changes.

A. Proposed changes to an approved stewardship plan that substantively alter plan operations, including, but not limited to, changes to participating producers, collection methods, achievement of the service convenience goal, policies and procedures for handling covered drugs, education and promotion methods or disposal facilities, must have prior written approval of the Health Department.

B. A producer or group of producers participating in an approved stewardship plan shall submit to the Health Department any proposed change to a stewardship plan as described under subsection A. of this section in writing at least 30 days before the change is scheduled to occur and accompanied by the review fee in accordance with section 24.15.150 of this regulation.

C. The plan operator of an approved stewardship plan shall notify the Health Department at least 15 days before implementing any changes to drop-off site locations, methods for scheduling and locating periodic collection events, methods for distributing prepaid, preaddressed mailers, or significant changes to agreements with authorized collectors for services at drop-off sites that do not substantively alter achievement of the service convenience goal under section 24.15.050 subsection D. of this regulation, or other changes that do not substantively alter plan operations under subsection A. of this section.

D. The producer or group of producers participating in an approved stewardship plan shall notify the Health Department of any changes in ownership or contact information for participating producers within 30 days of such change.
24.15.130 Enforcement Procedures and Penalties.

The Director is authorized to enforce this Chapter in accordance with the provisions of Chapter 24.07 of the Health Code and consistent with the following subsections. When or if the enforcement provisions in this Chapter and Chapter 24.07 conflict, the more stringent shall apply.

A. After presenting official credentials and providing notice of an audit or inspection to determine compliance with this Chapter or to investigate a complaint, the Director or his/her duly authorized inspector may audit a producer's, group of producers' or stewardship organization's records related to a stewardship plan or request that the producer, group of producers or stewardship organization arrange for the Health Department's to inspect at reasonable times a stewardship plan's or an authorized collector's facilities, vehicles and equipment used in carrying out the stewardship plan.

B. The Director may enforce the requirements and restrictions of this Chapter by one or a combination of the following by written order:

1. Requiring an informal administrative conference;

2. Prohibiting certain conduct or directing certain conduct;

3. Issuing a warning notice; and

4. Imposing a civil penalty of up to one thousand dollars that may be assessed against a producer or group of producers or drug wholesalers. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation. In determining the appropriate penalty, the Health Department shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the frequency of past violations, any action taken to mitigate the violation, the financial burden to the violator and the size of the violator's business.

5. Assessing all costs of enforcement in accordance with Chapter 24.07 of the Health Code.

C. The Director shall send a written order and a copy of this Chapter and any regulations adopted to implement this Chapter to a producer who is not participating in the standard stewardship plan or an independent stewardship plan as required under this Chapter. The Director shall state that participation in a plan is required and warn of penalties for noncompliance, including all costs incurred for enforcement as provided in Chapter 24.07 of the Health Code.

D. A producer not participating in the standard stewardship plan or an independent stewardship plan and whose covered drug continues to be sold in or into the county 60 days after receiving a written violation order may be assessed a penalty.

E. Failure to begin operation of an approved stewardship plan and provide the collection system for unwanted covered drugs required under this Chapter within 90 days of Health Department approval of the stewardship plan may result in a fine. Each day of delayed implementation of the stewardship plan will constitute a new and separate offense.

F. If the Director determines that a stewardship plan is not in compliance with this Chapter or its plan approved or conditionally approved under section 24.15.110 of this regulation, the Health Department may send the producer or group of producers participating in the plan a notice of violation stating the plan is in noncompliance, providing notice of the compliance requirements and warning of penalties for noncompliance, including all costs incurred for enforcement of that violation, as provided in Chapter 24.07 of the Health Code.

G. The producer or group of producers has 30 days after receipt of the notice to achieve compliance. This subsection does not preclude the Health Department from suspending an approved plan, in addition to
other penalties, if a violation of this Chapter or an approved plan creates a condition that, in the Health Department's judgment, constitutes an immediate hazard.

H. The Director is authorized to enforce the restrictions or requirements of this Chapter against any person or entity, whether it be a producer, group of producers, or drug wholesaler who is not in compliance; assess all costs of enforcement against the person or entity, whether it be a producer, group of producers or drug wholesaler, who is in noncompliance in accordance with Chapter 24.07 of the Health Code; and otherwise pursue compliance with this Chapter.

I. The Director is authorized to pursue civil penalties and costs including attorney fees by commencement of civil action in the name of Whatcom County Health Department independent of and/or as a means of enforcing the violations referenced above.


A. The Board of Health may adopt regulations necessary to implement, administer and enforce this Chapter.

B. The Health Department may work with the plan operator to define goals for collection amounts and public awareness for a stewardship plan.

1. Upon review of collection amounts in annual reports, the Health Department may direct a producer or group of producers participating in an approved stewardship plan to change the frequency of collection events or the provision of mail-back services to improve the plan's performance in providing adequate and reasonably convenient service to all Whatcom County residents as required under Section 24.15.050 of this Chapter.

2. Upon review of annual reports or results of public awareness surveys, the Health Department may direct a producer or group of producers participating in an approved stewardship program to modify the plan's promotion and outreach activities to better achieve widespread awareness and understanding among Whatcom County residents and healthcare providers about how to use collection options for unwanted covered drugs as required under Section 24.15.060 of this Chapter.

C. The Director shall report annually to Whatcom County Board of Health concerning the status of the standard and independent stewardship plans and recommendations for changes to this Chapter. The annual report shall include an evaluation of the secure medicine return system, a summary of available data on indicators and trends of abuse, poisonings and overdoses from prescription and nonprescription drugs and a review of comprehensive prevention strategies to reduce risks of drug abuse, overdoses and preventable poisonings.

24.15.150 Plan Review and Annual Operating Fees.

A. A producer or group of producers participating in the standard stewardship plan or an independent stewardship plan shall pay to the Health Department plan review fees to be established under subsection D. of this section for:

1. Review of a proposed stewardship plan;

2. Re-submittal of a proposed stewardship plan;

3. Submittal of revisions to a stewardship plan approved subject to conditions;

4. Review of changes to an approved stewardship plan;
5. Submittal of an updated stewardship plan at least every four years under section 24.15.030 subsection D.5. of this regulation; and

6. Review of any petition for approval to use alternative final disposal technologies under section 24.15.070 subsection C. of this regulation.

B. In addition to plan review fees, a producer or group of producers participating in the standard stewardship plan or an independent stewardship plan shall pay to the Health Department annual operating fees and an evaluation fee to be established in accordance with subsection D. of this section.

C. A plan operator or a stewardship organization may remit the fee on behalf of participating producers.

D. Fees shall be set by Whatcom County Board of Health and shall be subject to revision commensurate with the costs of delivering the service and to administering and enforcing this Chapter. All fees collected under the provision of this Chapter shall be payable to Whatcom County Health Department.

24.15.160 Appeals.

Any person aggrieved by a decision or final order of the Director shall have the right to appeal such decision or order in accordance with the appeal procedures set forth in Chapter 24.07.090 Health Code.

24.15.170 Severability.

The provisions of this Chapter are hereby declared to be separate and severable. If any section, sentence, clause or phrase of this Chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause, or phrase of this regulation.
<table>
<thead>
<tr>
<th>First Name</th>
<th>Last Name</th>
<th>Affiliation (if any)</th>
<th>Zip Code</th>
<th>Please share any comments or suggestions you have on the proposed policy components.</th>
<th>Are there any specific concerns or issues you would like the WCHD staff and Health Board to consider?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lisa</td>
<td>Friend</td>
<td></td>
<td>98225</td>
<td>I believe producer responsibility projects such as this proposed medicine take back are important, and I advocated for their inclusion in the solid waste management plan. Please go forward and also advocate for statewide legislation, as has been proposed in the legislature.</td>
<td>Sustainable funding without excessive staffing requirements - these efforts are most cost effective at the state level: let us not let costs deter us, however. Glad this is being promoted to the public for input.</td>
</tr>
<tr>
<td>D.W.</td>
<td>Myers</td>
<td>none</td>
<td>98225</td>
<td>Yes, I would love this. I had a pain issue for awhile and tried to take the reminder of the meds to the police station. There was a line at the front and I couldn’t see any place to leave them so I left. I was storing them in my car, in a jar, so my dogs couldn’t get into them, until when I could find the time to try again. In the meantime my car was broken into and the jar was stolen. I also have pet meds to dispose of and other old meds. Some need kinds of meds need to be disposed of at one location that takes those kinds of non narcotic meds. and other kinds of meds have to go to another place. It’s all very confusing and inconvenient. We do need a system for this, I don’t want to just dump them down the drain to go in the water supply or in the garbage, for eventual contamination or the soil or water.</td>
<td>Just as above. Many places to make it convenient for disposal or ALL types of meds. Thank you</td>
</tr>
<tr>
<td>KaSandra</td>
<td>Church</td>
<td>Western Washington University</td>
<td>98225</td>
<td>I support the proposed legislation to create and fund a secure medicine return system. In my role as Suicide Prevention Coordinator with Western Washington University, I see the increase in drug take-back efforts as a way to reduce lethal means for suicide. In Washington State, 19% of suicide deaths are due to poisoning, higher than the national rate of 15%. Disposing of and securing medications could keep them out of the hands of someone contemplating suicide, thereby reducing the risk of death due to overdose. In addition, increasing drug take-back efforts and encouraging proper disposal will keep prescription drugs out of the hands of youth that might be experimenting with substances. The</td>
<td>Consider ways to increase access to safe disposal. The locations are not convenient or easily accessible to all, especially those that live outside of town, the elderly, those without easy access to a personal car or public transportation. Consider ways to increase ability to dispose of controlled substances. Stopping at the police station to drop off these substances is a barrier even for those with are committed to the proper disposal of medications.</td>
</tr>
<tr>
<td>Name</td>
<td>Title/Position</td>
<td>Zip Code</td>
<td>Comment</td>
<td></td>
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</tr>
<tr>
<td>Mary Richards</td>
<td></td>
<td>98225</td>
<td>I am in strong support of the proposed Secure Medicine Return policy. I am a senior at Western Washington University and suicide is the second leading cause of death in individuals aged 10-24. As a college student and suicide attempt survivor, having more access to a secure medicine return site is extremely important to me. If someone is experiencing a mental health crisis, having a cabinet full of old prescriptions can be deadly. I strongly believe the Secure Medicine Return policy will save lives.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dan Dahlberg</td>
<td>Sea Mar Therapist for adult out patient mental health treatment</td>
<td>98226</td>
<td>This is a necessary and good idea, not only for people in general, but for waste water treatment plants, and marine life in general</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R. Michael Massanari, MD</td>
<td></td>
<td>98264</td>
<td>I strongly support this measure.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chris Kobdish</td>
<td>Unity Care NW</td>
<td>98225</td>
<td>Unity Care NW strongly supports the creation and funding of a secure medicine return system in Whatcom County. Such a system will help prevent prescription drug abuse and opioid addiction while protecting our environment. For the past year, Unity Care NW has worked with the Whatcom County Health Department and other community partners to educate the public on issues related to prescription drug abuse and opiate addiction, to respond to the crisis through the use of interventions such as Naloxone, and to promote safe disposal and storage. We see the effects of opiate addiction regularly at our health center. Unity Care NW is responding to the opiate crisis in our community.</td>
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Consider education to and partnership with hospitals, doctors, and pharmacies to educate about the program. Involve these locations in disseminating information to their patients about proper disposal.
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<td>City of Bellingham</td>
<td>98225</td>
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<td>I have heard from other counties that have recently enacted similar policies that they wish they had required more frequent reporting during the first year, perhaps quarterly, so they could better follow the progress of the program as it unfolds.</td>
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Secure Medicine Return

Erika Nuerenberg, MPH
Assistant Director
November 21, 2017

Overview

- Public Health Impacts of Unused Medicines
  - Environmental
  - Behavioral Health
- Policy Development Timeline
- Secure Medicine Return Policy Overview
- Questions

Environmental Health Concerns

Improper disposal contributes to pollution.
- Medicines are dangerous/hazardous waste.
- No treatment by septic/wastewater systems.
- Trash cans are not secure.

Behavioral Health Concerns

- 73% of teens say prescription pills are easy to get from home medicine cabinets
- 30% of respondents reported experiencing a situation where they or someone they know personally had medicines taken from them for use or abuse by someone else
- 84% of respondents indicated being very to somewhat likely to use a convenient location for medicine disposal
- 63% of parents with youth living with them, reported having expired, leftover or unwanted medicine in the home
Policy Development Timeline

September 2017  WCHD Behavioral Health Advisory Committee Briefing

October 2017  Opioid Summit Presentation
  Briefings to:
  - Whatcom County Health Board
  - Bellingham City Council
  - Solid Waste Advisory Council

October 16-27  Public Comment Period
  Oct. 24th Public Listening Session

Local Conditions & Capacity

Current Conditions
- 5 locations in Bellingham, Ferndale and Lummi
  - Collect non-controlled medicines
- Only 3 law enforcement agencies for collection of controlled medicines

Potential Capacity
- 41 secure medicine return location options in Whatcom County
- 32 retail pharmacies
- 2 clinics/hospitals with onsite pharmacies
- 7 law enforcement agencies

Overview of Proposed County Secure Medicine Return Regulations

Every drug manufacturer must:
- Finance and provide a county-wide secure medicine return system
- Provide secure medicine drop boxes through the county
  - Include every pharmacy, hospital, and law enforcement agency that volunteers to participate
  - Achieve minimum number of sites in each city/town or unincorporated area
- Provide prepaid mailers
  - At long term care facilities and for homebound residents
  - At libraries and fire stations in Acme, Birch Bay-Lynden, Derinig, Glacier, Kendall, Lummi Island, Maple Falls, Newhalem, Point Roberts, and Sudden Valley

Proposed Overview of County Secure Medicine Return Regulations, cont’d

Every drug manufacturer must (cont’d):
- Provide Collection Events
  - In Birch Bay and Columbia Valley, if no drop-off site can be arranged
- Accept prescription and over-the-counter medicines
- Provide education, safe storage & promote program; conduct public awareness surveys; quarterly and annual reporting
- Use secure protocols per DEA Rule and all federal/state laws
- Dispose of collected medicines at EPA recommended incinerators

County government provides oversight for safety and compliance
Security Procedures Required by DEA Rule

- Bolted secure receptacle.
- Two staff required to access.
- Inner liner boxes sealed.
- Tracking number added.
- Stored securely until transport.
- Boxes securely transported to disposal facility.
- Non-releasable destruction required – currently high temperature incineration.

Secure Medicine Return Process

Drug producers finance and operate a system for take-back and disposal of their products, as part of doing business.

Implementation Timeline

The proposed regulation defines deadlines for development and implementation of the secure medicine return system.

Start up:
- Six months after regulation is adopted: stewardship plan(s) submitted to the Health Department
- Three months after plan approval: program operations begin

Ongoing:
- Every year: survey resident awareness and usage; provide quarterly collection totals; an annual report of collection amount, by location
- Every four years: stewardship plans must be updated
### WHATCOM COUNTY COUNCIL AGENDA BILL

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**TITLE OF DOCUMENT:**
Proposed repeal of WCC 3.26, Solid Waste Disposal District Tax

**ATTACHMENTS:**
Draft ordinance repealing of WCC 3.26, Solid Waste Disposal District Tax in its entirety.

**SEPA review required?** ( ) Yes ( X ) NO  **Should Clerk schedule a hearing?** ( X ) Yes ( ) NO
**SEPA review completed?** ( ) Yes ( X ) NO  **Requested Date:** November 21, 2017 introduction for December 5, 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 the outdated WCC 3.26, Solid Waste Disposal District Tax in its entirety, since the solid waste excise privilege tax is fully implemented in the amended and updated WCC 8.13, Solid Waste Disposal District.

---

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

11/21/2017: Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt, Director
DATE: November 7, 2017

SUBJECT: Proposed Repeal of WCC 3.26, Solid Waste Disposal District Tax

Please find attached a proposed repeal of WCC 3.26, Solid Waste Disposal District Tax, for review and introduction for public hearing.

Background and Purpose

In 1990, Ordinance 090-1 established a solid waste disposal district within all unincorporated areas of Whatcom County and within all cities and towns in Whatcom County, pursuant to interlocal agreements between the cities and towns and Whatcom County. To fund solid waste programs, the ordinance also authorized the levy of a solid waste excise privilege tax, as per RCW 36.58.140.

WCC 3.26, Solid Waste Disposal District Tax provided for implementation of the levy of the excise tax. However, currently, the amended and updated WCC 8.13, Solid Waste Disposal District provides for implementation of the excise tax, and has replaced the outdated WCC 3.26, Solid Waste Disposal District Tax.

Recommendation

As a housekeeping matter, it is recommended that the outdated WCC 3.26, Solid Waste Disposal District Tax be repealed in its entirety.

Please call Jeff Hegedus at x6044 if there are any questions. Thank you.

Encl.
ORDINANCE NO. ________

REPEAL OF WHATCOM COUNTY CODE (WCC) 3.26, SOLID WASTE
DISPOSAL DISTRICT TAX, IN ITS ENTIRETY

WHEREAS, in 1990, Ordinance 090-1 established a solid waste disposal district within
all unincorporated areas of Whatcom County, and within all cities and towns in Whatcom
County, pursuant to interlocal agreements between the cities and towns and Whatcom
County; and,

WHEREAS, to fund solid waste programs, the ordinance authorized the levy of a
solid waste excise privilege tax, as per RCW 36.58.140; and,

WHEREAS, WCC 3.26, Solid Waste Disposal District Tax provided for implementation
of the levy of the excise tax; and,

WHEREAS, the amended and updated WCC 8.13, Solid Waste Disposal District,
shown in Exhibit B, currently provides for implementation of the excise tax, and has
replaced the outdated WCC 3.26, Solid Waste Disposal District Tax.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the
outdated WCC 3.26, Solid Waste Disposal District Tax 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, WASHINGTON

APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE

Jack Louws, County Executive

( ) Approved    ( ) Denied

Date Signed: ____________________
EXHIBIT A

Chapter 3.26
SOLID WASTE DISPOSAL DISTRICT TAX

Sections:
3.26.010 Definitions.
3.26.040 Use of proceeds.
3.26.050 Administration and collection procedures.
3.26.060 Consent to inspection of records.
3.26.070 Effective date.
3.26.090 Annual review of tax requirements.

3.26.010 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. "District" means the Whatcom County Solid Waste Disposal District.

D. The "executive committee" means the executive committee formed pursuant to the interlocal agreements, an example of which is incorporated in Appendix A of the ordinance codified in this chapter.

E. 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.

F. The "plan" is the county's comprehensive solid waste management plan, as it has been updated in January 1990 and may be amended thereafter.

G. A "residential dwelling" includes 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.

H. The “WUTC” is the Washington Utilities and Transportation Commission or any agency which succeeds to its powers. (Ord. 90-9 § 1).

There is hereby levied a solid waste excise privilege tax on the privilege of living in or doing business in Whatcom County, as authorized by Laws of 1982, Ch. 175, Sec. 5 and RCW 36.68.140, and pursuant to Ordinance 90-1 (codified as Ch. 8.10 of this code). (Ord. 90-9 § 2).

The rate of the tax imposed by this chapter shall be 10 percent per month of both of the following:

A. The charges billed by certificated or franchised haulers of solid waste to any residential, business or institutional customer for convenience center, collection, drop box or construction and demolition service provided within the district; and

B. The charges imposed by any public or private facility within the district handling or disposing of waste generated within the district but disposed of outside the district; provided, however, that this subsection B shall not apply to waste that is the subject of the charges in subsection A of this section. (Ord. 90-9 § 3).

3.26.040 Use of proceeds.
The proceeds of the tax imposed by this chapter and investment earnings therefrom shall be used only to pay for the 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 up to five percent of tax funds collected may be used to support tax billing and collection activities by the county treasurer and prosecutor. (Ord. 90-9 § 4).

3.26.050 Administration and collection procedures.
The executive shall administer and collect the tax consistent with procedures approved in Ordinance 90-1. (Ord. 90-9 § 5).

3.26.060 Consent to inspection of records.
The district and Whatcom County hereby consent to the inspection of such records as are necessary to qualify the district for inspection of records of the Department of Revenue, pursuant to RCW 82.32.330. (Ord. 90-9 § 6).
3.26.070 Effective date.
The tax imposed by this chapter shall be effective from and after May 1, 1990, or from
and after such other date which the county executive may certify as the implementation
date for the tax; provided, however, that such other date shall occur on the first day of a
month, and shall not be sooner than the first day of the month following the approval of
the ordinance codified in this chapter, nor later than six months following such approval.
(Ord. 90-9 § 7).

If any section of this chapter or its application to any person or circumstances is held
invalid, the remaining sections of the application of the provisions to other persons or
circumstances is not affected. (Ord. 90-9 § 8).

3.26.090 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 its findings. (Ord. 90-9 § 9).
EXHIBIT B

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 healthy 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 36.68A 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.


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. 2017-043 Exh. A; 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. 2017-043 Exh. A; 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. 2017-043 Exh. A; 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. 2017-043 Exh. A; 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. 2017-043 Exh. A; 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.

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. 2017-043 Exh. A; 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. 2017-043 Exh. A; 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 certified 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. 2017-043 Exh. A; 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
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. 2017-043 Exh. A; 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. 2017-043 Exh. A; 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. 2017-043 Exh. A; 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. 2017-043 Exh. A; Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 14).
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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| Dept. Head: | |
|             | |

| Prosecutor: | 11/21/17 |
|             | |

| Purchasing/Budget: | |
|                   | |

Executive: |

TITLE OF DOCUMENT:
Ordinance Authorizing the Levy of Taxes for Countywide Emergency Medical Purposes for 2018

ATTACHMENTS:
Proposed Ordinance

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 proposed ordinance adopts the Whatcom County 2018 tax levy for Countywide Emergency Medical Purposes.

COMMITTEE ACTION: |

COUNCIL ACTION:
11/21/2017: Introduced 7-0

Related County Contract #: |

Related File Numbers: |

Ordinance or Resolution Number: |

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
ORDINANCE NO. ____________
ORDINANCE AUTHORIZING THE LEVY OF TAXES
FOR COUNTYWIDE EMERGENCY MEDICAL PURPOSES FOR 2018

WHEREAS, pursuant to Home Rule Charter Section 6.10 the County Executive is required to submit for Council consideration a budget and proposed tax and revenue ordinances necessary to raise sufficient revenues to balance the budget; and,

WHEREAS, the voters of Whatcom County approved a countywide emergency medical property tax levy for collection beginning in 2017; and

WHEREAS, the County Council has approved a budget for the 2017–2018 biennium, including all sources of revenues and anticipated expenditures on December 6, 2016; and,

WHEREAS, the County Council, in the course of considering the mid-biennium review and modification has reviewed all sources of revenue and examined all anticipated expenses and obligations; and,

WHEREAS, the County Council has determined it is not necessary to increase the Countywide Emergency Medical Fund property tax levy for 2018,

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Whatcom County Council that amounts collected through the Countywide Emergency Medical levy shall be limited to the amount of 2017 taxes, increased for the addition of new construction and improvements to property and any increase in the value of state assessed property. A property tax increase, in addition to the amount resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, is hereby authorized for the 2018 levy in the amount of $0, which is a percentage increase of 0% from the previous year.

ADOPTED this ___ day of ________________, 2017

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Daniel L. Gibson

Jack Louws, Executive

Date:
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Initial</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>BB</td>
<td>1/24/17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>BB</td>
<td>1/24/17</td>
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<table>
<thead>
<tr>
<th>Initial</th>
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Date Received in Council Office

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<thead>
<tr>
<th>Date Received</th>
<th>Agenda Date</th>
<th>Assigned to</th>
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<tbody>
<tr>
<td></td>
<td>11/08/17</td>
<td>Introduction</td>
</tr>
<tr>
<td></td>
<td>11/21/17</td>
<td>Hearing Intro</td>
</tr>
<tr>
<td></td>
<td>12/5/2017</td>
<td>Hearing</td>
</tr>
</tbody>
</table>

TITLE OF DOCUMENT:
A Resolution Authorizing The Levy Of Taxes for the Whatcom County Flood Control Zone District for 2018

ATTACHMENTS:
Proposed Resolution

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

Should Clerk schedule a hearing? (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.)
The proposed resolution adopts the Whatcom County Flood Control Zone District 2018 tax levy.

COMMITTEE ACTION:
11/21/2017: Amended and forwarded to Council for introduction tonight (Council acting as the FCZDBS)

COUNCIL ACTION:
11/8/2017: Introduced 7-0 (Council acting as the FCZDBS)
11/21/2017: Introduced 7-0 (Council acting as the FCZDBS)

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

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
RESOLUTION NO. ____________
RESOLUTION AUTHORIZING THE LEVY OF TAXES
FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT FOR 2018

WHEREAS, RCW 86.15.160(3) authorizes the Board of Supervisors of the Whatcom County Flood Control Zone District (WCFCZD) to impose an ad valorem property tax levy of up to fifty cents per thousand dollars of assessed value upon real property within the district; and,

WHEREAS, RCW 86.15 and RCW 39.34.190 authorize expenditures to pay for flood control, stormwater management and other water resource work consistent with the powers of the district; and,

WHEREAS, the Board of Supervisors of the WCFCZD has reviewed the proposed annual budget, including all sources of revenues and anticipated expenditures; and,

WHEREAS, the annual budget provides detailed listings of various revenues including property taxes; and,

WHEREAS, the WCFCZD Board of Supervisors has held a public hearing concerning the annual budget, the property tax rates, and revenues included therein.

NOW, THEREFORE, BE IT RESOLVED by the WCFCZD Board of Supervisors that amounts collected through the WCFCZD levy shall be limited to the amount of 2017 taxes plus, increased for the addition of new construction and improvements to property and any increase in the value of state assessed property. A property tax increase, in addition to the amount resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, is hereby authorized for the 2018 levy in the amount of $1,200,000, which is a percentage increase of 34.391324442% from the previous year.

ADOPTED this ___ day of ____________________, 2017.

ATTEST:

Dana Brown-Davis, Council Clerk

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, District Chair

APPROVED AS TO FORM:

Daniel E. Gibson
Civil Deputy Prosecutor
**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: Randy Rydel</td>
<td>RR</td>
<td>10/18/17</td>
<td></td>
<td>11/8/17</td>
<td>Introduction</td>
</tr>
<tr>
<td>Division Head: Gary Stayka</td>
<td></td>
<td>10/18/17</td>
<td></td>
<td>11/21/2017</td>
<td>SCOTW</td>
</tr>
<tr>
<td>Dept. Head: Jon Hutchings</td>
<td></td>
<td>10/18/17</td>
<td></td>
<td>12/5/2017</td>
<td>Hearing WCFCZDBS</td>
</tr>
<tr>
<td>Prosecutor: Dan Gibson</td>
<td></td>
<td>10/18/17</td>
<td></td>
<td></td>
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<tr>
<td>Purchasing/Budget: Brad Bennet</td>
<td>BB</td>
<td>10/18/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive: Jack Louws</td>
<td>TLS</td>
<td>10/20/17</td>
<td></td>
<td></td>
<td></td>
</tr>
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</table>

**TITLE OF DOCUMENT:** A resolution adopting the 2018 budget of the Whatcom County Flood Control Zone District

**ATTACHMENTS:** Resolution to adopt the 2018 proposed budget, Exhibit A containing the 2018 budget work plan with capital projects listed, Exhibit B containing a 2018 list of capital budget appropriations, and ASR's that have been included in this budget.

<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>( ) 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.)

Resolution adopting the 2018 budget for the Whatcom County Flood Control Zone District.

**COMMITTEE ACTION:**

11/21/2017: Discussed (Council acting as the FCZDBS)

**COUNCIL ACTION:**

11/8/2017:Introduced 7-0 (Council acting as the FCZDBS)

**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).
TO: The Honorable Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary S. Stoyka, Natural Resource Program Manager
       Paula J. Harris, River and Flood Division Manager

DATE: October 18th, 2017

RE: 2018 Flood Control Zone District Budget

Enclosed is a resolution establishing the 2018 budget for the Whatcom County Flood Control Zone District (FCZD) for your review and adoption. Supporting documentation detailing the programs and projects included in the budget are also attached.

Requested Action:

Public Works respectfully requests that the FCZD Board of Supervisors adopt the attached resolution to establish a 2018 budget for the County-wide District and the following subzones:

- Acme/Van Zandt Subzone
- Lynden/Everson Subzone
- Sumas/Nooksack/Everson Subzone
- Birch Bay Watershed and Aquatic Resources Management District
- Samish Watershed Subzone

Background and Purpose:

Consistent with RCW 86.15.140, the FCZD must adopt an annual budget that includes the County-wide district and the subzones of the District. The attached resolution establishes the overall budget consistent with the appropriation items outlined in the law. The 2018 proposed budget and associated work program were presented to the Board of Supervisors at the October 17, 2017 Surface Water Work Session.
RESOLUTION NO. ________

(A Resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

ADOPTING THE 2018 BUDGET FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND SUBZONES

WHEREAS, RCW 86.15.140 requires that the Board of Supervisors of each flood control zone district and subzone adopt an annual budget for the zone; and

WHEREAS, the statute further requires that the zone or subzone budget be divided into four appropriation items: overhead and administration; maintenance and operation; construction and improvements; and bond retirement and interest; and

WHEREAS, under the appropriation item for construction and improvements, the Board is required to list each flood control improvement or storm water control improvement planned for the budget year and the estimated expenditure for each during the next year; and

WHEREAS, the budget may only be adopted after a public hearing for which proper notice has been given; and

WHEREAS, Fund No. 169 is managed by the County on behalf of the Whatcom County Flood Control Zone District for purposes of funding flood control, storm water management, and other water resources work by the County that are consistent with the powers of the District under RCW 86.15 and RCW 39.34.190; and

WHEREAS, funds obtained by the County through grants or cooperative agreements for flood control and other water resources work are also managed through Fund No. 169; and

WHEREAS, the 2018 budget proposed by the County Executive for the Whatcom County Flood Control Zone District includes proposed expenditures out of Fund 169 to pay for flood control, storm water management, and other water resources work consistent with the powers of the District under RCW 86.15 and RCW 39.34.190;
Section II. Provisions Restricting Expenditures, Authorizing Actions, and Setting Expectations.

For purposes of purchasing and award, projects listed in the attached exhibit (B) FCZD Construction and Improvements Work Plan shall be administered pursuant to WCC Chapter 3.08.100 A.(2) and A.(3) using the process prescribed for capital budget appropriations. Contracts for goods and services on individual items or projects listed in Exhibit (B) may be exceed by up to 10% provided expenditures in total do not exceed the total appropriation for the FCZD construction and improvement Work Plan.

APPROVED this ____ day of ________, 2017.

WHATCOM COUNTY
FLOOD CONTROL ZONE DISTRICT BOARD
OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Chair

APPROVED AS TO FORM:

Daniel L. Gibson, Chief Civil Deputy Prosecutor
NOW THEREFORE BE IT RESOLVED by the Board of Supervisors as follows:

Section I. Approval of the Budget
The Board hereby adopts the 2018 budget for the Flood Control Zone District Fund No. 169 in the amounts set forth in the document titled Whatcom County 2018 Budget and as modified and presented below and in Exhibit A:

OVERALL BUDGET SUMMARY

<table>
<thead>
<tr>
<th>Budget Code</th>
<th>Program</th>
<th>RCW Appropriation Item</th>
<th>2018 Budget Revenues</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>169100</td>
<td>Administration</td>
<td>Overhead &amp; administration</td>
<td>$3,646,272</td>
<td>$6,155,372</td>
</tr>
<tr>
<td>169119</td>
<td>Natural Resources Administration</td>
<td>Overhead &amp; administration</td>
<td>-</td>
<td>546,381</td>
</tr>
<tr>
<td>169120</td>
<td>AIS Administration</td>
<td>Overhead &amp; administration</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>169121</td>
<td>Water Planning Administration</td>
<td>Overhead &amp; administration</td>
<td>-</td>
<td>550</td>
</tr>
<tr>
<td>169130</td>
<td>Stormwater Administration (Transfer)</td>
<td>Overhead &amp; administration</td>
<td>-</td>
<td>640,599</td>
</tr>
<tr>
<td>169102</td>
<td>Flood Response</td>
<td>Maintenance &amp; operations</td>
<td>-</td>
<td>110,000</td>
</tr>
<tr>
<td>169104</td>
<td>Flood Planning</td>
<td>Maintenance &amp; operations</td>
<td>-</td>
<td>482,160</td>
</tr>
<tr>
<td>169106</td>
<td>Technical Assistance</td>
<td>Maintenance &amp; operations</td>
<td>-</td>
<td>86,000</td>
</tr>
<tr>
<td>169108</td>
<td>NFIP and CRS</td>
<td>Maintenance &amp; operations</td>
<td>15,000</td>
<td>185,000</td>
</tr>
<tr>
<td>169110</td>
<td>Early Warning</td>
<td>Maintenance &amp; operations</td>
<td>4,100</td>
<td>128,500</td>
</tr>
<tr>
<td>169119</td>
<td>Natural Resources Operations</td>
<td>Maintenance &amp; operations</td>
<td>430,500</td>
<td>1,177,521</td>
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<tr>
<td>169120</td>
<td>AIS Operations</td>
<td>Maintenance &amp; operations</td>
<td>-</td>
<td>131,750</td>
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<tr>
<td>169121</td>
<td>Water Planning Operations</td>
<td>Maintenance &amp; operations</td>
<td>171,843</td>
<td>343,686</td>
</tr>
<tr>
<td>169100</td>
<td>Stormwater Lake Whatcom Operations (Transfer)</td>
<td>Maintenance &amp; operations</td>
<td>-</td>
<td>462,850</td>
</tr>
<tr>
<td>169700</td>
<td>Stormwater NPDES Phase II</td>
<td>Maintenance &amp; operations</td>
<td>-</td>
<td>187,580</td>
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<tr>
<td>169100</td>
<td>Stormwater Lake Whatcom Capital (Transfer)</td>
<td>Construction &amp; improvements</td>
<td>-</td>
<td>82,439</td>
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<tr>
<td>16912</td>
<td>Repair and Maintenance</td>
<td>Construction &amp; improvements</td>
<td>80,000</td>
<td>692,439</td>
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<tr>
<td>169114</td>
<td>Flood Hazard Reduction</td>
<td>Construction &amp; improvements</td>
<td>407,217</td>
<td>2,975,356</td>
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</table>

Total 2018 FCZD Budget

<table>
<thead>
<tr>
<th>Code</th>
<th>Program</th>
<th>Revenues</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>16923</td>
<td>Acme/VanZandt Subzone</td>
<td>$24,280</td>
<td>$500</td>
</tr>
<tr>
<td>16925</td>
<td>Birch Bay Subzone</td>
<td>$774,052</td>
<td>229,277</td>
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<tr>
<td>16921</td>
<td>Lynden/Everson Subzone</td>
<td>39,483</td>
<td>68,000</td>
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<tr>
<td>16922</td>
<td>Sumas/Nooksack/Everson Subzone</td>
<td>116,443</td>
<td>15,000</td>
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<tr>
<td>16923</td>
<td>Acme/VanZandt Subzone</td>
<td>-</td>
<td>6,355</td>
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<tr>
<td>16924</td>
<td>Samish Watershed Subzone</td>
<td>19,300</td>
<td>18,500</td>
</tr>
<tr>
<td>16925</td>
<td>Birch Bay Subzone</td>
<td>-</td>
<td>175,200</td>
</tr>
<tr>
<td>16921</td>
<td>Lynden/Everson Subzone</td>
<td>-</td>
<td>80,000</td>
</tr>
<tr>
<td>16922</td>
<td>Sumas/Nooksack/Everson Subzone</td>
<td>-</td>
<td>172,500</td>
</tr>
<tr>
<td>16923</td>
<td>Acme/VanZandt Subzone</td>
<td>-</td>
<td>30,000</td>
</tr>
<tr>
<td>16925</td>
<td>Birch Bay Subzone</td>
<td>-</td>
<td>1,399,700</td>
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Total of 2018 FCZD Sub-Zone Budgets

<table>
<thead>
<tr>
<th></th>
<th>Revenues</th>
<th>Expenditures</th>
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</thead>
<tbody>
<tr>
<td>Total</td>
<td>$973,558</td>
<td>$2,195,032</td>
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$(1,221,473)
## Flood Control Zone District
### 2018 Budget
#### Work Plan and Supporting Documentation

### Detail for FCZD Program Areas

#### Flood Maintenance and Operations

<table>
<thead>
<tr>
<th>Flood Response (169102)</th>
<th>Proposed 2018 Budget</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wage and Benefits</td>
<td>Revenues $10,000</td>
<td>Includes pre-deployed and sand bags for training</td>
</tr>
<tr>
<td>Sand and sandbags</td>
<td>Expenditures $35,000</td>
<td>Road and M&amp;O employees and equipment</td>
</tr>
<tr>
<td>Preparedness training</td>
<td>$5,000</td>
<td>Road employees wages and benefits for 1 significant flood event</td>
</tr>
<tr>
<td>Sector observers during response</td>
<td>$40,000</td>
<td>During and immediately following response</td>
</tr>
<tr>
<td>Construction contracts</td>
<td>$20,000</td>
<td>Budget based on 2009 flood with cost &amp; wage increases</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$-</td>
<td>2017 YE projection assumes fall flood</td>
</tr>
</tbody>
</table>

**NET IMPACT TO FUND BALANCE**: $- 110,000

#### Flood Planning (169104)

<table>
<thead>
<tr>
<th>Lower Nooksack</th>
<th>Proposed 2018 Budget</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>CFHMP refinement/update</td>
<td>Revenues $150,000</td>
<td>Formal process started in late 2016</td>
</tr>
<tr>
<td>Wage and Benefits</td>
<td>$50,500</td>
<td>Contracted in late 2016 and CA into 2017; 2018 budget for projected contract balance</td>
</tr>
<tr>
<td>Facilitation</td>
<td>$-</td>
<td>New contracts in 2017 and will CA into 2018</td>
</tr>
<tr>
<td>Hydraulic modeling/alternatives analyses</td>
<td>$150,000</td>
<td>Contract consultant in 2017 for initial phase and supplement in 2018 as work is better defined</td>
</tr>
<tr>
<td>Engineering design / Plan development</td>
<td>$-</td>
<td>USACE may provide technical assistance and training</td>
</tr>
<tr>
<td>Structure surveys in overflow corridors</td>
<td>$100,000</td>
<td>Contracted in Jan 2017 and will CA into 2018; revenues from NOAA grant through TNC</td>
</tr>
<tr>
<td>Geomorphic reach analyses</td>
<td>$-</td>
<td>USGS cost-share; 2017 expenditures include 2016 charges billed late; contract ends in 2018</td>
</tr>
<tr>
<td>Sediment management</td>
<td>$25,000</td>
<td>Contracted in 2017 and will CA into 2018; revenues from SRFB grant</td>
</tr>
<tr>
<td>Habitat assessment</td>
<td>$25,000</td>
<td>Contracted in 2017 and will CA into 2018</td>
</tr>
<tr>
<td>Flood event mapping</td>
<td>$-</td>
<td>Assumes flood each year</td>
</tr>
<tr>
<td>High water mark survey</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$-</td>
<td>$482,160</td>
</tr>
</tbody>
</table>

**NET IMPACT TO FUND BALANCE**: $- 482,160

### Technical Assistance (169106)

<table>
<thead>
<tr>
<th>Proposed 2018 Budget</th>
<th>Assumptions/Notes</th>
</tr>
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<tbody>
<tr>
<td>Wage and Benefits</td>
<td>Revenues $85,000</td>
</tr>
<tr>
<td>Postage for Special District reassessments</td>
<td>$1,000</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>$86,000</td>
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</table>

**NET IMPACT TO FUND BALANCE**: $- 86,000

### National Flood Insurance Prgm (169108)

<table>
<thead>
<tr>
<th>Proposed 2018 Budget</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wage and Benefits</td>
<td>Revenues $160,000</td>
</tr>
<tr>
<td>FEMA Floodplain mapping</td>
<td>$10,000</td>
</tr>
<tr>
<td>Permit reviews</td>
<td>$15,000</td>
</tr>
<tr>
<td>Public education/CRS activities</td>
<td>$15,000</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>$15,000</td>
</tr>
</tbody>
</table>

**NET IMPACT TO FUND BALANCE**: $- 185,000

### Early Warning System (169110)

<table>
<thead>
<tr>
<th>Proposed 2018 Budget</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wage and Benefits</td>
<td>Revenues $5,000</td>
</tr>
<tr>
<td>Nooksack River gages - USGS</td>
<td>$90,000</td>
</tr>
<tr>
<td>Everson Main St stage gage - USGS</td>
<td>$4,100</td>
</tr>
<tr>
<td>SNOTEL sites - USDA</td>
<td>$6,000</td>
</tr>
<tr>
<td>WWU camera on Swift Creek slide</td>
<td>$2,500</td>
</tr>
<tr>
<td>Emergency access to SNOTEL</td>
<td>$5,000</td>
</tr>
<tr>
<td>Equipment for gage upgrades/repairs</td>
<td>$10,000</td>
</tr>
<tr>
<td>Repairs and maintenance</td>
<td>$10,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$129,000</td>
</tr>
</tbody>
</table>

**NET IMPACT TO FUND BALANCE**: $- 129,000
### Flood Control Zone District
#### 2018 Budget

**Work Plan and Supporting Documentation**

<table>
<thead>
<tr>
<th>FLOOD CONSTRUCTION AND IMPROVEMENTS</th>
<th>Proposed 2018 Budget</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repair and Maintenance (189112)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wage and Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Construction Projects</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emergency/new projects as needed</td>
<td>$50,000</td>
<td>Assumed costs for responding to flood/new repairs (fall 2017 flood assumed)</td>
</tr>
<tr>
<td>Miscellaneous repair projects</td>
<td>$50,000</td>
<td>Placeholder for small projects; fall 2017 flood assumed</td>
</tr>
<tr>
<td>Marine Drive Levee Repair</td>
<td>$175,000</td>
<td>2015 damage; permit fees in 2017 - contribution from WDFW</td>
</tr>
<tr>
<td>Appel Culvert Replacement (SWIF)</td>
<td>$10,000</td>
<td>Revenue is EQIP funding and $30k from DD#3; 2017 exp budget includes CA for Geotest</td>
</tr>
<tr>
<td>Red River Levee Stabilization (SWIF)</td>
<td></td>
<td>Survey and permit fees in 2018; in-house design; construction in 2019</td>
</tr>
<tr>
<td><strong>Mitigation Planning/Implementation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jail crew</td>
<td>$117,439</td>
<td>Jail crew to provide labor for FCZD and SWIF projects; available to diking or subzones</td>
</tr>
<tr>
<td>Reveg planning/coordination</td>
<td>$5,000</td>
<td>2017 contract with CD, will CA into 2018</td>
</tr>
<tr>
<td>Reveg/misc supplies</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$80,000</td>
<td>($682,439)</td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$682,439</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Flood Hazard Reduction (189114)</th>
<th>Proposed 2018 Budget</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wage and Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Swift Creek</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bank stabilization/channel excavation</td>
<td>$22,500</td>
<td>CA from 2016; 2017 work to repair Mades road; SNE paying 30% of 25%; Roads pays 75%</td>
</tr>
<tr>
<td>Bank stabilization/channel excavation (716004)</td>
<td>$75,000</td>
<td>Budget authority transferred from construction budget; MTCA grant revenues; inc appraisal cost</td>
</tr>
<tr>
<td>GW easement acquisition</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td><strong>Lower Nooksack River</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deming levee improvement constr. (708004)</td>
<td>$40,000</td>
<td>2017 exp inc. CA's for B&amp;C const support and Geotest materials testing; rev from FbO and NOAA thr TNC; planting in 2018</td>
</tr>
<tr>
<td>Marietta property acquisition &amp; demo (FEMA FMAG-716002)</td>
<td>$435,356</td>
<td>2017 budget includes Caldera CA $7000; acquisition and demo of Boyd and Allen in 2017; revenues from FEMA grant include pre-award costs from 2016; assume Turk goes into 2018</td>
</tr>
<tr>
<td>Marietta property acquisition &amp; demo (FEMA-712005)</td>
<td>$-</td>
<td>Acquisition of Jones in 2016 with second half payment in 2017; CA for demo retainage in 2017; revenues from FEMA grant; project complete in 2017</td>
</tr>
<tr>
<td>Marietta property acquisition &amp; demo New properties</td>
<td>$50,000</td>
<td>Allocation for new properties that become available and non-grant expenses; increased allocation as mitigation for Marine Drive Levee River Rd and Emerson Rd properties</td>
</tr>
<tr>
<td>Leases for agriculture</td>
<td>$3,780</td>
<td>Budget was from plant materials CA; jail crew time budgeted under 169112; option agreement would need to be extended for next round of Floodplains by Design funding</td>
</tr>
<tr>
<td>Reach 4 acquisition/mitigation (715002)</td>
<td>$5,000</td>
<td></td>
</tr>
<tr>
<td>Ferndale Levee Improvement Project Phase 1</td>
<td>$200,000</td>
<td>Survey, hydraulic analysis, alternatives analysis, conceptual design</td>
</tr>
<tr>
<td>Lynden Levee Improvement Project Phase 1</td>
<td>$125,000</td>
<td>Survey, hydraulic analysis, alternatives analysis, conceptual design</td>
</tr>
<tr>
<td>Rayhorst Levee Improvements</td>
<td>$60,000</td>
<td>Design, permit and construct project to widen and backslope levee</td>
</tr>
<tr>
<td><strong>Jones Creek Deflection Berm (712004)</strong></td>
<td></td>
<td>PSE contract (CA from 2016); final report and public meeting in fall of 2017</td>
</tr>
<tr>
<td>Bridge alternatives analysis</td>
<td>$-</td>
<td>Survey and base mapping for design</td>
</tr>
<tr>
<td>Survey</td>
<td>$25,000</td>
<td>Contract in early 2018</td>
</tr>
<tr>
<td>Berm and bridge design</td>
<td>$200,000</td>
<td>Purchase of parcels and/or easements for bern/road construction (Use SBR if needed)</td>
</tr>
<tr>
<td>Land/easement acquisition</td>
<td>$100,000</td>
<td>Construction budget to be established once design complete and funding source defined</td>
</tr>
<tr>
<td><strong>High Creek Sediment Management</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sediment trap/channel improvement design</td>
<td>$-</td>
<td>WSE design contract, 2017 budget authority to finish contract balance, includes CA of $5304</td>
</tr>
<tr>
<td>Sediment trap/channel imp. construction</td>
<td>$1,300,000</td>
<td>Construction contract and inspection in 2018</td>
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<tr>
<td><strong>City of Lynden - Pepin Creek</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funding for downstream analysis</td>
<td>$140,000</td>
<td>ILA executed in 2016 and CA's into 2017 for reimbursement of City's expenses; new 2018 budget for balance</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$407,217</strong></td>
<td>($2,975,356)</td>
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<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>($2,568,140)</strong></td>
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</tbody>
</table>
### Natural Resources (169119) - Proposed 2018 Budget

<table>
<thead>
<tr>
<th>Services</th>
<th>Revenues</th>
<th>Expenditures</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NATURAL RESOURCES ADMINISTRATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff</td>
<td>$321,481</td>
<td>$224,600</td>
<td>Includes salary for 2.5 FTEs and temporary extra help.</td>
</tr>
<tr>
<td>Office and operating</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$321,481</strong></td>
<td><strong>$224,600</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$546,381</strong></td>
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<tr>
<td><strong>NATURAL RESOURCES OPERATIONS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salmon Recovery (169119)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff</td>
<td>$128,701</td>
<td>$81,000</td>
<td>Includes $51,000 for WCC crew, plant survival surveys, spraying</td>
</tr>
<tr>
<td>Restoration effectiveness monitoring, adaptive management, and stewardship</td>
<td></td>
<td></td>
<td>noxious weeds, and plant materials for replacement of failing plants at</td>
</tr>
<tr>
<td>Maintenance projects</td>
<td>$51,000</td>
<td>$25,000</td>
<td>restoration projects</td>
</tr>
<tr>
<td>New restoration projects</td>
<td></td>
<td></td>
<td>WCC crew contract for maintaining previously planted projects</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$128,701</strong></td>
<td><strong>$81,000</strong></td>
<td>Contracted services for activities supporting planting, fencing, culvert</td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$212,419</strong></td>
<td></td>
<td>replacement, etc.</td>
</tr>
<tr>
<td>Marine Resources Committee (813001)</td>
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<td></td>
</tr>
<tr>
<td>Staff</td>
<td>$64,040</td>
<td>$64,041</td>
<td></td>
</tr>
<tr>
<td>MRC restoration projects</td>
<td>$8,960</td>
<td>$8,960</td>
<td>MRC grant funding minus labor</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$73,000</strong></td>
<td><strong>$73,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$73,000</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Quality/Pollution Identification &amp; Correction (813002)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Staff</td>
<td>$63,300</td>
<td>$339,496</td>
<td>3.3 FTEs</td>
</tr>
<tr>
<td>Water quality monitoring (90+ stations)</td>
<td>$103,960</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bacteria PIC outreach and technical</td>
<td>$12,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small farm technical and financial assistance</td>
<td>$150,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PIC data management</td>
<td>$76,683</td>
<td>$76,683</td>
<td>WCD data manager</td>
</tr>
<tr>
<td>OSS C&amp;M technical assistance</td>
<td>$22,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PDS PIC Enforcement capacity</td>
<td>$80,000</td>
<td>$80,000</td>
<td>Interfund transfer to PDS for 1 FTE enforcement</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$379,935</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$379,935</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>FLOOD CONTROL ZONE DISTRICT</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$379,935</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>*Integrated Salmon Recovery/Flood Hazard Reduction capital and planning projects appear under Cost Center 169114 and 169104.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Acquatic Invasive Species (169120) - Proposed 2018 Budget

<table>
<thead>
<tr>
<th>Services</th>
<th>Revenues</th>
<th>Expenditures</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AIS ADMINISTRATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff</td>
<td>$-</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td>Office and operating</td>
<td>$-</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$-</strong></td>
<td><strong>$-</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$-</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>AIS OPERATIONS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education and Inspection</td>
<td>$-</td>
<td>$123,000</td>
<td>Contribution to City for AIS Program; includes COB program cost increase</td>
</tr>
<tr>
<td>Interlocal Agreement (CCB)</td>
<td>$-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AIS online education program website maintenance</td>
<td>$-</td>
<td>$8,750</td>
<td>Contracted services for online course/website support</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$-</strong></td>
<td><strong>$131,750</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$131,750</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL FOR CENTER</strong></td>
<td><strong>$131,750</strong></td>
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</tr>
</tbody>
</table>

#### Water Planning (169121) - Proposed 2018 Budget

<table>
<thead>
<tr>
<th>Services</th>
<th>Revenues</th>
<th>Expenditures</th>
<th>Assumptions/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>WATER PLANNING ADMINISTRATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff</td>
<td>$-</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td>Office and operating</td>
<td>$550</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$550</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$550</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>WATER PLANNING OPERATIONS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education and Planning</td>
<td>$46,843</td>
<td>$90,688</td>
<td>Hydrogeologist (ASR) 50% coverage from general fund</td>
</tr>
<tr>
<td>Office and operating</td>
<td>$-</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$46,843</strong></td>
<td><strong>$90,688</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NET IMPACT TO FUND BALANCE</strong></td>
<td><strong>$171,843</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL FOR CENTER</strong></td>
<td><strong>$171,843</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Includes $45,000 for professional services contract, $336,526 professional services contract, and $67,950 for Administration of LIO process (ASR).</em></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Exhibit A
Lynden/Everson Subzone
2018 Budget
and Fund Balance Projections

<table>
<thead>
<tr>
<th>Fund balance as of December 31, 2016</th>
<th>$261,030</th>
<th>(+)</th>
<th>(-)</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td><strong>2017 Estimated Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment</td>
<td>$37,483</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest earnings</td>
<td>$2,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2017 Estimated Expenditures:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Levee vegetation maintenance</td>
<td></td>
<td></td>
<td></td>
<td>$18,600 brushing, spraying and hydroseed</td>
</tr>
<tr>
<td>Mole control</td>
<td></td>
<td></td>
<td></td>
<td>$5,000 ACOE deficiency</td>
</tr>
<tr>
<td>Alternative corrections crew labor</td>
<td></td>
<td></td>
<td></td>
<td>$5,000 stick pickup, misc</td>
</tr>
<tr>
<td>Tree removal</td>
<td></td>
<td></td>
<td></td>
<td>$39,000 ACOE deficiency</td>
</tr>
<tr>
<td>Mitigation plan</td>
<td></td>
<td></td>
<td></td>
<td>$5,000 for tree removal</td>
</tr>
<tr>
<td>Pipe inspections (1 pipe)</td>
<td></td>
<td></td>
<td></td>
<td>$1,500 ACOE deficiency</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$39,483</td>
<td></td>
<td>$74,100</td>
<td></td>
</tr>
</tbody>
</table>

| Projected December 2017 fund balance | $226,413 |

| 2018 Revenues - Proposed Budget     | |
| Assessment                          | $37,483  |
| Interest earnings                   | $2,000   |

| 2018 Expenditures - Proposed Budget | |
| Levee vegetation maintenance        |          | $20,000 brushing, spraying and hydroseed |
| Mole control                        |          | $5,000 ACOE deficiency |
| Alternative corrections crew labor  |          | $5,000 misc levee maintenance |
| Tree removal                        |          | $30,000 ACOE deficiency/Veg mgmt plan |
| Mitigation plan implementation/maintenance |          | $8,000 CO time, jail crew, plants, permit fee |
| Address new ACOE deficiencies       |          | $30,000 retaining walls/new problems |
| Cost-share/repairs as needed        |          | $50,000 30% of 169k; 6% of 539k |
| **Total**                           | $39,483  | $148,000 |

| Projected December 2018 fund balance | $117,896 |
## Exhibit A
Sumas/Nooksack/Everson Subzone
2018 Budget
and Fund Balance Projections

<table>
<thead>
<tr>
<th></th>
<th>Fund balance as of December 31, 2016</th>
<th>(+)</th>
<th>(-)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2017 Estimated Revenues:</strong></td>
<td>$1,166,509</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment</td>
<td>$111,443</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest earnings</td>
<td>$5,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2017 Estimated Expenditures:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Levee vegetation maintenance</td>
<td></td>
<td></td>
<td></td>
<td>$3,000 brushing and spraying</td>
</tr>
<tr>
<td>Mitigation plan implementation</td>
<td></td>
<td></td>
<td></td>
<td>$5,000 CD time/site prep/planting</td>
</tr>
<tr>
<td>Alternative corrections crew labor</td>
<td></td>
<td></td>
<td></td>
<td>$5,000 seeding, misc cleanup/maintenance</td>
</tr>
<tr>
<td>Cost-share for 2016 Swift Creek project</td>
<td></td>
<td></td>
<td></td>
<td>$30,000 30% of 100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$116,443</td>
<td></td>
<td></td>
<td>$43,000</td>
</tr>
<tr>
<td><strong>Projected December 2017 fund balance</strong></td>
<td>$1,239,952</td>
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</tbody>
</table>

### 2018 Revenues - Proposed Budget

<table>
<thead>
<tr>
<th></th>
<th>Assessment</th>
<th>Interest earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment</td>
<td>$111,443</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

### 2018 Expenditures - Proposed Budget

<table>
<thead>
<tr>
<th></th>
<th>Levee vegetation maintenance</th>
<th>Mitigation monitoring and maintenance</th>
<th>Alternative corrections crew labor</th>
<th>Cost-share for Swift Creek project</th>
<th>Cost-share/repairs as needed (new damage)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$5,000 brushing, spraying and hydroseed</td>
<td>$5,000 CD time, crew and supplies</td>
<td>$5,000 misc maintenance</td>
<td>$22,500 30% of $75,000 project</td>
<td>$150,000 30% of $500,000 project</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$116,443</td>
<td>$187,500</td>
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<tr>
<td><strong>Projected December 2018 fund balance</strong></td>
<td>$1,168,895</td>
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<tr>
<td>Fund balance as of December 31, 2016</td>
<td>$285,567</td>
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<td>(-)</td>
<td>Subtotal</td>
<td>Notes</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>---------</td>
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<td>-----</td>
<td>----------</td>
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<tr>
<td>2017 Estimated Revenues:</td>
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</tr>
<tr>
<td>Assessment</td>
<td>$22,680</td>
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<tr>
<td>Interest earnings</td>
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<tr>
<td>2017 Estimated Expenditures:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Cost-share/repairs as needed</td>
<td>$15,000</td>
<td></td>
<td></td>
<td></td>
<td>30% of 50k project</td>
</tr>
<tr>
<td>M&amp;O for Jones Creek stage/prec gage</td>
<td>$6,170</td>
<td></td>
<td></td>
<td></td>
<td>9 month operation with telemetry</td>
</tr>
<tr>
<td>Admin support for meetings/minutes</td>
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Exhibit A  
Samish Watershed Subzone  
2018 Budget  
and Fund Balance Projections

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<td><strong>2017 Estimated Expenditures:</strong></td>
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<tr>
<td>Office &amp; operating supplies</td>
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<td>Repair &amp; maintain weir &amp; channel</td>
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<td>Permits</td>
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<tr>
<td><strong>Total</strong></td>
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<td>$15,850</td>
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Projected December 2017 fund balance $103,801

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<td>Interest earnings</td>
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<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Natural resource staff salaries, wages, benefits</td>
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<td>Office &amp; operating supplies</td>
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<td>Repairs &amp; Maintenance - interfund</td>
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Projected December 2018 fund balance $104,601
### Exhibit A
Birch Bay Subzone
2018 Budget

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<td>Benefits</td>
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Capital Improvement Projects

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<td>2-Harborview Road Combined Drainage</td>
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Object Code Totals

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</table>
2017-2018 Budget Preparation - Regular Additional Service Request

Public Works

Natural Resources

Expenditure Type: Ongoing  Add'l FTE ✓  Add'l Space □  Priority 1

Name of Request: Hydrogeologist for Natural Resources and Planning

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<th>2018 Amount</th>
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1. Description of Request:
   a) Describe the proposed activity or service, and indicate whether it is a higher or lower priority than existing services in your department budget.

   Addition of a staff hydrogeologist to the Natural Resources to assist with water quality issues stemming from the Hirst decision. This position would also review land use and permit questions for planning.

   This Planner III position will be added to the Natural Resources Division of the Flood Control Zone District and will be 50% funded from the general fund.

   b) Who are the primary customers for this service?

   The primary customers for this service are land owners in rural Whatcom county. Additionally, this position will aid Whatcom county government in the application of the Hirst decision.

2. Describe the problem this request addresses and why Whatcom County needs to address it.

   The people of Whatcom County face an array of challenges related to water resources including finding legal sources of water for agriculture, water for cities and water districts for development, rural landowners, and finding enough water to support fish. The urgency to resolve some of these problems has been elevated by legal action by local tribes and several recent court decisions regarding water rights. Whatcom County elected officials have given direction to staff to support finding solutions to these water problems. Many of these issues require an understanding of the hydrogeology of Whatcom County. Activities that are underway or are expected to be underway in the near future include development of a groundwater flow model, water supply plan, and mitigation studies. Furthermore, once the groundwater flow model is completed, the County will need someone who can operate and manage it. The County currently only has a very limited amount of staff capacity to address these issues. In addition to these studies, the County recently amended its development code in response to the Supreme Court Hirst decision to require all applicants seeking to utilize groundwater for a development to either provide evidence of non-continuity with instream flows or provide mitigation. The County currently does not have staff to evaluate the information contained in these submittals to determine if they comply with state and local codes. The addition of a qualified hydrogeologist will provide the staff capacity necessary to address these issues and also assist in the development of new code language which may be necessary to address all of the potential legal concerns. A qualified hydrogeologist would also be able to use and manage the forthcoming groundwater model as well as provide technical support for the studies that will be needed to reach resolution on pending water supply issues.

3. Options
   a) What other options have you considered? Why is this the best option?

   The County is currently relying on its limited existing staff capacity and outside consultants to address this need. However, the amount of work that will need to be done is expected to increase greatly as new development regulations are developed and more development applications are received and as the work necessary to find a larger comprehensive water solution accelerates. Having the in-house expertise of a hydrogeologist will provide the necessary staff capacity to move resolution of these issues forward and is more cost-effective and will provide more continuity than relying on outside consultants.

Friday, October 06, 2017
Rpt: Rpt ASR Regular
### 2017-2018 Budget Preparation - Regular Additional Service Request

**Public Works**
- Fund: 169
- Cost Center: 169119
- Originator: Gary Stoyka

**Natural Resources**

*b) What are the specific cost savings? (Quantify)*

Hiring in-house staff will provide cost savings over utilizing outside consultants.

*b) Outcomes / Objectives*

**a) What outcomes will be delivered and when?**

The County will be able to process development applications under current and new regulations and play a more active role in developing comprehensive water solutions for the benefit of the whole community.

**b) How will you know whether the outcomes happened?**

Processing of development applications and development of needed studies.

5. **Other Departments/Agencies**

**a) Will this ASR impact other departments or agencies? If so, please identify the departments and/or agencies impacted and explain what the impact(s) will be.**

The hydrogeologist position will be based in the Natural Resources Division of the Public Works Department, but will work closely with the Health Department and Planning and Development Services Department with respect to the work evaluating hydrogeology reports and mitigation plans associated with development applications and the development of new related codes.

**b) If another department or agency is responsible for part of the implementation, name the person in charge of implementation and what they are responsible for.**

Gary Stoyka, Natural Resources Manager will manage the hydrogeologist position.

6. **What is the funding source for this request?**

50% Flood Control Zone District Fund (169121); 50% General Fund
2017-2018 Budget Preparation - Regular Additional Service Request

Public Works          Natural Resources

FUND 169  COST CENTER 169121  ORIGINATOR: Gary Stoyka

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

Name of Request: WRIA 1 LIO Support 2018

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Request Total: $0  $0

1. Description of Request:
   a) Describe the proposed activity or service, and indicate whether it is a higher or lower priority than existing services in your department budget.

   Whatcom County has agreed to manage the grant for the Lead Integrating Organization.

   b) Who are the primary customers for this service?

   All of the local governments and citizens of Whatcom County

2. Describe the problem this request addresses and why Whatcom County needs to address it.

   The Puget Sound Partnership (PSP), a state agency, is charged with coordinating the recovery of Puget Sound. PSP has established Local Integrating Agencies (LIos) throughout the Puget Sound region to provide a mechanism for local communities to coordinate recovery efforts with state and federal agencies. The Watershed Management Board has agreed to serve as the LIO for Water Resources Inventory Area 1 (which is comprised of most of western Whatcom County). The Watershed Management Board consists of representatives from Whatcom County, all cities in the county, Whatcom PUD, Washington Department of Fish & Wildlife, and the Lummi and Nooksack Tribes. PSP provides $75,000 in annual funding to operate and coordinate the LIO. LIO work consists of preparing and updated a local recovery plan and developing a list of near-term actions (NTAs), as well as other administrative functions. Most of the work is performed by a contracted consultant.

3. Options
   a) What other options have you considered? Why is this the best option?

      1. Another Watershed Management Board agency could manage the LIO grant; however, all of the other agencies believe that the County is the appropriate agency to manage the grant.
      2. The Watershed Management Board could decide to not participate as a LIO; however, that would mean there would be less coordination of local recovery efforts and would likely result in the loss of local grant funds for efforts such as flood planning and water quality programs as PSP generally requires that local agencies have grant funded activities vetted by a LIO.

   b) What are the specific cost savings? (Quantify)

      All of the work in this ASR is fully grant funded, so there is no direct cost to the County for managing this grant.

4. Outcomes / Objectives
   a) What outcomes will be delivered and when?

      Whatcom County will manage the LIO grant in accordance with the grant conditions. Better coordination between local and regional recovery efforts will continue and local agencies will remain eligible for grant funding.

   b) How will you know whether the outcomes happened?

      The Watershed Management Board will continue to be recognized as the local coordinating agency for recovery efforts, the local perspective will continue to be provided to state and federal agencies, and local projects will continue to be eligible for grant funding.

Friday, October 06, 2017
Rpt. Rpt ASR Regular
### 2017-2018 Budget Preparation - Regular Additional Service Request

<table>
<thead>
<tr>
<th>Public Works</th>
<th>Natural Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASR # 2017-5704</td>
<td><strong>Fund 169</strong>  Cost Center 169121  <strong>Originator:</strong> Gary Stoyka</td>
</tr>
</tbody>
</table>

5. **Other Departments/Agencies**
   
a) *Will this ASR impact other departments or agencies? If so, please identify the departments and/or agencies impacted and explain what the impact(s) will be.*  
Watershed Management Board member agencies, Puget Sound Partnership.

b) *If another department or agency is responsible for part of the implementation, name the person in charge of implementation and what they are responsible for.*  
Leah Kitner with Puget Sound Partnership is the WRIA LIO liaison.

6. **What is the funding source for this request?**  
This ASR is fully funded by a grant from the USEPA through the Puget Sound Partnership. These funds will be run through cost center 169121.
2017-2018 Budget Preparation - Regular Additional Service Request

Public Works  | Natural Resources
---|---
ASR # 2017: 5705 | Fund 169  | Cost Center 169119  | Originator: Gary Stoyka

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

Name of Request: WSU Extension Natural Resources O & E 2018

<table>
<thead>
<tr>
<th>Costs: Object</th>
<th>Object Description</th>
<th>2017 Amount</th>
<th>2018 Amount</th>
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<tbody>
<tr>
<td>8351</td>
<td>Operating Transfer Out</td>
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</tr>
<tr>
<td><strong>Request Total</strong></td>
<td></td>
<td><strong>$0</strong></td>
<td><strong>$25,000</strong></td>
</tr>
</tbody>
</table>

1. Description of Request:
   a) Describe the proposed activity or service, and indicate whether it is a higher or lower priority than existing services in your department budget.
   WSU Extension will be providing outreach and education services to the Natural Resources Division for water-related issues.

   b) Who are the primary customers for this service?
   Citizens of Whatcom County.

2. Describe the problem this request addresses and why Whatcom County needs to address it.
   The Natural Resources Division has the need for outreach and education services that can be provided by WSU Extension.

3. Options
   a) What other options have you considered? Why is this the best option?
      1. Contract an outside firm - This option would cost more than hiring WSU extension.
      2. Not conduct these services - The general public would not receive these services.
   b) What are the specific cost savings? (Quantify)
      These activities have typically been included in the general contract between WSU Extension and the County. The costs for these services have been shifted from the general contract, which is funded by the general fund, to the Natural Resources budget, which is funded by the Flood Fund as they are related to Natural Resources issues. This change will have a net zero impact on the County budget, but a positive impact on the general fund and a negative impact on the flood fund.

4. Outcomes / Objectives
   a) What outcomes will be delivered and when?
      1. Manage the Whatcom Water Information Network (WWIN) website and coordinate the Speaker Series
      2. Native plant technical assistance
      3. Rain garden outreach and training/technical assistance
      4. Incorporating water quality into the 4-H program including monitoring, education, and promotion
      5. Coastal resilience grant implementation
      6. Dairy fertilizer study
      7. Green crab monitoring
      8. Agriculture outreach
   b) How will you know whether the outcomes happened?
      WSU Extension will provide deliverables related to these activities.

5. Other Departments/Agencies
   a) Will this ASR impact other departments or agencies? If so, please identify the departments and/or agencies impacted and explain what the impact(s) will be.
      WSU Extension
   b) If another department or agency is responsible for part of the implementation, name the person in charge of implementation and what they are responsible for.

Friday, October 06, 2017  | Rpt: Rpt ASR Regular
6. **What is the funding source for this request?**
Flood Control Zone District Fund
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES
- Originator: GSS 10/27/17
- Division Head: GSS 10/27/17
- Dept. Head: 7H 11/8/17
- Prosecutor: 11/02/17
- Purchasing/Budget: 11/13/17
- Executive: 11/13/17

RECEIVED

NOV 13 2017

WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
Proposed ordinance establishing a stormwater utility district in the Lake Whatcom watershed to generate revenue to partially fund implementation of the Lake Whatcom Management Program.

ATTACHMENTS:
Memo
Proposed Ordinance

SEPA review required? ( ) Yes ( X ) NO  Should Clerk schedule a hearing? ( X ) Yes ( ) NO
SEPA review completed? ( ) Yes ( ) NO Requested Date: 12/5/17

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.)

Public Works staff will introduce for discussion and possible adoption an ordinance establishing a stormwater utility district in the Lake Whatcom watershed to generate revenue to partially fund implementation of the Lake Whatcom Management Program.

COMMITTEE ACTION:
11/21/2017: Discussed and forwarded substitute to introduction

COUNCIL ACTION:
11/21/2017: Substitute Introduced 7-0

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

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

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: October 27, 2017

RE: Proposed Ordinance Establishing a Stormwater Utility District in the Lake Whatcom Watershed

At the November 21, 2017 Natural Resources Committee meeting, Public Works staff will introduce for discussion a proposed ordinance to establish a stormwater utility district in the Lake Whatcom watershed with a public hearing and potential adoption by the Council scheduled for December 5, 2017.

Background
On September 26, 2017, the Council adopted a resolution requesting that staff prepare an ordinance to establish a special district for the Lake Whatcom watershed to provide partial funding to implement the Lake Whatcom Management Program. On October 17, 2017, the Council decided that the special district should be a stormwater utility district established under RCW 36.89. The proposed ordinance establishes the district and its boundaries, but does not establish a schedule of fees and charges. Public Works staff has issued a Request for Proposals to hire a consultant to engage in a process, including public outreach and continued discussions with Council, to establish the fees and charges in 2018. A separate Council action will be required to implement fees and charges.

Requested Action
Public Works is requesting discussion of the proposed ordinance by County Council and adoption, if it meets the Council's needs.

Please contact Gary Stoyka at extension 6218 if you have any questions regarding this information.

Attachment
ORDINANCE NO. 2017-_______

ESTABLISHING THE
LAKE WHATCOM STORMWATER UTILITY SERVICE AREA

WHEREAS, Lake Whatcom is the drinking water source for approximately 100,000
Whatcom County residents; and

WHEREAS, concerns about the Lake’s water quality have been expressed by various
citizens and entities since at least 1988; and

WHEREAS, in 1992 the City of Bellingham, Whatcom County, and the predecessor of the
Lake Whatcom Water and Sewer District jointly formed the Lake Whatcom Management
Program and thereby declared their intention to work together to protect and manage Lake
Whatcom; and

WHEREAS, Lake Whatcom was first listed on the 303(d) list of impaired water bodies
under the federal Clean Water Act for low levels of dissolved oxygen related to excessive
levels of phosphorus and excessive levels of fecal coliform in tributaries in 1998; and

WHEREAS, the Lake Whatcom Management Program coordinates actions of the member
governments to improve the Lake, including, but not limited to reducing phosphorus and
fecal coliform entering the Lake; and

WHEREAS, a Total Maximum Daily Load (TMDL) Report of Findings for total
phosphorus and fecal coliform in the Lake Whatcom Watershed was approved by the
Washington State Department of Ecology (DOE) and the United States Environmental
Protection Agency (EPA) in 2016; and

WHEREAS, the TMDL requires the development of an implementation plan identifying
measures to be taken by the City of Bellingham and Whatcom County to reduce total
phosphorus and fecal coliform in Lake Whatcom, which will become incorporated into the
National Pollutant Discharge Elimination System (NPDES) stormwater permit for western
Washington when that permit is renewed; and,

WHEREAS, as permittees, the City of Bellingham and Whatcom County have committed
to substantial investments in stormwater infrastructure and private homeowner incentives
to improve water quality; and

WHEREAS, in 2017 Whatcom County approved an update to the Lake Whatcom
Comprehensive Stormwater Plan that identifies specific projects needed to reduce
phosphorus-laden runoff entering the Lake to fulfill the requirements in the TMDL
implementation plan; and
WHEREAS, the City of Bellingham has established a stormwater utility to provide a funding source to address the phosphorus reduction funding needs within the incorporated portion of the Lake Whatcom watershed; and

WHEREAS, a funding source is needed to address the phosphorus reduction funding needs in the unincorporated portion of the Lake Whatcom watershed; and

WHEREAS, RCW 36.89 authorizes counties to establish stormwater utilities to fund the cost and expense of maintaining and operating storm water control facilities and the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities in all or portions of a county; and

WHEREAS, it is the intent of the Whatcom County Council to authorize an assessment for the collection of revenue for fulfilling the TMDL implementation plan including the Lake Whatcom Comprehensive Stormwater Plan; and

WHEREAS, a map and legal description of the Lake Whatcom Stormwater Utility Service Area is included in this resolution as Exhibit "A"; and

WHEREAS, on September 26, 2017, the Whatcom County Council passed a resolution calling for the development of a special funding district in the unincorporated portion of the Lake Whatcom watershed to provide local fees to be used in conjunction with other funding to address water quality concerns specific to Lake Whatcom and requesting staff to bring forth an ordinance establishing such a district to the County Council for approval; and

WHEREAS, on October 17, 2017, the Whatcom County Council selected a stormwater utility established under RCW 36.89 as the special funding mechanism for the Lake Whatcom watershed; and

WHEREAS, a public hearing was held on December 5, 2017, for the establishment of the Lake Whatcom Stormwater Utility Service Area at the regular Whatcom County Council meeting.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Lake Whatcom Stormwater Utility Service Area is hereby established, as enabled by RCW 36.89, with its boundaries set as described in Exhibit A, attached hereto and incorporated by reference.

ADOPTED this _______ day of _________, 2017.

ATTEST

Dana Brown Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved ( ) Denied

Date Signed: ____________
EXHIBIT "A"

Lake Whatcom Stormwater Utility Service Area as formed under RCW 36.89

Boundary Legal Description

THE LAKE WHATCOM STORMWATER UTILITY SERVICE AREA CONTAINING ALL OR PORTIONS OF SECTIONS 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 AND 36, TOWNSHIP 38 NORTH, RANGE 3 EAST, W.M., SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34 AND 35 TOWNSHIP 38 NORTH, RANGE 4 EAST, W.M., SECTIONS 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, AND 35, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M., AND SECTIONS 30 AND 31, TOWNSHIP 37 NORTH, RANGE 5 EAST, W.M., SAID SERVICE AREA BOUNDARY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE WEST 100.00 FEET OF LOT 1, AS MEASURED ALONG THE SOUTH LINE THEREOF, IN BLOCK 1, MCCUE'S GARDEN TRACTS, WHATCOM COUNTY, WASHINGTON, AS PER THE MAP THEREOF, RECORDED IN VOLUME 6 OF PLATS, PAGE 42, IN THE AUDITOR'S OFFICE OF SAID COUNTY AND STATE; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 1 TO THE NORTHEAST CORNER OF LOT 3, GINA LYNEE SHORT PLAT; THENCE WESTERLY ALONG THE NORTH LINE OF SAID SHORT PLAT TO THE NORTHWEST CORNER OF LOT 2 OF SAID SHORT PLAT; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 2 AND THE EXTENSION THEREOF TO THE SOUTHERLY RIGHT OF WAY MARGIN OF YORK STREET; THENCE WESTERLY ALONG SAID SOUTHERLY RIGHT OF WAY MARGIN TO THE NORTHWEST CORNER OF LOT 4, CEDAR BROOK 1ST ADDITION; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 4 TO THE NORTHWEST CORNER OF LOT 5 OF SAID CEDAR BROOK 1ST ADDITION; THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID LOT 5 TO THE NORTHEAST CORNER OF SAID LOT 5; THENCE SOUTHWESTERLY ALONG THE EASTERLY LINE OF SAID LOT 5 TO THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTHWESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 5 TO THE SOUTHWEST CORNER OF SAID LOT 5, SAID SOUTHWEST CORNER ALSO BEING A POINT ON THE WEST LINE OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST OF W.M.; THENCE SOUTHERLY ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 3 EAST, W.M.; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID SECTION 34 TO THE SOUTHWEST CORNER OF SAID SECTION 34; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID SECTION 34 TO THE QUARTER SECTION CORNER COMMON TO SECTION 34, TOWNSHIP 38 NORTH, RANGE 3 EAST, W.M. AND SECTION 3, TOWNSHIP 37 NORTH RANGE 3 EAST W.M.; THENCE SOUTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 3 TO THE CENTER OF SAID SECTION 3; THENCE EASTERLY ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 3 TO THE EAST QUARTER CORNER OF SAID SECTION 3; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 3 TO THE NORTHWEST CORNER OF SAID SECTION 11, TOWNSHIP 37 NORTH, RANGE 3 EAST, W.M.; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID SECTION 11 TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 11; THENCE EASTERLY ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 11 TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 11; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE EASTERLY ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 11 TO THE EAST QUARTER CORNER OF SAID SECTION 11; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 11 TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 3 EAST, W.M.; THENCE EASTERLY ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SOUTHWEST
SAID SOUTHEASTERLY RIGHT OF WAY MARGIN TO THE MOST WESTERLY CORNER OF LOT 2, BLOCK 6 OF SAID GLENHAVEN LAKES DIV. NO. 10; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 2 TO THE MOST SOUTHEASTERLY CORNER OF SAID LOT 2, ALSO BEING A POINT ON THE NORTHWesterLY RIGHT OF WAY MARGIN OF FERNHAVEN LANE; THENCE NORTHEASTERLY TO THE SOUTHWESTERLY CORNER OF LOT 20, BLOCK 5 OF SAID GLENHAVEN LAKES DIV. NO. 10, ALSO BEING A POINT ON THE SOUTHEASTERLY RIGHT OF WAY MARGIN OF FERNHAVEN LANE; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 20 TO THE SOUTHWESTERLY CORNER OF SAID LOT 20, ALSO BEING A POINT ON THE NORTHWesterLY RIGHT OF WAY MARGIN OF CAIN LAKE ROAD; THENCE SOUTHEASTERLY TO THE NORTHWesterLY CORNER OF LOT E, UNRECORDED PARK RANCHETTES, ALSO BEING A POINT ON THE SOUTHEASTERLY RIGHT OF WAY MARGIN OF CAIN LAKE ROAD; THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF SAID LOT E TO THE NORTHEASTERLY CORNER OF SAID LOT E; THENCE SOUTHWESTERLY ALONG THE EASTERLY LINE OF SAID LOT E TO THE NORTHWEST CORNER OF LOT A, CAMPOS SHORT PLAT; THENCE EASTERLY ALONG THE NORTH LINE OF SAID CAMPOS SHORT PLAT TO THE NORTH EASTERLY CORNER OF LOT B OF SAID SHORT PLAT; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID SHORT PLAT TO THE NORTH EASTERLY CORNER OF LOT 2, SOUTH BAY RIDGE SHORT PLAT; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID SHORT PLAT TO THE SOUTH EASTERLY CORNER OF LOT 4 OF SAID SHORT PLAT; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID LOT 4 TO THE NORTHEASTERLY CORNER OF A PARCEL DESCRIBED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2016-0401205; THENCE SOUTHWESTERLY ALONG THE EASTERLY LINE OF SAID PARCEL TO THE CENTERLINE OF A CREEK AS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 20000808578; THENCE SOUTHEASTERLY ALONG SAID CREEK TO THE WEST LINE OF THE WEST HALF OF THE NORTHEASTERLY QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.; THENCE CONTINUING ALONG SAID CREEK TO THE NORTHEASTERLY CORNER OF A PARCEL DESCRIBED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 1991202345; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID PARCEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.; THENCE EASTERLY ALONG SAID NORTH LINE TO THE WEST LINE OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 4 EAST W.M.; THENCE NORTHERLY ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF A PARCEL DESCRIBED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2050101389; THENCE EASTERLY ALONG THE NORTH LINE OF SAID PARCEL TO A POINT ON THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 28; THENCE SOUTHERLY ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID SECTION 28; THENCE EASTERLY ALONG SAID SOUTH LINE TO THE NORTH QUARTER CORNER OF SECTION 33, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.; THENCE SOUTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 33 TO THE CENTER OF SAID SECTION 33; THENCE EASTERLY ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 33 TO THE NORTHWESTERLY RIGHT OF WAY MARGIN OF CAMP 2 ROAD; THENCE SOUTHWESTERLY ALONG SAID RIGHT OF WAY MARGIN TO THE DIVIDING LINE BETWEEN WHATCOM COUNTY AND SKAGIT COUNTY; THENCE EASTERLY ALONG SAID DIVIDING LINE TO THE SOUTHEASTERLY CORNER OF SECTION 35, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.; THENCE NORTHERLY ALONG THE EAST LINE OF SAID SECTION 35 TO THE SOUTHWEST CORNER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID SECTION 25 TO THE NORTHWEST CORNER OF SECTION 31, TOWNSHIP 37 NORTH, RANGE 5 EAST, W.M.; THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION 31 TO THE NORTH QUARTER CORNER OF SAID SECTION 31; THENCE SOUTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 31 TO THE NORTHWEST CORNER OF A PARCEL DESCRIBED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2101106490; THENCE EASTERLY ALONG THE NORTH LINE OF SAID PARCEL TO THE WESTERLY RIGHT OF WAY MARGIN OF STATE ROUTE NO. 9; THENCE NORTHERLY ALONG SAID WESTERLY RIGHT OF WAY MARGIN TO THE SOUTH LINE OF SAID SECTION 30, TOWNSHIP 37 NORTH, RANGE 5 EAST, W.M.; THENCE WESTERLY ALONG SAID SOUTH LINE TO THE SOUTHWESTERLY RIGHT OF WAY MARGIN OF PARK ROAD; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY MARGIN TO THE NORTH-SOUTH CENTERLINE OF SAID SECTION 30; THENCE NORTHERLY ALONG SAID NORTH-SOUTH CENTERLINE TO THE CENTER OF SAID SECTION 30; THENCE WESTERLY ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 30 TO THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 30; THENCE NORTHERLY
WEST CENTERLINE ALONG THE NORTHWEST CORNER OF THE PLAT OF BROWNSVILLE; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID PLAT TO THE NORTH LINE OF THE PLAT OF BRITTON GREEN; THENCE WESTERLY ALONG SAID NORTH LINE TO THE EASTERLY RIGHT OF WAY MARGIN OF BRITTON ROAD; THENCE SOUTHERLY ALONG SAID RIGHT OF WAY MARGIN TO THE INTERSECTION WITH THE EXTENSION OF THE NORTH LINE OF LOT 1, MANDEL SHORT PLAT, AS SHOWN ON THE PLAT OF SUNNYBROOK, RECORDED UNDER WHATCOM COUNTY AUDITOR’S FILE NO. 2070400646; THENCE WESTERLY ALONG SAID NORTH LINE AND THE EXTENSION THEREOF TO THE EAST LINE OF LOT 13 OF SAID PLAT OF SUNNYBROOK; THENCE SOUTHERLY ALONG SAID EAST LINE TO THE SOUTHEAST CORNER OF SAID LOT 13, ALSO BEING A POINT ON THE NORTH LINE OF GREENVILLE EAST DIV. NO. 1.; THENCE WESTERLY ALONG THE NORTH LINE OF SAID GREENVILLE EAST DIV. NO. 1 TO THE EAST LINE OF A PARCEL DESCRIBED UNDER WHATCOM COUNTY AUDITOR’S FILE NO. 2040702618; THENCE NORTHERLY ALONG SAID EAST LINE TO THE NORTHEAST CORNER OF SAID PARCEL; THENCE WESTERLY ALONG THE NORTH LINE OF SAID PARCEL TO THE NORTHEAST CORNER OF A PARCEL DESCRIBED UNDER WHATCOM COUNTY AUDITOR’S FILE NO. 2016-0303015; THENCE WESTERLY ALONG THE NORTH LINE OF SAID PARCEL TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID PARCEL TO THE NORTH LINE OF GREENVILLE EAST DIV. NO. 2; THENCE WESTERLY ALONG SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID GREENVILLE EAST DIV. NO. 2; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID GREENVILLE EAST DIV. NO. 2 TO THE SOUTHWESTERLY LINE OF LOT 22, TWEED TWENTY DIV. NO. 5; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE TO THE SOUTHEASTERLY RIGHT OF WAY MARGIN OF DEL BONITA WAY; THENCE SOUTHWESTERLY ALONG SAID RIGHT OF WAY MARGIN AND EXTENSION THEREOF TO THE SOUTHWESTERLY RIGHT OF WAY MARGIN OF SPRING COULEE ROAD; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY MARGIN TO THE INTERSECTION WITH THE SOUTHEASTERLY RIGHT OF WAY MARGIN OF BEAZER ROAD; THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY RIGHT OF WAY MARGIN TO THE INTERSECTION WITH THE EXTENSION OF THE NORTHERLY LINE OF LOT 30, TWEED TWENTY DIV. NO. 3; THENCE WESTERLY ALONG SAID NORTHERLY LINE AND EXTENSION THEREOF TO THE EAST LINE OF LOT 1, PLAT OF “HERITAGE HILLS DIV. NO. 1”; THENCE NORTHERLY ALONG SAID EAST LINE TO THE NORTH LINE OF LOTS 1 AND 2 OF SAID PLAT OF “HERITAGE HILLS DIV. NO. 1”; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOTS 1 AND 2 TO THE EAST LINE OF TWEED TWENTY DIV. NO. 4; THENCE NORTHERLY ALONG SAID EAST LINE TO THE SOUTHEAST CORNER OF LOT 16 OF SAID TWEED TWENTY DIV. NO. 4; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID LOT 16 TO THE EASTERLY RIGHT OF WAY MARGIN OF MAGRAH ROAD; THENCE SOUTHWESTERLY ALONG SAID RIGHT OF WAY MARGIN TO THE INTERSECTION OF SAID RIGHT OF WAY MARGIN AND THE EXTENSION OF THE NORTH LINE OF LOT 35, TWEED TWENTY DIV. NO. 4; THENCE WESTERLY ALONG SAID NORTH LINE AND THE EXTENSION THEREOF TO THE WEST LINE OF TWEED TWENTY DIV. NO. 4, ALSO BEING THE NORTHWEST CORNER OF THE PLAT OF BRENTWOOD DIV. NO. 3B; THENCE EASTERLY ALONG THE NORTH LINE OF THE PLAT OF BRENTWOOD DIV. NO. 3B AND THE EXTENSION THEREOF TO THE NORTHWEST CORNER OF LOT A, THREE B’S SHORT PLAT; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT A AND EXTENSION THEREOF TO THE NORTH-SOUTH CENTERLINE OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 3 EAST, W.M.; THENCE SOUTHERLY ALONG SAID NORTH-SOUTH CENTERLINE TO THE INTERSECTION WITH THE NORTH LINE OF SILVER BEACH ON LAKE WHATCOM; THENCE EASTERLY ALONG THE SAID NORTH LINE TO THE EAST LINE OF SAID LOT 22, THENCE SOUTHERLY ALONG SAID EAST LINE TO THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST, W.M.; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 27 TO THE SOUTHWESTERLY RIGHT OF WAY MARGIN OF NORTHSHORE DRIVE; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY MARGIN TO THE MOST EASTERLY CORNER OF LOT 1, PEARCE’S SUBDIVISION; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOT 1 TO THE NORTHERLY MOST CORNER OF “PARCEL A” DESCRIBED UNDER WHATCOM COUNTY AUDITOR’S FILE NO. 2130101857; THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID “PARCEL A” TO THE SOUTHEASTERLY LINE THEREOF; THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY LINE TO THE INTERSECTION WITH SAID EAST LINE OF SECTION 27; THENCE SOUTHERLY ALONG SAID EAST LINE TO THE INTERSECTION WITH THE NORTHEASTERLY BANK MEANDER LINE OF LAKE
WHATCOM AS SHOWN ON THE MAP OF LAKE WHATCOM SHORE LANDS; THENCE SOUTHWESTERLY TO THE INTERSECTION OF THE EAST-WEST CENTERLINE OF SAID SECTION 27 WITH THE SOUTHWESTERLY BANK OF LAKE WHATCOM; THENCE WESTERLY ALONG SAID EAST-WEST CENTERLINE TO THE NORTHWEST CORNER OF THE “GURTNER PARCEL” AS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED UNDER WHATCOM COUNTY AUDITOR’S FILE NO. 901231198; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID “GURTNER PARCEL” AND THE EXTENSION THEREOF TO THE NORTHWEST CORNER OF THE PLAT OF MAPLEBROOK; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID PLAT TO THE NORTHEAST CORNER OF THE PLAT OF BROOK VIEW; THENCE WESTERLY ALONG THE NORTH LINE OF SAID PLAT OF BROOK VIEW AND THE EXTENSION THEREOF TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING WITHIN THE LIMITS OF THE CITY OF BELLENGHAM, WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.
LINES AND RIGHT OF WAY MARGINS TO BE LENGTHENED OR SHORTENED AS NECESSARY.
### WHATCOM COUNTY COUNCIL AGENDA BILL

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### TITLE OF DOCUMENT:

2017 Critical Areas Ordinance Update

### ATTACHMENTS:

(all materials can be found at [http://www.whatcomcounty.us/2417/County-Council-Review](http://www.whatcomcounty.us/2417/County-Council-Review))

- The draft ordinance adopting the Critical Areas Ordinance and Shoreline Management Program amendments
- Exhibit A – The draft Critical Areas Ordinance code as amended by the County Council
- Exhibit B – Whatcom County Critical Areas Ordinance Best Available Science Review and Recommendations for Code Update, 2005 (available online)

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

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

### Should Clerk schedule a hearing? (X) Yes ( ) NO

### Requested Date: 10/24/17

### 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.)

Introduction of 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:

10/24/2017: Held in Committee
11/8/2017: Discussed and amended
11/14/2017: Discussed and amended
11/21/2017: Amended and forwarded to Introduction

### COUNCIL ACTION:

10/10/2017: Referred to Committee of the Whole
11/8/2017: Withdrawn
11/21/2017: Introduced 7-0

### Related County Contract #:

### Related File Numbers:

### Ordinance or Resolution Number:

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

TO: The Honorable County Council
Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner

THROUGH: Mark Personius, Asst. Director

DATE: November 27, 2017

SUBJECT: Public Hearing on 2017 Critical Areas Ordinance (CAO) Update

Over the last year, Council has been reviewing and editing the Planning Commission recommended draft Critical Areas Ordinance (CAO) Update. On November 21, 2017, Council finished their review and introduced the 2017 Critical Areas Ordinance Update and a final public hearing is scheduled for December 5th.

The final public hearing packet contains the following:

- The draft ordinance adopting the Critical Areas Ordinance and Shoreline Management Program amendments
- Exhibit A – The draft Critical Areas Ordinance code as amended by the County Council
- Exhibit B – Whatcom County Critical Areas Ordinance Best Available Science Review and Recommendations for Code Update, 2005 (available online)

(Note: All of these documents are available for review at http://www.whatcomcounty.us/2417/County-Council-Review.)

Shoreline Management Program Amendment

As Council is aware, the courts found that critical areas ordinances do not (automatically) apply in the shoreline areas. Some jurisdictions solved this by having a separate set of similar CAO regulations in their Shoreline Management Program. However, many, including Whatcom County, chose to adopt their standard Critical Areas Ordinance by reference in their Shoreline Management Program, thus making those rules apply. For this reason, in the final adoption staff is asking Council to do a minor amendment to the Shoreline Management Program WCC 23.10.060(A) to reference this latest version of the Critical Areas Ordinance. This portion of the ordinance will be subject to a Shoreline Management Program minor amendment process with the Department of Ecology, anticipated to take 3-6 months. Until that process is finished and approved, the existing CAO will still pertain within the Shoreline jurisdiction.
A Synopsis of Proposed Substantive Changes

Below are listed a brief list of the more substantive changes in the proposed 2017 CAO Update. A more complete list can be found in Exhibit C, and all proposed changes can be found in Exhibit A.

Proposed changes from the Planning Commission include:

- **16.16.240(A)(2) & (C)(2) Technical Administrator and Hearing Examiner Authority** – Amending to give the Technical Administrator decision-making authority over all Reasonable Use Exceptions for single family residential uses, including those in geohazard area, so as to minimize cost to the typical homeowner.

- **16.16.260 General Mitigation Requirements** – Amending to make it clearer that, even though mitigation sequencing has always been a requirement, that alternatives and cumulative impacts be analyzed.

- **16.16.264 In-Lieu Fees** – Adding a new section authorizing a mitigation in-lieu fee program.

- **16.16.310 Designation, Mapping, and Classification** – Better describing and classifying geohazardous areas

- **Article 4 Frequently Flooded Areas & 16.16.710 HCA Designation, Mapping, and Classification** – Integrating the requirements of the FEMA Biological Opinion into the Frequently Flooded Areas and Habitat Conservation Area requirements

- **Article 6 Wetlands** – Updating the wetlands classification system to meet the Department of Ecology’s newer rating system

- **16.16.610(C) Wetlands Designation, Mapping, and Classification** – Reducing the minimum size of a regulated Class IV wetland from 4,356 to 1,000 square feet.

- **16.16.620 Wetlands – General Standards & 16.16.720 HCA General Standards** – Adding new standards for trails in wetland and habitat conservation area buffers

- **16.16.640 Wetland Buffer Standards**
  - Adding language from the new Ecology guidance (land use intensity table) regarding what type of measures will reduce use intensity
  - In Table 2, amending the wetland replacement ratio table based on the new Department of Ecology classification system

- **16.16.710(C)(1) HCA Designation, Mapping, and Classification and 16.16.900 Definitions** – Better clarifying the difference between regulated streams and non-regulated ditches

- **16.16.720 HCAs – General Standards**
  - Deleting the ability to install private launch ramps in HCAs
  - Requiring that an analysis be done prior to the removal of beaver and their dams

- **16.16.740 Habitat Conservation Area Buffers – Standards**
  - Adding a mitigation ratio for HCA buffer impacts
  - Requiring HCA buffer enhancement where buffer has been reduced

- **16.16.900 (Definitions)**
“Maximum Credible Event,” “May,” “Overnight accommodations,” “Seiche,” “Special
occupancies,” “Species of local importance,” “Stormwater Manual,” “Waters of the
state"

- Amending the definitions of “Clearing,” “Fish and wildlife habitat conservation areas,”
“Geologically hazardous areas,” “Qualified professional” or “qualified consultant,”
“Reestablishment,” “Rehabilitation,” “Restoration,”
- Deleting the definition of “Critical/Essential facilities,” “Prior Converted Croplands,”

Proposed changes the Council has made include:

- **16.16.100 Purpose and Intent** – Adding additional language to further clarify the CAO’s intent
  and authority.

- **Article 2** – Numerous changes regarding process, including:
  - Simplifying text to clarify how critical areas review is conducted
  - Requiring that detailed written findings be made so that applicants and the public can
    understand why decisions were made the way they were

- **16.16.205 Authorizations Required** – Amending the language to better clarify that critical areas
  cannot be altered without having proper authorization.

- **16.16.230 Exempt Activities** – Clarifying that even if exempt from this Title one cannot violate
  the requirements of it.

- **16.16.270 Reasonable Use Exceptions** – Allowing a maximum impact area of 4,000 s.f. for
  reasonable use exceptions (previously 2,500 s.f.), and to not include utilities and non-native
  landscaping in that calculation

- **16.16.275 Nonconforming Uses/Buildings** – Increasing the time for completing reconstruction
  of nonconforming structures from 18 months to 5 years

- **16.16.285 Penalties and Enforcement** – Changing the time for property owners to respond to
  code violations from 30 calendar days to 30 business days

- **16.16.350 Volcanic Hazard Areas – Standards** – Reducing the requirements for lahah hazard
  zones to just preparing an emergency evacuation plan

- **16.16.620 Wetlands – General Standards & 16.16.720 Habitat Conservation Areas – General
  Standards** – Adding a provision to allow phosphorus reducing BMP structures approved and
  installed through the Homeowners’ Improvement Program within the Lake Whatcom watershed
to treat runoff from existing development to be permitted within the outer 50% percent of
wetland buffers

- **16.16.640 Wetland Buffer Reduction** – In Table 1, merging Category IV wetland buffer
  requirements into one standard, since regardless of the habitat score the Department of
  Ecology recommended buffer widths are the same

- **16.16.670 Review and reporting requirements & 16.16.690 Compensatory Wetland Mitigation
  Plan** – Revising the wetland review and reporting requirements to allow various components to
  be submitted separately, if the Technical Administrator believes it will lead to a more efficient
  review
• 16.16.710 Habitat Conservation Areas – Designation, Mapping, and Classification
  o Converting to the stream classification system to use the more common Department of Natural Resources classification system
  o Adding state-listed species and habitats as a Habitat Conservation Area category (had previously listed each of the various habitats individually)
  o Removing the previous list of identified Species and Habitats of Local Importance as there was no evidence to support them being identified as such

• 16.16.720 Habitat Conservation Areas – General Standards & 16.16.750 Habitat Conservation Areas – Review and Reporting Requirements – Amending the submittal requirements for bald eagle permits on Eliza Island, since the state and federal designations and requirements have changed

• 16.16.760 Habitat Conservation Areas – Mitigation Standards – Changing the monitoring requirement for HCA’s from a case-by-case basis to a period of 5 years

• 16.16.830 Conservation Farm Plans – General Standards – Allowing 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 to 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

• 16.16.840 Conservation Farm Plan Requirements – Adding “fertilizers other than manure” to the list of issues that must be addressed in a Conservation Farm Plan

• 16.16.870 Limited Public Disclosure – Requiring PDS to make available a list of which farms have approved conservation farm plans and the date of their approval

• 16.16.900 (Definitions)
  o Adding definitions of “Critical Saltwater Habitat,” “Grazable acres,” “May,” “Reasonable Use Exception,” “Survey,” and “Swale”
  o Deleting the definition of “actively farmed” as it is not used in the code
  o Amending the definition of “Fish and wildlife habitat conservation areas” to more closely match the state’s definition
  o Amending the definition of “Reasonable Use” to match the state’s definition
  o Amending the definition of “Streams”

• Included in the adopting ordinance a commitment for Planning and Development Services to work with the agricultural community to develop creative solutions that would allow farmers to maintain or attain “ongoing agriculture” status pursuant to applicable laws.
ORDINANCE NO. 2017 – ________

ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 16.16 (CRITICAL AREAS) AND WHATCOM COUNTY CODE CHAPTER 23.10 (SHORELINE MANAGEMENT PROGRAM – PURPOSE AND INTENT) PERTAINING TO THE PROTECTION AND REGULATION OF ENVIRONMENTALLY CRITICAL AREAS

WHEREAS, the Whatcom County Comprehensive Plan supports the protection of environmentally critical areas through the adoption of development regulations; and

WHEREAS, the State Growth Management Act (GMA) includes goals and requirements to guide the development and adoption of comprehensive plans and development regulations including requirements to designate and protect environmentally critical areas; and

WHEREAS; the County has considered those goals, policies, and requirements in development of the proposed Whatcom County Code amendments related to critical areas, and, has considered other state requirements, law, rules, guidelines, and agency comments; and

WHEREAS, the County researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating critical areas, undertook a Best Available Science (BAS) review and public process in accordance with the requirements of the GMA, developed Whatcom County Code amendment drafts, prepared environmental documents in accordance with the requirements of the State Environmental Policy Act (SEPA), and held meetings and hearings throughout the code development process; and

WHEREAS, the County has been provided feedback on draft work products and guidance from members of the public, County staff, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, the Washington State Department of Commerce, the Lummi Nation, the Nooksack Indian Tribe, other stakeholders and experts, the Whatcom Planning Commission, and elected and appointed officials during the development of the recommended code amendments; and

WHEREAS, in developing this ordinance, the County has followed the GMA’s requirements, including to provide “early and continuous public involvement” through a variety of mechanisms described in the public record; and

WHEREAS, the County has followed the State guidelines for the BAS process required by RCW 36.70A.172 and WAC 365-195-900 through 925, employing a variety of mechanisms described in the public record; and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the State of Washington Department of Commerce and to other State agencies on February 2, 2016, for a 60-day review and comment period in accordance with State law; and

WHEREAS, an environmental review has been conducted in accordance with the requirements of State Environmental Policy Act (SEPA), and a SEPA threshold determination was issued, and published on March 17, 2016, in the Bellingham Herald; and

WHEREAS, the Planning Commission held a total of 7 public meetings to consider the proposed amendments, which included two public hearings, one on May 12 and one on June 12, 2016, with deliberations throughout these meetings; and
WHEREAS, the Planning Commission has provided a recommendation to the County Council related to the proposed amendments; and

WHEREAS, the County Council held 22 public study sessions on the proposed amendments between September 20, 2016 and November 21, 2017; and

WHEREAS, the County Council held an initial public hearing on October 25, 2016 and a final public hearing on December 5, 2017, both of which were duly noticed on the County's website and the Bellingham Herald; and

WHEREAS, the County Council has considered the recommendation of the Technical Advisory Committee, Citizens Advisory Committee, the County Planning Commission, and the public comments received; and

WHEREAS, the County Council has reviewed and considered a variety of information sources including Best Available Science materials, informational documents in the public record, and public testimony submitted verbally and in writing to the Planning Commission and to the County Council; and

WHEREAS, the County Council desires the proposed amendments to be effective throughout the county, including within the shoreline jurisdiction, a concurrent Shoreline Master Program amendment has been prepared for submittal to the State Department of Ecology for approval;

WHEREAS, based upon the foregoing process, the County Council makes the following Findings of Facts and Conclusions:

General Findings

1. The Growth Management Act requires critical areas to be designated and protected and to include and be informed by BAS when developing critical areas regulations. RCW 36.70A.

2. Critical areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas.

3. The Whatcom County has within its borders a variety of environmentally sensitive areas that require protection of important functions and values.

4. Unregulated development may result in cumulative impacts to those functions and values of critical areas that contribute to and are necessary for a healthy natural environment and perceived quality of life.

5. The unregulated development of residences, businesses, shopping areas and other structures, and the clearing of land for accommodation of livestock and for such development all have the potential of adversely and significantly impacting the functions and values of critical areas.

6. The unregulated development of resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life.

7. It is more costly to remedy the loss of critical area functions and values than to conserve and protect them from loss or degradation.

8. In determining what critical areas are to be afforded a particular degree of protection, Whatcom County has evaluated a wide range of the best science available with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

9. The sources of this best available science that were evaluated and included in this ordinance are contained in Exhibit B: *Whatcom County Critical Areas Ordinance Best Available Science Review*

10. Protection standards for one critical area often provide protection for one or more other critical areas.

11. Critical areas may also be protected by other actions by the County, such as stormwater management standards, clearing and grading regulations, critical area restoration, and public education; and from other regulations, such as the Forest Practices Act, the Shoreline Management Act, the State Environmental Policy Act, and others.

12. The U.S. Constitution prohibits the taking of private property without just compensation.

13. 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.

14. The amendments hereafter set forth address requirements related to development in and near environmentally critical areas including environmentally critical areas buffers, performance standards, mitigation requirements, exemptions and exceptions.

15. The amendments serve to further implement the Comprehensive Plan, and provide protection for critical areas that is consistent with BAS and with providing options and development flexibility, and are in the public interest.

16. The critical areas regulations continue to allow for reasonable use of property to ensure that such regulations do not infringe on constitutional private property rights.

17. The public record demonstrates that the amendments were developed through a review of the BAS literature available to the County for review and consideration.

18. The County has followed the GMA’s requirements for public involvement and for including and considering BAS in modification of the regulations for critical areas.

19. The public testimony provided to the County included both support for the proposed amendments and suggestions for modifications.

20. Based on the review of the testimony and public record, the amendments attached to this ordinance reflect the County’s requirement to protect critical areas and to consider the planning goals of the GMA, while recognizing public and private interests.

Wetlands

21. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include but are not limited to: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced.

22. The scientific literature supports the inclusion of protective buffers adjacent to wetlands to provide refuge to wetland dependent species, moderate water level fluctuations, and sediment and nutrient filtration functions.

24. The scientific literature supports the inclusion of protective buffers of relatively intact native vegetation from wetlands to adequately protect functions and values.


**Critical Aquifer Recharge Areas**

26. WAC 365-190-080 defines wellhead protection areas, sole source aquifers, special protection areas, and other areas that are susceptible or vulnerable to ground water contamination as areas with a critical recharging effect on aquifers used for potable water (also referred to as critical aquifer recharge areas).

27. Potable water is an essential life-sustaining element.

28. Much of the County’s drinking water in rural areas comes from groundwater supplies.

29. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean up.

30. Preventing groundwater contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.

31. The County has used Guidance Document for Establishment of Critical Aquifer Recharge Area Ordinances, by Ecology, 2000, which includes scientific recommendations for protecting ground water, including limiting certain uses and the intensity of development in critical aquifer recharge areas.

**Frequently Flooded Areas**

32. Flood hazard areas are subject to periodic inundation that results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

33. These flood losses are caused by development in areas prone to inundation that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

34. Floodplain and stream connectivity are major elements in maintaining healthy riparian habitat and off-channel habitats for the survival of fish species and conveyance of floodwaters. If river, floodplains, and other systems are not viewed holistically as biological, geomorphological units, this can lead to serious degradation of habitat and increase flood hazards, which in turn can contribute to listing of various fish species as threatened or endangered and result in extraordinary public expenditures for flood protection and relief.

35. Frequently flooded areas, including the 100-year floodplain and the floodway, are commonly mapped on flood insurance maps, often known as Flood Insurance Rate Maps, or FIRMs.

**Geologically Hazardous Areas**

36. Geologically hazardous areas are subject to periodic geological events that result in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
37. Geologic hazards may be exacerbated by development and human activity in sensitive areas, and impacts resulting from geologic hazards may be reduced by limiting development and human activity within or adjacent to the geologic hazard.

38. Some geologic hazards may be intensified during periods of consistent or heavy rainfall that results in ground saturation or surface water drainage flows.

39. Regarding amendments to the section on Volcanic Hazard Areas, in particular potential lahar hazards, Council finds:

a) Based on observable deposits only one far-reaching lahar is known to have impacted the lower reaches of the Nooksack River drainage (25-foot thick deposit preserved at the confluence of the Middle and North Fork valleys), by way of the Middle Fork Valley, since cessation of the last ice Age approximately 11,000 to 13,000 years ago ("Middle Fork Lahar," approximately 6,500 years ago);

b) Based on an absence of extensive lahar deposits in the North Fork Nooksack River drainage no far-reaching lahars are interpreted to have traveled down the North Fork Valley since cessation of the last Ice Age;

c) The initiation of extensive lahars that could impact the lower reaches of the Nooksack River drainages are most commonly associated with periods of significant volcanic unrest;

d) Periods of significant volcanic unrest may be preceded by weeks to months of advanced warnings, including increased fumarolic activity and volcanic seismicity as magma migrates through the volcanic edifice towards the ground surface;

e) The USGS has limited monitoring equipment in place but has expressed intent to expand the volcanic monitoring network at Mt. Baker to meet the minimum standard defined by Open-File Report 2009-1165. In addition, the USGS has the ability to deploy portable monitoring arrays capable of measuring seismicity, ground deformation, fumarolic activity, and other parameters during periods of volcanic unrest that would be useful for informing emergency preparedness and evacuation planning;

f) During periods of unrest the USGS would produce information updates, warnings, and risk estimates for the danger areas around Mt. Baker, including developing "scenario maps," which can be used to notify and warn people within the potential danger zones. During such an event communication between the USGS, State, County, emergency management organizations, and the public would be conducted in accordance with the Mount Baker/Glacier Peak Coordination Plan, as well as local emergency preparedness plans that are to be completed;

g) The area subject to the most frequent lahar hazards are currently in the more active portion of the volcano, which include the south and east sides of Mt. Baker, in particular the area surrounding Baker Lake.

h) People visiting, working, or residing in the "lahar hazard zone" would have ample time to be warned of the increased volcanic activity and associated lahar risk and make reasoned and safe evacuations until volcanic activity quieted;

i) As an example, when Mt. St. Helens erupted in 1980, there were weeks of advance warning signs of increased activity. A large number of people evacuated the potential impact area during the lead up to that eruption. The only lives lost were due to people who refused to evacuate after receiving warnings to do so;
Fish and Wildlife Habitat Conservation Areas

40. Fish and wildlife habitat conservation areas perform many important physical and biological functions that benefit Whatcom County and its residents, including but not limited to: maintaining species diversity and genetic diversity; providing opportunities for food, cover, nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas.

41. Wetlands and streams are environmentally sensitive and have numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations these functions cannot be adequately replicated or replaced.

42. The scientific literature supports the inclusion of protective buffers from streams to provide sediment and nutrient input control to downstream waters, large woody debris, and other functions important to riparian areas.

43. The Washington Department of Fish and Wildlife (WDFW) has prepared management recommendations for the preservation of priority habitat and species, which are based on the best available science, and include, in some instances, recommended protective buffer distances.

44. Kelp and eelgrass beds have been identified and mapped by the Washington State Department of Natural Resources (DNR) in some areas. Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260. Locations for both may be found by referring to Critical Spawning Habitat for Herring, Surf Smelt, Sand Lance and Rock Sole in Puget Sound, Washington: A Guide for Local Governments and Interested Citizens, 2002, and the Puget Sound Environmental Atlas, Volumes 1 and 2.

45. Salmonid and anadromous fish may be more impacted by development and human activity during some times than others. Such times are referred to as “fish windows,” which have been documented by WDFW.

46. DNR has classified watercourses according to two stream-typing systems based on channel width, fish use, and perennial or intermittent status.

47. WAC 365-190-080(5) grants Whatcom County the flexibility to make decisions in the context of local circumstances, and specifically excuses local jurisdictions from being required to protect “all individuals of all species at all time.”

Critical Area and Water Quality Related Monitoring and Enhancement Activities & Strategies

48. The County monitors various metrics to ensure that critical areas’ functions and values are protected. Monitoring programs include:

a) Participating in the WDFW High Resolution Change Detection Project (BAS Document #22), which measures changes in riparian vegetation cover.

b) Performing critical areas mitigation monitoring for 5 years post-permit approval to ensure mitigation success [WCC 16.16.260]

c) Participating in Puget Sound Partnership’s monitoring programs:
   (i) Puget Sound Ecosystem Monitoring Program
   (ii) Effectiveness Monitoring
   (iii) Puget Sound Vital Signs Program
d) PDS’ ongoing administrative review of consistency between CAO requirements and permit conditions to ensure staff is applying code requirements consistently and correctly

e) CPAL Conservation Farm Plan monitoring to ensure the CPAL program is working effectively [WCC 16.16.860]


g) Whatcom County Health Department’s Potable Water Well Testing Program to test new wells for contaminants in order to meet state water quality standards [http://www.whatcomcounty.us/856/Drinking-Water]


i) Participation in the nascent Nooksack-Fraser Transboundary Nitrogen Study to work cooperatively with Canadian and U.S. agencies to address the transboundary issue of excess nitrogen in the aquifer.

j) Council’s formation in 2016 of the Whatcom County Wildlife Advisory Committee to develop critical area monitoring and adaptive management program recommendations [2017 Ecosystem Report, Section VIII, Recommendations]

k) The Wildlife Advisory Committee’s preparation of the Whatcom County 2017 Ecosystem Report, including and existing ecosystem baseline conditions assessment and findings [2017 Ecosystem Report, Section VI, Findings].

**Critical Area Enhancement Activities**

49. Under the direction of the Whatcom Conservation District from 1995 through November 2017, the following critical area enhancement activities have been implemented:

a) Through the CREP Program, 425 projects have planted 1.67M seedlings along 213.6 miles of stream buffers, covering 2,858 acres.

b) Working with Whatcom County Public Works, 288,120 linear feet (176 acres) of stream buffers have been replanted.

50. Working through the Nooksack Salmon Enhancement Association (NSEA), since 2009 over 500 restoration, riparian and instream habitat enhancement, and fish passage projects along 100 miles of stream channel have been accomplished.

51. Since 1995, through implementation of the Critical Areas Ordinance, 114 conservation easements have been placed over critical areas and private property. These easements are held by Whatcom County or non-governmental organizations (e.g., Whatcom Land Trust, Lummi Island Heritage Trust, etc.) and are subject to monitoring.

**NOW THEREFORE, THE COUNTY COUNCIL OF WHATCOM COUNTY, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1. Adoption of amendments to Whatcom County Code Chapter 16.16 – Environmentally Critical Areas.** The amendments to the Whatcom County Code as set forth in Exhibit A to this ordinance are hereby adopted.

**Section 2. Adoption of Best Available Science.** Exhibit C, the Whatcom County Critical Areas Ordinance 2017 Update – Best Available Science Review: Addendum to the 2005 BAS Report, is hereby adopted as the basis for those amendments made that are required to be supported by science.
Section 3. Adoption of amendments to Whatcom County Code §23.10.060(A) — Shoreline Management Program: The below amendments to WCC §23.10.060(A) are hereby adopted.

23.10.060 References to plans, regulations or information sources.
A. The Whatcom County critical areas ordinance, Chapter 16.16 WCC (Ordinance No. 2005-068, dated September 30, 2005, 2017, and as amended on February 27, 2007) is hereby adopted in whole as a part of this program, except that the permit, nonconforming use, appeal and enforcement provisions of the critical areas ordinance (WCC 16.16.270 through 16.16.285) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), Chapter 16.16 WCC, are for this specific version.

Section 4. Planning and Development Services staff shall work with the farming community to develop creative solutions that would allow farmers to maintain or attain “ongoing agriculture” status pursuant to applicable laws. Proposed code amendments to the Critical Areas Ordinance related to ongoing agriculture shall be processed with all due haste, but the first proposal shall be brought to Council for consideration no later than July 1, 2018.

Section 5. Codification of the regulations: The County Council authorizes the Director of Planning and Development Services and the County Clerk to correct scrivener’s errors in Attachment A, codify the regulatory provisions of the amendment into Chapter 16.16 and §23.10.060(A) of the Whatcom County Code, and publish the amended code.

Section 6. Interpretation: The County Council authorizes the Director of Planning and Development Services to adopt administrative rules, adopt interpretations, update the County’s critical areas maps based on the amendments, and administer the amended code as necessary to implement the legislative intent of the County Council.

Section 7. Severability: Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 8. Effective Date: This ordinance shall be published in the official newspaper of the County, and shall take effect and be in full force 10 days after the date of publication.

APPROVED this __________ day of __________, 2017.

ATTEST:

Dana Brown Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

Barry Buchanan, Council Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved ( ) Denied
Date Signed: __________________________
2017

WWC 16.16 Critical Areas Regulations

Note: This version shows all edits up to and including Council edits as of 11/21/17.

Planning and Development Services
Whatcom County
11/21/17
Editor’s Notes:

1. All proposed changes are shown in strikeout/underline, except for formatting changes. Formatting changes have all been accepted so as to make reading easier.
2. Double strikeout/underline indicates that original text was moved. However, please note that such marking is an automatic function of MS Word, and it doesn’t always mark it as such (seems hit or miss). Therefore, comments have also been inserted to indicate a move.
3. The side comments explain why changes are proposed.
4. The editor has tried to log who’s proposed the change:
   a. “Co/C” refers to the County Council
   b. “P/C” refers to the Planning Commission.
   c. “CACAC” or “CAC” refers to the Citizens’ Advisory Committee.
   d. “CATA/C” or “TAC” refers to the Technical Advisory Committee.
   e. “CES” or “CStrong” refers to the Project Manager/editor, Cliff Strong.
   f. “NRS” refers to Natural Resources Staff
   g. “WCD” refers to the Whatcom Conservation District.
   h. Others are from various individuals.
5. Note that some of the paragraph numbering/lettering might seem off. However, the numbering is an automatic Word function and when used together with Review Mode it sometimes puts the paragraph’s number(letter after the paragraph. It will look right in the final version.
Chapter 16.16 – Critical Areas

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ARTICLE 1. PURPOSE AND INTENT

16.16.100 Purpose and Intent.
A. The purposes of this chapter are to carry out the goals of the Whatcom County comprehensive plan and the State of Washington Growth Management Act (Chapter 36.70A RCW) and its implementing rules by designating and classifying critical areas, and by protecting the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economical-ly beneficial or productive use of land and property. Critical areas regulated under this chapter include geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife [DOC1] habitat conservation areas. This chapter seeks to maintain harmonious relationships between human activity and the natural environment.

B. The Growth Management Act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities. The Washington Department of Commerce has adopted minimum guidelines in WAC 365-190 detailing the process involved in establishing a program to protect critical areas. "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety. Critical areas that must be protected include the following areas and ecosystems:

1. Wetlands;
2. Areas of critical recharging effect on aquifers used for potable water;
3. Fish and wildlife habitat conservation areas;
4. Frequently flooded areas; and
5. Geologically hazardous areas

B.C. By regulating development and minimizing critical area alterations, this chapter seeks to:

1. Protect the public from Reduce harm due to landslides, earthquakes, erosion, volcanic events, flooding, and other natural hazards.
2. Minimize unnecessary maintenance of public facilities, and costs associated with property damage, emergency rescue relief operations, and environmental degradation.
3. Protect against adverse impacts to water quality and quantity resources. Ensure there are no adverse impacts to the quality and quantity of water resources.
4. Alert appraisers, assessors, real estate agents, owners, potential buyers or lessees, and other members of the public to natural conditions that pose a hazard or otherwise limit development.
5. Protect wetlands, floodplains, critical aquifer recharge areas, and habitat conservation areas by applying the best available science to ensure no net loss of ecological functions and values.
6. Protect species listed as threatened or endangered and their habitats.
7. Protect unique, fragile, and/or valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, shellfish, and other fish and wildlife and their habitats.
8. Provide County officials with information to approve, condition, or deny project proposals.
9. 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.
10. Prevent adverse and cumulative environmental impacts to critical areas and mitigate unavoidable impacts.
11. Coordinate Whatcom County’s critical areas protection activities and programs with those of other jurisdictions.
12. Coordinate environmental reviews and permitting of proposals with other departments and agencies to avoid duplication and delay.
13. Allow for reasonable use of property in accordance with the provisions of WCC 16.16.270.
14. Establish critical areas protection standards and procedures that are consistent with state and federal regulations pertaining to critical areas.

C.D. The goals, policies, and purposes set forth in this chapter serve as a basis for exercise of the County’s substantive authority under the State Environmental Policy Act (SEPA) and the County’s SEPA rules.

D.E. The County’s enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

E.F. Nothing in this chapter is intended to preclude or discourage beneficial actions that protect, restore, and/or maintain critical areas or minimize risks associated with critical areas.

F.G. Consistent with Whatcom County’s high standard of staff conduct, County staff observe all applicable federal and Washington laws regarding entry onto privately owned property.
ARTICLE 2. ADMINISTRATIVE PROVISIONS

16.16.200 Authority.
This chapter is adopted under the authority of Chapters 36.70, which empowers a county to enact a critical area ordinance and provide for its administration, enforcement and amendment, and 36.70A RCW and Article 11 of the Washington State Constitution.

16.16.205 Authorizations Required.
A. No action shall be taken by any person, company, agency, governmental body (including Whatcom County), applicant, owner, or owner’s agent, which results in any alteration of a critical area or its setback or buffer without prior authorization by submitting an application to the Technical Administrator and obtaining either the required permit or an approval of a notice of activity, as specified herein.
B. Prior to issuing a permit, the County shall determine if the proposed activity or use is permitted pursuant to this chapter. No land use development permit, construction permit, or land division approval required by County ordinance shall be granted until the County decision-maker has determined that the applicant has complied with the applicable purposes, requirements, objectives, and goals provisions of this chapter including the mitigation standards set forth in WCC 16.16.260.
C-D. The requirements of this chapter shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA) (Chapter 43.21C RCW), as locally adopted (Chapter 16.08 WCC). Any conditions required pursuant to this chapter shall be coordinated with the SEPA review and threshold determination.
D. Areas characterized by a particular critical area may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. When one critical area adjoins or overlaps another, the more restrictive standards shall apply.

16.16.210 Applicability and Severability.
This chapter shall be consistently applied to any alteration or development within geographical areas of unincorporated Whatcom County that meet the definition and criteria for critical areas and critical area buffers as set forth in this chapter. No development shall be constructed, located, extended, modified, converted, or altered, or land subdivided without full compliance with this chapter. Should any section or provision of this chapter be declared invalid, such decision shall not affect the validity of this chapter as a whole.

16.16.215 Relationship to Other Jurisdictions.
A. Permit applicants are responsible for complying with all federal, state, tribal, and local regulations that may pertain to a proposed development. Compliance with the provisions of this chapter does not necessarily constitute compliance with other regulations and permit requirements, provided, that the following shall apply.
B. In cases where other agencies have jurisdiction over critical areas and the technical administrator determines that the permit conditions imposed by such agencies are no less protective and satisfy
the requirements of this chapter, those permit conditions may be substituted as the conditions of approval for the requirements of this chapter. Such agencies may include, but are not limited to, the Lummi Nation; the Nooksack Tribe; the United States Army Corps of Engineers; the United States Environmental Protection Agency; the United States Fish and Wildlife Service; the National Marine Fisheries Service or NOAA Fisheries; and the Washington State Departments of Ecology, Natural Resources, and Fish and Wildlife.

C. The County shall make detailed written findings required by Chapter WCC 2.33 and WCC 16.16.250 when adopting conditions of another jurisdiction’s permit. Such requirements shall be a condition of critical area approval and enforceable by the County. In the event that there is a conflict between permit requirements and the standards of this chapter, the more restrictive standards shall apply.

D. The County shall notify the applicant in writing when adopting other agencies’ conditions pursuant to this section provision applies [CES2].


A. The County has identified critical areas and areas where the conditions under which critical areas typically occur and/or have the potential to occur. The approximate location and extent of critical areas within the County’s jurisdiction are shown on maps, which shall be available at the planning and development services department and online for public inspection.

B. Property owners, the technical administrator, and/or members of the public may use these maps as a general guide, but the maps do not provide a comprehensive accounting of areas subject to this chapter nor do they provide a definitive critical areas designation. Critical area locations and boundaries shown on the County’s maps are approximate and do not include buffers that may be associated with critical areas; some critical areas may not be shown on the maps at all [CES3]. It is also possible that some maps showing critical areas in certain areas may not be accurate.

C. Field investigation, analysis by a qualified professional, and/or consideration of other sources of credible scientific information may be required to confirm the presence or absence of a critical area and its boundaries and buffers. The County shall update the maps on a regular and consistent basis as new information becomes available.

D. Planning and Development Services has the authority and shall to update critical areas and the maps and shall do so as new critical areas are identified and as new information becomes available [CES4].

16.16.225 Regulated Activities.

A. The following activities shall be subject to the provisions of this chapter when they occur within critical areas or their buffers or will impair the functions and values of a critical area:

1. Clearing, grading, dumping, excavating, discharging, or filling with any material. This includes creating impervious surfaces.

2. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, subject to the provisions for a nonconforming structure pursuant to WCC 16.16.275, WCC Chapter 20.83, and WCC 23.50.070.

3. Any other activity for which a County permit is required, excluding permits for interior remodeling.

B. Alteration of critical areas and/or buffers is prohibited except when:

1. Alteration is approved pursuant to the reasonable use or variance provisions of WCC 16.16.270 and 16.16.273, respectively; or

2. Alteration is necessary to accommodate an essential public facility or public utility where no feasible alternative location will accommodate the facility and the facility is located, designed, and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible; or
3. Alteration is necessary to accommodate an approved water-dependent oriented use and any associated development/activity and/or the development activities listed in WCC 23.90.130(B)(7)(a) when permitted in accordance with the Whatcom County Shoreline Management Program (SMP); provided, that such development is operated, located, designed and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible; or

4. Alteration is part of an essential element of an activity allowed by this chapter and all feasible measures to avoid and minimize impacts have been employed. Such feasible measures shall include, but not be limited to, clustering where permitted by zoning and as appropriate to protect critical areas. The purposes of clustering shall be to minimize adverse effects of development on critical area functions and values, minimize land clearing, maintain soil stability, preserve native vegetation, provide for wildlife corridors, maintain hydrology, and mitigate risk to life and property; or

5. Alteration is associated with an exempt activity under WCC 16.16.230, or is allowed pursuant to the notification provisions of WCC 16.16.235, or is allowed pursuant to the specific regulatory standards for each designated critical area, as enumerated in the subsequent articles of this chapter; or

6. Alteration is associated with an alternative mitigation plan or watershed-based management plan approved pursuant to WCC 16.16.261(E) or 16.16.262, respectively; or,

6.7. Alteration is associated with a conservation farm plan pursuant to WCC 16.16 Article 8.

16.16.230 Exempt Activities.

Exemptions from permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction. The following activities as specified are exempt from the requirements of this chapter:

A. Class I, II, III, and IV special (not Class IV general) [TAC5] forest practices conducted in accordance with the applicable standards of the Washington State Forest Practices Act rules, Chapter-Title 222-16 WAC, except where either of the following applies:

B. The lands have been or are proposed to be converted to a use other than commercial forest product production; or

C. A. On lands which have been platted after January 1, 1960, as provided in RCW 76.09.050 and 76.09.240 [TAC6]

B. Maintenance of existing [CES7] lawfully established vegetation, landscaping, and gardens within a regulated critical area or its buffer, including, but not limited to, cutting, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas; provided, that native growth protection areas, mitigation sites, or other areas protected via conservation easements or similar restrictive covenants are not covered by this exception.

D. C. Maintenance activities necessary to implement approved mitigation plans.

E. D. Low impact activities, when the activity does not cause adverse impacts, [CES8] such as hiking, canoeing, viewing, nature study, photography, hunting, fishing, education, or scientific research.

F. E. Activities undertaken to comply with a United States Environmental Protection Agency Superfund-related Order, or a Washington Department of Ecology Order pursuant to the Model Toxics Control Act, or a Department of Homeland Security Order that specifically preempts local regulations in the findings of the Order.
F. Maintenance and/or repair of lawfully established single-family residences and appurtenant features; provided, that the activity does not further alter, impact, or encroach upon critical areas or buffers or further affect their functions. The maintenance activity shall not result in increased risk to life or property. The landowner may cut hazard trees within critical areas and buffers.

G. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation; provided, that the project is approved by the U.S. Fish and Wildlife Service, the Washington Department of Ecology, Washington State Department Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction [CES9] and/or that meet the criteria of RCW 77.55.181(1) and that are reviewed and approved according to the provisions of RCW 77.55.181[CES10].

16.16.235 Activities Allowed with Notification.

A. The following activities as specified in subsection (B) are authorized within critical areas and buffers; provided, that:

1. The applicant provides a written notification to the technical administrator (see Appendix B of this chapter) on a form provided by the department[TAC11].

2. The notification will provide a site plan [in a common scale][NRS12], photos, and specific information describing the activity and the mitigation to be implemented, if required by the Technical Administrator, to document that the activity will not result in increased risk to public health, safety, and welfare; that adverse impacts to critical areas are minimized; and that disturbed areas are restored as soon as possible following the activity.

3. Notification shall be submitted to the technical administrator at least 10 full business days prior to initiating work.

4. Upon receipt of the notification, the Technical Administrator shall issue a decision within 10 days unless additional information is required from the applicant or other review processes necessitate additional time. Additionally, the Technical Administrator may provide guidance on best management practices for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and use of chemical applications to be used in the execution of the activities listed in Subsection (B).

4.5. Unless otherwise specified, notification shall be valid for one year per activity; provided, that there is no change in the scope of the project including, but not limited to, the location and/or extent of the activity allowed under the notification process.

B. Activities allowed with notification:

5.1. Emergency construction or activity necessary for the immediate preservation of the public health, safety, and welfare as determined by the technical administrator; provided, that:

a. An emergency is an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time period too short to allow full compliance with this chapter.

b. Emergency construction does not include development of new permanent protective structures where none previously existed. Where the technical administrator determines that new protective structures are the appropriate means to address an emergency situation, the project proponent shall either obtain any permits that would have been required absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-27 WAC, or this chapter, or remove the structure upon abatement of the emergency situation.

c. Within the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title [23]), all emergency construction shall be consistent with the policies and procedural requirements of WCC Title [23] and this chapter.

d. The applicant shall make a reasonable attempt to contact the technical administrator prior to activity; provided, that prior notice is not feasible, notification of the action shall be
submitted to the technical administrator as soon as the emergency is addressed and no later
than 14 days following such action.

2. Maintenance, operation, and/or repair of existing infrastructure improvements, including dikes
and drainage ditches, rights-of-way, trails, roads, fences, and utilities; provided, that the activity
does not further alter, impact, or encroach upon critical areas or buffers or further affect their
functions. The maintenance activity shall not result in increased risk to life or property. Mainte-
nance shall be allowed pursuant to the provisions set forth in this chapter; provided, that:

a. The applicant shall submit to the technical administrator a written description of the
maintenance activity with all of the following general information:
   1. Type, timing, frequency, and sequence of maintenance activity to be conducted;
   2. Type of equipment to be used (hand or mechanical);
   3. Manner in which the equipment will be used; and
   4. Best management practices to be used.

b. The applicant’s written description shall be valid for up to five years; provided, that there is
   no significant change in the type or extent of maintenance activity.

3. Select vegetation removal or pruning of vegetation subject to the following:

a. Vegetation removal or pruning will be done in a manner that minimizes unecessary dis-
   turbance and prevents adverse effects on soil stability, fish or wildlife habitat, water quality,
   or water quantity.

b. Provided, that Except for lawn, pasture, ornamental vegetation, and similar introduced
   vegetation, no vegetation shall be removed from a wetland, habitat conservation area,
   coastal or riverine erosion hazard area, or landslide hazard area or their buffers unless oth-
   erwise authorized by the Technical Administrator for safety reasons; except for lawn, pas-
   ture, ornamental vegetation, and similar introduced vegetation, except that:

   c. Cut vegetation shall be left within the critical area or buffer where practicable unless re-
      moval is warranted due to the presence of an established disease infestation or other haz-
      ard, or because of access or maintenance needs if the area is a utility or access right-of-way.

4. The landowner may cut felling of hazard trees within critical areas and buffers, with an approved
   tree risk assessment completed by a qualified professional[NRS13].

3.5. Clearing, pruning, and revegetation of buffer areas, except in landslide hazard areas and buff-
   ers and riverine and coastal erosion hazard areas and buffers, the clearing, pruning, and revege-
   tation of buffer areas for view purposes, provided:

a. This activity shall not be conducted more than once every 10 years for any individu-
   al residential property.

b. A window or view opening is limited to the minimum necessary for view purposes and shall
   not exceed 15% percent of buffer length, unless the applicant can demonstrate to the tech-
   nical administrator’s satisfaction that a larger dimension is warranted because of slope or
   other site considerations. Trees greater than 12 inches in diameter at breast height shall be
   preserved, but may be shaped, windowed/thinned or pruned.

c. Clearing shall not take place where increased risks or adverse impacts, including cumulative
   impacts, to critical area functions and values are likely to occur.

d. Low-growing native vegetation shall be retained and/or planted in the view corridor to pro-
   vide habitat, stabilize the area, and achieve dense growth.

e. This provision does not apply to open space set aside in a subdivision or other approval to
   which specific conditions are attached that prohibit clearing of vegetation without a written
   approval or permit.

f. View areas established under this section shall be considered lawfully established and may
   be maintained as provided for in subsection B(3) of this section.[TAC14]
4. The installation of navigation aids and boundary markers in accordance with applicable state and federal laws; or the

5.6. Installation of mooring buoys in accordance with the Department of Fish and Wildlife design guidelines and the Whatcom County Shoreline Management Program (WCC Title 23).

6.7. Routine site investigation work in wetlands, landslide hazard areas, and riverine and coastal erosion hazard areas. This includes geotechnical soil borings, groundwater monitoring wells, percolation tests, sediment sampling, and similar or related activities necessary required for land use application submittals or permit compliance. Land survey and shallow soil test pits dug in conjunction with wetland delineation studies do not require notification.

B. Clearing, pruning, and revegetation of buffer areas, except landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, for view purposes, provided:

1. This allowed activity shall not be conducted more than once every 10 years for any individual residential property.

2. A window or view opening is limited to the minimum necessary for view purposes and shall not exceed 15 percent of buffer length, unless the applicant can demonstrate to the technical administrator's satisfaction that a larger dimension is warranted because of slope or other site considerations. Trees greater than 12 inches in diameter at breast-height shall be preserved, but may be shaped, windowed/thinned or pruned.

3. Clearing shall not take place where increased risks or adverse impacts, including cumulative impacts, to critical area functions and values are likely to occur.

4. Low-growing native vegetation shall be retained and/or planted in the view corridor to provide habitat, stabilize the area, and achieve dense growth.

5. This provision does not apply to open space set aside in a subdivision or other approval to which specific conditions are attached that prohibit clearing of vegetation without a written approval or permit.

View areas established under this section shall be considered lawfully established and may be maintained as provided for in subsection B of this section.[CES15]

6. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation; provided, that the project is approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction.[CES16]

7.8. Household herbicides, pesticides, and fertilizers or household herbicides to address noxious weed infestation, [CES17] may be used in critical area buffers, but not in critical areas, when either must be applied at times and rates specified on the label in accordance with Washington State Department of Agriculture and other applicable regulations.

8.9. Routine maintenance of drainage channels, ditches on agricultural lands; provided, that all of the following are met:

a. The maintenance is necessary to support ongoing agricultural operations;

b. The maintenance activity does not expand the dimensions of the drainage channel beyond the original, lawfully established dimensions;

c. The agricultural activities are conducted pursuant to an approved conservation farm plan prepared pursuant to WCC 16.16.290;

d. The farm operator obtains a hydraulic project approval (HPA), if required, from the Washington State Department of Fish and Wildlife (WDFW) prior to the maintenance activity; and

e. The farm operator provides a copy of the HPA to the technical administrator as part of the written notification. No other written notification is needed.[CES18]

9.10. Alteration or removal of beaver-built structures two years old or less; provided, that:

a. There is no adverse impact to wetland or river or stream functions.
b. The property owner obtains an HPA from WDFW (if required) prior to the maintenance activity.
c. The property owner provides a copy of the HPA to the technical administrator as part of the written notification.

16.16.240 Technical Administrator and Hearing Examiner Authority.
The technical administrator is the Whatcom County director of planning and development services or his/her designee. The hearing examiner is appointed by the County Council. The technical administrator and the County Hearing Examiner shall administer and enforce the provisions of this chapter pursuant to the following:
A. The technical administrator shall have the primary responsibility for reviewing development proposals for compliance with this chapter and is authorized to approve, deny, or condition permits in accordance with the standards set forth herein. The technical administrator shall also have the following authority:
1. Authority to convene an interdisciplinary team to assist in reviewing development proposals or to solicit review from outside experts in accordance with WCC 16.16.245.
2. Authority to grant, condition, or deny reasonable use permits for single-family residential building permits, residences, proposed to be located outside of geologically hazardous areas [TAC19] within critical areas and/or their buffers.
2.3. Authority to grant, condition, or deny reasonable use permits for other development proposals that would affect critical area buffers, but not the critical areas themselves.
3. Authority to serve a cease and desist order pursuant to WCC 16.16.285 upon a person undertaking activity within a critical area or buffer in violation of this chapter.
4. Any additional responsibility and/or authority specifically provided for in the subsequent articles of this chapter.
B. The technical administrator's authority shall transfer to another County decision-maker when another decision-maker is specified for a separate project permit. In such cases, the technical administrator shall ensure that all procedural requirements of this chapter are met and shall make a recommendation to the designated decision-maker as to how the provisions of this chapter apply to the permit action, including project permits.
C. The Whatcom County hearing examiner is hereby vested with responsibility and authority to hear appeals and perform the following duties:
1. Authority to grant or deny variances.
2. Authority to grant, condition, or deny reasonable use permits for all non-single-family developments, except single-family building permits, [CES20] affecting critical areas and for all developments in geologically hazardous areas [NRS21].
3. Authority to decide on appeals of administrative decisions including, but not limited to, variance [CES22] and reasonable use permits issued by the technical administrator.
4. Authority to hold public hearings pursuant to Chapters 20.84 and 20.92 WCC.
D. In granting, revising, or extending a permit, the technical administrator, or hearing examiner, as appropriate applicable, may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development is consistent with criteria set forth in this chapter. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to allow for future review or reevaluation to assure conformance with this chapter. The technical administrator and/or hearing examiner shall render a final decision in accordance with the timelines established in WCC 2.33.090 and 20.92.430, as applicable. All decisions of the technical administrator and hearing examiner may be appealed pursuant to WCC 20.84.240 and 20.92.600.
16.16.245 Interdisciplinary Team.
The technical administrator may call upon outside expertise including an interdisciplinary team if the
technical administrator determines that additional technical assistance is required to assess a critical
areas development proposal or ensure the application of best available science.
A. The interdisciplinary team shall include the applicant and/or their technical representative, local,
state, or federal agency or tribal representatives with expertise in the field, and/or independent
qualified professionals with expertise relating to the critical area issue.
B. The functions of the interdisciplinary team are to field check and verify critical area determina-
tions/boundaries and assess species/habitat presence by providing written peer review of the in-
formation included with an application, identify areas of concern in the application of best available
science, provide professional opinions and recommendations relevant to the provisions of this chap-
ter, and help focus the preparation of subsequent reports and environmental documentation on the
most relevant issues.
C. The technical administrator will coordinate this effort and seek advice from the team.
D. In lieu of convening an interdisciplinary team, the County may require third party review by a quali-
ified professional for any development proposal, mitigation plan, mitigation bank proposal, or other
project for which additional technical expertise is needed. The cost of the third party review shall be
the permit applicant's responsibility.

A. All applicants shall complete a prescreening are encouraged to contact and/or meeting [NRS23]with
the technical administrator prior to submitting an application subject to this chapter. The purpose of
this meeting shall be to discuss the requirements for a complete application; the critical area stand-
ards and procedures; to review conceptual site plans prepared by the applicant; to discuss appropri-
ate investigative techniques and methods; and to determine reporting requirements.
B. Review and approval of a proposed development within a critical area or its buffer may be initiated
through the application for any project permit in Whatcom County. If another authority does not
require a project permit, application shall be made pursuant to Chapter 2.33 WCC.
C. The technical administrator shall be responsible, in a timely manner, to make one of the following
determinations regarding critical areas review:

1. Initial Determination. When County critical area maps or other sources of credible information
indicate that a site may be located, contain or abut critical areas, critical area buffers or setbacks
the technical administrator shall require technical studies in accordance with that critical area's
specific Article.

2. Determination of Impacts. Upon receipt of a permit application, the technical administrator
shall use best available science, including but not limited to the County's critical areas maps,
his/her field investigation results, his/her own knowledge of the site, information from appro-
priate resource agencies, or documentation from a scientific or other credible source to deter-
mine if the project is will more probably than not located with adversely impact a critical area
or its buffer. The technical administrator may request that the applicant submit a critical area
identification form provided by the County to assist in the initial determination. [CES24]Identifi-
ced adverse impacts shall be fully mitigated in accordance with WCC 16.16.260.

3. Determination of Compliance. If the applicant demonstrates to the satisfaction of the Technical
Administrator that the project meets the provisions of this chapter and is not likely to adversely
affect the functions and values of critical areas or buffers or provides mitigation to reduce the
adverse impact to meet no net loss of the function and values of critical areas or its buffer, the
technical administrator shall make the determination issue written verification that the proposal
complies with this chapter. Written verification shall be included in the project review record for
the underlying permit, or issued in accordance with Chapter 2.33 WCC, and no further critical areas review is required.

3. Need for Additional Critical Area Assessment. If the proposed activity does not meet the criteria of subsection (C)(2) of this section and would more probably than not affect a critical area or buffer, the technical administrator shall require confirmation of the presence or absence of critical areas through site inspection by a qualified professional or other appropriate means consistent with best available science, and shall notify the applicant in writing of the need to prepare a critical areas assessment report in conformance with WCC 16.16.225.

4. Decision to Approve, Condition, or Deny. The technical administrator shall review all pertinent information pertaining to the proposed development and shall approve, approve with conditions, or deny the permit based on their review, and shall provide a detailed written decision. This determination shall be included in the project review record for the project permit in accordance with Chapter 2.33 WCC, including findings of fact to support the decision made. Such determinations shall be provided to the applicant in writing.

D. The technical administrator may waive the requirement for critical areas review under this chapter when he/she determines that all of the following conditions are met:

1. The proposed development activity is located on a parcel that received approval of a previous critical areas review within the prior 5 years, site conditions have not changed, and the applicable regulations have not substantively changed, and appropriate County permits were issued;[CES25]

2. All critical areas on the parcel have been identified and delineated and the effects of the proposed development activity have been thoroughly considered in accordance with the most current regulations in effect at the time and Best Available Science;

3. The activity is in compliance with all permit conditions including mitigating measures, as applicable, that were imposed as part of the prior review and there are no outstanding violations of conditions that were imposed as part of the previous review;

4. The prior permit has not expired;[NRS26]

5.4. The development activity involves a use that is equally or less intensive than the development activity that was subject to the prior permit. Land use intensity shall be based on factors including development density, critical areas impacts, impervious surface, noise, glare, dust, hours of operation, and traffic.

E. Upon the applicant’s request, the technical administrator shall provide brief written findings of fact to support the decision made. [NRS27] Submittal Materials:

1. Complete Application

2. A detailed site map drawn to a common scale, or survey, showing at least the following:
   a. Vicinity Map
   b. Topographic, hydrologic, and vegetative features.
   c. The location and description of known wildlife and habitat features and all known critical areas.
   d. Proposed development activity with dimensions.

6. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc. Structures shall be dimensioned.[NRS28]

3. E.F. Elements of a critical area assessment are encouraged to be submitted together for timely review. However, the Technical Administrator may allow the various components to be submitted independently at different phases of a project if he/she determines piecemeal review will benefit the review process or at the request of the applicant.
16.16.255 Critical Areas Assessment Reports.

A. When the technical administrator determines a need for additional critical area assessment pursuant to WCC 16.16.250(C)(3) proposed development is within, abutting, or is likely to adversely affect a critical area or buffer pursuant to the provisions of this chapter, s/he shall have the authority to require a critical areas assessment report, to be prepared by a qualified professional, as defined by this chapter, shall prepare the report and be consistent with best available science. The intent of these provisions is to require a reasonable level of study and analysis sufficient to protect critical areas. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity. A critical area assessment shall have all of the following elements, unless determined by the Technical Administrator not to be needed:

1. The requirements found in subsections (B) & (H);
2. Geological Hazard Assessment;
3. Critical Aquifer Recharge Assessment;
4. Frequently Flooded Area Assessment;
5. Wetland Assessment;
6. Fish and Wildlife Habitat Conservation Area Assessment;

A.7. A mitigation plan addressing all mitigation requirements of this Title.

B. The critical areas assessment report shall:

1. Demonstrate that the submitted proposal is consistent with the purposes and specific standards of this chapter;
2. Describe all relevant aspects of the development proposal and critical areas adversely affected by the proposal including any geological hazards and risks associated with the proposal, and assess impacts on the critical area from activities and uses proposed; and
3. Where impacts are unavoidable, demonstrate through an alternatives analysis that no other feasible alternative exists.[CES29]
4. Consider the cumulative impacts of the proposed action that includes past, present, and reasonably foreseeable future actions to facilitate the goal of no net loss of critical areas. Such impacts shall include those to wildlife, habitat, and migration corridors; water quality and quantity; and other watershed processes that relate to critical area condition, process, and/or service.

B.5. Identify proposed mitigation and protective measures as required by this chapter.

C. The technical administrator shall review the critical areas assessment report for completeness and accuracy and shall consider the recommendations and conclusions of the critical areas assessment report to assist in making administrative decisions concerning approval, conditional approval, or denial of the subject project and to resolve issues concerning critical areas jurisdiction and appropriate mitigation and protective measures.

D. Critical areas assessment reports shall generally be valid for a period of five years from the date the assessment is approved by the technical administrator[CAC30]. Future land use applications may require preparation of new or supplemental critical area assessment reports unless it can be demonstrated to the satisfaction of the technical administrator that the previously prepared report is adequate for current analysis. The technical administrator may also require the preparation of a new critical area assessment report or a supplemental report when new information is found demonstrating that the initial assessment is in error. If the technical administrator requires more information in the report, s/he shall make the request in writing to the applicant stating what additional information is needed and why.

D.5. The technical administrator may reject or request revision of the field and literature findings and conclusions reached in a critical areas assessment report when the technical administrator 
can demonstrate that the assessment is inaccurate, incomplete, or does not fully address the critical
areas impacts involved.

E.F. To avoid duplication, the reporting requirements of this chapter shall be coordinated if more than
one critical area assessment report is required for a site or development proposal. Similarly, where
other agencies assessments or reports are required pursuant to other state or federal laws, the ap-
licant is encouraged to submit one report that satisfies all such agencies’ requirements.[CES31]

E.G. In addition to a hard copy, applicants shall provide reports and maps to the County in an electronic
format that allows site data to be incorporated into the County critical areas database; provid-
however, that the County may waive the electronic format this requirement for single-family de-
velopments building permits. Applicants shall follow Whatcom County are encouraged to coordinate
with the technical administrator regarding electronic submittal guidelines. This requirement shall
not be construed as a requirement to use specific computer software, though it must be in a format
useable by the County.

G.H. The intent of these provisions is to require a reasonable level of technical study and alternatives
analysis pursuant to WCC 16.16.225 sufficient to assess potential project impacts and to protect crit-
ical areas. At a minimum, a critical areas assessment report shall include the following information:

1. A site plan showing the proposed development footprint and clearing limits, all relevant critical
areas and buffers within and abutting the site, a written description of the project, an examina-
tion of project on-site design alternatives, and an explanation of why the proposed activity re-
quires a location on, or access across, a critical area and why alternatives are not feasible;

2. A written description of the critical areas and buffers on or abutting in the vicinity of [NRS32] the
site, including their size, type, classification or rating, condition, disturbance history, and func-
tions and values. Projects in frequently flooded areas must comply with the reporting require-
ments of WCC Title 17. Projects on or adjacent to geologically hazardous areas shall identify the
type of hazard and assess the associated risks posed by the development or that the develop-
ment may be subject to;

3. An analysis of potential adverse critical area impacts associated with the proposed activity in-
cluding, but not limited to, effects related to clearing, grading, noise, light/glare, drilling, dam-
ing, draining, creating impervious surface, managing stormwater, releasing hazardous materi-
als, and other alterations, and including an explanation of critical area processes and functions
that may be affected;

4. An analysis of how critical area impacts or risks will be avoided and/or minimized, and/or an
analysis of the proposed measures to prevent or minimize hazards. When impacts cannot be
avoided, the report shall include a plan describing mitigation that will be provided to replace
critical area functions and values altered as a result of the proposal. The mitigation plan shall be
consistent with the provisions of WCC 16.16.260 and provide written documentation showing
what the applicant considered for each step in the mitigation sequencing [CES33] and the other
applicable articles of this chapter;

5. The dates, names, [signature NRS34], and qualifications of the persons preparing the report and
documentation of analysis methods including any fieldwork performed on the site; and

6. Additional reasonable information requested by the technical administrator for the assessment
of critical areas impacts or otherwise required by the subsequent articles of this chapter.

16.16.260 General Mitigation Requirements.

Developments permitted pursuant to this chapter that adversely impact or alter a critical area or buffer
shall include mitigation sufficient to minimize risks associated with geologic hazards and/or maintain or
replace critical areas functions and values. Any proposed development that cannot adequately mitigate
critical area impacts as determined by the technical administrator shall be denied.
A. Mitigation Sequence.

1. When an alteration or impact to a critical area or buffer is proposed, the applicant shall conduct an alternatives/mitigation sequencing analysis and demonstrate that all reasonable efforts have been taken to mitigate adverse impacts in the following prioritized order:
   a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
   b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
   c. Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.
   d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.
   e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.

2. Mitigation shall be provided for all unavoidable adverse alterations of a critical area or buffer. Mitigation for individual projects may include a sequenced combination of the above measures as needed to achieve the most effective protection, compensation for buffer functions and values, or compensatory mitigation for critical area functions and values.

B. Mitigation Plan.

1. Compensatory mitigation shall be provided for all unavoidable adverse alterations of a critical area or buffer. A mitigation plan shall be developed in accordance with an approved critical area assessment report and be consistent with best available science. Where appropriate, the mitigation plan should be compatible with watershed and recovery planning goals for Whatcom County. The intent of these provisions is to require a level of technical study and analysis sufficient to protect critical areas and/or protect developments and occupants from critical areas involving hazards. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.

2. The mitigation plan shall provide for construction, maintenance, monitoring, and contingencies as required by conditions of approval and consistent with the requirements of this chapter.

3. The mitigation plan shall be prepared by a qualified professional; provided, that the technical administrator may waive the requirement to hire a qualified professional to prepare a mitigation plan when the required mitigation involves standard planting or enhancement practices. The waiver shall not be granted for mitigation practices involving wetland creation, rehabilitation and/or restoration.

4. The mitigation plan shall contain the following information:
   a. A description and scaled drawings of the activities proposed to reduce risks associated with geologic hazards and/or flooding, and/or to mitigate for impacts to critical area functions and values. This shall include all clearing, grading/excavation, drainage alterations, planting, invasive weed management, installation of habitat structures, construction sequencing, best management practices, site protection, irrigation, and other site treatments associated with the development activities.
   b. Specific information on construction or the proposed mitigation activity including timing, sequence, equipment needs, and best management practices, and responsible parties.
   c. A description of the functions and values that the proposed mitigation area(s) shall provide, and/or a description of the level of hazard mitigation provided.
d. The goals, objectives, and performance standards that the proposed mitigation action(s)
shall achieve or demonstrate consistency with.

e. A description of how the mitigation area(s) will be evaluated and monitored to determine if
the performance standards are being met.

f. A program and schedule for construction and post-construction performance monitoring of
the mitigation project.

g. An evaluation of potential adverse impacts on adjacent property owners resulting from the
proposed mitigation and measures to address such impacts. Mitigation projects shall not re-
result in adverse impacts to adjacent property owners.

h. Identification of potential courses of action or contingencies, and any corrective measures
to be taken if monitoring or evaluation indicates that project performance standards are not
being met.

i. Plan sheets with scale identified, showing the edge of the critical area and buffer area. The
affected critical area and buffer shall be clearly staked, flagged, and/or fenced prior to and
during any site clearing and construction to ensure protection for the critical area and buffer
during construction.

j. A description of other permits and approvals being sought, including the need for permits
from state and/or federal agencies.

k. Additional information as required by the subsequent articles of this chapter.

C. Mitigation Monitoring and Maintenance.

1. The technical administrator shall have the authority to require that com-
penatory mitigation projects be monitored annually for at least five years to establish that per-
formance standards have been met. Required monitoring reports shall be submitted to the
County annually during the monitoring period to document milestones, successes, problems,
and contingency actions of the compensatory mitigation. The technical administrator may re-
duce the monitoring timeframe to three years for minor mitigation projects involving critical ar-
aea or buffer revegetation or vegetation enhancement, but not for projects involving wetland
creation, wetland restoration, stream restoration or other activities that require manipulation of
soils or water. All mitigation areas shall be maintained and managed to prevent degradation and
ensure protection of critical area functions and values subject to field verification by the tech-
nical administrator.

2. The technical administrator shall have the authority to extend the monitoring period, require
corrective measures, and/or require additional monitoring reports beyond the initial monitoring
period for any project that does not meet the performance standards identified in the mitiga-
tion plan, or does not provide adequate replacement for the functions and values of the impact-
ed critical area.

3. Permanent protection shall be achieved through deed restriction or other protective covenant
in accordance with WCC 16.16.265.

D. Mitigation Assurance.

1. The applicant and his/her representatives shall demonstrate sufficient scientific expertise and
capability to implement the mitigation, monitor the site, and make corrections if the project fails
to meet projected goals. The technical administrator may require the following to ensure that
the mitigation is fully functional:

a. The applicant shall post a mitigation surety in the amount of 125% percent of the estimated
cost of the uncompleted actions or the estimated cost of restoring the functions and values
of the critical area that are at risk, whichever is greater. The surety shall be based on an
itemized cost estimate of the mitigation activity including clearing and grading, plant mater-
ials, plant installation, irrigation, weed management, monitoring, and other costs.
b. The surety shall be in the form of an assignment of funds or other means approved by the technical administrator.

c. Surety authorized by this section shall remain in effect until the technical administrator determines, in writing, that the standards bonded for have been met. Surety shall generally be held by the County for a period of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary. Surety for construction may be reduced after initial completion in an amount not to exceed the cost of monitoring plus not less than 25% percent of the construction cost.

d. Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, or monitoring.

e. Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, or monitoring.

f. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default subject to the provisions of WCC 16.16.280, and the County may demand payment of any financial guarantees or require other action authorized by the County code or any other law.

g. Any funds recovered pursuant to this section shall be used to complete the required mitigation.

E. Permanent Protection. All mitigation areas shall be protected and managed to prevent degradation and ensure protection of critical area functions and values in perpetuity. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265. If additional development is proposed that impacts a mitigation area and those impacts are accounted for under a new, approved mitigation plan, such protection may be removed so long as the final plan meets the requirements of this chapter for all cumulative impacts.

**16.16.261 Alternative or Innovative Mitigation Approaches Plans and Watershed-Based Management Plans [TAC35]**

The County shall consider and facilitate review and may approve or approval of:

A. An alternative or innovative mitigation plans for a major development (as defined by this in Article 9 of this chapter), a planned unit development (pursuant to Chapter 20.85 WCC), and/or a development agreement (pursuant to RCW 36.70B.170 through 36.70B.210) or:

A.B. The mitigation plan approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:

1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;

2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;

3. There is a clear likelihood for success of the proposed plan based on supporting scientific information and/or demonstrated experience in implementing similar plans;
4. In terms of functional value, the proposed project mitigation plan results in equal or greater protection and conservation of critical areas functions, services, and values than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

5. The plan is consistent with the general purpose and intent of this chapter, the Shoreline Management Program (WCC Title 23), and the comprehensive plan;

6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and

7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

8. The County shall facilitate review and/or approval of a watershed-based management plan sponsored by a watershed improvement district or other special purpose district when it meets the general purpose and intent of this chapter. Such plans may be used to satisfy the requirements of this chapter and provide relief from the specific standards and requirements thereof when it is demonstrated that all of the following circumstances exist:

9. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;

10. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;

11. There is a clear likelihood for success of the proposed plan based on demonstrated experience in implementing similar plans or supporting scientific information;

12. The proposed project results in equal or greater protection and conservation of critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

13. The plan is consistent with an approved watershed plan prepared pursuant to Chapter 90.82 RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter 90.82 RCW;

14. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and

15. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance. [CES36]
B.—Alternative mitigation plans shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process. A watershed-based management plan and/or an alternative mitigation plan developed under this section for a major development, planned unit development or developer agreement shall be allowed to substitute for the standards and requirements of this chapter when approved by the designated decision maker for the underlying development permit, as per County code. The process for approval shall be as follows:

C.—The plan shall be reviewed by the technical administrator to ensure compliance with the general purpose and intent of the purposes of this chapter, the Whatcom County Shoreline Management Program (WCC Title 23), and with the comprehensive plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the technical administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts.

D.C. If the technical administrator finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision-maker shall solicit comment pursuant to the public notice provisions of Chapter 2.33 WCC prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.

1. Alternative mitigation plans associated with major developments, planned unit developments, and/or developer agreements shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process.

2. Watershed-based management plans approved by the Whatcom County council shall be adopted by ordinance and appended to this chapter.

3. The designated decision maker shall not approve watershed-based management plans that conflict with Chapter 90.82 RCW.

16.16.262 Watershed-Based Management Plans.

A. The County may consider watershed-based management plans sponsored by a watershed improvement districts, other special purpose districts, or other government agencies.

B. If approved, said plan may shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:

1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;

2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;

3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;

4. In terms of functional value, the proposed mitigation plan results in equal or greater restoration, protection, and conservation of the impacted critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

5. The plan is consistent with the general purpose and intent of this chapter, the comprehensive plan, and an approved watershed plan prepared pursuant to Chapter 90.82 RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is
consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter 90.82 RCW;

6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and

7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

C. Watershed-Based Management Plans shall be approved by the County Council by ordinance and appended to this chapter. The process for approval shall be as follows:

1. The plan shall be reviewed by the technical administrator to ensure compliance with the purposes of this chapter, the Whatcom County Shoreline Management Program (WCC Title 23), and with the comprehensive plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the technical administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts.

2. If the technical administrator finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision-maker shall solicit comments pursuant to the public notice provisions of Chapter 2.33 WCC prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.

3. The designated decision-maker shall not approve watershed-based management plans that conflict with Chapter 90.82 RCW.

16.16.263 Mitigation Banking.

A. The County may approve mitigation banking as a form of compensatory mitigation for wetland and habitat conservation area impacts when the provisions of this chapter require mitigation and when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of critical area functions and values when compared to on-site mitigation; provided, that all of the following criteria are met:

1. Banks shall only be used when they provide significant ecological benefits including long-term conservation of critical areas, important species, habitats and/or habitat linkages, and when they are consistent with the County Comprehensive Plan and create a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals.

2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule, Chapter 173-700 WAC or as revised, and Chapter 90.84 RCW and the federal mitigation banking guidelines as outlined in the Federal Register, Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain state and federal certification.

3. Preference shall be given to mitigation banks that implement restoration actions that have been identified formally by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the Watershed Management Salmon Recovery Board Habitat Project List or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

B. Mitigation banks shall require a major project permit in accordance with Chapter 20.88 WCC and shall be subject to a formal review process including public review as follows:
1. The bank sponsor shall submit a bank prospectus for County review. The prospectus shall identify the conceptual plan for the mitigation bank, including:
   a. The ecological goals and objectives of the bank;
   b. The rationale for site selection, including a site map and legal description of the prospective bank site;
   c. A narrative demonstrating compliance with the Whatcom County comprehensive plan, associated development standards and this chapter, shoreline restoration plan, watershed planning documents prepared and adopted pursuant to Chapter 90.82 RCW, and/or the salmonid recovery plan;
   d. A description of the existing site conditions and expected changes in site conditions as a result of the banking activity, including changes on neighboring lands;
   e. A conceptual site design;
   f. A description of the proposed protective mechanism such as a conservation easement; and
   g. Demonstration of adequate financial resources to plan, implement, maintain, and administer the project.

2. The technical administrator shall review the bank prospectus either by participating in the state’s Mitigation Bank Review Team (MBRT) process and/or by hiring independent, third-party expertise to assist in the review.

3. If the technical administrator determines that the bank prospectus is complete, technically accurate, and consistent with the purpose and intent of this chapter, s/he/she shall forward the prospectus to the County Council for initial review. If the proposed bank involves conversion of agricultural land to nonagricultural uses, the County Council shall seek an initial recommendation from the Agricultural Advisory Committee as to whether the conversion shall should be allowed. The Committee’s recommendation shall be nonbinding. The County Council may require mitigation for the loss of agricultural lands.

4. If the County Council determines, based on the initial review, that the prospectus is valid, it shall issue a notice to proceed to the bank sponsor. Following receipt of the notice to proceed, the bank sponsor may submit application for a major project permit in accordance with Chapter 20.88 WCC. The notice to proceed shall not be construed as final approval of the bank proposal, but shall indicate approval to proceed with the development of the mitigation bank instrument, which details all of the legal requirements for the bank.

5. Upon receipt of a draft mitigation banking instrument from the bank sponsor and major project permit application, the technical administrator shall review the banking instrument and major project permit in consultation with the MBRT and/or other third-party expert. Following review of the mitigation banking instrument and major project permit, the technical administrator shall make a recommendation to certify and approve, conditionally certify and approve, or deny the bank proposal and major project permit in accordance with the procedures of Chapter 20.88 WCC.

6. Following receipt of the recommendation, the County Council shall proceed with review in accordance with the procedures outlined in Chapter 20.88 WCC. The county council shall seek a final recommendation from the agricultural advisory committee if the proposal involves conversion of agricultural land.

7. The bank sponsor shall be responsible for the cost of any third-party review.

8. The award of bank credits for an approved bank may be negotiated based on habitat acreage, habitat quality, and contribution to a regional conservation strategy that has been approved by the County and other appropriate regulatory agency(ies). Credit availability may vary in accordance with agreed upon performance criteria for the development of the resource value in question. Awarded bank credits, subject to the approval of the County and regulatory agency(ies), may be made transfer-
able. Whether out-of-kind mitigation credit will be allowed at a particular bank will require a fact-specific inquiry on a case-by-case basis for the project creating the impacts.

D. Use of Bank Credits

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
   a. The bank is certified under state rules;
   b. The Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
   c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

16.16.264 In-Lieu Fees

To aid in the implementation of off-site mitigation, the County may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.

2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.

3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.

4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three (3) years of the credit sale.

5. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant’s qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.

6. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

16.16.265 Critical Areas Protective Measures.

When an impact to critical area or a buffer has been 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 measures shall be applied:

A. Deterrent Devices

The technical administrator, as a condition of permit approval, may require that the outer boundary of a wetland or habitat conservation area critical area and its o-buff-er, a mitigation site, a designated open space, or a conservation easement be identified with signs, markers, and/or fencing when needed to minimize potentially harmful intrusions from adjacent land uses, to alert citizens to a potential public health or safety risk associated with a critical
area, or to accomplish other objectives specifically provided for elsewhere in this chapter. The technical administrator shall provide specifications on the type, content, and size of the signs prior to permit approval. The signs shall be posted near primary access points and approximately every 200 feet along the critical area boundary unless the technical administrator determines that more or less frequent spacing is adequate considering the size and location of the site (see also Appendix C of this chapter).

B. Notice on Title. The owner of any property containing any critical area or buffer for which a development permit is about to be issued shall record a notice with the County Auditor real estate records, in a format approved by the technical administrator, and provide a copy of the filed notice to the Planning and Development Services Department at the time the permit is issued. The notice shall state advice of the general presence of the critical area or buffer on the property, and the fact that limitations on actions in or affecting the critical area or buffer exist. The notice shall provide that restrictions on uses within the critical area exist until such time as the technical administrator approves a change in restriction and such approval is filed. This notice on title shall not be required for a development proposal by a public agency or public or private utility within a right-of-way or easement for which they do not have fee-simple title. This requirement may be waived by the Technical Administrator for certain geologically hazardous areas if s/he finds that the risk is so low as to not warrant notification (e.g., old alluvial deposits).[TAC42]

C. Tracts and Easements. Prior to final approval of any development permit subdivisions, short subdivisions, or binding site plans, the part of the critical area and required buffer that is located on the site shall be protected using one of the following mechanisms:

1. Placed in a separate tract or tracts owned in common by all lots within a subdivision, short subdivision, or binding site plan[CES43];
2. Covered by a protective easement, or public or private land trust dedication; or
3. Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the County Technical Administrator or Hearing Examiner.

D. Building Setback. The County shall require buildings and other structures to be set back a minimum distance of 10 feet from the edge of geological hazard setback, a critical area buffer, or from the critical area where no buffer is required. The following uses are allowed in the building setback:

1. Landscaping;
2. Uncovered decks;
3. Building overhangs less than 18 inches[CES44] 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.

E. Indemnification. At the technical administrator’s discretion, when a permit is granted for development or use within a geologic, flood, or other hazard area, the property owner shall sign an indemnification agreement acknowledging hazards posed to the development and absolving the County of all responsibility, to be recorded against the property prior to permit issuance.

E.F. Temporary protection measures to identify location of critical areas and buffers such as construction fencing, erosion and sediment control, or similar shall be required during construction of the proposed project.[NRS45].
16.16.270 Reasonable Use Exceptions and variances.

A. Permit applicants for a property so encumbered by critical areas and/or buffers that application of this chapter—including buffer averaging, buffer reduction, or other mechanism—would deny all reasonable use who are unable to comply with the specific standards of this chapter [NRS46], may seek approval pursuant to the reasonable use or variance standards and procedures provided for in this section.

B. Reasonable Use Standards.

1. Nothing in this chapter is intended to preclude all reasonable economic use of property. If the application of this chapter would deny all reasonable economic use of the subject property, including agricultural use, use or development shall be allowed if it is consistent with the zoning code and the purposes of this chapter.

2. To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:
   a. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;
   b. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since [TAC47] effective date of the ordinance codified in this chapter, change in use, reduction in size, change in timing of activity, and/or revision of project design;
   c. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area;
   d. The proposed activities will not result in adverse effects on endangered or threatened species as listed by the federal government or the state of Washington, or be inconsistent with an adopted recovery plan;
   e. Measures shall be taken to ensure the proposed activities will not cause degradation of groundwater or surface water quality, or adversely affect drinking water supply;
   f. The proposed activities comply with all state, local and federal laws, including those related to erosion and sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
   g. The proposed activities will not cause There will be no damage to nearby public or private other property properties;
   g.h. The proposed activities will not increase risk and no threat to the health or safety of people on or off the site [NRS48]
   h.i. The inability to derive reasonable economic use of the property is not the result of segregating or dividing the property and/or creating the condition of lack of use after the effective date of the ordinance codified in this chapter September 30, 2005 [CES49]; and
   j. The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter;
   k. For single-family residences, the maximum impact area shall be no larger than 2,500,000 square feet [CES50]. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages, decks,
driveways, parking, utilities (exclusive of on-site septic systems), and all lawn and non-native landscaping, with the following exceptions:

i. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the 2,5004,000 square foot maximum impact area provided that the access road meets the standards of WCC 16.16.620(E) or 16.16.720(C), as applicable.

i.ii. On lots within the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, approval of those driveway portions shall be sought through a Shoreline Variance (WCC 23.60.030) and demonstrate that the size and location of the driveway is the minimum relief necessary to access the development site.

C. Variance Standards. In cases where the reasonable use criteria of subsection A of this section do not apply, or for a variance from other standards of this chapter, the hearing examiner may grant a variance from the requirements in this chapter when the applicant proves by clear, cogent and convincing evidence of all of the following elements:

1. Because of special circumstances applicable to the subject property, including, but not limited to, size, shape, topography, location, surroundings, and other physical conditions, the application of this chapter precludes development of the property by the property owner as otherwise allowed in WCC Title 20; and

2. The granting of the variance will not be injurious to the health or safety of the community and every reasonable effort has been made to minimize adverse effects on critical areas; and

3. The variance does not constitute a grant of special privilege, and is not based upon reasons of hardship caused by previous actions of the current property owner after July 16, 1992, and the proposed modification to a critical area will be the minimum necessary to allow reasonable and economically viable use of the property; and

4. The project includes mitigation for unavoidable critical area and buffer impacts.

D. Reasonable Use and Variance Procedures.

1. Procedural requirements for variances and reasonable use permit exception applications shall be as follows:

a. Variance and reasonable use exception permit applications shall be subject to an open record public hearing; except provided, that reasonable use exception permit applications for single-family residential building permits, ces proposed to be located outside of geologically hazardous areas [TAC53] or for other development proposals that would affect critical area buffers, but not the critical areas themselves, shall be processed administratively by the technical administrator.

b. Variance and reasonable use exception permit applications that require an open record hearing shall be processed in accordance with Chapter 2.33 WCC and WCC 20.84.230.

c. Reasonable use exception permit applications that are subject to administrative approval by the technical administrator shall be processed in accordance with WCC 20.84.235.

d. The hearing examiner or technical administrator shall have the authority to set an expiration date for any or all variance and/or reasonable use approvals. The development proposal must be completed before the approval expires.

e. Any person aggrieved by the granting, denying, or rescinding of a reasonable use exception permit by the technical administrator or any party of record may appeal the Technical Administrator's decision pursuant to WCC 16.16.280 or the hearing examiner decision pursuant to Chapter 20.92 WCC.
f. Any person aggrieved by the granting, denying, or rescinding of a reasonable use permit by the technical administrator may seek review from the hearing examiner pursuant to WCC 16.16.280.

g.f. Any application for a variance or reasonable use exception permit or approval which remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.

2. All variance or reasonable use exception permit applications or other approvals shall be subject to the provisions of this chapter, which are in effect at the time of application.

3. Each application for a variance or reasonable use exception permit shall be accompanied by a fee as stated in the unified fee schedule.

4. In making reasonable use or variance decisions, the technical administrator and/or hearing examiner shall have the authority to require submittal of technical reports in accordance with WCC 16.16.255 and/or 16.16.260(B).

16.16.273 Variances. [CES54]

A. Where strict application of requirements of this chapter renders compliance with these provisions an undue hardship, in cases where the reasonable use criteria of WCC 16.16.270 do not apply, permit applicants may seek a variance pursuant to the variance standards and procedures provided in this section.

A.B. Variance Standards. In cases where the reasonable use criteria of subsection A of this section do not apply, or for a variance from other standards of this chapter, the hearing examiner may grant a variance from the dimensional requirements in this chapter when the applicant proves by clear, cogent, and convincing evidence of all of the following elements:

1. Because of special circumstances applicable to the subject property, including, but not limited to, size, shape, topography, location, surroundings, and other physical conditions, the application of this chapter precludes development of the property by the property owner as otherwise allowed in WCC Title 20; and,

2. The granting of the variance will not be injurious to the health or safety of the community and every reasonable effort has been made to minimize adverse effects on critical areas; and,

3. The variance does not constitute a grant of special privilege, and is not based upon reasons of hardship caused by previous actions of the current property owner after July 18, 1992, and the proposed modification to a critical area will be the minimum necessary to allow reasonable and economically viable use of the property; and,

4. The project includes mitigation for unavoidable critical area and buffer impacts.

5. No other feasible alternative exists.

C. Variance Procedures.

1. Procedural requirements for variances applications shall be as follows:
   a. Variance applications shall be subject to an open record public hearing, processed in accordance with Chapter 2.33 WCC and WCC 20.84.230.
   b. The hearing examiner shall have the authority to set an expiration date for any or all variance approvals. The development proposal must be completed before the approval expires. The hearing examiner will render a decision pursuant to Chapter 20.92 WCC.
   c. Any party of record may appeal the hearing examiner decision pursuant to Chapter 20.92 WCC.
d. Any application for a variance that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant a single 90-day extension to two 1-year extensions for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.

2. All variance applications shall be subject to the provisions of this chapter that are in effect at the time of application.

3. Each application for a variance shall be accompanied by a fee as stated in the unified fee schedule.

4. In making variance decisions, the hearing examiner shall require submittal of technical reports in accordance with WCC 16.16.255 and/or 16.16.260(B).[TAC55]

16.16.275 Nonconforming uses/buildings.

The following provisions shall apply to legally existing uses and/or buildings and/or structures that do not meet the specific standards of this chapter:

A. The lawful use of any legal nonconforming building, structure, land, or premises existing on September 30, 2005, the effective date of the adoption or amendment of this chapter [CESS56], or authorized under a permit or approval issued, or otherwise vested, prior to the effective date of the adoption or amendment of this chapter, the date may be continued, subject to the provisions for a nonconforming structure in Chapter 20.83 WCC; provided, that agricultural activities shall conform to section WCC 16.16.299Article 98 (Conservation Program on Agriculture Lands). If a nonagricultural nonconforming use is intentionally abandoned for a period of 12 months or more, then any future use of the nonconforming building, land, or premises shall be consistent with the provisions of this chapter.

B. Expansion, alteration, and/or intensification of a nonconforming use is prohibited.

B.C. Expansion, alteration, and/or intensification of a legal nonconforming building, or structure, excluding normal maintenance and repair, is prohibited unless such use will produce impacts that degrade the critical area, including but not limited to vegetation clearing; additional impervious surfaces; generation of surface water runoff; discharge, or risk of discharge of pollutants; increased noise, light or glare, or increased risk associated with geologically hazardous areas [NRS57].

C.D. Nonconforming structures that are completely destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind if there is no alternative that allows for compliance with the standards of this chapter; provided, that the following are met:

1. The reconstruction process is commenced within 18 months of the date of such damage; and

2. The reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsection B.C of this section.

D.E. Nonconforming uses in shoreline areas shall be governed by the shoreline management provisions of the WCC Title 23.

E.F. When a development permit is sought for a parcel containing a nonconforming building or structure that has been intentionally abandoned for a period of 12 months or more, the technical administrator may require removal of the nonconforming building and restoration of the critical area or buffer in accordance with this chapter as a condition of permit approval.
16.16.280 Appeals.

A. Final permit decisions made by the technical administrator shall be subject to appeal in accordance with the procedures of Chapter 2.33 WCC and WCC Title 20; provided, that the applicant may request administrative review by the director of planning and development services prior to initiating a formal appeal process. Decisions of conditions applied to specific permits shall be subject to the appeal provisions for that permit. A request for administrative review shall stay the time within which one must file an appeal until a decision on the review is issued.

B. Any person may appeal to the hearing examiner a final administrative order, final requirement, final permit decision, or final determination made; provided, that such appeal shall be filed in accordance with the appeal procedure for the underlying permit. If there is no appealable permit or if the appeal is for a reasonable use permit decision issued by the technical administrator, the appeal shall be filed in writing within 14 calendar days of the date the written decision, order, requirement, or determination is issued and public notice provided, unless the decision is issued as part of a SEPA determination of nonsignificance for which a public comment period is required, in which case a 21-day appeal period shall be provided.

C. The appeal will be upheld if the applicant proves that the decision appealed is clearly erroneous or based upon error of law.

D. The hearing examiner shall have the authority to set an expiration date for any or all appeal approvals. The hearing examiner will render a decision pursuant to Chapter 20.92 WCC.

E. Each application for an appeal of an administrative decision to the hearing examiner shall be accompanied by a fee as stated in the unified fee schedule.

F. Pursuant to WCC 20.92.610, the applicant, any party of record, or any County department may appeal any final decision of the hearing examiner to the County Council. The appellant shall file a written notice of appeal at the County Council office within 10 business days of the final decision of the Hearing Examiner.

G. Any issue not raised by the time of appeal in the original appeal filing to superior court is thereafter waived. [TAC58]

16.16.285 Penalties and Enforcement.

A. Any person who violates any of the provisions of this chapter shall be guilty of a civil offense and may be fined a sum not to exceed $1,000 for each offense. After a notice of violation has been given, each day of site work in conjunction with the notice of violation shall constitute a separate offense.

1. The penalty provided in subsection A of this section shall be assessed and may be imposed by a notice in writing either by certified mail with return receipt requested or by personal service to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.

2. Within 30 business calendar days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County's final decision on mitigation or revision shall be reviewed by the hearing examiner if the aggrieved party files a written appeal therewith of said decision within 10 business calendar days of its issuance.

B. If work activity has occurred on a site in violation of this chapter, prompt corrective action, restoration, or mitigation of the site will be required when appropriate. If this provision is not complied with, the County may restore or mitigate the site and charge the responsible person property owner
C. In the event any person violates any of the provisions of this chapter, the County may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a nonemergency situation, such notice may include notice of the intent to issue a stop work order no less than 10 business calendar days following the receipt of the correction notice, and provide for an administrative predeprivation hearing within 10 business calendar days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the County may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative predeprivation hearing within 72 hours following receipt of the stop work order. Failure to comply with the order to stop work shall be a gross misdemeanor punishable upon conviction by a minimum fine of $500 up to a maximum fine of $1,000 or one year in jail, or both. Under no circumstance may the court defer or suspend any portion of the minimum $500 fine for any conviction under this section. Each day or part thereof of noncompliance with said order to stop work shall constitute a separate offense.

D. The County may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.

E. The prosecuting attorney may enforce compliance with this chapter by such injunctive, declaratory, or other actions as deemed necessary to ensure that violations are prevented, ceased, or abated.

F. Any person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

F.G. After the Fact Permit Fee. After the Fact permit application fees shall be double the amount established by the Unified fee schedule [NRS60].

16.16.290 Conservation program on agriculture lands (CPAL) [CES61]


The following programs may be employed to achieve the purposes of this chapter and minimize the burden to individual property owners from application of the provisions of this chapter:

A. Open Space. Any property owner whose property contains a critical area or buffer and who meets the applicable qualifying criteria may apply for open space taxation assessment pursuant to Chapter 84.34 RCW.

B. Conservation Easement. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property by naming the County or its qualified designee under RCW 64.04.130 as beneficiary of the conservation. This conservation easement may be in lieu of separate critical areas tracts that qualify for open space tax assessment described in subsection A of this section. The purpose of the easement shall be to preserve, protect, maintain, and limit use of the affected property. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the County.

C. Conservation Futures Fund. The County may consider using the conservation futures property tax fund as authorized by RCW 84.34.230 for the acquisition of properties containing significant critical areas and their associated buffers.
ARTICLE 3. GEOLOGICALLY HAZARDOUS AREAS

16.16.300 Purpose.
The purposes of this Article are to minimize-reduce risks to public health, human life and safety and reduce the risk of property damage by regulating development on or adjacent to geologically hazardous areas; to structures and property from geologic hazards, to allow for natural geologic processes supportive of forming and maintaining fish and wildlife habitat; and to regulate and inform land use and planning decisions. It is recognized that the elimination of all risk from geologic hazards is not feasible to achieve but the purpose of this Article is to reduce the risk to acceptable levels.

   A. Minimize risks to public health and safety and reduce the risk of property damage by regulating development on or adjacent to geologically hazardous areas.
   B. Regulate land use so as to avoid the need for construction of flood control devices or channel modifications on alluvial fans and allow for natural hydrologic processes.
   C. Protect aquatic habitats, wetlands, and fish and wildlife by avoiding or minimizing impacts that can result from landslides and erosion.
   D. Maintain natural geological processes while protecting existing and new development.
   E. Establish review procedures for development proposals in geologically hazardous areas.

16.16.310 Designation, Mapping[CAC62], and Classification.

A. Designation. Lands determined to be landslide, seismic, alluvial fan, volcanic, erosion (including channel migration zones), tsunami, seiche and landslide generated waves, or mine hazard areas are hereby designated as geologically hazardous areas. Geologically hazardous areas are areas susceptible to erosion, landslides, earthquakes, volcanic activity, and/or other geological processes and which pose a significant risk to people and property. Incompatible development in these geologic hazard areas can put human life, safety, health, and development at risk, alter geologic processes, adversely affect natural resources, threaten public health and safety, and put the development and surrounding developments and uses at risk.

B. Mapping. The approximate location and extent of known potential geologically hazardous areas are shown on maps maintained by the County. These maps are useful as a guide for project applicants and/or property owners, and County review of development proposals. However, they do not provide a conclusive or definitive indication of geologically hazardous area presence or extent. Potential geologically hazardous areas may exist that do not appear on the maps, and some potential geologically hazardous areas that appear on the maps may not meet the geologically hazardous areas designation criteria. Geologically hazardous areas are shown on the County’s critical areas maps. The County shall update the maps periodically as new hazard areas are identified and as new information becomes available and may require additional studies during the development review process to supplement and/or confirm the mapping. This chapter does not imply that land outside mapped geologically hazardous areas or uses permitted within such areas will be without risk. This chapter shall not create liability on the part of Whatcom County or any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

C. Classification. For purposes of this chapter, geologically hazardous areas shall include all of the following:

1. Landslide Hazard Areas. Landslide hazard areas shall include areas potentially susceptible to landslides based on a combination of geologic, topographic, and hydrologic factors, as specified below. They include any areas susceptible to mass movement due to any combination of bedrock, soil, slope (gradient), slope aspect, slope form (concave, convex, planar), geological struc-
ture, surface and subsurface hydrology, or other physical factors. Landslide hazard areas shall also include areas along which landslide material may be routed or which may be subject to deposition of landslide delivered material. Potential landslide hazard areas include but are not limited to the following areas. Landslide hazard areas shall be further classified as follows:

a. **Potential Landslide Hazard Areas.** Potential landslide hazard areas exhibit one or more of the following characteristics:[TAC63]
   i. Areas designated as quaternary slumps, earth-flows, mudflows, or landslides on maps published by the U.S. Geological Survey, Washington State Department of Natural Resources, or other reputable sources. Slopes between 15 and 35 percent that have a relatively permeable geologic unit overlying a relatively impermeable unit and have springs or groundwater seeps;
   ii. Areas with all three (3) of the following characteristics:
      a. Slopes steeper than fifteen percent (15%);
      b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and,
      a.c. Springs or groundwater seepage;
   iii. Areas that have shown movement and/or are underlain or covered by mass wastage debris. Areas that are at risk of mass wasting due to seismic forces;
   iv. Potentially unstable slopes resulting from rapid river or stream incision, river or stream bank erosion or undercutting by wave erosion. These include slopes exceeding 10 feet in height adjacent to streams, lakes and coastal shorelines and with more than a 35 percent gradient;
   v. Areas that have shown evidence of historic failure or instability, including, but not limited to, back rotated benches on slopes; areas with structures that exhibit structural damage such as settling and cracking of building foundations; and areas that have toppling, leaning, or bowed trees caused by ground surface movement.
   vi. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking;
   vii. Areas that show past slouging or calving of bluff sediments or rocks resulting in a steep slope that is poorly vegetated, resulting in a vertical or steep bluff faceslope that is poorly with little or no vegetation;
   viii. Slopes that are parallel or sub-parallel to planes of weakness (which may include but not be limited to bedding planes, soft clay layers, joint systems, such as bedding planes, joint systems, and fault planes) in subsurface materials;
   ix. Areas that show evidence of or, are at risk from snow avalanches; slopes having gradients steeper than 80 percent subject to rock fall during seismic shaking;
   x. Deep-seated landslide areas characterized by one or more of the following features: scalloped ridge crests at the top of the slope, crescent shaped depressions, head scarps, side scarps, ponds or sag areas on mid slopes, benches and scarps on mid slope areas, hummocky ground, linear fractures in the ground. These features may be evident in aerial images, topographic maps, LiDAR imagery or on the ground.
   xi. Areas below unstable slopes or that have been identified as landslide hazard areas that could be impacted by landslide runout;
   xii. Areas above or adjacent to unstable slopes that could be impacted if the landslide area expands;
   xiii. Slopes exceeding 35 percent.Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of compe-
tent bedrock or a properly engineered slopes designed and approved by a geotechnical engineer licensed in the state of Washington and experienced with the site;

Areas within which land use activities could affect the slope stability of a landslide hazard area, including but not limited to areas with subsurface hydrologic flow, groundwater recharge areas and surface water flow; or;

Areas of historical landslide movement including coastal shoreline areas mapped by the Department of Ecology Coastal Zone Atlas or the Department of Natural Resources slope stability mapping as unstable ("U" or class 3), unstable old slides ("UOS" or class 4), or unstable recent slides ("URS" or class 5).

b.**Active Landslide Hazard Areas.** Active landslide hazard areas are areas that have been identified during a geological inspection as meeting the following criterion:

c.**Areas that exhibit indicators noted in subsection (C)(1)(a) of this section that have been determined through geological assessment to be presently failing or very likely to fail in the near future.**

b.

2. **Seismic Hazard Areas.** Whatcom County is located in a seismically active area that will be subject to ground motion during local and regional earthquakes. Seismic hazards and risk are partially addressed in the International Building Code (IBC) or International Residential Code (IRC). Additional seismic hazard areas for the purpose of this chapter include:TAC64: Seismic hazard areas shall include areas subject to a severe risk of earthquake damage as a result of seismically induced ground shaking, differential settlement, slope failure, settlement, lateral spreading, mass wasting, surface faulting, or soil liquefaction.

a. Areas designated as having a “high” and “moderate to high” risk of liquefaction susceptibility as mapped on the Liquefaction Susceptibility Map by the Washington State Department of Natural Resources.

b. Areas that are identified as underlain by liquefiable soils and due to local topography are also subject to or interpreted as being potentially impacted by lateral spreading[TAC65].

d. Areas located within 500 feet of Quaternary fault zones[TAC66] with surface offsets.[TAC67]

3. **Alluvial Fan Hazard Areas.** Any area located at the base of a confined mountain channel and determined to be susceptible to clear-water flooding, debris-laden flows and floods, and erosional impacts shall be designated as an alluvial fan hazard area. Watershed hydrology, geology, slope conditions, topography, current and historic land uses, roads and road drainage, valley bottom conditions, and channel conditions upstream of an alluvial fan area are all fundamental to potential hazards and risks on alluvial fans. Alluvial fan hazard areas shall include those areas on alluvial fans potentially impacted by:

a. Sediment laden flows (e.g., where debris flows, and debris floods);

b. Clear water floods;

c. Areas that have the potential to significantly damage or harm the health or welfare of the community. They include the area generally corresponding to the path of potential flooding; stream channel changes, (including channel avulsion, incision, aggradation or lateral erosion and migration); and, sediment and debris deposition, or debris flow paths as determined by analysis of watershed hydrology and slope conditions, topography, valley bottom and channel conditions, potential for channel changes, and surface and subsurface geology.

e.d. **Erosion.**

4. **Volcanic Hazard Areas.** Volcanic hazard areas associated with Mount Baker shall include areas potentially subject to lava flows, pyroclastic flows, pyroclastic surges, mud flows, lahars, debris flows, debris avalanche, ash (tephra) clouds or ash (tephra) fall, lateral blast, ballistic debris, or flooding resulting from volcanic activity. Lahars, mud flows, and debris avalanches can also oc-
Volcanic hazard areas are those areas that have been affected, or have the potential to be affected, by pyroclastic flows, pyroclastic surges, lava flows, or ballistic projectiles, ash and tephra fall, volcanic gases, and volcanic landslides. Also included are areas that have been or have the potential to be affected by Case M, Case I, or Case II lahars, or by debris flows or sediment-laden events originating from the volcano or its associated deposits. In addition, volcanic hazards include secondary effects such as sedimentation and flooding due to the loss of flood conveyance as a result of river channel and flood plain aggradation. The implications of secondary effects may be observed at some distance from the initiating event, and may continue to impact affected drainages over many decades following the initiating event. Secondary effects may significantly alter existing stream and river channels, associated channel migration zones and floodplains due to stream and river bed aggradation and channel avulsion. Volcanic hazards include areas that have not been affected recently, but could be affected by future events. Volcanic hazard areas are classified into the following categories:

a. **Pyroclastic Flow Hazards Areas.** Areas that could be affected by pyroclastic flows, pyroclastic surges, lava flows, and ballistic projectiles in future eruptions. During any single eruption some drainages may be unaffected by any of these phenomena, while other drainages are affected by some or all phenomena. Recurrence interval is not known.

b. **Ash/Tephra fall Hazard Areas.** The location of ash/tephra fall hazards at Mt. Baker is predominantly controlled by the prevailing, westerly winds observed on the west coast of North America. However, easterly winds do occur in the region and direct ash/tephra fall impacts to Whatcom County population centers are certainly a possibility. Health hazards, power outages, negative impacts to machinery and aircraft, structural damage (e.g. roof collapse) and extensive disruption of daily activities are all potential hazards.

c. **Lateral Blast Hazard Areas.** Lateral blast hazards result from low-angle, explosive volcanic eruptions that emanate from the flank of a volcano. The occurrence of a lateral blast is largely unpredictable, both with respect to timing and direction, and does not appear to be a common feature of eruptive activity at Mt. Baker, or at other volcanoes globally. Extensive destruction is likely within the lateral blast zone, and mitigation is generally considered unachievable.

d. **Volcanic Landslide Hazard Areas.** Landslides are common on volcanoes due to their relative height, steepness, and weakness in both the underlying bedrock and the volcanic deposits due to magma movement and chemical weathering. Landslides size is highly variable depending on site conditions and type, but may achieve high velocity and momentum which can carry a landslide across valleys and ridgelines. Given the range of possible landslide types and sizes, specific hazards, risk zones and recurrence interval have not been delineated at Mount Baker. Volcanic landslide hazards are associated with lahar hazards as they pose the potential to generate small to large-scale cohesive lahars.

e. **Lahar Hazard Areas.**

i. **Case M Lahar Hazard Areas.** Areas that could be affected by cohesive lahars that originate as enormous avalanches of weak, chemically-altered rock from the volcano. Case M lahars can occur with or without eruptive activity. A single, post-glacial, Case M Lahar deposit is known to have traveled down the Middle Fork Nooksack River, and is postulated to have continued down the main stem of the Nooksack River, eventually reaching Bellingham Bay and to have also flowed north to Canada along the pre-historic path of the Nooksack River. Case M Lahars are thus interpreted to pose a threat to the Sumas River drainage due to the potential for bed aggradation and channel avulsion to overtop the low-lying drainage divide that exists between the Nooksack and Sumas River drainages. Case M Lahars are considered high consequence, low-probability events.
ii. **Case I Lahar Hazard Areas.** Areas that could be affected by relatively large non-cohesive lahars, which most commonly are caused by the melting of snow and glacier ice by magmatic activity and associated processes, but which can also have a non-eruptive origin. The average recurrence interval for Case I Lahars, based on deposits identified along the flanks of Mount Baker, is postulated to be 500 years, or greater. However, renewed magmatic activity at Mount Baker would be indicative of greatly increased potential for Case I Lahar generation; this may reduce the recurrence interval to approximate that of Case II Lahars.

iii. **Case II Lahar Hazard Areas.** Areas that could be affected by moderately large debris avalanches or small cohesive lahars, or other types of debris flow, generated on the east flank of Mount Baker at Sherman Crater or the upper Avalanche Gorge. Case II Lahars impact the Baker Lake basin and drainage, and are considered correlative to Case I Lahars that may impact the primary drainages on the west and north of Mount Baker, but with increased frequency and comparable volume. The postulated recurrence interval for Case II Lahars at Mount Baker is less than 100 years.

2.4. **Erosion Hazard Areas.** Erosion hazard areas shall include:

a. Channel migration zones, also known as riverine erosion areas, are defined as the areas along a river or stream within which the channel(s) can be reasonably predicted to migrate over time. This is a result of natural and normally occurring geomorphic, hydrological, and related processes when considered with the characteristics of the river or stream and its surroundings, and in consideration of river and stream management plans. Channel migration hazard areas shall include: potential channel migration, channel avulsion, bank erosion, and stability of slopes along the river or stream; Surface erosion areas, which are slopes greater than 15 percent with soils identified by the Natural Resources Conservation Service as having a “severe” or “very severe” rill and inter-rill erosion hazard because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to natural characteristics; and [TAC68]

b. Coastal and riverine erosion areas that, which are subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat from wind, wave, and tidal erosion. This includes the channel migration zone (CMZ) and the anticipated slope/bank failures and landward retreat resulting from erosion and erosion along other features that concentrate surface water flows; provided, that channel migration zones apply only to those watercourses where detailed CMZ studies have been completed. Areas that are identified as potential channel migration hazards based on sound scientific evidence, but which are pending further study, may be designated by the County Council as interim channel migration zones until such studies are complete. Additional CMZs may be regulated as erosion hazard areas as new information becomes available, accepted and adopted by Whatcom County.

5. **Tsunami and Seiche Hazard Areas** [CAC69]. Tsunami and seiche hazard areas shall include coastal areas and lake shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of a tsunami, coastal or inland wave action generated by seismic events.

3.6. **Seiche and Landslide Generated Wave Hazard Areas.** Seiche and landslide generated wave hazard areas include lake and marine shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of a seiche or landslide generated waves. No known Best Available Science is currently available to characterize potential seiche hazards in Whatcom County. [CAC70]
4.7. Mine Hazard Areas. Mine hazard areas shall include those lands in proximity to abandoned coal mines and associated underground mine workings where mine workings are less than 200 feet below ground level. Mine workings include adits (mine entrances), gangways (haulage tunnels), rooms and chutes (large voids), drifts (water-level tunnels), pillars (coal-rock left for support) and air shafts. Mine hazards include subsidence, which is the uneven downward movement of the ground surface caused by underground workings caving in; sink holes; contamination of ground and surface water from tailings and underground workings; concentrations of lethal or noxious gases; and underground mine fires.

16.16.320 Geologically Hazardous Areas — General Standards [TAC71].

† 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. Allowed New developments shall be located and/or engineered and/or constructed to reduce risks to life, health, and 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: and occupants from the hazard, and to avoid or compensate for impacts to other critical areas such as wetlands and habitat conservation areas:

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 and appurtenant, 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 hazards) impact avoidance may mean no development will be permitted on a property. So long as an applicant complies with WCC 16.16.350(B), the County shall not require lahar hazard impact avoidance measures that reduce the number, size, or scale of buildings or appurtenant features; or prevent uses otherwise allowed per the property’s zoning district based solely on the property’s location within a lahar hazard zone.

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 (except for lahar hazards) and/or are outside any setback or buffer established by this Chapter.

D. Critical Facilities Prohibited. Critical facilities as defined in WCC 16.16.800 shall not be constructed or located in geologically hazardous areas if there is a feasible alternative location outside geologically hazardous areas that would serve the intended service population. If allowed, the critical facility shall be designed and operated to minimize the risk and danger to public health and safety to the maximum extent practicable.

E. Review by Qualified Professional. A qualified professional geologist or other qualified profession-algeotechnical engineer, licensed in the State of Washington, shall review projects development
proposals that occur in potentially geologically hazardous areas to ensure that they are properly designed and constructed as provided for in WCC 16.16.225 determine the potential risk. If development takes place within an identified geologically hazardous area requiring design or structural elements to mitigate/minimize the hazard, the design/mitigation shall be approved/designed by a qualified professional geotechnical engineer licensed in the State of Washington with expertise in mitigation of geological hazards.

F. **Life of Structure.** Proposed development shall be sited far enough from erosion and landslide hazard areas to ensure at least one hundred (100) years of useful life for the proposed structure(s) or infrastructure. The location should be determined by a geologist or other qualified professional geologist or engineering geologist, licensed in the State of Washington and be should be based on a site specific evaluation of the landslide and/or erosion hazard.

G. **Remodels and Additions.** Any proposed remodel or addition to an existing permitted or non-conforming structure that exceeds a valuation of greater than 50% of the fair market value shall be required to ensure that the entire structure is improved in accordance with all Article 3 requirements.

A. Alterations shall be directed toward portions of parcels or parcels under contiguous ownership that are not subject to, or at risk from, geologic hazards and/or are outside any associated buffer established by this article.

B.H. **Agricultural Activities.** Agricultural activities (uses and structures) may be allowed within geologically hazardous areas without a conservation farm plan as long as the activity does not increase the potential for landslides, channel migration, or alluvial fan hazards on or off the site; except, that a conservation farm plan shall be required for agricultural activities within landslide hazard areas and associated buffers/landslide hazard area setbacks (WCC 16.16.325(C)).

C.I. **Land Subdivision.** Land that is located wholly within a landslide hazard area, riverine or coastal erosion hazard area, alluvial fan hazard area, lahar hazard area, or mine hazard area or its buffer may not be subdivided to create buildable parcels entirely within the hazardous area. Land that is located partially within a hazard area or its buffer setback may be divided provided that each resulting lot has sufficient buildable area outside of the hazardous area with provision for drainage, erosion control and related features that will not adversely affect the hazard area or its buffer setback.

D. Surface erosion hazards will be regulated under WCC 20.80.730, Land clearing.

**16.16.325 Landslide Hazard Areas – Standards – Landslide hazard areas.**

A. **General Standards.** The following activities may be allowed in active landslide hazards areas when all reasonable measures have been taken to minimize risks and other adverse effects associated with landslide hazards, and when the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose:

1. Developments that will not increase the threat to the health or safety of people and will not increase potential for landslides on or off the site and meet the reasonable use standards as set forth in WCC 16.16.270.

2. Utility lines and pipes that are above-ground, properly anchored and/or designed so that they will continue to function in the event of a slope failure or movement of the underlying materials and will not increase the risk or consequences of static or seismic slope instability or result in a risk of mass wasting. Such utility lines may be permitted only when the applicant demonstrates that no other feasible alternative is available to serve the affected population.

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

4. Stormwater conveyance through a properly designed stormwater pipe when no other stormwater conveyance alternative is available. The pipe shall be located above-ground and be properly anchored and/or designed so that it will continue to function in the event of a slope failure or movement of the underlying materials and will not increase the risk or consequences of static or seismic slope instability or result in increased risk of mass wasting activity.

B. 16.16.330 Standards - Landslide Hazard Management Zone Standards. Alteration may be allowed within 300 feet of an active landslide hazard area when the technical administrator determines that the following standards are met:

1. The proposed alteration includes all appropriate measures to avoid, eliminate, reduce, or otherwise mitigate risks to health and safety.

2. The proposed alteration is located outside of an active landslide hazard area and any required setback buffer, as set forth in WCC 16.16.335.

3. The development will not decrease slope stability on adjacent properties. The development shall not increase the risk or frequency of landslide occurrences.

4. The removal and disturbance of vegetation, clearing, or grading shall be limited to the area of the approved development.

5. The development is outside of the area of potential upslope or downslope surface movement or potential deposition in the event of a slope failure.

6. The development will not increase or concentrate surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions.

7. The proposed alterations will not adversely impact other critical areas.

8. Structures and improvements shall minimize alterations to the slope contour, and shall be designed to minimize impervious lot coverage unless such alterations or impervious surfaces are needed to maintain slope stability.

C. 16.16.335 Standards - Landslide Hazard Area Setbacks Buffers [TAC73]. In addition to the applicable general protective measures found in WWC 16.16.265, the technical administrator shall have the authority to require setbacks buffers from the edges of any identified active landslide hazard area in accordance with the following:

1. The size of the setback buffer shall be based on the findings of a qualified professional and shall protect critical areas and minimize the risk of property damage, death, or injury resulting from landslides both on and off the property caused in whole or part by the development.

2. The setback buffer shall include consideration of the uphill hydrologic contribution area to the potential landslide area and/or the area subject to the potential for mass movement, and the downhill area subject to potential deposition.

3. The setback buffer shall include consideration of vegetation on the potential landslide area and in areas above and below the potential landslide area. The technical administrator shall have the authority to require vegetation or other measures to protect or improve slope stability and shall have the authority to require a mitigation plan developed in accordance with 16.16.260, and a conservation easement in accordance with WCC 16.16.265(C) to ensure appropriate vegetation improvements are installed, maintained, and preserved.

4. Developments on sites that are directly adjacent to a wetland, marine shoreline, or other habitat conservation area as defined in Article 7 of this chapter may be subject to additional buffer requirements and standards as set forth in the subsequent articles of this chapter.
16.16.340 Standards—Seismic Hazard Areas—Standards.
Development may be allowed in seismic hazard areas when all of the following apply:
A. Structures in seismic hazard areas shall conform to applicable analysis and design criteria of the International Building Code.
B. Public roads, bridges, utilities, and trails shall be allowed when there are no feasible alternative locations and geotechnical analysis and design are provided to ensure the minimization of potential damage to roadway, bridge, and utility structures and facilities will not be susceptible to damage from seismically induced ground deformation. Mitigation measures shall be designed in accordance with the most recent version of the American Association of State Highway and Transportation Officials (AASHTO) Manual or other appropriate document.

The following activities may be allowed in alluvial fan hazard areas when all reasonable measures have been taken to minimize risks and other adverse effects associated with alluvial fan hazards, and when the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose, and when the applicable general protective measures found in WWC 16.16.265 have been applied:
A. Developments that will have minimized the threat to the health or safety of people and will not increase the risks of alluvial fan hazards on or off the site and meet the reasonable use standards as set forth in WWC 16.16.270.
B. Roads, utilities, bridges, and other infrastructure when that are located and designed to prevent minimize adverse impacts on critical areas and avoid the need for channel dredging or diking or other maintenance activities that have the potential to substantially degrade river and stream functions.
C. Permanent residential structures and commercial developments shall be allowed in alluvial fan hazard areas only if the fan has undergone a County-approved study to assess potential hazards, determine risks, and identify mitigation measures and is deemed suitable for development. The technical administrator shall make this determination based on a detailed assessment by a qualified professional that identifies the risks associated with a 500-year return period debris flow or the maximum credible event that could impact the alluvial fan.
D. Accessory structures not involving human occupancy shall be allowed as long as the structure will not increase the alluvial fan hazards on or off the site.

Development may be allowed in volcanic hazard areas; provided, that all reasonable measures have been taken to minimize risks and other adverse effects associated with volcanic hazards, and when the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose, and when the applicable general protective measures found in WWC 16.16.265 and the standards of 16.16.320 have been applied:
A. For lahars inundation zones, the following activities shall be allowed as specified under the conditions specified:
1. Developments permitted and administratively approved uses allowed in accordance with the zoning that will have no threat to the health or safety of people and that are designed to minimize the will not increase the risks of volcanic hazards at adjacent and downstream properties, provided that there are no more than 6 employees on site on or off the site and meet the reasonable use or variance standards and procedures as set forth in WWC 16.16.270 [CE574] Sewer collection facilities and other utilities that are located underground and not likely to cause harm to people or the environment if inundated by a lahar.
2. Critical facilities, as defined in subsection 1 of "critical facilities," Article 8 of this chapter, of 50 or more fewer persons may be permitted within lahar inundation zones subject to the conditional use permit requirements of Chapter 20.84 WCC, provided, that the following criteria are also met:
   i. The applicant demonstrates through submittal of a travel time analysis prepared by a qualified professional or local, state, or federal agency the amount of time that is anticipated for a lahar to reach the proposed project and evacuation route, together with a description of existing or proposed detection and notification systems to be installed and maintained by a public entity.
   ii. The applicant has provided an emergency evacuation plan prepared by a qualified professional or local, state, or federal agency showing that the proposed project is located near directly adjacent to a safety zone that is within walking distance in an amount of time less than the anticipated time that it takes a lahar to reach the site after the triggering of an alarm and notification.

3. Accessory structures not involving human occupancy shall be allowed.


A. Ash/Tephra Fall and Lateral Blast Hazard Areas. Development may be allowed in these areas; provided, that all reasonable measures have been taken to minimize risks and adverse effects, and when the amount and degree of the alteration is limited to the minimum needed to accomplish the project purpose, and when the applicable general protective measures found in WWC 16.16.265 and the standards of 16.16.320 have been applied.

A.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 are 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.
   a. Expansion of legal nonconforming uses meeting criteria of WCC 16.16.275 and WCC 20.83.
   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.
Generally speaking, the severity of lahars decrease with distance from the volcanic source, although consequences may increase due to greater development density farther from the mountain. Distance also allows additional time to implement evacuation procedures and other emergency preparedness measures. Some municipalities have tailored their volcanic hazard codes based on the ability to evacuate people from within a lahar hazard area, on distance from the source event (i.e., those areas closest to the event will have less time to evacuate than those areas farther away from the source of an event), and on the amount of time necessary to conduct evacuation following public notification (such as via an acoustical flow-monitoring alarm system) that a lahar has occurred. In Whatcom County, a lahars warning system does not exist, nor do detailed, peer-reviewed lahar inundation and velocity models or travel-time analyses. For these reasons the following Lahar Hazard Zones, which also apply to pyroclastic flow hazards, have been devised for the purpose of enacting prudent development regulations. These Lahar Hazard Zones, also graphically shown on the County’s Geologic Hazards Map, are generally based on the assumption that detrimental impacts will decrease with distance from the source event, as well as in consideration of regional topography, published lahar recurrence intervals, and, to a lesser extent, conservative lahar travel-time estimates:

- **Lahar Hazard Zone A**—Includes all areas immediately surrounding the base of Mount Baker that may be impacted by Case M and Case I Lahars as well as those areas potentially impacted by pyroclastic and lava flows. Also includes all areas impacted by Case I Lahars on the east side of the Mount Baker including the area immediately surrounding Baker Lake and Lake Shannon that may be impacted by debris flow-generated tsunamis or by the subsequent seiche. Lateral Blast hazards, while destructive, are considered to be rare events and are therefore regulated pursuant to WCC 16.16.350(A).

- **Lahar Hazard Zone B**—Includes all areas impacted by Case M and Case I Lahars that are located within 1 hour travel time distance from the source event. Effectively this includes all areas upstream of the State Route 542 Bridge over the Nooksack River at Nugent’s Corner, extending up the Middle Fork Nooksack River to the Mosquito Lake Road Bridge and up the North Fork Nooksack River to, and including, the community of Glacier. Areas upstream of these locations are considered in Volcanic Hazard Zone A.

- **Lahar Hazard Zone C**—Includes all areas that may be impacted by Case M and Case I Lahars downstream of the State Route 542 Bridge over the Nooksack River at Nugent’s Corner and extending downstream to Everson, as well as within the Sumas River Drainage for a correlative distance approximated by a 1.5 hour travel time distance from the source event.

- **Lahar Hazard Zone D**—Includes all areas that may be impacted by Case M and Case I Lahars downstream of Everson and extending to Bellingham Bay, as well as the area beyond the 1.5 hour travel time distance in the Sumas Drainage and extending to the Canadian Border. Recognizing that hazards associated with a lahar, such as large volumes of debris and sediment, may differ substantially from that which is present during a clear water flood, the purposes of regulating development, the extent and severity of hazards in Zone D are considered commensurate with that of a 500-year flood, and development in these areas shall meet the requirements of Article 4, Frequently Flooded Areas.

- **Lahar Hazard Zone Regulations.** The use regulations shown in Table 1 shall apply within the indicated Lahar Hazard Zones.

- **Technical Assessment and Review.** In zones A & B, any project proposing a maximum occupant load greater than 25 shall be required to have a volcanic hazards assessment prepared by a qualified professional that includes recommendations for siting of improvements intending to avoid volcanic hazards and a volcanic hazard management and evacuation plan. In addition, the technical administrator shall have the authority to require such assessment for any project deemed subject to an elevated risk from volcanic hazards.
### Table 1. Volcanic Hazard Zone Standards

<table>
<thead>
<tr>
<th>Facility/Occupancy</th>
<th>Use Allowances and Maximum Occupancies&lt;sup&gt;2&lt;/sup&gt;</th>
<th>Lahar-Hazard Zone</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Essential Facilities</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
<td></td>
<td></td>
<td>Allowed, subject to underlying zoning</td>
</tr>
<tr>
<td>Hazardous Facilities</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
<td></td>
<td></td>
<td>Allowed, subject to underlying zoning</td>
</tr>
<tr>
<td>Special Occupancies</td>
<td>Prohibited</td>
<td>Allowed, subject to underlying zoning, with a maximum occupancy of 100.</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
<td></td>
<td></td>
<td>Allowed, subject to underlying zoning</td>
</tr>
<tr>
<td>Covered Assemblies</td>
<td>Prohibited</td>
<td>Allowed, subject to underlying zoning, with a maximum occupancy of 100.</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
<td></td>
<td></td>
<td>Allowed, subject to underlying zoning</td>
</tr>
<tr>
<td>All other uses allowed by Title 20, Zoning</td>
<td>Within the Glacier LAMIRD—All other uses allowed by Title 20, with a maximum occupancy of 25.</td>
<td>All other uses allowed by Title 20, with a maximum occupancy of 100.</td>
<td>Allowed, subject to underlying zoning, but shall meet the requirements of 16.16.260 and 265.</td>
<td></td>
<td></td>
<td>Allowed, subject to underlying zoning</td>
</tr>
</tbody>
</table>

<sup>1</sup> See Article 9 for definitions of these facilities.

<sup>2</sup> Maximum occupancies listed here may be increased per WCC 16.16.360(D).

A. General Standards. Development shall be allowed in erosion hazard areas, provided, that all reasonable measures have been taken to minimize risks and other adverse effects associated with erosion hazards, and when the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose. [C.A.C. 76] For coastal, and riverine, and stream erosion hazard areas, the following activities shall be allowed when the applicable general protective measures found in WCC 16.16.265 have been applied and as follows specified:

1. Developments that will not minimize the threat to the health or safety of people and will not increase the risks of alluvial fan erosion hazards on or off the site and meet the reasonable use or variance standards as set forth in WCC 16.16.270 or 16.16.273 respectively.

2. Discharge of surface water drainage into a coastal or riverine erosion hazard area, provided there are no other alternatives for discharge, and the drainage is collected upland of the top of the active erosion hazard area and directed downhill in an appropriately designed stormwater pipe that includes an energy dissipating device at the base of the hazard area. The pipe shall be located on the surface of the ground and be properly anchored so that it will continue to function under erosion conditions and not create or contribute to adverse effects on downslope critical areas. The number of pipes should be minimized along the slope frontage.

3. Stormwater retention and detention systems, such as dry wells and infiltration systems utilizing buried pipe or French drains, provided they are located outside the identified channel migration zone, designed by a qualified professional and shall not affect the stability of the site.

4. Utility lines when no feasible conveyance alternative is available. The line shall be located above ground and properly anchored and/or designed so that it will not preclude or interfere with channel migration and will continue to function under erosion conditions; provided, that utility lines may be located within channel migration zones if they are buried below the scour depth for the entire width of the CMZ.

5. Public roads, bridges, and trails when no feasible alternative alignment is available. Facilities shall be designed such that the roadway prism and/or bridge structure will not be susceptible to damage from active erosion.

6. Access to private development sites may be allowed to provide access to portions of the site that are not critical areas, if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW. Exceptions or deviations from technical standards for width or other dimensions, and specific construction standards to minimize impacts may be specified.

7. Stream bank stabilization and shoreline protection may be permitted subject to all of the following standards:

   i. Shoreline protection measures located within coastal or riverine erosion areas shall use soft armoring techniques (bioengineering erosion control measures as identified by the State Department of Ecology and the Department of Fish and Wildlife guidance) unless the applicant provides a geotechnical analysis demonstrating that bioengineering approaches will not adequately protect the property.

   ii. The armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply from feeder bluffs.

   iii. The armoring will not adversely affect critical areas including habitat conservation areas or mitigation will be provided to compensate for adverse effects where avoidance is not feasible.

   iv. The proposal shall comply with WCC Title 23.

   v. Hard bank armoring is discouraged and may occur only when the property contains an existing permanent structure(s) that is in danger from shoreline erosion caused by wave action.
or riverine processes and not erosion caused by upland conditions, such as the alteration of natural vegetation or drainage, and the armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply.

vi. The erosion is not being caused by upland conditions, such as the removal of vegetation or human alteration of existing drainage.

vii. Nonstructural measures, such as placing or relocating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

8. New residences shall be located outside identified channel migration hazard areas or marine shoreline retreat areas. Accessory structures not involving human occupancy with a footprint equal to or less than 2,500 square feet shall be allowed; provided, that they are located at the outer edge of the migration zone as defined by this chapter; and provided, that the technical administrator may allow larger accessory structures where mitigating measures are feasible and provided for by the applicant.

9. New public flood protection measures and expansion of existing ones may be permitted, subject to WCC Title 17, Article 4 of this chapter, and a state hydraulic project approval; provided, that bioengineering or soft armoring techniques shall be used where feasible. Hard bank armoring may occur only in situations where soft approaches do not provide adequate protection.

16.16.360 Standards—Erosion Hazard Area SetbacksBuffers. In addition to the applicable general protective measures found in WWC 16.16.265, the technical administrator shall have the authority to require setbacksbuffers from the edges of any coastal, stream, or riverine hazard erosion area in accordance with the following:

1. The size of the setback buffer shall be based on the findings of a qualified professional and shall protect critical areas and processes and minimize the risk of property damage, death or injury resulting from erosion caused in whole or in part by the development or that the development may be subject to over the life of the development, typically identified as 100 years.

2. The buffer setback shall include the uphill area subject to potential erosion, the downhill area subject to potential deposition, and any area subject to landslide as a result of erosion.

3. The setback buffer shall include woody vegetation adequate to stabilize the soil and prevent soil movement. If the designated setback buffer area lacks adequate woody vegetation, the technical administrator shall have the authority to require vegetation enhancement or other measures to improve slope stability.

4. Developments on sites that are directly adjacent to a wetland or marine shoreline or other habitat conservation area as defined in Article 7 of this chapter may be subject to additional setback buffer requirements and standards as set forth in the subsequent articles of this chapter.

16.16.365 Standards—Tsunami and Seiche Hazard Areas—Standards.

The standards of WCC 16.16.320 and 16.16.350 shall apply. For development within tsunami hazard areas the proposed development shall be designed to provide protection from the tsunami hazard that meets the projected hazard on the Department of Natural Resources Tsunami Inundation Maps. For other low lying coastal areas not included on the Inundation maps, development shall be designed to provide protection for debris impact and an inundation as determined by current Department of Natural Resource modeling [NRS77] of 10 feet above mean high tide, unless other measures can be shown to provide equal or greater protection.

16.16.367 Seiche and Landslide Generated Wave Hazard Areas—Standards.

Standards for seiche and landslide generated wave hazards will only apply if the hazard area is mapped by the United States Geologic Survey or the Department of Natural Resources, Division of Geology and...
Earth Resources or other credible source approved by Whatcom County. If a mapped hazard is present, the standards of WCC 16.16.320 and 16.16.350 shall apply. For residential development within a mapped seiche and landslide generated wave hazard areas, the proposed development should be designed to withstand the mapped hazard. If the risk of the event is less than 0.1% on a yearly basis, development standards may not be required, but notice on property title will be required.

The standards of WCC 16.16.320 and 16.16.350(D)(1)[TAC78] shall apply.

16.16.375 Review and Reporting Requirements [TAC79]
A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration is, or may be, located within an active or potential geologically hazardous area, the technical administrator shall have the authority to require the submittal of a geological assessment report.

B. A geologic hazards assessment report for a geologically hazardous area shall include a field investigation and contain an assessment of whether or not the type of potential geologic hazard identified is present or not present and if development of the site will increase the potential for landslides or erosion on or off the site. Geology hazard assessment reports shall be prepared, stamped, and signed by a qualified professional. The report should be an investigation process to evaluate the geologic characteristics of the subject property and adjacent areas. The geological assessment shall include field investigation and may include the analysis of historical aerial photographs, review of public records and documentation, and interviews with adjacent property owners. The report shall include the following: provided, that the technical administrator may determine that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:
1. Be appropriate for the scale and scope of the project;
2. Include a discussion of all geologically hazardous areas on the site and any geologically hazardous areas off site potentially impacted by or which could impact the proposed project. If the affected area extends beyond the subject property, the geology hazard assessment may utilize existing data sources pertaining to that area;
3. Clearly state that the proposed project will not decrease slope stability or pose an unreasonable threat to persons or property either on or off site and provide a rationale as to those conclusions based on geologic conditions and interpretations specific to the project;
4. Provide adequate information to determine compliance with the requirements of this article;
5. Generally follow the guidelines set forth in the Washington State Department of Licensing Guidelines for Preparing Engineering Geology Reports in Washington (2006). In some cases, such as when it is determined that no landslide or erosion risk is present, a full report may not be necessary to determine compliance with this article, and in those cases a stamped letter or abbreviated report may be provided.
6. If a landslide or erosion hazard is identified, provide minimum setback recommendations for avoiding the landslide or erosion hazard, recommendations on stormwater management and vegetation management and plantings, other recommendations for site development so that the frequency or magnitude of landsliding or erosion on or off the site is not altered, and recommendations are consistent with this article.
1. A description of which areas on the site, surrounding areas that influence or could be influenced by the site, or areas within 300 feet of the site meet the criteria for geologically hazardous areas as set forth in WCC 16.16.330.
2. A scaled site plan showing:
a. The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, or that are likely to impact or influence the proposal or be influenced by the proposal, including properties and critical areas upslope and downslope of the subject site;

b. The location of existing and proposed structures, fill, access roads, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain;

c. The existing site topography preferably accurate to within two-foot contours; and

d. Clearing limits.

3. A description of the site features, including surface and subsurface geology, evidence of past or potential channel migration, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report. This may include surface exploration data such as borings, drill holes, test pits, wells, geologic reports, and other relevant reports or site investigations that may be useful in making conclusions or recommendations about the site under investigation.

4. A description of the processes affecting the property or affected by development of the property, including soil erosion, deposition, or accretion, and evidence of past channel migration.

5. A description of the vulnerability of the site to seismic and other geologic processes and a description of any potential hazards that could be created or exacerbated as a result of site development.

6. A description and analysis of the risk associated with development prohibitions and buffers associated with this chapter and the level of risk associated with alternative proposals for development within or with less setback from the area of geological hazard.

7. A description and analysis of the risk associated with the measures proposed to mitigate the hazards, ensure public safety, and protect property and other critical areas.

8. For projects in or affecting landslide hazard areas, the report shall also include:

a. Assessments and conclusions regarding slope stability for both the existing and developed conditions, including the potential types of landslide failure mechanisms (e.g., debris flow, rotational slump, translational slip, etc.) that may affect the site. The stability evaluation shall also consider dynamic earthquake loading, and shall use a minimum horizontal acceleration as established by the current version of the International Building Code.

b. An analysis of slope recession rate shall be presented in those cases where stability is impacted or influenced by wave cutting, stream meandering, or other forces acting on the slope.

c. Description of the run-out hazard of landslide debris to the proposed development that starts upslope (whether part of the subject property or on a neighboring property) and/or the impacts of landslide run-out on downslope properties and critical areas.

9.7. For projects in seismic hazard areas, the report shall also include a detailed engineering evaluation of expected ground displacements, amplified seismic-shaking, or other liquefaction and/or dynamic settlement effects and proposed mitigation measures to ensure an acceptable level of risk for the proposed structure type or other development facilities such as access roads and utilities.

10.8. For projects in mine hazard areas, the report shall also include a description of historical data and remnant mine conditions, if available, dates of operation, years of abandonment, strength of overlying rock strata, and other information needed to assess stability of the site together with analysis of surface displacement or foundation stress from collapse of workings.

C. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period, the applicant may be required to submit an amendment to the geological assessment.
ARTICLE 4. FREQUENTLY FLOODED AREAS

16.16.400 Purpose.
The purposes of this article are to:
A. Reduce the risk to life and safety, public facilities, and public and private property that result from floods.
B. Avoid and/or minimize impacts to fish and wildlife habitats that occur within frequently flooded areas.
C. Protect and maintain the beneficial ecological functions and values of frequently flooded areas, including providing the necessary flow regime to form and maintain a full range of functional and accessible salmonid habitats both within and outside of frequently flooded areas.
D. To ensure compliance with FEMA National Flood Insurance Program (NFIP) protection standards for critical habitats of species listed under the Endangered Species Act.
E. In conjunction with the provisions of WCC Title 17, establish review procedures that provide an integrated approach to managing floodplain development and maintaining the capacity of the floodplain or floodway to convey and store flood waters.

16.16.410 Designation and Mapping – Frequently Flooded Areas.
A. Frequently flooded areas are areas located along major rivers, streams, and coastal areas where the depth, velocity, intensity and frequency of flood water during major events present a risk to human life and property. Areas susceptible to these types of hazards are hereby designated as frequently flooded areas and subject to the provisions of this article.
B. The approximate location and extent of frequently flooded areas are shown on the County’s critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as new hazard areas are identified and as new information becomes available. This article does not imply that land outside mapped frequently flooded areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Whatcom County, any officer or employee thereof, or the Federal Insurance and Mitigation Administration (FIMA), for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.
C. Frequently flooded areas shall include, but not be limited to:
1. Areas subject to a one percent 1% recurrence interval of flood water inundation or a 100-year base flood as mapped on the current effective Federal Emergency Management Agency’s Flood Insurance Rate Maps (FIRM). This includes coastal high hazard areas as defined by this chapter and as identified and designated on the FIRM maps as Zone VE or V; provided, that tsunami hazard areas are designated as geologically hazardous areas and subject to the provisions of Article 3 of this chapter.
2. Other flood hazard areas identified by the County Public Works Department based on review of historical data, high water marks, photographs of past flooding, or similar information from federal, state, county, or other valid sources when base flood elevation data from the Federal Insurance and Mitigation Administration has not been provided or is not accurate.

16.16.420 Frequently Flooded Areas – General Standards.
A. All development shall conform to the provisions of WCC Title 17, Flood Damage Prevention, and the applicable provisions of this chapter.
B. Development within frequently flooded areas shall be allowed pursuant only when it is consistent with all of the following:
1. FEMA's National Flood Insurance Program (NFIP), including the protection standards for critical
habitats for listed species, which shall be demonstrated through submittal of a habitat assess-
ment, and if necessary, a mitigation plan prepared by a qualified professional, in accordance
with the FEMA Regional Guidance for the Puget Sound Basin. The plan shall identify any federally
listed species and associated habitats, and demonstrate that no harm will occur to such species
or habitats as a result of development within frequently flooded areas; and.[CAC82]

2. The mitigation sequence in WCC 16.16.260; and;

3. Article 7, Habitat Conservation Areas, of this chapter; and.[CAC83]

4. The applicable general protective measures found in WCC 16.16.265.

C. The technical administrator shall have the authority to require a habitat assessment, and if neces-
sary, a mitigation plan prepared by a qualified professional, in accordance with the FEMA Regional
Guidance for the Puget Sound Basin and mitigation mitigate for adverse impacts to floodplain-the
ecological functions of Frequently Flooded Areas; provided, that such mitigation shall be consistent
and compatible with the goal of protecting health and safety and minimizing risks to property.

A. When County critical area maps or other sources of credible information indicate that a site pro-
posed for development is or may be located within a frequently flooded area, the County Public
Works Department's River and Flood Division and/or the technical administrator shall have the au-
thority to require a critical area assessment report.

A.B. The public works department shall have primary responsibility for reviewing and approving pro-
duced developments for consistency with WCC Title 17; provided, that The technical administrator
shall review development proposals for consistency with the standards provided in this chapter. Ei-
ther may place conditions for approval and/or require mitigation in accordance with this chap-
ter.[CAC84]

C. In addition to the requirements of WCC 16.16.225, Critical areas assessment reports for frequently
flooded areas shall:
1. Identify any federally listed species and associated habitats, and demonstrate that no harm will
occur to such species or habitats as a result of development (inclusive of mitigation) within fre-
quently flooded areas meet the requirements of WCC and

2. Address adverse impacts to ecological functions and processes, including riparian vegetation.
Positive impacts may also be discussed.

3. The reports shall also include mitigation for adverse effects on Frequently Flooded Areas’
floodplain ecological functions where applicable.

D. The technical administrator shall have the authority to modify the requirements of Subsection C
when s/he determines that any portion of these requirements is unnecessary given the scope
and/or scale of the proposed development.[P/C85]

E. The technical administrator shall have the authority to modify these requirements when he/she de-
determines that any portion of these requirements is unnecessary given the scope and/or scale of the
proposed development. The technical administrator also shall have the authority to require addi-
tional information to that required in Subsection C that discloses and describes the effects of pro-
duced development on Frequently Flooded Area floodplain functions, including, but not limited to
impacts on; storageage and conveyance of flood water; channel migration[CS86]; reducing peak
flows and flow velocities; reducing redd scour and displacing-displacement of rearing juvenile fish;
maintaining-sediment quality in streams; reducing-shear stress and bank erosion; improving water
quality; providing-wildlife habitat; maintaining-fish access; and cycling-nutrients cycling or providing
other hyporheic functions that link surface and groundwater systems. The reports shall also include
mitigation for adverse effects on floodplain ecological functions.
Critical areas assessment report requirements may be waived for single-family developments and structures accessory to agricultural uses when the technical administrator and the public works department determine that no adverse impacts or risks to life, property, or ecological functions will occur.
ARTICLE 5. CRITICAL AQUIFER RECHARGE AREAS

16.16.500 Purpose.
The purposes of this article are to:
A. Preserve, protect, and conserve Whatcom County's groundwater resources and their functions and values for current and future generations by protecting critical aquifer recharge areas from contamination.
B. Prevent adverse impacts on groundwater quantity by regulating development activities that could deplete aquifer storage, reduce groundwater levels, and/or diminish infiltration and replenishment of groundwater.
C. Prioritize the management, protection, and conservation of groundwater recharge areas as sources of potable water supply.
D. Establish review procedures for development activities that have the potential to adversely affect critical aquifer recharge areas.

16.16.510 Designation, Classification and Mapping – Critical Aquifer Recharge Areas.
A. Critical aquifer recharge areas play a crucial role in supplying potable water (as defined by WAC 365-190-030(2)). These recharge areas have geologic conditions that allow high infiltration rates, which contribute significantly to the replenishment of groundwater. These conditions also create a high potential for groundwater contamination. These areas are hereby designated as critical areas and subject to the provisions of this chapter.
B. The approximate location and extent of critical aquifer recharge areas are shown on the County's critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as recharge areas are identified and as new information becomes available.
C. Critical aquifer recharge areas shall be designated and classified as follows:
   1. Low, Moderate, and High Susceptibility Aquifer Recharge Areas. Aquifer recharge areas susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the State Department of Ecology (Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances, July 2000, Publication No. 97-30, Version 4.0).
   2. Wellhead Protection Areas. The area defined by the boundaries of the 10-year time of groundwater travel, in accordance with WAC 246-290-135. For purposes of this chapter, all wellhead protection areas shall be designated as highly susceptible critical aquifer recharge areas.
   D. If special groundwater management areas or susceptible groundwater management areas are established in Whatcom County in accordance with WAC 173-200-090 or 173-100-010, respectively, then these areas shall be incorporated into the highly susceptible aquifer designation.

16.16.520 Critical Aquifer Recharge Areas – General Standards.
In addition to the applicable general protective measures found in WCC 16.16.265, all development in a critical aquifer recharge area shall meet the following standards:
A. The proposed development will not cause contaminants to enter the aquifer and will not significantly adversely affect the recharging of the aquifer in an adverse manner.
B. The proposed development must comply with the water source protection requirements and recommendations of the Federal Environmental Protection Agency, State Department of Health, and the Whatcom County health department.
C. The proposed development must be designed and constructed in accordance with the County
stormwater management requirements or other applicable stormwater management standards
(Whatcom County Development Standards Chapter 2, WCC Title 20).

16.16.525 Standards—Activity Subject to Critical Areas Review.
The following development activities, when proposed in moderate and high susceptibility critical aquifer
recharge areas, have the potential to adversely affect groundwater quality and/or quantity and shall
require submittal of a critical areas assessment report as defined in WCC 16.16.255 and 16.16.535:
A. Any development with an on-site domestic septic system at a gross density greater than one system
per residence per acre.
B. All storage tanks and storage facilities for hazardous substances and/or hazardous wastes; provided,
that:
1. The tanks must comply with Department of Ecology regulations contained in Chapters 173-360
and 173-303 WAC as well as International Building Code requirements;
2. All new underground tanks and facilities shall be designed and constructed so as to prevent re-
leases due to corrosion or structural failure for the operational life of the tank, or have a sec-
ondary containment system to prevent the release of any stored substances;
3. All new aboveground storage tanks and facilities shall be designed and constructed so as to pre-
vent the release of a hazardous substance to the ground, groundwaters, or surface waters by
having primary and secondary containment.
C. Vehicle repair, servicing and salvaging facilities; provided, that the facility must be conducted over
impermeable pads and within a covered structure capable of withstanding normally expected
weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in
a manner that protects them from weather and provides containment should leaks occur. Dry wells
shall not be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior
to facility establishment must be abandoned using techniques approved by the State Department of
Ecology prior to commencement of the proposed activity.
D. Use of reclaimed wastewater must be in accordance with adopted water or sewer comprehensive
plans that have been approved by the State Departments of Ecology and Health and the Whatcom
County council per Chapter 57.16 RCW; provided, that:
1. Surface spreading must meet the groundwater recharge criteria given in RCW 90.46.010(10) and
90.46.080.
2. Direct injection must be in accordance with the standards developed by authority of RCW
90.46.042.
E. Any other development activity that the technical administrator determines is likely to have a signif-
icant adverse impact on groundwater quality or quantity, or on the recharge of the aquifer. The de-
termination must be made based on credible scientific information.
F. Metals and hard rock mining and new sand and gravel mining subject to the provisions of the Coun-
ty’s current MRL review procedures in Chapter 20.73 WCC; provided, that for new MRLs such activi-
ties shall be prohibited within the 10-year travel time zone of wellhead protection areas.

16.16.530 Standards—Prohibited Uses.
The following developments and uses are prohibited in critical aquifer recharge areas:
A. New landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood
waste of more than 2,000 cubic yards, and inert and demolition waste landfills.
B. Underground injection wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10,
5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells.
C. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).

D. Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).

E. Facilities that store, process, or dispose of radioactive substances.

F. Other activities that the technical administrator determines would significantly degrade groundwater quality and/or reduce the recharge to aquifers currently or potentially used as a potable water source, or that may serve as a significant source of base flow to a regulated stream. The determination must be made based on credible scientific information.


A. When County critical area maps or other sources of credible information indicate that the proposed development activities listed in WCC 16.16.525 occur within a critical aquifer recharge area, the technical administrator shall have the authority to require a critical area assessment report and to regulate developments accordingly. Critical areas assessment reports for aquifer recharge areas shall meet the requirements WCC 16.16.255 and this section. 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. Available information regarding geologic and hydrogeologic characteristics of the site, including the surface location of all critical aquifer recharge areas located on-site or immediately adjacent to the site, and permeability of the unsaturated zone;

2. Groundwater depth, flow direction and gradient based on available information;

3. Currently available data on wells and springs within 1,300 feet of the project area;

4. The presence and approximate location of other critical areas, including surface waters, within 1,300 feet of the project area based on available data and maps;

5. Existing and available historic water quality data for the area to be affected by the proposed activity;

6. Proposed best management practices;

7. The effects of the proposed project on the groundwater quality and quantity, including:

a. Potential effects on stream flow, wetlands and/or other resources, and on ecosystem processes;

b. Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features; and

c. Predictive evaluation of contaminant transport based on potential releases to groundwater; and

8. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for emergency response provisions as well as regular inspection, repair, and replacement of structures and equipment that could fail.

B. If the applicant can demonstrate through a valid hydrogeological assessment that geologic and soil conditions underlying their property do not meet the criteria for low, moderate, or high susceptibility, the property shall not be considered a critical aquifer recharge area.
ARTICLE 5.5. AREAS WITHIN THE RURAL RESIDENTIAL DISTRICT OF LUMMI ISLAND

16.16.540 Areas within the Rural Residential District of Lummi Island.

16.16.541 Exempt Wells.
Wells drilled as a replacement of an existing well are exempt from this article as long as the withdrawal rate is not increased by more than 20% percent of the existing well. If baseline withdrawal rate information is not available, this must be established by a licensed well driller prior to well replacement.

16.16.542 Minimum Well Spacing for All New Wells.
Wells shall have a minimum of 200 feet distance between a new well and an existing operating well.

In addition to the minimum well spacing, the following measures are required for public water system wells, non-Group B two party wells, and nondomestic wells. (Includes “public water system” wells and non-Group B two party wells as defined under Whatcom County drinking water regulations and nondomestic use wells pumping greater than 250 gpd. “Public water system” is defined under Chapter 24.11 WCC as any water system providing piped water for consumption, excluding a system serving only one single-family residence and any system with four or fewer connections serving only residences on the same farm. A “non-Group B two party well” is defined in Chapter 24.11 WCC as a water system utilizing one well to serve two single-family residences for which the director of health has waived all public water system requirements.)

A. Chloride Monitoring and Testing.
1. Monitoring. Well owners shall collect and have water samples analyzed for chloride concentration twice annually, in April and August, and submitted to the Whatcom County health department.
2. Chloride Determinations for New Wells or Increased Pumping of Existing Wells. Applications for new wells, applications to convert an existing private well into a two party well, any application to expand the number of connections of a public water system, and nondomestic use wells proposing greater than 20% percent increase in groundwater withdrawals in an existing well require a minimum 24-hour-duration pumping test at 100% percent of the proposed average daily demand, at the end of which a water sample will be collected for analysis of chloride concentration. Subdivisions using individual wells are required to test wells simultaneously, or alternatively have a licensed hydrogeologist evaluate well interference and water quality changes. Subdivision wells shall remain accessible for future testing in the event of subdivision expansion.
3. Restrictions on New Wells or Increased Pumping of Existing Wells. New wells cannot be permitted, existing private wells cannot be converted to two party wells, existing public water systems cannot expand beyond their existing number of approved connections, and nondomestic wells cannot increase pumping rates greater than 20% percent if chloride concentrations measured at the end of the test specified in subsection (A)(2) of this section are greater than 100 mg/L. For systems expanding 20% percent or less within one year, the highest chloride determination within the past year in subsection (A)(1) of this section cannot be greater than 100 mg/L.
4. Limit on Water Use by Existing Wells. Any increase (zero to 20% percent) in water use will not be permitted if either semi-annual analysis in the previous 12-month period indicates greater than 100 mg/L chloride concentration. If the semi-annual chloride determinations have not
been submitted as required, then the pump testing requirement of subsection (A)(2) of this section shall apply.

5. Prior to 10 days before the pumping test, all property owners within 1,000 feet of the well location shall be notified by first class mail informing them of the test and providing contact information of the person responsible for the testing.

B. Arsenic Monitoring and Testing in the Unconsolidated Aquifer.

1. The following monitoring and testing is required unless the well is determined not to be located in the unconsolidated sandstone aquifer. A Washington State licensed hydrogeologist must make the determination in a submitted report.

2. Arsenic Determinations for New Wells or Increased Pumping of Existing Wells. Applications for new wells, applications to convert an existing private well into a two party well, any application to expand the number of connections of a public water system, and nondomestic use wells proposing a greater than 20% increase in groundwater withdrawals in an existing well require a minimum 24-hour-duration pumping test at 100% of the proposed average daily demand, at the end of which a water sample will be collected for analysis of arsenic concentration.

3. Restrictions on New Wells or Increased Pumping of Existing Wells. New wells cannot be permitted, existing private wells cannot be converted to two party wells, existing public water systems cannot expand beyond their existing number of approved connections, and nondomestic wells cannot increase pumping rates greater than 20% if arsenic concentrations measured at the end of the test specified in subsection (B)(2) of this section are greater than 10 μg/L.

4. Limit on Water Use by Existing Wells. Any increase (zero to 20%) in water use will not be permitted if the most recent arsenic determination indicated greater than 10 μg/L arsenic concentration. If no arsenic concentration has been determined in the past three years, the pumping test requirement in subsection (B)(2) of this section shall apply.

5. Prior to 10 days before the pumping test, all property owners within 1,000 feet of the well location shall be notified by first class mail informing them of the test and providing contact information of the person responsible for the testing.

16.16.544 Administrative Waiver.

Administrative waivers may be granted to any section of these requirements by petition to the administering agency. Waiver request must demonstrate that the project is consistent with the intent of these requirements; no health hazard would result from this action, and must be stamped by a licensed Washington State hydrogeologist.
ARTICLE 6. WETLANDS

16.16.600 Purpose.
The purposes of this article are to:

A. Recognize and protect the beneficial functions, values, and services performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging groundwater; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, retention and transformation of sediments, nutrients, and toxicants.

B. Regulate land use to avoid adverse effects on wetlands and maintain the functions, services, and values of freshwater and estuarine wetlands throughout Whatcom County.

C. Establish review procedures for development proposals in and adjacent to wetlands.

C.D. Establish minimum standards for identifying and delineating wetlands [TAC89].

A. Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate wetland impacts. Swamps, freshwater and saltwater marshes, bogs, and some meadows are examples of wetlands. Some riparian areas adjacent to streams are also wetlands [CES90][P91].

B.A. Wetlands shall be identified delineated in accordance with the requirements of RCW 36.70A.175. Unless otherwise provided for in this chapter, all areas within the County determined to be wetlands meeting the criteria in accordance with the Washington State Wetlands Identification and Delineation Manual [Ecology Publication 96-042] or [TAC92] 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 [C93] or as revised corresponding guidance letters, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this article.

C.B. The approximate location and extent of wetlands are shown on the County’s critical area maps. However, this information has come from multiple sources over many years’ time and is not precise, only general. Thus, these maps are to be used as a guide and do not provide a definitive critical area designation; a property specific assessment is necessary for that. The county shall update the maps as new wetlands are identified and as new information becomes available.

D.C. Wetlands shall be rated based on categories that reflect the functions and values of each wetland. Wetland categories shall be based on the criteria provided in the Washington State Wetland Rating System for Western Washington, revised 2014, and as amended thereafter, August 2004 [Ecology Publication No. 14-06-02904-06-025], as determined using the appropriate rating forms and associated figures [TAC94] contained in that publication. These categories are generally defined as follows:

1. Category I. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than 1 acre; (2) wetlands of high conservation value that are identified by scientists of the Washington
Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger
than 1 acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score 8 or 9 habitat
points and are larger than 1 acre; and (7) wetlands that perform many functions well (scoring 23
points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensi-
tive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological at-
tributes that are impossible to replace within a human lifetime; or (4) provide a high level of
functions.

1. Category I Wetlands. Category I wetlands are those wetlands of exceptional value in terms
of protecting water quality, storing flood and stormwater, and/or providing habitat for wildlife as
indicated by a rating system score of 2170 [TAC95] points or more on the Ecology rating forms.
These are wetland communities of infrequent occurrence that often provide documented habi-
tat for sensitive, threatened or endangered species, and/or have other attributes with functions
and services that are very difficult or impossible to replace if altered. Category I wetlands in-
clude large, undisturbed estuarine wetlands, wetlands with a high conservation value, bogs,
wetlands with mature or old-growth forests, coastal lagoons, and interdunal wetlands.

2. Category II. Category II wetlands are: (1) estuarine wetlands smaller than 1 acre, or disturbed
estuarine wetlands larger than 1 acre; (2) interdunal wetlands larger than 1 acre or those found
in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring be-
tween 20 and 22 points). Category II Wetlands. Category II wetlands have significant value based
on their function as indicated by a rating system score of between 2051 and 2269 points on the
Ecology rating forms. They do not meet the criteria for Category I rating but occur infrequently
and have qualities that are difficult to replace if altered.

3. Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring
between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation
project; and (3) interdunal wetlands between 0.1 and 1 acre. Wetlands scoring between 16 and
19 points generally have been disturbed in some ways and are often less diverse or more isolat-
ed from other natural resources in the landscape than Category II wetlands. Category III Wet-
lands. Category III wetlands have important resource value as indicated by a rating system score
of between 1630 and 1950 points on the Ecology rating forms. They occur commonly in What-
com County.

4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16
points) and are often heavily disturbed. These are wetlands that we should be able to replace,
or in some cases to improve. However, experience has shown that replacement cannot be guar-
anteed in any specific case. These wetlands may provide some important functions, and should
be protected to some degree. Category IV Wetlands. Category IV wetlands are wetlands that
have been highly altered and are of limited resource value, as indicated by a rating system score
of less than 1630 points on the Ecology rating forms. They typically have vegetation of similar
age and class, lack special habitat features, and/or are isolated or disconnected from other
aquatic systems or high-quality upland habitats. Nevertheless, Category IV wetlands still have
value, as cumulatively, they can play a vital role in moderating hydrology. They also have the
most potential for ecological lift (difference in value if restored) [TAC96]

E:D All wetlands shall be regulated regardless of size; provided, that hydrologically isolated Category IV
wetlands less than one-tenth acre (4,356 1,000 [TAC97] square feet in size) may be adversely im-
pacted shall be exempt from the requirements of this article when all of the following criteria are
met:
1. The wetland does not provide significant suitable breeding habitat for native amphibian species.
2. Suitable breeding habitat may be indicated by adequate and stable seasonal inundation, pres-
ence of thin-stemmed emergent vegetation, and clean water;
2. The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices;

3. The wetland is not located within a habitat conservation area, or buffer as defined in WCC 16.16.710, or buffer and is not integral to the maintenance of habitat functions of a habitat conservation area;

4. The wetland is not located within a floodplain and/or not associated with a shoreline of the state as defined by the County’s Shoreline Master Program (WCC Title 23);

5. The wetland is not part of a mosaic of wetlands and uplands. This criterion shall be determined using the guidance provided in Ecology’s Wetland Rating System for Western Washington (Publication No. 14-06-02900-06-025); and

6. The wetland is not identified as locally significant by a local watershed plan prepared pursuant to Chapter 400-12 WAC.

6.—Adverse impacts are mitigated pursuant to WCC 16.16.680.

The following activities may be permitted in wetlands and/or wetland buffers as specified when all reasonable measures have been taken to avoid adverse effects on wetland functions and values as documented through an alternatives analysis[TAC98], the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose, and compensatory mitigation is provided for all adverse impacts to wetlands that cannot be avoided; and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose:

A. Developments that meet the reasonable use or variance standards as set forth in WCC 16.16.270.

B. Surface water discharge into Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no other alternatives for discharge are feasible and the discharge is designed to minimize physical, hydrologic and ecological impacts to the wetland.[TAC99]

C.B. Utility lines in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible conveyance alternative is available shall be designed and constructed to minimize physical, hydrologic, and ecological impacts to the wetland, and meet all of the following:

1. The utility line is located as far from the wetland edge and/or buffer as possible and in a manner that minimizes disturbance of soils and vegetation.

2. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation.

3. Buried utility lines shall be constructed in a manner that prevents adverse impacts to surface and subsurface drainage. This may include regrading to the approximate original contour or the use of trench plugs or other devices as needed to maintain hydrology.

3.A. Best management practices are used in maintaining said utility corridors such that maintenance activities do not expand the corridor further into the critical area.[TAC100]

D.C. Public roads or, bridges, and trails[TAC101] in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible alternative alignment is available and the road or, bridge, or trail is designed and constructed to minimize physical, hydrologic, and ecological impacts to the wetland, including placement on elevated structures as an alternative to fill, where feasible.

E.D. Access to private development sites may be permitted to cross Category II, III, or IV wetlands or their buffers, provided there are no feasible alternative alignments and measures are taken to maintain preconstruction hydrologic connectivity across the access road. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW. Exceptions or deviations from technical standards for width or other dimensions, and specific construction
standards to minimize impacts may be specified, including placement on elevated structures as an
alternative to fill, if feasible.
E. Agricultural Uses as follows:
1. Construction of an appurtenant structure that is associated with an a primary agricultural use;
   or the reconstruction, remodeling, or maintenance of such structures in wetland buffers, subject
to all of the following specific criteria:
   i. The structure is located within an existing lot of record and is an existing ongoing agricultural
      use.
   ii. There is no other feasible location with less impact to critical areas.
   iii. Clearing and grading activity and impervious surfaces are limited to the minimum necessary
        to accommodate the proposed structure and, where possible, surfaces shall be made of
        pervious materials.

2. Existing Ongoing a Ongoing agricultural activities subject to the following:
   i. The activities are conducted in accordance with all applicable provisions of this chapter and
      WCC Title 17; or
   ii. The agricultural activity is in compliance with the Conservation Program on Agricultural
       Lands (CPAL) as described in WCC 16.16.290, and Appendix A Article 8 of this chap-
       ter.[CAC102]

F. Domestic wells serving single-family developments (including plats, short plats, and individual single-
family residences) [CAC103] and necessary appurtenances, including a pump and appropriately sized
pump house, but not including a storage tank, in wetland buffers when all of the following condi-
tions are met:
1. There is no viable alternative to the well site outside of the buffer and the well is located as far
   back from the wetland edge as is feasible; and
2. The well is more than 75 feet deep; and
2-3. Any impacts to the wetland and buffer from staging equipment and the well-drilling process are
mitigated.

G. Stormwater management facilities. [TAC104]
3-1. Stormwater management facilities, limited to detention/retention/treatment ponds, media fil-
tration facilities, and lagoons or infiltration basins, or bio-retention cells (engineered or
raingardens) may be permitted within the outer 50% percent of a Category II, III or IV wetland
buffer; provided, that:
   i. Construction of the stormwater facility does not displace or impact a forested buffer;
   ii. The width of the buffer between the stormwater facility and the wetland edge is not less
   than the low intensity land use buffer standards in WCC 16.16.630;
   iii. There is no other feasible location for the stormwater facility and the facility is located, con-
constructed, and maintained in a manner that minimizes adverse effects on the buffer and ad-
acent critical areas;
   iv. The stormwater facility is designed to mimic and resemble natural wetlands and meets ap-
  plicable county or state stormwater management standards and the discharge water meets
  state water quality standards; and
   v. Low impact development approaches have been considered and [TAC105] implemented to
      the maximum extent feasible per the Department of Ecology Stormwater manual.
4-2. Surface water or Stormwater conveyance or discharge facilities such as dispersion trenches,
level spreaders, and outfalls may be permitted within a Category IV; III; or IV wetland buffer on a
case-by-case basis when the technical administrator determines that all of the following are
met:
i. Due to topographic or other physical constraints, there are no feasible alternative locations for these facilities in the outer buffer area or outside the buffer.

ii. The discharge is located as far from the wetland edge and/or buffer as possible and in a manner that minimizes disturbance of soils and vegetation.

iii. The discharge outlet is designed to prevent erosion and promote infiltration.

iv. The dispersion outfall is within the outer 25% of the buffer. [TAC106]

G-H. Passive recreation facilities that are part of a nonmotorized trail system or environmental education program, including walkways, wildlife viewing structures, and/or public education trails in wetland buffers; provided, that all of the following criteria are met:

1. Private trails shall not exceed 46 feet in width, and public [CAC107] Trails shall not exceed 10 feet in width.

2. They shall be made of pervious material or on an elevated structure where feasible.

3. They shall be designed to avoid removal of significant trees.

4. When located in the buffer, the trail or they facility is shall be located in the outer 25% of the buffer.

2.5. Area, and should be designed to avoid removal of significant trees. If they must cross a wetland, they shall be elevated, constructed to minimize supports, and be the minimum size necessary to accommodate the level of service.

2.6. They trail and/or facility is shall be constructed and maintained in a manner that minimizes disturbance of the buffer and associated critical areas.

H. Existing ongoing agricultural activities subject to the following:

1. The activities are conducted in accordance with all applicable provisions of this chapter and WCC Title 17; or

2. The agricultural activity is in compliance with the Conservation Program on Agricultural Lands (CPAL) as described in WCC 16.16.290, and Appendix A of this chapter. [CAC108]

I. Single-family developments may be permitted to encroach into wetland buffers subject to the technical administrator’s approval; provided, that all of the criteria in WCC 16.16.270(A) (Reasonable Use) are met.

J. On-site sewage disposal systems (OSS) may be permitted in wetland buffers when accessory to an approved residential structure:

1. When for which it is not feasible to connect to a public sanitary sewer system; and,

2. It is located as far as possible from the wetland; and,

3. When it is operated and maintained in accordance with WCC 24.05.170; provided, that adverse effects on water quality are avoided.

K. Phosphorus reducing BMP structures approved and installed through the Homeowners’ Improvement Program (or as may be renamed) within the Lake Whatcom watershed to treat runoff from existing development may be permitted within the outer 50% percent of a Category II, III or IV wetland buffer.

16.16.630 Standards—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 on all sides as marked in the field. Buffers shall not include areas that are functionally and effectively disconnected from the wetland by an existing, legally established road or other substantial developed surface. [TAC109]
B. The buffer standards required by this article presume the existence of a dense, multi-storied native vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer lacks adequate vegetation, the technical administrator may increase the standard buffer, require buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging.

C. The standard buffer shall be based on a combination wetland category, habitat function score (from the wetland rating form), and land use intensity on the intensity of the proposed land use and the functions and values provided by the wetland. The intensity of the land use shall be determined in accordance with the definitions outlined found in Article 8-9 of this chapter unless the technical administrator determines that a lesser level of impact is appropriate based on information provided by the applicant demonstrating that the proposed land use will have a lesser impact on the wetland than that contemplated under the buffer standard otherwise appropriate for the land use, as specified in Section 16.16.640.

D. Standard buffer widths are shown in Table 1. However, Category I or II wetlands with “special characteristics” as determined and defined through the Washington State Department of Ecology (2014) Wetland Rating System (including Estuarine, Coastal Lagoons, Wetlands of High Conservation Value, Bogs, Forested, and Interdunal wetlands) only buffers in the highest habitat score (8-9) group are applied.

D. There are three possible standard buffer scenarios listed in the following tables:

Table 1. Standard Wetland Buffer Widths

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>Habitat Function Score</th>
<th>Land Use Intensity*</th>
<th>High Buffer Width (feet)</th>
<th>Moderate Buffer Width (feet)</th>
<th>Low Buffer Width (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I</td>
<td>8-9</td>
<td>300</td>
<td>225</td>
<td>150</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5-7</td>
<td>150</td>
<td>110</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;5</td>
<td>100</td>
<td>75</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Category II</td>
<td>8-9</td>
<td>275</td>
<td>150</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5-7</td>
<td>150</td>
<td>110</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;5</td>
<td>80</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Category III</td>
<td>8-9</td>
<td>150</td>
<td>110</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5-7</td>
<td>150</td>
<td>100</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;5</td>
<td>80</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Category IV</td>
<td>8-&lt;5</td>
<td>50</td>
<td>40</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>50</td>
<td>40</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;5</td>
<td>50</td>
<td>40</td>
<td>25</td>
<td></td>
</tr>
</tbody>
</table>

* Definitions for high, moderate, and low intensity land use are provided in Article 8 of this chapter.

E. For wetlands that have a high level of function for wildlife habitat as indicated by a habitat function score of 8 to 929 points or more on the wetland rating form, the buffers shall be as follows:

<table>
<thead>
<tr>
<th>Wetland Function Score</th>
<th>High Buffer Width (feet)</th>
<th>Moderate Buffer Width (feet)</th>
<th>Low Buffer Width (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8-9</td>
<td>300</td>
<td>225</td>
<td>150</td>
</tr>
<tr>
<td>5-7</td>
<td>150</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>&lt;5</td>
<td>100</td>
<td>75</td>
<td>50</td>
</tr>
</tbody>
</table>
### Category and Intensity Buffer Width (feet)

<table>
<thead>
<tr>
<th>Category</th>
<th>Intensity</th>
<th>Intensity</th>
<th>Intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Buffer-Width (feet)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category I</td>
<td>300</td>
<td>225</td>
<td>150</td>
</tr>
<tr>
<td>Category II</td>
<td>275</td>
<td>150</td>
<td>100</td>
</tr>
<tr>
<td>Category III</td>
<td>150</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>Category IV</td>
<td>50</td>
<td>40</td>
<td>25</td>
</tr>
</tbody>
</table>

Definitions for high, moderate and low-intensity land use are provided in Article 8 of this chapter.

---

**F.** For wetlands that have a moderate level of function for wildlife habitat as indicated by a habitat function score of 20 to 285 to 7 points on the wetland rating form, the buffers shall be as follows:

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>High Intensity</th>
<th>Moderate Intensity</th>
<th>Low Intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Buffer-Width (feet)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category I</td>
<td>150</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>Category II</td>
<td>150</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>Category III</td>
<td>150</td>
<td>100</td>
<td>60</td>
</tr>
<tr>
<td>Category IV</td>
<td>50</td>
<td>40</td>
<td>25</td>
</tr>
</tbody>
</table>

Definitions for high, moderate and low-intensity land use are provided in Article 8 of this chapter.

---

**G.** For wetlands that have a low level of function for wildlife habitat as indicated by a habitat function score of less than 20.5 points on the wetland rating form, the buffers shall be as follows:

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>High Intensity</th>
<th>Moderate Intensity</th>
<th>Low Intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Buffer-Width (feet)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category I</td>
<td>100</td>
<td>75</td>
<td>50</td>
</tr>
<tr>
<td>Category II</td>
<td>100</td>
<td>75</td>
<td>50</td>
</tr>
<tr>
<td>Category III</td>
<td>80</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>Category IV</td>
<td>50</td>
<td>40</td>
<td>25</td>
</tr>
</tbody>
</table>

Definitions for high, moderate and low-intensity land use are provided in Article 8 of this chapter.
1. Because there is a large increase in width associated with a one-point increase in the habitat score, the technical administrator may deviate from the buffer requirements outlined in subsection D of this section and increase the buffer widths in increments of 20 feet for every one-point increase in the habitat score in accordance with guidance developed by the Department of Ecology in Wetlands in Washington State—Volume 2: Guidance for Protecting and Managing Wetlands (Publication No. 05-06-008) [TAC111].


The technical administrator shall have the authority to reduce the standard buffer widths identified in WCC 16.16.630; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply; and provided further, that all of the following apply:

A. The buffer reduction shall not adversely affect the functions and values of the adjacent wetlands;
B. The buffer of a Category I, II, or III wetland shall not be reduced to less than 75% percent of the required buffer or 50 feet, whichever is greater;
C. The buffer of a Category IV wetland shall not be reduced to less than 50% percent of the required buffer, or 25 feet, whichever is greater;
D. The applicant implements all reasonable measures to reduce minimize the adverse effects of adjacent land uses and ensure no net loss of buffer functions and values. The specific measures may that shall be implemented include, but are not limited to, the following:

1. Direct lights away from the wetland and buffer.
2. Locate activities facilities that generate substantial noise (such as some manufacturing, industrial and recreational facilities) away from the wetland and buffer.
3. Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered.
4. Establish covenants limiting use of pesticides within 150 feet of wetland.
5. Apply integrated pest management programs.
6. Retrofit stormwater detention and treatment for roads and existing adjacent development.
7. Prevent channelized flow from lawns that directly enters the buffer.
8. Infiltrate or treat, detain, and disperse runoff into buffer new runoff from impervious surfaces and new lawns.
9. Post signs at the outer edge of the critical area or buffer to clearly indicate the location of the critical area according to the direction of the County.
10. Use privacy fencing.
11. Plant buffer with dense native vegetation appropriate for the region to delineate buffer edge and to create screens or thorny barriers to noise, light, human intrusion and discourage domestic animal intrusion [TAC113].
12. Use low impact development where appropriate.
13. Establish a permanent conservation easement or tract to protect the wetland and the associated buffer.
14. Use best management practices to control dust. [CAC114]
16.16.650 Standards—Wetland Buffer Averaging.
The technical administrator shall have the authority to average wetland buffer widths on a case-by-case basis; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply, and when all of the following criteria are met:
A. The buffer averaging does not reduce the functions or values of the wetland;
B. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer, and all increases in buffer dimension for averaging must be generally parallel to the wetland boundary to avoid creating buffer “panhandles” unless it constitutes an essential-wildlife corridor;
C. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation;
D. The minimum buffer width of a Category I, or II, or III wetland shall not be less than 75% percent of the widths established under WCC 16.16.630; or 50 feet, whichever is greater;
E. The minimum buffer width of a Category III or [TAC115]IV wetland shall not be less than 50% percent of the widths established under WCC 16.16.630; or 25 feet, whichever is greater; and
F. The buffer has not been reduced in accordance with WCC 16.16.640. Buffer averaging is not allowed if the buffer has been reduced.

16.16.660 Standards—Wetland buffer increases.
The technical administrator shall have the authority to increase the width of the standard buffer width on a case-by-case basis when there is sound evidence that a larger buffer is required by an approved habitat management plan as outlined in WCC 16.16.750, or such increase is necessary to:
A. Protect the function and value of that wetland including, but not limited to, compensating for a poorly vegetated buffer or a buffer that has a steep slope (greater than 30% percent); or
B. Prevent windthrow damage; or
C. Maintain viable populations of species such as herons and other priority fish and wildlife; or
D. Protect wetlands or other critical areas from landslides, erosion or other hazards.

16.16.670 Review and reporting requirements.
A. Review Process for Non-Single-Family Development.[NRS116]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 (reconnaissance/field investigation) or critical area assessment report 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 no regulated wetlands are present, then wetland review will be considered complete.
B. 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.
C. A wetland assessment is an element of a critical area assessment report that describes the characteristics of the subject property and adjacent areas and must be consistent with WCC 16.16.255. The wetland 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 [NRS117] delineation of all wetland boundaries (with delineations field flagged and left in the field for County verification), [CAC118] and may include analysis of historical aerial photos, and review of public records, and interviews with adjacent property owners.
B. D. A wetland assessment report shall include the following site- and proposal-related information unless the technical administrator determines that any portion of these requirements is already required by Article 2, or unnecessary given the scope and/or scale of the proposed development:

1. Location information (legal description, parcel number, and address);
2. A vicinity Map;
3. A site plan that includes scale, and wetlands and associated buffers and proposed development if appropriate;
4. A qualitative written assessment and accompanying maps of critical areas 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;
5. 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;
6. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc. Wetland Analysis. 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 conducted by a qualified professional and completed in accordance with WCC 16.16.610(A).
   ii. The wetland boundary shall be marked in the field (with flagging left in the field for Whatcom County verification and placed high enough to allow line of sight with vegetation growth) and surveyed using a methodology appropriate to scale of development. The surveyed wetlands areas shall be mapped showing location and size of all wetlands. Methodology used shall be in the report with description of equipment (specs), accuracy, and pertinent description of how the coordinates where gathered.
   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. Include all streams and drainages (Type S, F, Np, or Ns streams), shorelines, floodplains, flood prone areas
   vi. Description of vegetation, hydrologic conditions, and soil and substrate conditions.
   vii. Description of wildlife and habitat. Include all critical habitat for threatened and endangered species within 300 feet of the development footprint.
   viii. Topographic elevation, at two-foot contours provided by Whatcom County PDS for single family proposals.
   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.
   i-x. Standard buffer requirements for each wetland. Copies of the wetland rating forms and associated figures from the Ecology Wetland Rating System for Western Washington, as amended.

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 [CAC121] or as revised Washington State Wetlands Identification and Delineation Manual as required by RCW 36.70A.175 (Ecology Publication No. 96-94[WSDOT122]). 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.

Wetland Delineation Requirements. The following are required components of a wetland delineation report:

The report shall be prepared by a qualified professional for wetlands, who meets the minimum requirements as defined in this chapter.

Maps. The wetland delineation report shall include the following maps:

- Vicinity map.
- 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 1, 2, 3, 4, or 5 streams), shorelines, floodplains, flood prone areas and critical habitat for threatened and endangered species within 150 feet of the development footprint.
- Topographic map based on city or surveyed data.
- Map of development proposal with accurate scale.

Wetland Analysis. A wetland delineation report shall provide an analysis of all wetlands and buffers to the extent they can be legally accessed [WSDOT123] within 150 feet of the development footprint including, at a minimum, the following information:

- Wetland delineation.
- 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.
- Determination of each wetland size.
- Description of each wetland class and category.
- Description of overall water sources and drainage patterns on site.
- Description of vegetation, hydrologic conditions, and soil and substrate conditions.
- Description of wildlife and habitat.
- Topographic elevation, at two-foot contours.
- 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.
- Standard buffer requirements for each wetland.

Review Process. For single-family development building permits, the following options shall apply when development of a single-family dwelling is proposed on a site that contains wetlands or wetland buffers:

D.E. An assessment report shall be required when the single-family dwelling and associated features are proposed within the wetland or standard buffer of a regulated wetland.
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:
1. Field investigation by County staff shall be at the discretion of the technical administrator and subject to workload and scheduling constraints.
2. Fees for County staff services shall be in accordance with the unified fee schedule.
3. When the proposed single-family dwelling and associated features are located outside the standard buffer required under WCC 16.16.630 (no encroachment), no assessment report shall be required. [NRS126]

E.F. 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 (e.g., split rail fence or [CAC127]permanent, clearly visible wetland buffer signs) [NRS128] 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.

16.16.680 Standards—Wetland Mitigation.
In addition to the applicable general protective measures found in WWC 16.16.265, Activities that adversely affect wetlands and/or wetland buffers shall include mitigation sufficient to achieve no net loss of wetland function and values in accordance with WCC 16.16.260 and this section.
A. In determining the extent and type of mitigation required, the technical administrator shall consider all of the following when applicable:
1. The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;
2. The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;
3. Observed or predicted trends regarding the gains or losses of specific wetland types in the watershed, in light of natural and human processes;
4. The likely success of the proposed mitigation measures;
5. Effects of the mitigation actions on neighboring properties; and
6. Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a watershed plan prepared pursuant to Chapter 400-12 WAC, a salmonid recovery plan or project that has been identified on the Watershed Management Salmon Recovery Board Habitat Project List or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement, a fully authorized mitigation bank (§16.16.260(f), or an in lieu fee program.
B. Type of Mitigation.
1. Wetland Alterations. Compensatory mitigation projects shall restore, create, rehabilitate, enhance, and/or preserve equivalent wetland functions and values pursuant to no net loss of function and area. Compensation for wetland alterations shall occur in the following order of preference:
   a. Reestablishing (also referred to as restoring) wetlands on upland sites that were formerly wetlands.
   b. Creating wetlands on disturbed upland sites such as those consisting primarily of nonnative, invasive plant species.
   c. Rehabilitation of existing wetlands for the purposes of repairing or restoring natural and/or historic hydrologic functions.
d. Enhancing existing significantly degraded wetlands.

e. Preserving Category I or II wetlands that are under imminent threat; provided, that preservation shall only be allowed in combination with other forms of mitigation and when the technical administrator determines that the overall mitigation package fully replaces the functions and values lost due to development.

2. Buffer Alterations. Compensatory mitigation for buffer impacts:

a. Shall be consistent with WCC 16.16.630, 640, 650, and 660; and,

b. May include enhancement of degraded buffers by planting native species, removing structures and impervious surfaces within buffers, and other measures to achieve equivalent or greater buffer functions.

C. Mitigation Ratios.

1. Compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio on an area basis.

2. Compensatory mitigation for wetland alterations shall be based on the wetland category and the type of mitigation activity proposed. The replacement ratio shall be determined according to the ratios provided in the table below Table 2; provided, that the replacement ratio for preservation shall be 10 times the ratio for reestablishment or creation. The created, reestablished, rehabilitated, or enhanced wetland area shall, at a minimum, provide a level of function equivalent to the wetland being altered and shall be located in an appropriate landscape setting.

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>Reestablishment or Creation</th>
<th>Rehabilitation</th>
<th>Enhancement Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I</td>
<td>No alteration allowed unless an Essential Public Facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category II</td>
<td>3:1</td>
<td>6:1</td>
<td>12:1</td>
</tr>
<tr>
<td>Category III</td>
<td>2:1</td>
<td>4:1</td>
<td>8:1</td>
</tr>
<tr>
<td>Category IV</td>
<td>1.5:1</td>
<td>3:1</td>
<td>6:1</td>
</tr>
</tbody>
</table>

*Ratio is the replacement area: impact area

3. The mitigation ratios noted above in Table 2 shall not apply to mitigation banks as defined by this chapter. Credit and debit procedures for mitigation banks shall be determined in accordance with the mitigation banking provisions outlined in WCC 16.16.260(F).
Table 2. Mitigation ratios for projects in western Washington

<table>
<thead>
<tr>
<th>Category and Type of Wetland Impacts</th>
<th>Re-establishment or Creation</th>
<th>Rehabilitation Only</th>
<th>Re-establishment or Creation (R/C) and Rehabilitation (RH)</th>
<th>Re-establishment or Creation (R/C) and Enhancement (E)</th>
<th>Enhancement Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Category IV</td>
<td>1.5:1</td>
<td>3:1</td>
<td>1:1 R/C and 1:1 RH</td>
<td>1:1 R/C and 2:1 E</td>
<td>6:1</td>
</tr>
<tr>
<td>All Category III</td>
<td>2:1</td>
<td>4:1</td>
<td>1:1 R/C and 2:1 RH</td>
<td>1:1 R/C and 4:1 E</td>
<td>8:1</td>
</tr>
<tr>
<td>Category II Estuarine</td>
<td>Case-by-case</td>
<td>4:1</td>
<td>Case-by-case</td>
<td>Case-by-case</td>
<td>Case-by-case</td>
</tr>
<tr>
<td>All other Category II</td>
<td>3:1</td>
<td>6:1</td>
<td>1:1 R/C and 4:1 RH</td>
<td>1:1 R/C and 8:1 E</td>
<td>12:1</td>
</tr>
</tbody>
</table>

Category I: No alteration allowed unless an Essential Public Facility [CAC130]

D. Replacement: Re-established or created wetlands established pursuant to these mitigation provisions shall have adequate buffers to ensure their protection. The buffer shall be based on the category of the reestablished, created, rehabilitated, enhanced, or preserved wetland; provided that the technical administrator shall have the authority to approve a smaller buffer when existing site constraints (such as a road) prohibit attainment of the standard buffer. Replacement wetlands shall not create buffer encumbrances on adjoining properties [TAC131].

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 Table 2. at a 2:1 ratio. For example, impacts to one acre of a Category II wetland requiring a 3:1 ratio for creation can be compensated by creating one acre and enhancing four acres (instead of the additional two acres of creation that would otherwise be required).

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. When meeting the required ratios would adversely affect other natural and valuable characteristics of an otherwise appropriate and suitable mitigation site [TAC132].

4. The ratios reduced pursuant to subsections (E)(2) and (3) of this section shall be at least 60 percent of the standard ratios listed in subsection (C)(2) of this section and shall not be less than a 1:1 ratio.

F. Compensatory mitigation shall be provided on-site or off-site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success; provided, that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin would have the greatest ecological benefit and the greatest likelihood of success; provided, that limiting functions shall not

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be removed from sensitive watersheds identified in WCC Title 20. Mitigation shall occur within WR
d or 3.

G. All mitigation areas shall be protected and managed to prevent degradation and ensure permanent
protection of critical area functions and values into perpetuity. Permanent protection shall be
achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.

H. Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands.
In all other cases, mitigation shall be completed as quickly as possible following disturbance and pri-
or to use or occupancy of the activity or development. Construction of mitigation projects shall be
timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator
may adjust the timing requirements to allow grading, planting, and other activities to occur during
the appropriate season(s).

16.16.690 Standards—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:

1. Provide an analysis of existing wetland functions and values and a detailed description of the ef-
fects of the proposed development on wetland and buffer function and value, including the area
of direct wetland disturbance, area of buffer disturbance, area of buffer reduction, and area of
buffer averaging, including documentation that the functions and values will be increased
through reduction or average; effects of stormwater management; proposed hydrologic altera-
tion 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, and human intrusion.

1-2. The plan shall be based on applicable portions of the Washington State Department of Ecology’s
Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals, 2004, or other
appropriate guidance document that is consistent with best available science.

2-3. The plan shall contain sufficient information to demonstrate that the proposed activities are log-
istically feasible, constructible, ecologically sustainable, and likely to succeed. Specific inform-
ation to be provided in the plan shall include:

a. The rationale for site selection;

b. General goals of the plan, including wetland function, value, and acreage;

c. Description of baseline (existing) site conditions including topography, vegetation, soils, hy-
drology, habitat features (i.e., snags), surrounding land use, and other pertinent infor-

mation;

d. Field data confirming the presence of adequate hydrology (surface and/or groundwater) to
support existing and compensatory wetland area(s);

2. Nature of mitigation activities, including area of restored, created, enhanced, rehabilitated
and preserved wetland, by wetland type;

f. Detailed grading and planting plans showing proposed post-construction topography; general
hydrologic patterns; spacing and distribution of plant species; size and type of proposed
planting stock; watering or irrigation plans; and other pertinent information;

g. A description of site treatment measures including invasive species removal, use of mulch
and fertilizer, placement of erosion and sediment control devices, and best management
practices that will be used to protect existing wetlands and desirable vegetation;

h. A demonstration that the site will have adequate buffers sufficient to permanently protect
the wetland functions in perpetuity.

B. All compensatory mitigation projects shall be monitored in accordance with WCC 16.16.260(C) for a
period necessary to establish that performance standards have been met. The technical administra-
tor shall have the authority to extend the monitoring period for up to 10 years and require additional monitoring reports when any of the following conditions apply:

1. The project does not meet the performance standards identified in the mitigation plan.
2. The project does not provide adequate replacement for the functions and values of the impacted critical area.
3. The project involves establishment of forested plant communities, which require longer time for establishment.

C. Reports shall be submitted annually for the first three years following construction and at the completion of years five, seven and 10 if applicable to document milestones, successes, problems, and contingency actions of the compensatory mitigation.
ARTICLE 7. HABITAT CONSERVATION AREAS (HCA)

16.16.700 Purpose.
The purposes of this article are to:
A. Protect, and restore, and maintain native fish and wildlife populations, especially populations of
anadromous fish species, by protecting and conserving valuable fish and wildlife habitat and prote-
tecting the ecological processes, functions and values, and biodiversity that sustain these
resources.[CAC134]
B. Protect marine shorelines, valuable terrestrial habitats, lakes, and ponds, and natural 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 degra-
dation and fragmentation are avoided, minimized, especially along riparian corridors.
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.

16.16.710 Habitat Conservation Areas—Designation, Mapping, and Classification—Habitat conserva-
tion areas.
A. Habitat conservation areas, as defined in Article 9, are those areas identified as being of critical im-
portance to the maintenance of certain fish, wildlife, and/or plant species. These areas are typically
identified either by known point locations of specific species (such as a nest or den) or by habitat ar-
eas or both. All areas within the County meeting these criteria are hereby designated critical areas
and are subject to the provisions of this article (see also Appendix D of this chapter).
B. The approximate location and extent of identified fish, and wildlife, and sensitive plant habitat areas
are shown on the County’s critical area maps as well as state and federal maps. However, these
maps are to be used as a guide and do not provide a definitive critical area determination; each ap-
plicant is responsible for having a property-specific determination made[CAC136] pursuant to Article
2. The County shall update the maps as new fish and wildlife habitat conservation areas are identi-
ﬁed and/or more comprehensive information on function, condition, cover type, and resolution is
developed.
C. For purposes of this chapter, all habitat conservation areas shall include all of the following:
1. Streams:[TAC137]
   a. All streams which meet the criteria for Type S, F, Np or Ns waters as set forth in WAC 222-
16-030 of the Washington Department of Natural Resources (DNR) Water Typing System, as
now or hereafter amended.
   (i) Type S Streams are those surface waters which meet the criteria of the Washington
Department of Natural Resources, WAC 222-16-030(1) as now or hereafter amended,
as a Type S Water and are inventoried as “Shorelines of the State” under the Shoreline
Management Master Program for Whatcom County, pursuant to RCW Chapter 90.58.
   Type S waters contain salmonid fish habitat.
   (ii) Type F Streams are those surface waters, which meet the criteria of the Washington
Department of Natural Resources, WAC 222-16-030(2) as now or hereafter amended,
as Type F Water. Type F streams contain habitat for salmonid fish, game fish and other
anadromous fish.

Note that ditched channels may or may not meet the definition of a stream. See Article 89, Definitions.
(iii) Type Np Streams are those surface waters, which meet the criteria of the Washington Department of Natural Resources, WAC 222-16-030(3) as now or hereafter amended, as Type Np Water. Type Np waters do not contain fish habitat.

(iv) Type Ns Streams are those surface waters, which meet the criteria of the Washington Department of Natural Resources, WAC 222-16-030(4) as now or hereafter amended, as a Type Ns Water. These streams are areas of perennial or intermittent seepage, ponds, and drainage ways having short periods of spring or storm runoff. Type Ns waters do not contain fish.

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. Streams, as defined in Article 9, shall be designated according to the following criteria:

(ii) Shoreline streams are those streams identified and regulated as shorelines of the state as defined by WAC 173-18-410 and designated in the Whatcom County Shoreline Master Program (WCC Title 23).

(iii) Other fish bearing streams that do not meet the definition of shorelines of the state but have current, historic[CAC138], known or potential use by anadromous or resident fish species. The technical administrator shall make determinations of known or potential fish use in consultation with federal, state, and tribal biologists and in accordance with best available science, and shall take into consideration factors such as factors of consideration when determining a stream as fish bearing include but are not limited to species life cycle requirements, habitat suitability, channel gradient, presence or lack of fish passage barriers, stocked fish populations by government or tribal entities, and/or a reasoned evaluation of current, historic, and potential fish use by a qualified professional.

Non fish-bearing streams are those streams that have no current, historic, known or potential use by anadromous or resident fish.

(iv)(iii) Streams do not include drainage ditches as defined in Article 9.

2. Areas in which federally and/or state-listed species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the US Fish & Wildlife’s Threatened & Endangered Species List or Critical Habitat List (http://ecos.fws.gov/ecp/), as amended have a primary association.

1-3 Areas in which state listed priority species are found, have a primary association with, or contain suitable habitat for said listed species, as listed Washington Department of Fish and Wildlife’s Priority Habitats and Species list (http://wdfw.wa.gov/mapping/phs/ or http://wdfw.wa.gov/conservation/phs/list/), as amended.

2-4. State priority habitats and areas associated with state priority species as listed in Washington Department of Fish and Wildlife’s Priority Habitats and Species list (http://wdfw.wa.gov/mapping/phs/ or http://wdfw.wa.gov/conservation/phs/list/), as amended.

5. Areas in which state listed rare plant species are found, or contain suitable habitat for said listed species, as listed in the Department of Natural Resources’ Natural Heritage Program (http://www1.dnr.wa.gov/nhp/refdesk/plants.html), as amended.[CAC139]
3.6. Areas in which state listed saltwater critical areas are found, as listed in WAC 173-26-221(2)(c)(iii)(A) Commercial and recreational shellfish areas, including designated [TAC140] shellfish Habitat Conservation Areas.


5. Documented and potential Surf smelt, Pacific herring, and Pacific sand lance spawning areas of forage fish, including but not limited to: surf smelt, Pacific herring, Pacific sand lance, northern anchovy, and longfin smelt [TAC141]

6.7. Naturally occurring ponds and lakes or manmade ponds and lakes created prior to September 30, 2005, excluding agricultural, fire protection, and stormwater facilities under 20 acres in size, or manmade ponds and lakes under 20 acres in size and created prior to September 30, 2005, excluding agricultural, fire protection, and stormwater facilities. In-stream ponds shall be regulated based on associated stream type [CAC142]

7.8. Naturally occurring lakes over 20 acres and All other waters defined as Waters of the State, including marine waters, and waters planted with game fish by a government or tribal entity.

9. Natural Area Preserves, Aquatic Reserves, and Natural Resource Conservation Areas as defined by the Washington Department of Natural Resources.

8.10. Portions of the San Juan Islands National Monument within Whatcom County (including Chuckanut Rock, tip of Eliza Island, Eliza Island Rocks, Lummi Rocks, Baker’s Reef, Carter Point, Carter Point Rock, and Seal Rock at the North end of Lummi Island, and subsequently designated areas). [TAC143]


9.12. Species and Habitats of Local Importance [CAC145]. Locally important species and habitats that have recreational, cultural, and/or economic value to citizens of Whatcom County, including the following:

a. Species.

--- The Department of Planning and Development Services is authorized to shall maintain a current list of Species of Local Importance as designated by the County Council. As of 2016 the list includes:

--- Osprey;
--- Turkey Vulture;
--- Nooksack dace;

i. Salish sucker
   i. --- Osprey;
   ii. --- Turkey vulture;
   iii. --- Nooksack dace;
   iv. --- Salish sucker.

b. Habitats.

i. The marine nearshore habitat, including coastal lagoons, and the associated vegetated marine riparian zone. These areas support productive eelgrass beds, marine algal turf, and kelp beds that provide habitat for numerous priority fish and wildlife species including, but not limited to, forage fish, seabird and shorebird foraging and nesting sites, and harbor seal pupping and haulout sites. This designation applies to the area from the extreme low tide limit to the ordinary high water mark upper limits of the shoreline jurisdiction; provided, that reaches of the marine shoreline that were lawfully developed for commercial and industrial uses prior to the original adoption of this chapter may be excluded from this designation, but not otherwise exempt from this chapter. See Appendix E.A of this chapter.
ii. Identified Roosevelt elk wintering and calving grounds. [TAC146]

iii. Unique natural plant communities designated by the Washington Department of Natural Resources. [CAC147]

iv. The Chuckanut wildlife corridor, which extends east from Chuckanut Bay and adjacent marine waters, including Chuckanut Mountain, Lookout Mountain, the northern portions of Anderson Mountain, and Stewart Mountain [TAC148] continuing along the southern Whatcom County border to Mount Baker/Snoqualmie National Forest boundary. Mountain including Lookout Mountain, Stewart Mountain, and the northern portions of Anderson Mountain to Chuckanut Bay and the adjacent marine waters. This area represents the last remaining place in the Puget Trough where the natural land cover of the Cascades continues to the shore of Puget Sound.

See Appendix C of this chapter.

iii. The Department of Planning and Development Services is authorized to shall maintain a current list and map of Habitats of Local Importance, as designated by the County Council.

D. In addition to the species, habitats, and wildlife corridors identified in subsection (C)(1014) of this section, the County Council may designate additional species, habitats of local importance, and/or wildlife corridors as follows:

1. In order to nominate an area, species, or corridor to the category of "locally important," an individual or organization must:
   a. Demonstrate a need for special consideration based on:
      i. Identified species of declining population;
      ii. Documented species sensitivity to habitat manipulation and cumulative loss;
      iii. Commercial, recreational, cultural or, biological, other special value; or
      iv. Maintenance of connectivity between habitat areas;
   b. Propose conceptual relevant management strategies considered effective and within the scope of this chapter;
   c. Identify the general effects on property ownership and use; and
   d. Provide a map showing the species or habitat location(s).

2. Submitted proposals shall be reviewed by the County and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.

3. If the proposal is found to be complete, accurate, and consistent with the purposes and intent of this chapter and the various goals and objectives of the Whatcom County comprehensive plan and the Growth Management Act, the County Council will hold a public hearing to solicit comment. Approved nominations will become designated locally important habitats, species, or corridors and will be subject to the provisions of this chapter.

3-4. The Council may remove species, habitats, or corridors from this list if it can be shown that there is no longer a need to provide protection above and beyond that afforded by WDFW management strategies. Species and habitats of local importance that are not regulated elsewhere in this chapter may be removed if sufficient evidence has been provided by qualified professionals that demonstrates that the species no longer meets any provisions of 16.16.710(D)[1](a).”

[P/C150]

16.16.720 Habitat Conservation Areas — General Standards.

The following activities may be permitted in habitat conservation areas and/or their buffers when, pursuant to WCC 16.16.255 and 16.16.260 Article 2, all reasonable measures have been taken to avoid ad-
verse effects on species and habitats, any applicable Washington Department of Fish and Wildlife management recommendations have been applied, [NRS151] compensatory mitigation is provided for all adverse impacts that cannot be avoided, and the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose; provided, that locally important species and habitats shall be subject to WCC 16.16.730:

A. Developments that meet the reasonable use and variance standards set forth in WCC 16.16.270.

B. Relocation of streams, or portions of streams, when there is no other feasible alternative and when the relocation will result in equal or better habitat and water quality and quantity, and will not diminish the flow capacity of the stream or other natural stream processes; provided, that the relocation meets state hydraulic project approval requirements and that relocation of shoreline streams shall be prohibited unless the relocation has been identified formally by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement or identified in watershed planning documents prepared and adopted pursuant to Chapter 90.82 RCW, the WRIA 1 Salmonid Recovery Plan or the WRIA 1 Watershed Management Salmon Recovery Board Habitat Project List or County shoreline restoration plan.

C. Stream Road, trail, bridge, and right-of-way crossings, provided they meet all the following criteria:
   1. There is no other feasible alternative route with less impact on critical areas.
   2. The crossing minimizes interruption of natural processes such as channel migration, the downstream movement of wood and gravel, and the movement of all fish and wildlife. Bridges are preferred for all stream crossings and should be designed to maintain the existing stream substrate and gradient, span the bankfull width, or be proven to not have an appreciable increase in backwater elevation at the minimum of a 100-year event and provide adequate horizontal clearance on each side of the ordinary high water mark, and provide adequate vertical clearance for debris likely to be encountered at high water. Elevation above the ordinary high water mark. [CAC152]
   3. Culverts shall be designed according to applicable state and federal guidance criteria for fish passage as identified in Water Crossing Design Guidelines, WDFW 2013[CAC153], as amended-Fish Passage Design at Road Culverts, WDFW, March 1999, and/or the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000, (and subsequent revisions) and in accordance with a state hydraulic project approval. The applicant or property owner shall maintain fish passage through the bridge or culvert.
   4. The County may require that existing culverts be removed, replaced, or fish passage barrier status corrected as a condition of approval if the culvert is detrimental to fish passage or water quality, and a feasible alternative exists.
   5. Culvert crossings shall be limited to the minimum length [CAC154] necessary. Roadway widths at culvert crossings shall be limited to the minimum width necessary to accommodate the roadway's classification. Culvert length shall be the minimum that is compatible with the roadway width. [P/C155]

5-6. CS. Shared common crossings are the preferred approach where multiple properties can be accessed by one crossing.

D. Access to private development sites may be permitted to cross habitat conservation areas if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW. Exceptions or deviations from technical standards may be considered by the Technical Administrator on a case-by-case basis where the resulting outcome reduces overall impacts to any identified Critical Area, for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.

E. Construction of a structure or improvements, other than a building, [NRS156] that is are associated with an agricultural use in the outer 25% of the CPAL designated buffer [NRS157]; or the reconstruc...
tion, remodeling, or maintenance of such structures in a habitat conservation area buffer, subject to all of the following criteria:

1. The structure is located within an existing lot of record and is an existing ongoing agricultural use.

2. There is no other feasible location with less impact to critical areas. However, this provision does not apply to the reconstruction, maintenance and/or remodeling of pre-existing structures.

3. Clearing and grading activity and impervious surfaces are limited to the minimum necessary to accommodate the proposed structure and, where possible, surfaces shall be made of pervious materials.

4. Unavoidable adverse effects on critical areas are mitigated in accordance with this chapter.

F. Stormwater management facilities limited to detention/retention/treatment ponds, media filtration, lagoons and infiltration basins may be permitted in a stream buffer, subject to all of the following standards:

1. The facility is located in the outer 50% percent of the standard stream buffer and does not displace or impact a forested riparian community;

2. There is no other feasible location for the stormwater facility and the facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent critical areas;

3. The stormwater facility meets applicable County or state stormwater management standards and the discharge water meets state water quality standards; and

4. Low impact development approaches have been considered and implemented to the maximum extent feasible.

G. Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted in a habitat conservation area buffer on a case-by-case basis when the technical administrator determines that all of the following are met:

1. Due to topographic or other physical constraints, there are no feasible locations for these facilities outside the buffer;

2. The discharge is located as far from the ordinary high water mark as possible and in a manner that minimizes disturbance of soils and vegetation, except on shoreline slopes where location shall be determined by site characteristics to minimize adverse impacts;

3. The discharge outlet is designed to prevent erosion and promote infiltration; and

4. The discharge meets freshwater and marine state water quality standards, including the need to evaluate cumulative impacts to 303(d) impaired waterbodies and [TAC158] total maximum daily load (TMDL) standards as appropriate at the point of discharge. Standards should include filtration through mechanical or biological means, vegetation retention, timely reseeding of disturbed areas, use of grass-lined bioswales for drainage, and other mechanisms as appropriate within approved stormwater "special districts."

5. The discharge outlet is designed to exclude fish from entering or migrating into stormwater conveyance systems. [CAC159]

H. Clearing and grading, when allowed as part of an authorized activity or as otherwise allowed in these standards, may be permitted; provided, that the following shall apply:

1. Grading is allowed only during the designated dry season, which is typically regarded as May to October of each year; provided, that the County may extend or shorten the designated dry season on a case-by-case basis, based on actual weather conditions. Special scrutiny shall be given to Lakes Samish, Padden, and Whatcom watersheds, and Water Resource Special Management Areas as described in WCC 20.80.735. [CAC160]

2. Appropriate erosion and sediment control measures shall be used at all times, consistent with Best Management Practices in the Department of Ecology's Stormwater Management Manual...
for Western Washington. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, disturbed topsoil shall be salvaged and/or redistributed to other areas of the site. Areas shall be revegetated as needed to stabilize the site.

3. The moisture-holding and infiltration capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.

I. Streambank stabilization and shoreline protection may be permitted subject to all of the following standards:

1. The stabilization or protection measures shall be designed in accordance with the techniques contained within the Washington Department of Fish and Wildlife’s most recent Integrated Streambank Protection Guidelines. Deviation from these techniques requires written justification from a qualified professional/engineer.

2. Natural shoreline processes will be maintained to the maximum extent practicable.

3. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs.

4. Stream and shoreline protection and launching ramps on shorelines of the state shall comply with WCC Title 23 and with state hydraulic project approval requirements.

5. No adverse impact net loss to critical fish or wildlife Habitat Conservation Areas or associated wetlands will occur.

6. No net loss alteration of juvenile fish migration corridors will occur.

7. No net loss of intertidal or riparian habitat function will occur.

8. Nonstructural measures, such as placing or relocating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not practicable or not sufficient.

9. Stabilization is achieved through bioengineering or soft armoring techniques in accordance with an applicable Hydraulic Permit Approval issued by the Washington State Department of Fish and Wildlife.

10. Hard bank armoring is discouraged and may occur only when the property contains an existing permanent structure(s) that is in danger from shoreline erosion caused by wave action or riverine processes and not erosion caused by upland conditions, such as the alteration of natural vegetation or drainage, and the armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply. An objective alternatives analysis, addressing up- and downstream impacts, shall be conducted to demonstrate that there is no other less environmentally damaging alternatives to the more impacting proposed action.

11. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not a demonstration of need.

12. The bank stabilization or shore protection will not adversely affect habitat conservation areas or mitigation will be provided to compensate for adverse effects where avoidance is not feasible.

J. Construction of trails and roadways less than or equal to 30 feet wide may be permitted in a habitat conservation area buffer when not directly related to a crossing and are subject to all of the following standards:

1. There is no other feasible alternative route with less impact on the critical area.

2. The road or trail minimizes erosion and sedimentation, hydrologic alteration, and disruption of natural processes such as channel migration, wood recruitment and natural wildlife movement patterns.
3. The road or trails through riparian (stream) buffers shall be located in the outer 25% of the standard buffer, except for limited viewing platforms and crossings, shall not exceed 12 feet in width and shall be made of pervious material where feasible.

3.4. Private trails shall not exceed 454 feet in width, and public trails shall not exceed 10 feet in width, and shall be made of pervious material or on an elevated structure where feasible. Trails may include limited viewing platforms that shall not exceed 128 feet in width and shall be made of pervious materials where feasible.

4.5. The road or trail is constructed and maintained in a manner that minimizes disturbance of the buffer and associated critical areas.

K. New utility lines and facilities may be permitted when all of the following criteria are met:

1. Impacts to fish and wildlife habitat and/or corridors shall be avoided to the maximum extent possible.

2. Where feasible, installation shall be accomplished by boring beneath the scour depth of the stream or water body and the width of the channel migration zone where present.

3. Trenching of utilities across a stream channel shall be conducted as the utilities shall cross streams at an angle greater than 60 degrees to the centerline of the channel or perpendicular to the channel centerline as possible whenever boring under the channel is not feasible. Utilities shall be installed below potential scour depth regardless of method.

4. Crossings shall be contained within the footprint of an existing road or utility crossing where possible.

5. The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.

L. New public flood protection measures and expansion of existing ones may be permitted, subject to WCC Title 17, Article 4 of this chapter and a state hydraulic project approval; provided, that bioengineering or soft armoring techniques shall be used where feasible. Hard bank armoring may occur only in situations where soft approaches do not provide adequate protection.

M. In-stream structures such as, but not limited to, high-flow bypasses, dams, and weirs, shall be allowed only as part of a watershed restoration project as defined pursuant to WCC 23.110.230(10) or identified in watershed planning documents prepared and adopted under Chapter 90.82 RCW, the salmonid recovery plan or Watershed Management Salmon Recovery Board Habitat Project List, and the County’s shoreline restoration plan and upon acquisition of any required state or federal permits. The structure shall be designed to avoid adverse effects on stream flow, water quality, or other habitat functions and values.

N. Construction of docks and public launching ramps, and reconstruction, repair, and maintenance of docks and public or private [CAC162] or private launching ramps may be permitted subject to the following:

1. The dock or ramp is located and oriented and constructed in a manner that minimizes adverse effects on navigation; wave action, water quality, movement of aquatic and terrestrial life; eelgrass beds, shellfish beds, spawning critical saltwater habitats, and wetlands, or other critical areas.

2. Docks or ramps on shorelines of the state shall comply with WCC Title 23 and state hydraulic project approval requirements.

3. Natural shoreline processes will be maintained to the maximum extent practicable. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs.

4. No net loss adverse impact to critical fish or wildlife Habitat Conservation Areas or associated wetlands will occur.

5. No net loss alteration of juvenile fish migration corridors will occur.
6. No net loss of intertidal or riparian habitat function will occur.

O. On-site sewage disposal systems (OSS) may be permitted in non-aquatic HCA buffers and in the outer 50% of streams or other aquatic HCA buffers when accessory to an approved residential structure for which there are no alternatives and when it is not feasible to connect to a public sanitary sewer system and when operated and maintained in accordance with WCC Chapter 24.05.170; provided, that there are no adverse effects on water quality and slope stability are avoided are avoided.

P. Domestic wells serving single-family developments (including plats, short plats, and individual single-family residences) and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, in HCA buffers when all of the following conditions are met:

1. There is no viable alternative to the well site outside of the buffer and the well is located as far back from the wetland edge as is feasible;
2. Any impacts to the HCA buffer from staging equipment and the well-drilling process are mitigated. [P/C163]

R-Q. Single-family developments may be permitted to encroach into stream buffers subject to the technical administrator's approval; provided, that all of the criteria in WCC 16.16.270(A) are met.

Q-R. All other developments may be allowed in shellfish protection districts outside of actual shellfish habitats when permitted by zoning with a valid development permit and when the requirements of subsection N-O of this section are met.

R-S. Alteration or removal of beaver-built structures more than two years old; provided, that:[C5164]

1. The property owner can show that the beaver dam is harming or likely to harm his or her property.

2. Any beaver deceiver or auto leveler devices have been demonstrated to appropriately resolve ponding/backwatering that is negatively affecting adjacent land or property. [TAC165]. The applicant demonstrates that nondestructive measures, such as the use of ‘beaver deceivers’ are not feasible.

3. Impacts to wetland, river, or stream functions are minimized and mitigation is provided to compensate for lost ecological value.

3.4. The property owner obtains an HPA from WDFW prior to initiating alteration or removal of the beaver-built structure.

5. The property owner provides a copy of the HPA to the technical administrator.

S-T. On Eliza Island, applicants shall complete the U.S. Fish & Wildlife Service (USFWS) self-assessment (https://www.fws.gov/pacific/eagle/) to determine whether a USFWS bald eagle permit is needed, and if so, apply for one. Development activities near bald eagle habitat shall be carried out consistent with the national Bald Eagle Guidelines WCC 20.35.653 (Bald eagle management plan) shall also apply.

U. Phosphorus reducing BMP structures approved and installed through the Homeowners' Improvement Program (or as may be renamed) within the Lake Whatcom watershed to treat runoff from existing development may be permitted within 25 feet of the lake shoreline.

16.16.730 Standards—Locally Important Habitats and Species—Standards.

Alterations that occur within a locally important habitat area or that may affect a locally important species as defined herein shall be subject to review on a case-by-case basis. The technical administrator shall have the authority to require an assessment of the effects of the alteration on species or habitats and may require mitigation to ensure that unmitigated adverse effects do not occur. This standard is intended to allow for flexibility and responsiveness with regard to locally important species and habitats.
16.16.740 Standards—Habitat Conservation Area Buffers—Standards.

In addition to the applicable general protective measures found in WWC 16.16.265 and 16.16.720[DOC166], the technical administrator shall have the authority to require buffers from the edges of all habitat conservation areas (in addition to the building setback required by 16.16.265(D)) in accordance with the following:

A. Buffers shall be established for activities adjacent to habitat conservation areas as necessary to protect the integrity, functions, and values of the resource. Buffer widths shall reflect the sensitivity of the species or habitat present and the type and intensity of the proposed adjacent human use or activity. Buffers shall not include areas that are functionally and effectively disconnected from the habitat area by an existing, legally established road or other substantial developed surface.

B. Stream Buffers.

1. The standard buffer widths required by this article are considered to be the minimum required and presume the existence of a dense vegetation community in the buffer zone adequate to protect the stream functions and values at the time of the proposed activity. When a buffer lacks adequate vegetation to protect critical area functions, the technical administrator may increase the standard buffer, require buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging.

2. The standard buffer shall be measured landward horizontally on both sides of the stream from the ordinary high water mark as identified in the field; provided, that for streams with identified channel migration zones, the buffer shall extend outward horizontally from the outer edge of the channel migration zone on both sides. The required buffer shall be extended to include any abutting adjacent regulated wetland(s), landslide hazard areas and/or erosion hazard areas and required buffers, but shall not be extended across roads or other lawfully established structures or hardened surfaces.

2-3. The following standard buffer width requirements are established; provided, that portions of streams that flow underground may be exempt from these buffer standards at the technical administrator's discretion when it can be demonstrated that no adverse effects on aquatic species will occur. [TAC167]

i. Shoreline streams: 150 feet;

ii. Fish-bearing streams: 100 feet;

iii. Non-fish-bearing streams: 50 feet.

4. Portions of streams that flow underground may be exempt from these buffer standards at the technical administrator’s discretion when it can be demonstrated that no adverse effects on aquatic species will occur. [CES168]

B.C. Buffers for Other Habitat Conservation Areas. The technical administrator shall determine appropriate buffer widths for other habitat conservation areas based on the best available information.

Buffer widths for non-stream habitat conservation areas shall be as follows: [Identified in Table 3:...
Table 3. Buffer Requirements for HCAs

<table>
<thead>
<tr>
<th>Habitat Conservation Area</th>
<th>Buffer Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Areas with which federally listed species have a primary association</td>
<td>Minimum buffers shall be based on recommendations provided by the Washington State Department of Fish and Wildlife PHS Program; provided, that local and site-specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise. When there are no state recommendations or species management guidelines then only the building setback (WCC 16.16.265) shall be applied. [NRS 169]</td>
</tr>
<tr>
<td>State priority habitats and areas with which Priority Species have a primary association</td>
<td></td>
</tr>
<tr>
<td>Commercial and recreational shellfish areas/Critical Saltwater Habitats</td>
<td>Buffers shall extend 150 feet landward from ordinary high water mark of the marine shore. Buffers shall not be required adjacent to shellfish protection districts, but only in nearshore areas where shellfish reside.</td>
</tr>
<tr>
<td>Kelp and eelgrass beds</td>
<td>Buffers shall extend 150 feet landward from ordinary high water mark of the marine shore.</td>
</tr>
<tr>
<td>Surf-smelt, Pacific herring, and Pacific sand lance spawning areas</td>
<td>Buffers shall extend 150 feet landward from ordinary high water mark of the marine shore.</td>
</tr>
<tr>
<td>Natural ponds and lakes</td>
<td>Buffers shall extend 150 feet from the ordinary high water mark (which are subject to Title 23) – Buffers shall extend 100 feet from the ordinary high water mark; provided, that where vegetated wetlands are associated with the shoreline, the buffer shall be based on the wetland buffer requirements in WCC 16.16.630.</td>
</tr>
<tr>
<td>Natural area preserves and natural resource conservation areas</td>
<td>Buffers shall not be required adjacent to these areas. These areas are assumed to encompass the land required for species preservation.</td>
</tr>
<tr>
<td>Locally important habitat areas</td>
<td>The buffer for marine nearshore habitats shall extend landward 150 feet from the ordinary high water mark.</td>
</tr>
</tbody>
</table>

C.D. The technical administrator shall have the authority to reduce buffer widths on a case-by-case basis; provided, that the general standards for alternatives analysis and mitigation sequencing avoidance and minimization per WCC 16.16.260 have been applied (A)(1)(a) and (b) shall apply, and when the applicant demonstrates to the satisfaction of the technical administrator that all of the following criteria are met:

1. The buffer reduction shall not adversely affect the habitat functions and values of the adjacent habitat conservation area or other critical area.
2. The buffer shall not be reduced to less than 75% percent of the standard buffer specified in Table 2, above as defined in subsection C. of this section.
3. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30% percent (see Article 3).

4. The area that has been reduced shall be mitigated at least at a ratio of 1:1, on an area basis. [CES170]

D. E. The technical administrator shall have the authority to average buffer widths on a case-by-case basis; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply, and when the applicant demonstrates to the satisfaction of the technical administrator that all of the following criteria are met:

1. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer and all increases in buffer dimension are parallel to the habitat conservation area.
2. The buffer averaging does not reduce the functions or values of the habitat conservation area or riparian habitat, or the buffer averaging, in conjunction with vegetation enhancement, increases the habitat function.
3. The buffer averaging is necessary due to site constraints caused by existing physical characteristics such as slope, soils, or vegetation.
4. The buffer width is not reduced to less than 75% percent of the standard width specified in Table 2, above as defined in subsection C of this section.
5. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30% percent.
6. Buffer averaging shall not be allowed if habitat conservation area buffers are reduced pursuant to subsection D of this section.
7. Where a buffer has been reduced, the Technical Administrator may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value. [CES171]

E. F. The technical administrator shall have the authority to increase the width of a habitat conservation area buffer on a case-by-case basis when there is clear evidence that such increase is necessary to achieve any of the following:

1. Comply with the requirements of a habitat management plan prepared pursuant to WCC 16.16.750.
2. Protect fish and wildlife habitat, maintain water quality, ensure adequate flow conveyance, provide adequate recruitment for large woody debris, maintain adequate stream temperatures, or maintain in-stream conditions.
3. Compensate for degraded vegetation communities, Clean Water Act 303(d) impaired water bodies, or steep slopes adjacent to the habitat conservation area.
4. Maintain areas for channel migration and/or frequently flooded areas.
5. Protect adjacent or downstream areas from erosion, landslides, or other hazards.
6. Protect streams from high intensity adjacent land uses.

16.16.750 Habitat Conservation Areas – Review and Reporting Requirements.

A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration is more likely than not to contain habitat conservation areas or buffers, or could adversely affect a habitat area or buffer, the technical administrator shall require a site evaluation (field investigation) by a qualified professional or other measures to determine whether or not the species or habitat is present. If no habitat conservation areas are present, then review will be considered complete. If the site evaluation determines that the species or habitat is present, the technical administrator shall require a critical areas assessment report or habitat management plan (HMP), except; provided, that:

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B. No report or evaluation shall be required for developments outside of buffers within the upland portions of shellfish conservation areas.

A.C. The technical administrator shall have the authority to waive the report requirement when he/she determines that the project is a single-family building permit development that involves less than one-half acre of clearing and/or vegetation removal and will not directly disturb the species, or specific areas or habitat features that comprise the habitat conservation area (nest trees, breeding sites, etc.) as indicated by a site plan or scaled drawing of the proposed development [TAC172].

B.D. In addition to the reporting requirements of WCC 16.16.255, the Habitat Conservation Area assessment report/HMP shall describe the characteristics of the subject property and adjacent areas, including condition, quality, function, and values of the Habitat Conservation Area at a scale appropriate to the function being evaluated (see WAC 365-196-830(6)). The assessment shall include determination of appropriate buffers as set forth in WCC 16.16.740. The assessment shall also include field identification and/or delineation of habitat areas, analysis of historical aerial photos, and review of public records, and interviews with adjacent property owners as necessary to determine potential effects of the development action on critical areas. Assessment reports shall include the following site- and proposal-related information unless the technical administrator determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

1. A map drawn to a common scale or survey showing the following information:
   a. Topographic, hydrologic, and vegetative features.
   b. The location and description of wildlife and habitat features, and all critical areas on or within 200 feet of the site [CAC173], or farther given the scale appropriate to the function being evaluated.
   c. Proposed development activity.
   d. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.
   e. Surrounding land uses and zoning (to ensure appropriate buffer)

2. An analysis, including an analysis of cumulative impacts, of how the proposed development activities will affect the fish and wildlife habitat conservation area and/or buffer, including the area of direct disturbance; effects of stormwater management; effects on any 303(d) impaired waterbodies; proposed alteration to surface or subsurface hydrology; natural drainage or infiltration patterns; clearing and grading impact; temporary construction impacts; effects of increased intensity of use (including noise, light, or human intrusion, etc.).

3. Provisions to reduce or eliminate adverse impacts of the proposed development activities on the functions and values of the Habitat Conservation Area including, but not limited to:
   a. Buffering;
   b. Clustering of development;
   c. Retention of native vegetation;
   d. Access limitations;
   e. Seasonal restrictions on construction activities in accordance with the guidelines developed by the Washington State Department of Fish and Wildlife, the U.S. Army Corps of Engineers, the salmonid recovery plan and/or other agency or tribe with expertise and jurisdiction over the subject species/habitat; and
   e. Other appropriate and proven low impact development techniques.

4. Management recommendations developed by WDFW through its PHS program.

5. When appropriate due to the type of habitat or species potentially present or the project area conditions, the technical administrator may also require that the report include additional information including, but not limited to, direct observations of species use or detailed physical...
and biological characteristics surface and subsurface hydrologic features both on and adjacent
to the site off-site at an appropriate scale (see WAC 365-196-830(6))). The assessment of off-site
conditions shall be based on available information and shall not require accessing off-site prop-
erties.

5-6. Applicants near a bald eagle nest shall complete the U.S. Fish & Wildlife Service (USFWS) self-
assessment (https://www.fws.gov/pacific/eagle/) to determine whether a USFWS bald eagle
permit is needed, and if so, apply for one. Development activities near bald eagle habitat shall
be carried out consistent with the national Bald Eagle Guidelines. Bald eagle habitats shall be
protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292), the
provisions of which require a site cooperative habitat management plan to be developed in co-
ordination between the WDFW and landowner whenever projects are proposed on land that in-
volves land containing or adjacent to an eagle nest or communal roost site that alter habitat are
proposed within a nest territory or communal roost. The County shall issue development per-
mits only after certification from the WDFW that the development is in compliance with an ap-
proved habitat management plan. (See WAC 232-12-292 for specific details.)[TAC174]

C-E. All habitat management plans shall be prepared in consultation with the State Department of Fish
and Wildlife and/or other federal, state, local or tribal resource agencies with jurisdiction and expert-
ise in the subject species/habitat.

D-F. At the request of the applicant, the County may gather the required information in this section for
applicants seeking to develop a single-family home; provided, that:
1. Availability of County staff shall be at the discretion of the technical administrator and subject to
workload and scheduling constraints.
2. Fees for County staff services shall be in accordance with the unified fee schedule.

16.16.760 Habitat Conservation Areas – Mitigation Standards for habitat conservation areas.
Activities that adversely affect habitat conservation areas and/or their buffers as determined by the
technical administrator shall include mitigation sufficient to achieve no net loss of habitat functions and
values in accordance with WCC 16.16.260 and this section.
A. In determining the extent and type of mitigation required, the technical administrator may consider
all of the following:
1. The ecological processes that affect and influence critical area structure and function within the
watershed or sub-basin;
2. The individual and cumulative effects of the action upon the functions of the critical area and
associated watershed;
3. Observed or predicted trends regarding the gains or losses of specific habitats or species in the
watershed, in light of natural and human processes;
4. The likely success of the proposed mitigation measures;
5. Effects of the mitigation actions on neighboring properties; and
6. Opportunities to implement restoration actions formally identified by an adopted shoreline rest-
oration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82
RCW, a salmonid recovery plan or project that has been identified on the Watershed Manage-
ment Salmon Recovery Board Habitat Project List or by the Washington State Department of
Fish and Wildlife as essential for fish and wildlife habitat enhancement.
B. The following additional mitigation standards shall apply:
1. Compensatory mitigation for alterations to habitat areas shall achieve equivalent or greater
biologic functions, and shall provide similar functions to those that are lost or altered.
2. **Compensatory Mitigation** in the form of habitat restoration or enhancement is required when a habitat is altered permanently as a result of an approved project. Alterations shall not result in net loss of habitat.

3. Where feasible, mitigation projects shall be completed prior to activities that will disturb habitat conservation areas. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).

4. **Compensatory Mitigation** shall be provided on-site whenever feasible. Off-site mitigation in the location that will provide the greatest ecological benefit to the species and/or habitats affected and have the greatest likelihood of success may be accepted at the discretion of the Technical Administrator. Mitigation shall occur as close to the impact site as possible, within the same sub-basin, and in a similar habitat type as the permitted alteration unless the applicant demonstrates to the satisfaction of the technical administrator through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same watershed would have a greater amount of mitigation required. If offsite mitigation is proposed, the applicant must demonstrate through an alternatives/ mitigation sequencing analysis (WWC 16.16.260) that the mitigation will have greater ecological benefit.\[CAC175\]

5. All mitigation sites shall have buffers consistent with the buffer requirements established in 16.16.740 of this chapter; provided, that the technical administrator shall have the authority to approve a smaller buffer when existing site constraints (such as a road) prohibit attainment of the standard buffer. Mitigation actions shall not create buffer encumbrances on adjoining properties.

6. The technical administrator shall have authority to require annual monitoring of mitigation activities and submittal of annual monitoring reports in accordance with WCC 16.16.260(C) to ensure and document that the goals and objectives of the mitigation are met. The frequency and duration of the monitoring shall be based on the specific needs of the project as determined by the technical administrator. Monitoring shall be for a period of up to 5 years.

7. All mitigation areas shall be protected and managed to prevent degradation and ensure protection of critical area functions and values in perpetuity. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.\[CES176\]

8. Mitigation projects involving in-stream work including, but not limited to, installation of large woody debris shall be designed to ensure there are no adverse hydraulic effects on upstream or downstream properties. The County River and Flood Division shall review any such mitigation projects for compliance with this provision.

9. On a case-by-case basis, the Technical Administrator shall have the authority to require mitigation for impacts to a Habitat Conservation Area \[TAC177\] at the following ratios:
   - Where the mitigation is placed after the impact occurs, at a
     - 1.25:1 ratio (area or function); and,
     - 1:1 ratio (area or function).
ARTICLE 8[CES178]. CONSERVATION PROGRAM ON AGRICULTURE LANDS (CPAL)[CES179]

16.16.290 Conservation program on agriculture lands (CPAL) [16.16.800 Purpose.]
A. The well-being of farms and ranches in Whatcom County depends in part on good quality soil, water, air, and other natural resources. Agricultural operations that incorporate protection of the environment, including critical areas and their buffers as defined by this chapter, are essential to achieving this goal.[CES180]
B. The purpose of the CPAL program is to allow farmers practicing ongoing agricultural activities shall be permitted within that may affect critical areas, their functions and values, [DOC181] and/or their buffers to do so either (i) in accordance with the standard requirements of this chapter or (ii) pursuant to a Conservation Farm Plan voluntarily prepared and approved conservation program established pursuant to this section. Article. Under this program, ongoing agriculture is afforded more flexibility, but only if the farmers are good stewards of the land. This is more than growing bountiful crops and livestock. It necessarily includes protecting critical areas. If farmers and ranchers are willing to enter into this agreement with their community, the CPAL program, then flexibility in these provisions may be extended to them. If not, then they must observe the standard provisions of this Chapter. [TAC182]
A.C. This program shall be subject to continued monitoring and adaptive management to ensure that it meets the purpose and intent of this chapter.

16.16.810 Resource Concerns. [CES183]
Agricultural operations, including the keeping of horses and other large animals have the potential to create adverse impacts to critical areas. It is the County’s policy to minimize such impacts.
A. Nutrient Pollution of Water. Animal waste contains nutrients (nitrogen and phosphorus). With each rain, these wastes can wash off the land and into the nearest stream, lake, or wetland. In surface water, phosphorous and nitrogen fertilize aquatic plants and weeds. As the plants and weeds proliferate and decay, the dissolved oxygen that fish need to survive is depleted. Nitrogen in the form of nitrate is easily dissolved in and carried with rainfall through our permeable soils to groundwater. Nitrate concentrations exceeding the maximum contaminant level for safe drinking water are found in many wells of Whatcom County. These can present a significant human health risk, particularly to the very old and young.
B. Pathogen Pollution of Water. Manure contains bacteria and other pathogens. These can make the water unfit for drinking without treatment or shellfish unfit for human consumption. They can also make water unsafe for human contact and recreational sports such as fishing, swimming or water skiing. Both surface and groundwater are vulnerable to this type of pollution.
C. Sediment Pollution to Surface Water. Regardless of the amount of supplemental feed provided, large animals will continue grazing until all palatable vegetation is gone. On especially small lots (one or two acres), the animals that are allowed free and continuous access to vegetation quickly graze-out and trample pasture grasses and forbs. These areas are then susceptible to invasion by weeds, including noxious weeds, and brush. The resulting bare ground is subject to erosion from wind and water. Lands that lack adequate vegetation are subject to erosion, and contaminated runoff from these areas can enter water bodies and wetlands and interfere with fish and wildlife habitat.
D. Degradation of Riparian Areas. The term “riparian” is defined in Article 8.9 of this chapter and includes the areas adjacent to streams, lakes, marine shorelines and other waters. A healthy riparian area is essential to protecting fish and wildlife, including salmon and shellfish. Dense riparian vege-
tation along the water’s edge will slow and protect against flood flows; provide infiltration and filtering of pollutants; secure food and cover for fish, birds and wildlife; and keep water cooler in summer. If it occurs, uncontrolled grazing has the potential to removes important riparian vegetation.

16.16.820 Classification and Applicability. [CES184]
A. A conservation farm plan identifies the farming or ranching activities and the practice(s) necessary to avoid their potential negative impacts (resource concerns). Practice selection depends upon the types of livestock raised and crops grown. Based upon the type and intensity of the operation, some generalizations can be made as to the resource concerns and remedies that apply.
B. Some operations present relatively low risks to critical areas because of their benign nature, timing, frequency, or location. For these operations, the resource concerns and remedies are relatively easy to identify and implement. These are described in more detail as Type 1 agricultural operations subject to standardized conservation farm plans in Sections 16.16.830 and 16.16.840(A).
C. Where the potential negative impacts to critical areas are moderate or high, solutions are more difficult to formulate and implement. In those circumstances, a more rigorous planning process is required. In such cases, a formal written plan shall provide the desired environmental protection. These types of operations are described as agricultural operations requiring custom conservation farm plans in Sections 16.16.830 and 16.16.840(B or C).
D. Agricultural activities that qualify for coverage under this section include:
1. Type 1 [CES185] Low impact farm or Livestock Operations.
   a. To qualify as a Type 1 low impact operation, a farm shall not exceed one animal unit per one acre of grazable pasture (row and berry crops do not qualify as Type 1). These operations present a low potential risk to critical area degradation including ground/surface water contamination because the animals kept generate fewer nutrients than can be used by the crops grown there. where
   b. Critical areas on Type 1 operations are protected against the potential negative impacts of agricultural activities through the implementation of an approved standard conservation farm plan prepared in accordance with Sections 16.16.830 and 16.16.840(A)Appendix A, Section 1, of this chapter, or.
   c. Those operators qualifying for a Type I (standard) conservation farm plan may elect to do a Type II (custom) conservation farm plan if they want to use “Prescribed Grazing” (NRCS Practice 528A) to manage vegetative filter strips installed alongside critical areas. [CES186]
2. Type 2 Moderate Operations.
   a. Type 2 operations are farms that include, but are not limited to, those that exceed one animal unit per one acre of grazable pasture; farms that have orchards, vineyards, small-fruit field or row crops; and drainage improvement districts. These operations present a potential moderate risk to critical area degradation, including ground or surface water contamination, because the nutrients applied from manure or commercial fertilizers may exceed that which can be easily used by the crops grown there without careful planning and management. The agricultural activities are also likely to be much more intense than Type 1 operations, posing greater potential risks to other critical areas.
   b. Critical areas on Type 2 operations are protected against the potential negative impacts of agricultural activities through the implementation of an approved custom conservation farm plan prepared in accordance with Sections 16.16.830 and 16.16.840(B).
3. Type 3 High impact Operations.
   a. Type 3 operations include dairies and animal feeding operations/concentrated animal feeding operations (AFO/CAFOs). These operations are already highly regulated by state and federal governments (see Chapter 90.64 RCW et seq.; 40 CFR 122.23 and 40 CFR Part 412).
b. Farm or livestock operations where critical areas are protected against the potential negative impacts of Type 3 agricultural activities through the implementation of an approved custom conservation farm plan prepared in accordance with Sections 16.16.830 and 16.16.840(C)Appendix A, Section 2, of this chapter.

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.[CES187]
B. The following additional requirements shall apply:
1. A conservation farm plan shall not be permitted; [TAC188] or authorize:
   a. Except on existing agricultural land where such activities are an essential part of the ongoing agricultural use or part of routine maintenance; and,
   b. When it does not expand the boundaries of the existing agricultural use; provided and,
   c. The appropriate permits for doing so have been obtained.

   The conservation farm plan shall not authorize:
1.2. The construction of new structures. New structures shall be constructed in compliance with the applicable provisions of this chapter and the Whatcom County Code.
   a. Landowner shall ensure that all of the following are met:
   b. Siting of structures shall not result in surface or groundwater contamination.
   c. Dust, odor, and noise concerns attendant to the use of the improvement shall be mitigated.
   d. Improper surfaces such as building roofs, roads, and yards shall not change the flow, volume, and/or direction of runoff, or cause erosion or downstream flooding.[CAC189]
   e. New or expanded drainage systems. (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.[CES190]
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.

16.16.840 Conservation Farm Plan Requirements.
A. Type 1 (Standard) Conservation Farm Plans. Owners of Type 1 low impact livestock operations have limited options to control animal waste because their operations are small. The required conservation farm plan can be prepared by the landowner and include a simple map of the property, a standard checklist designed to protect water quality, and the following additional components:
1. System Siting and Design. Barns, corrals, paddocks, or lots are to be sited to avoid runoff directly into critical areas.
   a. Where structures exist in critical areas or buffers and cannot be relocated, corrective measures must be taken if necessary to avoid runoff of pollutants and bacteria to critical areas.
b. Where trees and shrubs exist along regulated streams, lakes, ponds, or wetlands:
   i. Where trees and shrubs already exist, they shall be retained and managed to preserve
      the existing functions of the buffer pursuant to the NRCS Conservation Practice 391,
      "Riparian Forest Buffer."
   ii. Where trees and shrubs are absent, but the Department of Ecology has not listed the
       waterbody on the most recent Section 303(d) list as impaired for temperature or estab-
       lished a TMDL for temperature along a stream, lake, pond or wetland, a strip or ar-
       ea of herbaceous vegetation shall be established and maintained between barns, cor-
       rals, paddocks, and grazing areas pursuant to the USDA Natural Resource Conserva-
       tion Service's (NRCS) Conservation Practice 393, "Vegetative Filter Strip," and USDA's
       Buffer Width Design Tool for Surface Runoff found in the publication Conservation
       Buffers Design Guidelines for Buffers, Corridors, and Greenways. Livestock shall be ex-
       cluded from the vegetative filter strips established to protect critical areas pursuant to
       NRCS Practice 472, "Access Control: Livestock Exclusion."

2. Manure Collection, Storage, and Use. Manure and soiled bedding from stalls and paddocks are
   to be removed and are to be placed in a storage facility protected from rainfall so that runoff
   does not carry pollutants and bacteria to critical areas. Manure is to be used as cropland fertiliz-
   er. The rate and timing of manure application shall not exceed crop requirements, or cause sur-
   face or groundwater water quality degradation. It is to be applied in a manner to avoid runoff of
   nutrients and bacteria to critical areas.

3. Pasture Management. Pastures are to be established and managed pursuant to “Prescribed
   Grazing” (NRCS Practice 528A).

4. Exercise or Barn Lots. These normally bare areas must be stabilized and managed to prevent
   erosion and sediment movement to critical areas. A diversion terrace shall be installed, where
   necessary, to hinder flow to and across the lot or paddock. Runoff from the lot must be treated
   via the vegetative filter strip or riparian buffer as described in subsection (A3)(1a) of this section
   to avoid contaminants reaching critical areas.

5. Existing native vegetation within critical areas and their buffers shall be retained to the extent
   practicable[CES193].

6. Chemical additions, including fertilizers, fungicides, herbicides, and pesticides, shall not be ap-
   plied within 50 feet of standing or flowing water except by a licensed applicator.

7. Fertilizers other than manure. The rate and timing of fertilizer application shall not exceed crop
   requirements, or cause surface or groundwater quality degradation.

B. Type 2 (Custom) Conservation Farm Plans. In addition to the elements of a Type 1 conservation
farm plan, Type 2 plans must address the following:

1. Plan Standards. In developing the elements that an approved conservation farm plan must con-
   tain, the technical administrator may authorize the use of the methods, and technologies, and
   Best Management Practices of the Natural Resources Conservation Service. Other standards
   may be used other than those developed by the Natural Resources Conservation Service when
   such alternatives have been developed by a land grant college or a professional engineer with
   expertise in the area of farm conservation planning.

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Note that ditched channels may or may not meet the definition of a stream. See Article 9, Definitions.
2. **Plan Performance.** Implementation of the conservation farm plan must protect existing values and functions of critical areas. Benchmark conditions are to be captured and described in the plan. This may consist of photo documentation, written reports or both.


4. Custom conservation farm plans need not address the application, mixing, and/or loading of insecticides, fungicides, rodenticides, and pesticides; provided, that such activities are carried out in accordance with the Washington State Department of Agriculture and all other applicable regulations including, but not limited to: the provisions of Chapter 90.48 RCW, the Clean Water Act, United States Code (USC) Section 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act), Chapter 15.58 RCW (Pesticide Control Act), and Chapter 17.21 RCW (Pesticide Application Act).

5. Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to mitigate, prevent and/or mitigate same by:
   a. A planning advisor; or
   b. Through the USDA Natural Resources Conservation Service; or
   c. The Whatcom conservation district; or
   d. An eligible farmer or rancher, who participates in this program by:
      • Attending a County-sponsored or approved workshop, and
      • Conducting a risk assessment of their farm or ranch, alone or with a planning advisor’s assistance, and
      • Developing a plan to prevent and/or mitigate any identified risks, and
      • Having the plan approved pursuant to WCC 16.16.290.

One resource for guidance is Tips on Land and Water Management for Small Farm and Livestock Owners in Whatcom County, Washington. It can be obtained from the Whatcom Conservation District’s website: http://www.whatcomccd.org/small-farm. Other guidance may also be used, provided it is consistent with the best available science criteria in WAC 365-195-900 through 365-195-925.

**B.C. Type 3 (Custom) Conservation Farm PlansHigh Impact Operations.**

1. Conservation farm plans meeting the criteria of these state and federal laws pertaining to AFO/CAFOs (see Chapter 90.64 RCW et seq.; 40 CFR 122.23 and 40 CFR Part 412) fulfill the requirements of this chapter. (See USEPA Final Guidance – Managing Manure Guidance for Concentrated Animal Feeding Operations (CAFOs) at: http://epa.gov/guide/cafo/)

**16.16.850 Preparation and Approval of Conservation Farm Plans**

Conservation farm plans shall be subject to County review, approval, monitoring, adaptive management, and enforcement in accordance with the following:

A. The technical administrator shall review and approve all conservation farm plans.

A.B. The following Table 4 shows which entities may prepare and/or provide technical assistance and recommendations regarding preparing which type of a conservation farm plan:

**Table 4. Who May Prepare Conservation Farm Plans**

<table>
<thead>
<tr>
<th>Who May Prepare</th>
<th>Type 1 Operations</th>
<th>Type 2 and 3 Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The farm operator</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Whatcom County Planning and Development Services</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>A Qualified Consultant[\TAC194]</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
A Watershed Improvement District (for a farm or ranch that is within its boundaries) | X  
---|---
The Whatcom Conservation District | X | X  
A Planning Advisor | X | X  

b. The Whatcom Conservation District; or,
c. A watershed improvement district for a farm or ranch that is within its boundaries; or,
d. A qualified planning advisor as defined by this chapter.
C. The farm operator can seek conservation farm plan approval directly through the Department of Planning and Development Services, or grant permission to any of the entities listed in Table 4 to prepare and submit it. If the conservation farm plan is prepared by any entity listed in Table 4 other than the Whatcom Conservation District, the farm operator, the Department will conduct a site visit prior to plan approval in order to assess critical areas and sufficiency of the plan to protect water quality and critical areas.[CES195]

16.16.860 Monitoring and Compliance
A. The technical administrator and/or the farm operator shall periodically monitor plan implementation and compliance beginning one year after plan approval and every two years thereafter, through the life of the plan, or more frequently at the Technical Administrator’s discretion. The monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions. For a time period of up to every 5 years, self-certification is allowed for Type 1 conservation farm plans, or if the plan is prepared by the Whatcom Conservation District or Planning Advisor and approved by the department. If a sufficient self-certification monitoring report (must include photos and implemented Best Management Practices) is not submitted within 30 days of request, County staff may make a site visit. Site visits will be coordinated with the landowner/farm operator. Prior to carrying out a site inspection, the technical administrator shall provide reasonable notice to the owner or manager of the property as to the purpose or need for the entry, receive confirmation, and afford at least two weeks in selecting a date and time for the visit. At the landowner’s/farm operator’s discretion, staff may be accompanied by the planning advisor or Whatcom Conservation District planner. [CES196]
B. Where the planning advisor has reason to believe that there is an imminent threat to public health or significant pollution with major consequences occurring as a result of the agricultural operations, the planning advisor will advise the agricultural operator of his or her concerns in writing. While the planning advisor may provide suggestions for resolving the issue, the responsibility for compliance and resolution of issues rests solely with the farm operator. If compliance issues are not promptly resolved, the planning advisor shall promptly withdraw from representing the farm operator, notify the Technical Administrator of such, and[CAC197] may report such situations to the Technical Administrator for subsequent action and enforcement in accordance with WCC 16.16.285.
C. The farm practices described in an approved conservation farm plan will be deemed to be in compliance with this Chapter so long as the landowner/farm operator is properly and fully implementing the practices and responding to possible adaptive management requirements. If the conservation farm plan is found not to be protective of critical areas in the approved conservation farm plan according to the timeline in the plan. This will be verified through conservation farm plan implementation monitoring.[CES198]

C.D. Agricultural operations shall cease to be in compliance with this Article, and a new or revised conservation farm plan will be required, section when the technical administrator determines that any of the following has occurred:
1. A farm or ranch operator fails to properly and fully implement and maintain their conservation farm plan.
2. When implementation of the conservation farm plan fails to protect critical areas. If so, a new or
revised conservation farm plan shall be required to protect the values and functions of critical
areas at the benchmark condition.
3. When substantial changes in the agricultural activities of the farm or livestock operation have
occurred that render the current conservation farm plan ineffective. Substantial changes that
render a conservation farm plan ineffective are those that:
d. Degrad baseline critical area conditions for riparian and wetland areas that existinged
when the plan was approved; or,
e. Result either in a direct discharge or substantial potential discharge of pollution to surface
or ground water; or, [CES199]
f. The type of agricultural practices change from Type 1 to Type 2, Type 2 to Type 3, or Type 1
to Type 3 operations. [CAC200]
4. When the increase in livestock or decrease in land base or nutrient export results in the farm
being out of balance between the nutrients generated and to be used by growing
crops. [TAC201]
e. In such cases a new or revised conservation farm plan will be required to meet the purpose
and intent of this section.
3.5. When a new or revised conservation farm plan is required, pursuant to either subsection
(C)(48)(b) or (c) of this section, and the farm operator the technical administrator has been so
advised in writing, and a reasonable amount of time has passed without significant
progress being made to develop said plan. Refusal or inability to provide a new plan within a
reasonable period of time shall be sufficient grounds to revoke the approved conservation farm
plan and require compliance with the standard provisions of this chapter.
4.6. When an owner or manager denies the technical administrator reasonable access to the property
for technical assistance, monitoring, or compliance purposes, then the technical administrator
shall document such refusal of access and notify the owner of his/her findings. The owner shall
be given an opportunity to respond in writing to the findings of the technical administrator, pro-
pose a prompt alternative access schedule, and to state any other issues that need to be ad-
dressed. Refusal or inability to comply with an approved conservation farm plan within a rea-
sonable period of time shall be sufficient grounds to revoke said plan and require compliance
with the standard provisions of this chapter.
E. With one exception, Whatcom County will not use conservation farm plans (standard or custom) as
an admission by the landowner that s/he or she has violated this Chapter. Disclosure of current farm
practices, structures on conservation farm plan documents, or observations made through moni-
toring inspections or conservation farm plan approval, will not be used to bring other enforcement ac-
tions against a farm operator. W The exception is that when matters of major life, health, environ-
ment, or safety issues, as determined by the Technical Administrator are observed and the land-
owner fails to immediately and permanently remediate, then the observations may be used in an
enforcement action. [CAC202][CES203]
A. Conservation farm plans prepared pursuant to this section will not be open subject to public inspec-
tion disclosure unless required by law or a court of competent jurisdiction;
A.B. Provided, that the County will collect summary information related to the general location of a
farming enterprise, the nature of the farming activity, and the specific best management practices
to be implemented during the conservation farm plan review process. The summary information
shall be provided by the farm operator or his/her designee and shall be used to document the basis
for the County's approval of the plan.
B-C. Plans shall also be subject to disclosure if required by a court of competent jurisdiction. The County will provide to the public via its website information regarding which farms have approved conservation farm plans and the date of their approval.

C-D. Upon request, the County may provide a sample conservation farm plan, exclusive of site- or property-specific information, to give general guidance on the development of a conservation farm plan.
ARTICLE 89. DEFINITIONS

16.16.800-900 Definitions.
"Accessory structure" means a structure that is incidental and subordinate in intensity to a primary use. Barns, garages, storage sheds, and similar appurtenances are examples.

"Active alluvial fan" means a portion or all of a fan that has experienced channel changes, erosion, or deposition. Active fans can be identified based on determination by field geomorphic and topographic evidence, and by historical accounts.

"Actively farmed" means land that has a documented history of ongoing agricultural use and that is currently used primarily for the production of crops and/or raising or keeping livestock.

"Activity" means human activity associated with the use of land or resources.

"Adaptive management" means using scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. Management policy may be adapted based on a periodic review of new information.

"Adequate water supply" means a water supply that meets requirements specified in the Whatcom County drinking water ordinance (Chapter 24.11 WCC).

"Agricultural activities" means those activities directly pertaining to the production of crops or livestock including, but not limited to: cultivation; harvest; grazing; animal waste storage and disposal; fertilization; the operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, and canals; and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. The construction of new structures or activities that bring a new, non-ongoing agricultural area into agricultural use are not considered agricultural activities.

"Agricultural land" is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and/or lands that have been designated as capable of producing food and fiber, which have not been developed for urban density housing, business, or other uses incompatible with agricultural activity.

"Alluvial fan" means a fan-shaped deposit of sediment and organic debris formed where a stream flows or has flowed out of a mountainous upland onto a level plain or valley floor because of a sudden change in sediment transport capacity (e.g., significant change in slope or confinement).

"Alluvium" is a general term for clay, silt, sand, gravel, or similar other unconsolidated detrital materials, deposited during comparatively recent geologic time by a stream or other body of running water, as a sorted or semi-sorted sediment in the bed of the stream or on its floodplain or delta.

"Alteration" means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the critical area.

"Anadromous fish" means fish species that spend most of their lifecycle in salt water, but return to freshwater to reproduce.
"Animal unit" means 1,000 pounds of livestock live weight.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs (Chapter 173-160 WAC).

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

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

"Bankfull width" means:

(a) For streams – The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments – Line of mean high water.

(c) For tidal water – Line of mean high tide.

(d) For periodically inundated areas of associated wetlands – Line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.[TAC204]

"Base flood" is a flood event having a one percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letters A (zone subject to flooding during a 100-year flood, but less so than V zones) or V (zone subject to the highest flows, wave action, and erosion during a 100-year flood).

"Bedrock" is a general term for rock, typically hard, consolidated geologic material that underlies soil or other unconsolidated, superficial material or is exposed at the surface.

"Best available science" means information from research, inventory, monitoring, surveys, modeling, synthesis, expert opinion, and assessment that is used to designate, protect, or restore critical areas. As defined by WAC 365-195-900 through 365-195-925, best available science is derived from a process that includes peer-reviewed literature, standard methods, logical conclusions and reasonable inferences, quantitative analysis, and documented references to produce reliable information.

"Best management practices" means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;

2. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitat;

3. Control plant site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material.

"Buffer (the buffer zone)" means the area adjacent to the outer boundaries of critical areas including wetlands; habitat conservation areas such as streams, lakes, and marine shorelines; and/or landslide hazard areas that separates and protects critical areas from adverse impacts associated with adjacent land uses.
"Channel migration zone (CMZ)" means the area along a river or stream within which the channel can reasonably be expected to migrate over time as a result of normally occurring processes. It encompasses that area of current and historic lateral stream channel movement that is subject to erosion, bank destabilization, rapid stream incision, and/or channel shifting, as well as adjacent areas that are susceptible to channel erosion. There are three components of the channel migration zone: (1) the historical migration zone (HMZ) – the collective area the channel occupied in the historical record; (2) the avulsion hazard zone (AHZ) – the area not included in the HMZ that is at risk of avulsion over the timeline of the CMZ; and (3) the erosion hazard area (EHA) – the area not included in the HMZ or the AHZ that is at risk of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The channel migration zone may not include the area behind a lawfully constructed flood protection device. Channel migration zones shall be identified in accordance with guidelines established by the Washington State Department of Ecology.

"Clearing" means destruction of vegetation by manual, mechanical, or chemical methods resulting in exposed soils. "Clearing" means the removal of vegetation or plant cover by manual, chemical, or mechanical means. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.[NRS205]

"Commercial fish" means those species of fish that are classified under the Washington State Department of Fish and Wildlife Food Fish Classification as commercial fish (WAC 220-12-010).

"Compensatory mitigation" means a project for the purpose of mitigating, at an equivalent or greater level, unavoidable critical area and buffer impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not limited to: wetland creation, restoration, enhancement, and preservation; stream restoration and relocation; rehabilitation; and buffer enhancement.

"Conservation" means the prudent management of rivers, streams, wetlands, wildlife and other environmental resources in order to preserve and protect them. This includes the careful utilization use of natural resources in order to prevent depletion or harm to the environment.

"Conservation easement" means a legal agreement that the property owner enters into to restrict uses of the land for purposes of natural resources conservation. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in groundwater, air, or soil or that occurs at concentrations greater than those in the natural levels (Chapter 172-200 WAC).

"County" means Whatcom County, Washington.

"Covered assembly" means any structure that has the potential to provide capacity for large numbers of people or assemblies such as but not limited to convention centers, churches, theatres, etc.

"Critical aquifer recharge areas" means areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(2).

"Critical Areas." The following areas shall be regarded as critical areas:

1. Critical aquifer recharge areas;
2. Wetlands;
3. Geologically hazardous areas;
4. Frequently flooded areas;
5. Fish and wildlife habitat conservation areas.

"Critical areas report" means a report prepared by a qualified professional or qualified consultant based on best available science, and the specific methods and standards for technical study required for each applicable critical area. Geotechnical reports and hydrogeological reports are critical area reports specific to geologically hazardous areas and critical aquifer recharge areas, respectively.

"Critical area tract" means land held in private ownership and retained in an open undeveloped condition (native vegetation is preserved) in perpetuity for the protection of critical areas.

"Critical facilities (essential facilities)" [P/C206] means buildings and other structures that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow, volcanic activities, or earthquakes pursuant to the most current International Building Code (IBC), 2003 Edition. These include, but are not limited to:

1. Buildings and other structures that represent a substantial hazard to human life in the event of failure including, but not limited to:
   a. Buildings and other structures where more than 300 people congregate in one area;
   b. Buildings and other structures with an occupant load greater than 250;
   c. Buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities;
   d. Health care facilities with an occupant load of 50 or more residents but not having surgery or emergency treatment facilities;
   e. Jails and detention facilities;
   f. Any other occupancy with an occupant load greater than 5,000 (CE207);
   g. Power-generating stations, potable water, wastewater treatment facilities, and other public utility facilities (not including cell towers) not included in subsection 2 of this definition;
   h. Buildings and structures not included in subsection 2 of this definition containing sufficient quantities of toxic or explosive substances to be dangerous to the public if released.

2. Buildings and other structures designed as essential facilities including, but not limited to:
   a. Hospitals and other health care facilities requiring surgery or emergency treatment facilities;
   b. Fire, rescue and police stations, and emergency vehicle garages;
   c. Designated earthquake, hurricane, or other emergency shelters;
   d. Designated emergency preparedness, communication, and operation centers and other facilities required for emergency response;
   e. Structures containing highly toxic materials as defined by IBC Section 307 where the quantity of the material exceeds the maximum allowable quantities of IBC Table 307.7(2);
   f. Aviation control towers, air traffic control centers, and emergency aircraft hangars;
   g. Buildings and other structures having critical national defense functions;
   h. Water treatment facilities required to maintain water pressure for fire suppression;
   i. Power-generating stations and other public utility facilities required as emergency backup facilities for structures listed above.

"Critical habitat" means habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified herein with reference to lists, categories, and definitions promulgated by the Washington State Department of Fish and Wildlife as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) Program of the Department of Fish and Wildlife; or by rules and
regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

"Critical Saltwater Habitat" includes all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as pacific herring, surf smelt and pacific sand lance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.

"Cumulative Impact" [CAC208] means effects on the environment that are caused by the combined results of past, current and reasonably foreseeable future activities. Evaluation of such cumulative impacts should consider: (i) current circumstances affecting the critical area and relevant natural processes; (ii) reasonably foreseeable future development that may affect the critical area; and (iii) beneficial effects of any established regulatory programs under other local, state, and federal laws.

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

"Debris torrent" means a violent and rushing mass of water, logs, boulders and other debris.

"Deepwater habitats" means permanently flooded lands lying below the deepwater boundary of wetlands. Deepwater habitats include environments where surface water is permanent and often deep, so that water, rather than air, is the principal medium in which the dominant organisms live. The boundary between wetland and deepwater habitat in the marine and estuarine systems coincides with the elevation of the extreme low water of spring tide; permanently flooded areas are considered deepwater habitats in these systems. The boundary between wetland and deepwater habitat in the riverine and lacustrine systems lies at a depth of two meters (6.6 feet) below low water; however, if emergent vegetation, shrubs, or trees grow beyond this depth at any time, their deepwater edge is the boundary.

"Delineation" means the precise determination of wetland/non-wetland boundaries in the field according to the application of the specific method described in the 1997 Washington State Wetland Delineation Manual and/or the Corps of Engineers Wetlands Delineation Manual, 1987 Edition, as amended and the Western Mountains, Valleys, and Coast Region supplement (Version 2.0) 2010 or as revised.

"Designated Species, Federal." Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

"Designated Species, State." State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

"Development" means any activity that requires federal, state, or local approval for the use or modification of land or its resources. These activities include, but are not limited to: subdivision and short subdivisions; binding site plans; planned unit developments; variances; shoreline substantial development permits and exemptions; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; and septic approval.
"Drainage Ditch" or "Drainage Ditch" means an artificially created watercourse constructed to drain convey surface or groundwater. Ditches are graded (manmade) channels installed to collect and convey runoff water to or from fields and roadways. Ditches may include:

- irrigation ditches,
- waste ways,
- drains,
- outfalls,
- operational spillways,
- channels,
- stormwater runoff facilities
- or other wholly artificial watercourses, except those that directly result from the modification to a natural watercourse.

Ditched channels that support fish are considered to be streams or other artificial watercourses where

- natural streams existed prior to human alteration, and/or
- the waterway is used by anadromous or resident salmonid or other fish populations, or
- flows directly into shellfish habitat conservation areas

are not considered ditches, but are considered streams for the purposes of this Chapter. [CES209] "Emergency activities" means those activities which require immediate action within a time too short to allow full compliance with this chapter due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this chapter. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

"Emergent wetland" means a wetland with at least 30% percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

"Enhancement" means actions performed within an existing degraded critical area and/or buffer to intentionally increase or augment one or more functions or values of the existing critical area or buffer. Enhancement actions include, but are not limited to, increasing plant diversity and cover, increasing wildlife habitat and structural complexity (snags, woody debris), installing environmentally compatible erosion controls, or removing nonindigenous plant or animal species.

"Erosion" means a process whereby wind, rain, water and other natural agents mobilize, transport, and deposit soil particles.

"Erosion hazard areas" means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having "severe" or "very severe" erosion hazards and areas subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat.

"Essential facilities" means those facilities that are necessary to maintain life, health, welfare, and safety functions such as but not limited to: fire and police stations; emergency medical facilities or medical facilities containing surgery or emergency treatment areas; emergency response services or preparedness centers and their associated buildings, shelters, or vehicle storage areas; jails, and detention centers; structures and equipment in government communications centers and other facilities required for emergency response; power generating stations, standby power generating equipment or other types of
public utility facilities that if interrupted would cause disruption to normal living and business operations; and wastewater treatment plants.

"Essential public facilities" means those facilities that are typically difficult to site, such as airports, state education facilities, state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, and group homes.

"Estuarine wetland" means the zero-gradient sector of a stream where it flows into a standing body of water together with associated natural wetlands; tidal flows reverse flow in the wetland twice daily, determining its upstream limit. It is characterized by low bank channels (distributaries) branching off the main stream to form a broad, near-level delta; bank; bed and delta materials are silt and clay; banks are stable; vegetation ranges from marsh to forest; and water is usually brackish due to daily mixing and layering of fresh and salt water.

"Exotic" means any species of plants or animals that is not indigenous to the area.

"Farm pond" means an open water depression created from a non-wetland site in connection with agricultural activities.

"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.

"Feasible alternative" means an action, such as development, mitigation, or restoration, that meets all of the following conditions: (1) 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; (2) the action provides a reasonable likelihood of achieving its intended purpose; and (3) the action does not physically preclude achieving the project’s primary intended legal use. Feasibility shall take into account both short- and long-term monetary and nonmonetary costs and benefits.

"Fen" means a mineral-rich wetland formed in peat that has a neutral to alkaline pH. Fens are wholly or partly covered with water and dominated by grass-like plants, grasses, and sedges.

"Filling" means the act of transporting or placing by any manual or mechanical means fill material from, to, or on any soil surface, including temporary stockpiling of fill material.

"Fill material" means any solid or semi-solid material, including rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure that, when placed, changes the grade or elevation of the receiving site.

"Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the
likelihood that the species will persist over the long term. These areas may include, but are not limited
to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including sea-
sonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative
population density or species richness. Counties and cities may also designate locally important habitats
and species. "Fish and wildlife habitat conservation areas" does not include such artificial features or
constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches
that lie within the boundaries of, and are maintained by, a port district or an irrigation district or com-
pany means areas important for maintaining species in suitable habitats within their natural geographic
distribution so that isolated populations are not created.

“Fish habitat” means a complex of physical, chemical, and biological conditions that provide the life-
supporting and reproductive needs of a species or life stage of fish. Although the habitat requirements
of a species depend on its age and activity, the basic components of fish habitat in rivers, streams,
ponds, lakes, estuaries, marine waters, and nearshore areas include, but are not limited to, the follow-
ing:

1. Clean water and appropriate temperatures for spawning, rearing, and holding;
2. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-
channel habitat;
3. Abundance of bank and in-stream structures to provide hiding and resting areas and stabilize
stream banks and beds;
4. Appropriate substrates for spawning and embryonic development. For stream- and lake-
dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged
rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand;
5. Presence of riparian vegetation as defined in this article. Riparian vegetation creates a transition
zone, which provides shade and food sources of aquatic and terrestrial insects for fish;
6. Unimpeded passage (i.e., due to suitable gradient and lack of barriers) for upstream and down-
stream migrating juveniles and adults.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of
normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation
of runoff of surface waters from any source.

“Floodplain” means the total land area adjoining a river, stream, watercourse, or lake subject to inunda-
tion by the base flood.

“Floodway” means the channel of a river or other watercourse and the adjacent land area that must be
reserved in order to discharge the base flood without cumulatively increasing the surface water eleva-
tion more than one foot. Also known as the “zero rise floodway.”

“Forest wetland” means a wetland with at least 30% percent of the surface area covered by woody
vegetation greater than 20 feet in height, excluding monotypic stands of red alder or cottonwood that
average eight inches in diameter at breast height or less.

“Frequently flooded areas” means lands in the floodplain subject to a one percent 1% or greater chance
of flooding in any given year and those lands that provide important flood storage, conveyance and at-
tenation functions, as determined by the County in accordance with WAC 365-190-080(3). Classifica-
tions of frequently flooded areas include, at a minimum, the “Special Flood Hazard Area” 100-year
floodplain designations of the Federal Emergency Management Agency and the National Flood Insur-
ance Program.

“Functions, services, and value” means the beneficial functions that roles served by critical areas per-
form, the services they provide humans, and the values people derive from these roles including, but
not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, protection from hazards, providing historical and archaeological resources, noise and visual screening, open space, and recreation. These beneficial roles are not listed in order of priority.

“Function assessment” or “functions and values assessment” means a set of procedures, applied by a qualified consultant, to identify the ecological functions being performed in a wetland or other critical area, usually by determining the presence of certain characteristics, and determining how well the critical area is performing those functions. Function assessments can be qualitative or quantitative and may consider social values potentially provided by the wetland or other critical area. Function assessment methods must be consistent with best available science.

“Functions” means the processes or attributes provided by areas of the landscape (e.g., wetlands, rivers, streams, and riparian areas) including, but not limited to, habitat diversity and food chain support for fish and wildlife, groundwater recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and flood water attenuation and flood peak desynchronization, and water quality enhancement through biofiltration and retention of sediments, nutrients, and toxicants. These beneficial roles are not listed in order of priority.

“Game fish” means those species of fish that are classified by the Washington State Department of Wildlife as game fish (WAC 232-12-019).

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.[CES210]

“Gradient” means a degree of inclination, or a rate of ascent or descent, of an inclined part of the earth’s surface with respect to the horizontal; the steepness of a slope. It is expressed as a ratio (vertical to horizontal), a fraction (such as meters/kilometers or feet/miles), a percentage (of horizontal distance), or an angle (in degrees).

“Grading” means any excavating or filling of the earth’s surface or combination thereof.

"Grazable acres" means both pasture and hayland as described in the Whatcom County Standard Farm Conservation Planning Workbook.

“Groundwater” means all water that exists beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves (Chapter 90.44 RCW).

“Groundwater management area” means a specific geographic area or subarea designated pursuant to Chapter 173-100 WAC for which a groundwater management program is required.

“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 Chapter 173-100 WAC.

“Growing season” means the portion of the year when soil temperatures are above biologic zero (41 degrees Fahrenheit).
"Growth Management Act" means Chapters 36.70A and 36.70B RCW, as amended.

"Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by Whatcom County pursuant to WCC 16.16.710(C)(14). [TAC211]

"Hazard tree" means any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

"Hazardous facilities" means those occupancies or structures housing or supporting toxic or explosive chemicals or substances and any non-building structures housing, supporting or containing quantities of toxic or explosive substances that, if contained within a building, would cause that building to be defined as a hazardous facility. Hazardous facilities include any elements contained in the definition for "hazardous waste treatment and storage facility." Hazardous facilities may be classified as a group "H" occupancy in the UBC.

"Hazardous substance" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

"High intensity land use" means land use that includes the following uses or activities: commercial, urban, industrial, institutional, retail sales, residential (more than one unit/acre), high-intensity new agriculture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high-intensity recreation (golf courses, ball fields), hobby farms, and Class IV Special forest practices, including the building of logging roads (note that pursuant to WCC 16.16.230(A) all other forest practices are exempt from this chapter).

"Hydraulic project approval (HPA)" means a permit issued by the State Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 75.20 RCW.

"Hydric soil" means a soil that is or has been saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the NRCS Field Indicators of Hydric Soils version 7, and/or the Corps of Engineers Wetlands Delineation Manual, as amended. [Washington State Wetland Identification and Delineation Manual (RCW 36.70A.175).CES212]

"Hydrologic soil groups" means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:

1. Low runoff potential and a high rate of infiltration potential;
2. Moderate infiltration potential and a moderate rate of runoff potential;
3. Slow infiltration potential and a moderate to high rate of runoff potential; and
4. High runoff potential and very slow infiltration and water transmission rates.

"Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

"Hyporheic zone" means the saturated zone located beneath and adjacent to streams that contain some proportion of surface water from the surface channel. The hyporheic zone serves as a filter for nutrients, as a site for macroinvertebrate production important in fish nutrition and provides other functions related to maintaining water quality.
“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow compared to natural conditions prior to development. Common impervious surfaces may include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Impervious surfaces do not include surface created through proven low impact development techniques.

“Infiltration” means the downward entry of water into the immediate surface of soil.

“In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity.

“Intertidal zone” means the substratum from extreme low water of spring tides to the upper limit of spray or influence from ocean-derived salts. It includes areas that are sometimes submerged and sometimes exposed to air, mud and sand flats, rocky shores, salt marshes, and some terrestrial areas where salt influences are present.

“Invasive species” means a species that is: (1) nonnative (or alien) to Whatcom County, and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Invasive species can be plants, animals, and other organisms (e.g., microbes). Human actions are the primary means of invasive species introductions.

“Lahar” means a mudflow and debris flow originating from the slopes of a volcano.

“Lahar inundation hazard zone area” means areas that have been or potentially could be inundated by lahars or other types of debris flows, according to a map showing Volcano Hazards from Mount Baker, Washington.

“Lake” means a naturally or artificially created body of deep (generally greater than 6.6 feet) open water that persists throughout the year. A lake is larger than a pond, greater than one acre in size, equal to or greater than 6.6 feet in depth, and has less than 30% percent-aerial coverage by trees, shrubs, or persistent emergent vegetation. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake’s ordinary high water mark with the stream where the stream enters the lake.

“Landfill” means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

“Landslide” means a general term covering a wide variety of mass movement landforms and processes involving the downslope transport, under gravitational influence of soil and rock material en masse; included are debris flows, debris avalanches, earthflows, mudflows, slumps, mudslides, rock slides, and rock falls.

“Landslide hazard areas” means areas that, due to a combination of site conditions like slope inclination and relative soil permeability, are susceptible to mass wasting.

“Low intensity land use” means land use that includes the following uses or activities: forestry (cutting of trees only), low-intensity open space (such as passive recreation and natural resources preservation), and unpaved trails.

“Maintenance or repair” means those usual activities required to prevent a decline, lapse or cessation from a lawfully established condition or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition.
This does not include any activities that change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design.

“Major development” means any project for which a major project permit is required pursuant to Chapter 20.88 WCC. For the purposes of this chapter, “major development” shall also mean any project associated with an existing development for which a major development permit has been required or other existing legally nonconforming development for which a major development permit would otherwise be required if developed under the current land use regulations outlined in WCC Title 20.

“Mass wasting” means downslope movement of soil and rock material by gravity. This includes soil creep, erosion, and various types of landslides, not including bed load associated with natural stream sediment transport dynamics.

“Mature forested wetland” means a wetland with an overstory dominated by mature trees having a wetland indicator status of facultative (FAC), facultative-wet (FACW), or obligate (OBL). Mature trees are considered to be at least 21 inches in diameter at breast height.

“Maximum Credible Event” means the largest debris flow event that can be hypothesized from geologic processes within the watershed above the alluvial fan with consideration of the volume of sediment and debris that would be available within the drainage combined with the material the from landslides that would enter the drainage, and the volume of water that could become trapped behind and within the debris flow or dammed within the drainage.

“May” means the action is allowable, provided it conforms to the provisions of this Title.

“Mean annual flow” means the average flow of a river or stream (measured in cubic feet per second) from measurements taken throughout the year. If available, flow data for the previous 10 years should be used in determining mean annual flow.

“Mitigation” means individual actions that may include a combination of the following measures, listed in order of preference:

1. Avoiding an impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
3. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for an impact by replacing or providing substitute resources or environments; and
6. Monitoring the mitigation and taking remedial action when necessary.

“Mitigation bank” means a site where wetlands or similar habitats are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to aquatic resources.

“Mitigation bank instrument” means the documentation of agency and bank sponsor concurrence on the objectives and administration of the bank. The “bank instrument” describes in detail the physical and legal characteristics of the bank, including the service area, and how the bank will be established and operated.

“Mitigation Bank Review Team” or “MBRT” means an interagency group of federal, state, tribal and local regulatory and resource agency representatives that are invited to participate in negotiations with the bank sponsor on the terms and conditions of the bank instrument.
“Mitigation Bank Review Team process” or “MBRT process” means a process in which the County and other agencies strives to reach consensus with the MBRT members on the terms, conditions, and procedural elements of the bank instrument.

“Mitigation bank sponsor” means any public or private entity responsible for establishing and, in most circumstances, operating a bank.

“Mitigation plan” means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.

“Moderate intensity land use” means land use that includes the following uses or activities: residential (one unit/gross acre or less), moderate-intensity open space (parks), moderate-intensity new agriculture (orchards and hay fields), plant nurseries [CAC213], and paved trails, and building of logging roads.

“Monitoring” means evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of ecosystem functions and processes, and/or assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features compared to baseline or pre-project conditions and/or reference sites.

“Native vegetation” means plant species that are indigenous to Whatcom County and the local area.

“Nearshore habitat” means the zone that extends seaward from the marine shoreline to a water depth of approximately 20 meters (66 feet). Nearshore habitat is rich biologically, providing important habitat for a diversity of plant and animal species.

“No net loss” means the maintenance of the aggregate total of the County’s critical area functions and values as achieved through a case-by-case review of development proposals. Each project shall be evaluated based on its ability to meet the no net loss goal.

“Off-site mitigation” means to replace critical areas away from the site on which a critical area has been adversely impacted by a regulated activity.

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

“Ordinary high water mark” means the mark or line on all lakes, rivers, streams, and tidal water that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation (RCW 90.58.030(2)(b)).

“Overnight accommodations,” for the purposes of this chapter only, means any use that allows more than 10 persons to sleep overnight, either as a primary use (such as hotels/motels, camps, or other lodging), or occasionally (such as churches hosting sleepovers), whether in a bed or otherwise. While this latter group of uses may be allowed, hosting overnight groups shall not be and the permit authorizing the use shall include such a condition.
“Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, state agency or local governmental unit, however designated, or Indian nation or tribe.

“Planned unit development (PUD)” means one or a group of specified uses, such as residential, resort, commercial or industrial, to be planned and constructed as a unit. Zoning or subdivision regulations with respect to lot size, building bulk, etc., may be varied to allow design innovations and special features in exchange for additional and/or superior site amenities or community benefits.

“Qualified planning advisors” means those qualified individuals who have technical experience and training necessary to prepare conservation farm plans for agricultural lands and who have completed the two-week training course delivered by the technical administrator and achieved a minimum of 75 percent on the course exam and assignments and signed the practice and confidentiality agreement; or been certified a technical service provider by the USDA Natural Resources Conservation Service (see http://techreg.usda.gov) and signed the practice and confidentiality agreement.

“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 percent 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, are excluded from this definition, and beaver ponds less than two years old or less are excluded from this definition.

“Potable” means water that is suitable for drinking by the public (Chapter 246-290 WAC).

“Preservation” means actions taken to ensure the permanent protection of existing, ecologically important critical areas and/or buffers that the County has deemed worthy of long-term protection.

“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)."[P/C216]

“Primary association” means the use or potential use of a habitat area by a listed or priority species for breeding/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s) as well as habitats that are used less frequently/regularly but which provide for essential life cycle functions such as breeding/nesting/spawning.

“Priority habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning hab-
itat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife (WAC 173-26-020(24)).

"Priority species" means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington State Department of Fish and Wildlife.

"Project" means any proposed or existing activity regulated by Whatcom County.

"Project permit" or "project permit application" means any land use or environmental permit or approval required by Whatcom County, including, but not limited to, building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, variances, lot consolidation relief, site plan review, permits or approvals authorized by a comprehensive plan or subarea plan.

"Qualified planning advisor" means those individuals who have technical experience and training necessary to prepare farm conservation plans for agricultural lands and who have:

1. Completed the two-week training course delivered by the technical administrator and achieved a minimum of 75 percent on the course exam and assignments and signed the practice and confidentiality agreement; or

2. Been certified a technical service provider by the USDA Natural Resources Conservation Service (see http://techreg.usda.gov) and signed the practice and confidentiality agreement.

"Qualified professional" or "qualified consultant" means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or a related field, and related work experience, and meet the following criteria:

1. Is listed on a roster of qualified professionals or qualified consultants prepared by the PDS Natural Resource Supervisor. [NRS217]

2. A qualified professional for wetlands must have a degree in wildlife biology, ecology, soil science, botany, or a closely related field and a minimum of five three years of professional experience in wetland delineation identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems. The following is required to be submitted [NRS218] to be placed on the roster:
   i. Curriculum vitae or resume; and,
   ii. Three complete and approved wetland delineations (as primary author on at least one), conducted in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987, or as amended.
   iii. One complete and approved wetland delineation using the U.S. Army Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region, 2010, or as amended. Successful completion of a wetland class using this manual may be substituted for this requirement.
2.3. A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or a closely related field and a minimum of three years of professional experience related to the subject species/habitat type or approved equivalent work experience.

3.4. A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.

5. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.

6. A qualified professional for tree risk assessment means a certified arborist or certified treet professional with a current ISA Tree Risk Assessment Qualification.

4-7. Anyone who has had their professional licensure or certification revoked for violations of the provisions of their profession does not meet the definition of a qualified professional or qualified consultant.

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

“Reasonable Use Exception” means an exception to the standards of this title that allows for any one of the uses allowed within a given zoning designation which cannot otherwise conform to the requirements set forth in this title, including the variance criteria; that have the least impact on the critical areas as found on the subject property. “Recharge” means the process involved in the absorption and addition of water from the unsaturated zone to groundwater.

“Reestablishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former critical area. Re-establishment results in rebuilding a former critical area and results in a gain in acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles measures taken to intentionally restore an altered or damaged natural feature or process including:

Active steps taken to restore damaged wetlands, streams, protected habitat, and/or their buffers to the functioning condition that existed prior to an unauthorized alteration;

Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or other events; and

Restoration can include restoration of wetland functions and values on a site where wetlands previously existed but are no longer present due to lack of water or hydric soils.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded critical area. Rehabilitation results in a gain in function but does not result in a gain in area. Activities could involve breaches a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland, a type of restoration action that restores a critical area to its original form or type such as restoring a wetland to its original hydrogeomorphic class.

“Resident fish” means a fish species that completes all stages of its life cycle within freshwater and frequently within a local area.

“Restoration” means measures taken to restore an altered or damaged natural feature, including:
(a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and

(b) Actions performed to re-establish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events. [CES222]

"Rills" means steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

"Riparian corridor" or "riparian zone" means the area adjacent to a water body (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.

"Riparian vegetation" means vegetation that tolerates and/or requires moist conditions and periodic free flowing water, thus creating a transitional zone between aquatic and terrestrial habitats which provides cover, shade and food sources for aquatic and terrestrial insects for fish species. Riparian vegetation and their root systems stabilize stream banks, attenuate high water flows, provide wildlife habitat and travel corridors, and provide a source of limbs and other woody debris to terrestrial and aquatic ecosystems, which, in turn, stabilize stream beds.

"Scrub-shrub wetland" means a wetland with at least 30% percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

"Seiche" is a standing wave in an enclosed or partially enclosed body of water. Seiches are typically caused when strong winds and rapid changes in atmospheric pressure push water from one end of a body of water to the other. When the wind stops, the water rebounds to the other side of the enclosed area. The water then continues to oscillate back and forth for hours or even days. In a similar fashion, earthquakes, tsunamis, or severe storm fronts may also cause seiches along ocean shelves and ocean harbors. Seiches and seiche-related phenomena have been observed on lakes, reservoirs, swimming pools, bays, harbors and seas. The key requirement for formation of a seiche is that the body of water be at least partially bounded, allowing the formation of the standing wave. [P/C223]

"Seismic hazard areas" means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

"SEPA" is a commonly used acronym for the State Environmental Policy Act.

"Shellfish" means invertebrates of the phyla Arthropoda (class Crustacea), Mollusca (class Pelecypoda) and Echinodermata.

"Shellfish habitat conservation areas" means all public and private tidelands suitable for shellfish, as identified by the Washington State Department of Health classification of commercial growing areas, and those recreational harvest areas as identified by the Washington State Department of Ecology are designated as shellfish habitat conservation areas pursuant to WAC 365-190-80. Any area that is or has been designated as a shellfish protection district created under Chapter 90.72 RCW is also a shellfish habitat conservation area.
“Shellfish protection district” means the Drayton Harbor shellfish protection district (DHSPD) and the Portage Bay shellfish protection district (PBSPD) (Chapter 16.20 WCC), or other area formed by the County based on RCW Title 90, in response to State Department of Health (DOH) closures or downgrades of a commercial shellfish growing area due to a degradation of water quality as a result of pollution. These areas include the watershed draining to the shellfish beds as part of the shellfish habitat conservation area.

“Shorelands” or “shoreland areas” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58 RCW.

“Shoreline” (Shoreline Management Act) means all of the water areas of the state, including reservoirs and their associated wetlands, together with lands underlying them, except:
1. Shorelines on segments of streams upstream from a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
2. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

“Shorelines” means all of the water areas of the state as defined in RCW 90.58.030, including reservoirs and their associated shorelands, together with the lands underlying them, except:
1. Shorelines of statewide significance;
2. Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second (cfs) or less and the wetlands associated with such upstream segments; and
3. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

“Shorelines of statewide significance” means those areas defined in RCW 90.58.030(2)(e).

“Shorelines of the state” means the total of all “shorelines,” as defined in RCW 90.58.030(2)(d), and “shorelines of statewide significance” within the state, as defined in RCW 90.58.030(2)(e).

“Single-family development” means the development of a single-family residence permanently installed and served with utilities on a lot of record.

“Site” means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way, under the applicants/proponent’s ownership or control that is the subject of a development proposal or change in use.

“Slope” means:
1. Gradient.
2. The inclined surface of any part of the earth’s surface, delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

“Soil” means all unconsolidated materials above bedrock described in the Soil Conservation Service Classification System or by the Unified Soils Classification System.

“Sphagnum bog” means a type of wetland dominated by mosses that form peat. Sphagnum bogs are very acidic, nutrient-poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.

“Special occupancies” means those structures that have the potential to provide capacity for special groups of people such as but not limited to schools, daycare centers, resident incapacitated patients, etc.
"Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species. [TAC224]


"Streams" means those areas where surface waters flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the annual passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include drainage ditches or other artificial water courses unless they are used to convey streams naturally occurring where natural streams existed prior to human alteration, and/or the waterway is used by anadromous or other resident salmonid or other fish populations, or flows directly into shellfish habitat conservation areas. (See also "drainage ditch" definition.)

"Structure" means a permanent or temporary building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether installed on, above, or below the surface of the ground or water, except for vessels.

"Survey" means one of the following:
   a. Mapping using a compass and tape, or
   b. Mapping using a smart phone or hand held GPS, or
   c. A survey completed by a licensed Surveyor.

"Swale" means a shallow drainage conveyance with relatively gentle side slopes, generally with flow depths less than one foot.

"Technical administrator" means the director of the planning and development services department or staff member designated by the director to perform the review functions required in this chapter.

"Toe" means the lowest part of a slope or cliff; the downslope end of an alluvial fan, landslide, etc.

"Top" means the top of a slope; or in this chapter it may be used as the highest point of contact above a landslide hazard area.

"Unavoidable" means adverse impacts that remain after all appropriate avoidance and minimization measures have been implemented.

"Utilities" means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.

"Volcanic hazard areas" means geologically hazardous areas that are subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

"Waters of the state" or "state waters" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state. [CES225]

"Watershed" means a geographic region within which water drains into a particular river, stream or body of water. There are approximately 122 watersheds (e.g., Bertrand, Ten Mile, Dakota, Canyon Creek, Lake Whatcom, Lake Samish) identified in WRIA 1 and 3. These are nested within approximately 14 sub-basins (e.g., North Fork Nooksack, Drayton Harbor, Sumas River, Friday Creek), which are nested within four basins (e.g., Nooksack River, Fraser River, Samish River, coastal).
"Watershed improvement district" means a special district established pursuant to Chapter 85.38 RCW citation.

"Wellhead protection area" means the area (surface and subsurface) managed to protect ground-water-based public water supplies.

"Wetland" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate wetland impacts.

"Wetland buffer" means a designated area contiguous or adjacent to a wetland that is required for the continued maintenance, function, and ecological stability of the wetland.

"Wetland class" means the general appearance of the wetland based on the dominant vegetative life form or the physiography and composition of the substrate. The uppermost layer of vegetation that possesses an aerial coverage of 30% or greater of the wetland constitutes a wetland class. Multiple classes can exist in a single wetland. Types of wetland classes include forest, scrub/shrub, emergent, and open water.


"Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in this chapter.

"Wetland Enhancement." See "mitigation."

"Wetland mitigation bank" means a site where wetlands and buffers are restored, created, enhanced or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

"Wetland Restoration." See "mitigation" and "reestablishment."

"Wet meadow" means palustrine emergent wetlands, typically having disturbed soils, vegetation, or hydrology.

"Wet season" means the period generally between November 1st and March 30st of most years when soils are wet and prone to instability. The specific beginning and end of the wet season can vary from year to year depending on weather conditions.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Wood waste" means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel, and log sort
yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.
<table>
<thead>
<tr>
<th>Acronym</th>
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<tr>
<td>AASHTO</td>
<td>American Association of State Highway and Transportation Officials</td>
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<td>AFO</td>
<td>Animal feeding operation</td>
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<td>AHZ</td>
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<td>CAFO</td>
<td>Concentrated animal feeding operations</td>
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<td>CFR</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>CMZ</td>
<td>Channel migration zone</td>
</tr>
<tr>
<td>CPAL</td>
<td>Conservation program on agriculture lands</td>
</tr>
<tr>
<td>DHSPD</td>
<td>Drayton Harbor shellfish protection district</td>
</tr>
<tr>
<td>DOH</td>
<td>Washington State Department of Health</td>
</tr>
<tr>
<td>EHA</td>
<td>Erosion hazard area</td>
</tr>
<tr>
<td>ESU</td>
<td>Ecologically significant unit</td>
</tr>
<tr>
<td>FAC</td>
<td>Facultative</td>
</tr>
<tr>
<td>FACW</td>
<td>Facultative – Wet</td>
</tr>
<tr>
<td>FIMA</td>
<td>Federal Insurance and Mitigation Administration</td>
</tr>
<tr>
<td>FIRM</td>
<td>Flood Insurance Rate Maps</td>
</tr>
<tr>
<td>FIOO</td>
<td>Federal insurance office of Oregon</td>
</tr>
<tr>
<td>FCO</td>
<td>Federal species of concern</td>
</tr>
<tr>
<td>FE</td>
<td>Federal endangered</td>
</tr>
<tr>
<td>FT</td>
<td>Federal threatened</td>
</tr>
<tr>
<td>HGM</td>
<td>Hydrogeomorphic</td>
</tr>
<tr>
<td>HMP</td>
<td>Habitat management plan</td>
</tr>
<tr>
<td>HMZ</td>
<td>Historical migration zone</td>
</tr>
<tr>
<td>HPA</td>
<td>Hydraulic project approval</td>
</tr>
<tr>
<td>IBC</td>
<td>International Building Code</td>
</tr>
<tr>
<td>LWD</td>
<td>Large woody debris</td>
</tr>
<tr>
<td>MBRT</td>
<td>Mitigation Bank Review Team</td>
</tr>
<tr>
<td>MTBE</td>
<td>Methyl tertiary butyl ether</td>
</tr>
<tr>
<td>MRL</td>
<td>Mineral resource lands</td>
</tr>
<tr>
<td>NGPE</td>
<td>Native growth protection easement</td>
</tr>
<tr>
<td>NOAA</td>
<td>National Oceanic and Atmospheric Administration</td>
</tr>
<tr>
<td>NRCS</td>
<td>Natural Resource Conservation Service</td>
</tr>
<tr>
<td>OBL</td>
<td>Obligate</td>
</tr>
<tr>
<td>OSS</td>
<td>On-site sewage disposal system</td>
</tr>
<tr>
<td>PBSPD</td>
<td>Portage Bay Shellfish Protection District</td>
</tr>
<tr>
<td>PCE</td>
<td>Perchloroethylene</td>
</tr>
<tr>
<td>PHS</td>
<td>Priority habitat and species</td>
</tr>
<tr>
<td>PUD</td>
<td>Planned unit development</td>
</tr>
<tr>
<td>RCT</td>
<td>Recreational, commercial or tribal importance</td>
</tr>
<tr>
<td>RCW</td>
<td>Revised Code of Washington</td>
</tr>
<tr>
<td>SC</td>
<td>State candidate</td>
</tr>
<tr>
<td>SE</td>
<td>State endangered</td>
</tr>
<tr>
<td>SEPA</td>
<td>State Environmental Policy Act</td>
</tr>
<tr>
<td>SM</td>
<td>State monitor</td>
</tr>
<tr>
<td>SMA</td>
<td>Shoreline Management Act</td>
</tr>
<tr>
<td>SMP</td>
<td>Shoreline Management Program</td>
</tr>
<tr>
<td>SS</td>
<td>State sensitive</td>
</tr>
<tr>
<td>ST</td>
<td>State threatened</td>
</tr>
<tr>
<td>TMDL</td>
<td>Total maximum daily load</td>
</tr>
<tr>
<td>U</td>
<td>Unstable</td>
</tr>
<tr>
<td>UOS</td>
<td>Unstable old slides</td>
</tr>
<tr>
<td>URS</td>
<td>Unstable recent slides</td>
</tr>
<tr>
<td>USC</td>
<td>United States Code</td>
</tr>
<tr>
<td>USDA</td>
<td>United States Department of Agriculture</td>
</tr>
<tr>
<td>USEPA</td>
<td>United States Environmental Protection Agency</td>
</tr>
<tr>
<td>VA</td>
<td>Vulnerable aggregations</td>
</tr>
<tr>
<td>WAC</td>
<td>Washington Administrative Code</td>
</tr>
<tr>
<td>WCC</td>
<td>Whatcom County Code</td>
</tr>
<tr>
<td>WDFW</td>
<td>Washington State Department of Fish and Wildlife</td>
</tr>
<tr>
<td>WRIA</td>
<td>Water resource inventory area</td>
</tr>
</tbody>
</table>
Appendix A: CONSERVATION PROGRAM ON AGRICULTURE LANDS

Purpose Statement

The well-being of farms and ranches in Whatcom County depends in part on good quality soil, water, air, and other natural resources. Agricultural operations that incorporate protection of the environment, including critical areas as defined by this chapter, are essential to achieving this goal.

Overview

A conservation farm plan identifies the farming or ranching activities and the practice(s) necessary to avoid their potential negative impacts (resource concerns). Practice selection depends upon the types of livestock raised and crops grown. Based upon the type and intensity of the operation, some generalizations can be made as to the resource concerns and remedies that apply.

Some operations present relatively low risks to critical areas because of their benign nature, timing, frequency, or location. For these operations, the resource concerns and remedies are relatively easy to identify and implement. These are described in more detail as low-impact agricultural operations subject to standardized conservation farm plans in Section 1 below.

Where the potential negative impacts to critical areas are moderate or high, solutions are more difficult to formulate and implement. In those circumstances, a more rigorous planning process is required. In such cases, a formal written plan shall provide the desired environmental protection. These types of operations are described as agricultural operations requiring custom conservation farm plans in Section 2 below.

Conservation farm plans prepared pursuant to Section 1 or 2 shall include all reasonable measures to maintain existing critical area functions and values.

Section 1. Low-Impact Agricultural Operations Subject to Standardized Conservation Farm Plans

These operations present a low-potential risk to critical area degradation including ground/surface water-contamination because the animals kept generate fewer nutrients than can be used by the crops grown there.

Criteria. To qualify as a low impact operation, a farm shall not exceed one animal unit per one acre of grazable pasture. One resource for guidance is Tips on Land and Water Management for Small Farm and Livestock Owners In Western Washington. It can be obtained at: http://www.kinged.org/pub_sma.htm or from the Whatcom Conservation District. Other guidance may also be used, provided it is consistent with the best available science criteria in WAC 365-195-900 through 365-195-925.

Benchmark System and Resource Concerns. Keeping horses and other large animals creates potential adverse impacts to critical areas.

Nutrient Pollution of Water. Animal waste contains nutrients (nitrogen and phosphorous). With each rain, these wastes can wash off the land and into the nearest stream, lake, or wetland. In surface water, phosphorous and nitrogen fertilizer aquatic plants and weeds. As the plants and weeds proliferate and decay, the dissolved oxygen that fish need to survive is depleted. Nitrogen in the form of nitrate is easily dissolved in and carried with rainfall through our permeable soils to groundwater. Nitrate concentrations exceeding the maximum contaminant level for safe drinking water are found in many wells of Whatcom County. These can present a significant human health risk, particularly to babies and young.
Pathogen Pollution of Water. Manure contains bacteria and other pathogens. These can make the water unfit for drinking without treatment or shellfish unfit for human consumption. They can also make water unsafe for human contact and recreational sports such as fishing, swimming or water skiing. Both surface and groundwater are vulnerable to this type of pollution.

Sediment Pollution to Surface Water. Regardless of the amount of supplemental feed provided, large animals will continue grazing until all palatable vegetation is gone. On especially small lots (one or two acres), the animals that are allowed free and continuous access to vegetation quickly graze it out and trample pasture grasses and forbs. These areas are then susceptible to invasion by weeds, including noxious weeds, and brush. The resulting bare ground is subject to erosion from wind and water. Lands that lack adequate vegetation are subject to erosion, and contaminated runoff from these areas can enter water bodies and wetlands and interfere with fish and wildlife habitat.

Degradation of Riparian Areas. The term “riparian” is defined in Article 8 of this chapter and includes the areas adjacent to streams, lakes, marine shorelines and other waters. A healthy riparian area is essential to protecting fish and wildlife, including salmon and shellfish. Dense riparian vegetation along the water’s edge will slow and protect against flood flows; secure food and cover for fish, birds and wildlife; and keep water cooler in summer. Uncontrolled grazing removes important riparian vegetation.

Standard Conservation Farm Plan Requirements. Owners of low impact livestock operations have limited options to control animal waste because their operations are small. The required conservation farm plan can be prepared by the landowner and include a simple map of the property, a standard checklist designed to protect water quality, and the following additional components:

System Siting and Design. Barns, corrals, paddocks or lots are to be sited to avoid runoff directly into critical areas. Where structures exist and cannot be relocated, corrective measures must be taken to avoid runoff of pollutants and bacteria to critical areas. Where trees and shrubs are absent along a stream, lake, pond or wetland, a strip or area of herbaceous vegetation shall be established and maintained between barns, corrals, paddocks, and grazing areas pursuant to the National NRCS Conservation Practice 393, “Filter Strip.” Livestock shall be excluded from the filter strips established to protect critical areas pursuant to NRCS Practice 472, “Livestock Exclusion.” Where trees and shrubs exist along a stream, lake, pond, or wetland, they shall be retained and managed to preserve the existing functions of the buffer pursuant to the NRCS Conservation Practice 391, “Riparian Forest Buffer.”

Manure Collection, Storage, and Use. Manure and soiled bedding from stalls and paddocks are to be removed and are to be placed in a storage facility protected from rainfall so that runoff does not carry pollutants and bacteria to critical areas. Manure is to be used as cropland fertilizer. The rate of manure application shall not exceed crop requirements. It is to be applied in a manner to avoid runoff of nutrients and bacteria to critical areas.

Pasture Management. Pastures are to be established and managed pursuant to “Prescribed Grazing” (NRCS Practice 528A).

Exercise or Barn Lots. These normally bare areas must be stabilized and managed to prevent erosion and sediment movement to critical areas. A diversion terrace shall be installed, where necessary, to hinder flow to and across the lot or paddock. Runoff from the lot must be treated via the filter strip or riparian buffer as described in subsection (3)(a) of this section to avoid contaminants reaching critical areas.

Existing native vegetation within critical area buffers shall be retained to the extent practicable.

Section 2: Agricultural Operations Requiring Custom Conservation Farm Plans
These operations present a potential moderate or high risk to critical area degradation including ground or surface water contamination because the nutrients applied from manure or commercial fertilizers may exceed that which can be easily used by the crops grown there without careful planning and management. The agricultural activities are also likely to be much more intense than low-impact operations posing greater potential risks to other critical areas.

Moderate-Impact Operations. Examples include farms that exceed one animal unit per one acre of grazable pasture; orchards, vineyards, small fruit field and row crops; and drainage improvement districts.

High-Impact Operations. Examples include dairies and animal feeding operations/concentrated animal feeding operations (CAFOs). These operations are already highly regulated by state and federal governments (see Chapter 90.64 RCW et seq.; 40 CFR 122.23 and 40 CFR Part 412).

Custom Conservation Farm Plan Requirements.

Moderate-Impact Operations. Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to mitigate same by:

A planning advisor; or
Through the USDA Natural Resources Conservation Service; or
The Whatcom conservation district; or
An eligible farmer or rancher, who participates in this program by:
Attending a County-sponsored or approved workshop; and
Conducting a risk assessment of their farm or ranch, alone or with a planning advisor's assistance, and
Developing a plan to mitigate any identified risks, and
Having the plan approved pursuant to WCC 16.16.290.

High-Impact Operations. Conservation farm plans meeting the criteria of these state and federal laws fulfill the requirements of this chapter. (See USEPA Final Guidance – Managing Manure Guidance for Concentrated Animal Feeding Operations (CAFOs) at: http://epa.gov/guide/cafo/)

Plan Standards. In developing the elements that an approved conservation farm plan must contain, the technical administrator may authorize the use of methods and technologies other than those developed by the Natural Resources Conservation Service when such alternatives have been developed by:

A land-grant college; or
A professional engineer with expertise in the area of conservation farm planning.

Plan Performance. Implementation of the conservation farm plan must protect existing values and functions of critical areas. Benchmark conditions are to be captured and described in the plan. This may consist of photo documentation, written reports or both.


Custom conservation farm plans need not address the application, mixing and/or loading of insecticides, fungicides, rodenticides and pesticides; provided, that such activities are carried out in accordance with the Washington State Department of Agriculture and all other applicable regulations including, but not limited to: the provisions of Chapter 90.48 RCW, the Clean Water Act, United States Code (USC) Section...
136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act), Chapter 15.58 RCW (Pesticide Control Act), and Chapter 17.21 RCW (Pesticide Application Act).
Appendix B: NOTIFICATION EXAMPLE

Date___________
Whatcom County Planning and Development Services
Land Use Division Northwest Annex, Suite B
5280 Northwest Drive
Bellingham, WA 98226-9097
Notice of work to be performed in or near a critical area — in compliance of WCC 16.16.235. This notification should be submitted to the Whatcom County planning and development services department at least 10 working days before start.
Contractor _______ Land owner _______ Other _______ Type of utility _______
Contact name ___________________________ Phone ___________________________
Address ___________________________ Cell ___________________________
Name of property owner ___________________________ Phone ___________________________
Property address and/or tax parcel number ___________________________
Proposed start date ___________ Proposed finish date ___________
Type of affected critical area ___________________________
List equipment, specific work and/or activity to be conducted (if more space is needed attach additional information sheets)
I/we understand this work and/or activity may have adverse effects on the critical area, and acknowledge that special care must be taken to reduce or eliminate adverse effects. Disturbed critical areas shall be restored as near as possible to the previous condition.
Description of restoration ___________________________
I/we the undersigned acknowledge and accept the responsibility for the progress and completion of this project. Any unforeseen problems or plan changes will immediately be brought to the attention of the County Technical Administrator.
Signed __________________ Date ___________ Signed __________________ Date ___________
Appendix C: NATIVE GROWTH PROTECTION EASEMENT SIGN INSTALLATION GUIDELINES {CAC228}

TYPE 1 SIGN

12-inch-by-18-inch aluminum sign with white reflective background. Install one per protected feature in a conspicuous place.

Four-foot-by-four-foot pressure-treated wooden post with one-half-inch chamber at top.

Magnetic locator pin (e.g., pipe, rebar, 20 penny nail, etc.) placed eight inches to 12 inches from post along NGPE line.

Quick-set concrete

Compacted native material

NOTES:

NGPE signs shall be placed no greater than 200 feet apart around the perimeter of the NGPE. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPE unless otherwise approved by the technical administrator.

Sign placement shall be subject to the approval of Whatcom County. Alternative sign designs may be submitted to Whatcom County for approval.

All signs must be secure and permanent. Type 2 signs may be used in conjunction with Type 1 signs at the discretion of the Whatcom County technical administrator.

TYPE 2 SIGN
Paint white with black lettering

Pressure treated two-inch-by-four-inch (NOM) wooden stake, metal or fiberglass post. (Carsonite style is OK provided it has an anchor.)

Magnetic locator pin (e.g., pipe, rebar, 20 penny nail, etc.) placed eight inches to 12 inches from post along NGPE line.

Quick-set concrete
Steel anchor or similar anchor may be substituted for concrete on Type 2 signs provided it firmly anchors the post.

Compacted native material.

NOTES:
NGPE signs shall be placed no greater than 200 feet apart around the perimeter of the native growth protection easement. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the native growth protection easement unless otherwise approved by the County critical areas specialist.
Sign placement shall be subject to the approval of Whatcom County. Alternative sign designs may be submitted to Whatcom County for approval.
## Appendix D: SPECIAL STATUS FISH AND WILDLIFE SPECIES PROTECTED
PURSUANT TO ARTICLE 7 OF THIS CHAPTER [CAC229]

Table D-1. Listed, Sensitive, and Candidate Species Known or Suspected to Occur in Whatcom County. For special status fish, please see Table D-3.

<table>
<thead>
<tr>
<th>Species</th>
<th>Status¹</th>
<th>Habitat Requirements and Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bald eagle</td>
<td>FT, ST</td>
<td>Numerous nest territories and foraging areas in major drainages and along marine shorelines of western Washington.¹²ᵃ</td>
</tr>
<tr>
<td>Brandt's cormorant</td>
<td>none;</td>
<td>Winter resident seabird of inland-marine waters. Breeds on outer coast.¹²ᵇ</td>
</tr>
<tr>
<td>Brown pelican</td>
<td>FE, SE</td>
<td>Occasional summer sighting in marine waters.¹²ᵇ</td>
</tr>
<tr>
<td>Cascades frog</td>
<td>FCO, SM</td>
<td>Wetlands and small streams in between 2,000 feet and 6,200 feet elevation in Washington and Oregon. Whatcom County population is disjunct from populations to south.²⁶</td>
</tr>
<tr>
<td>Columbia spotted frog</td>
<td>FCO, SC</td>
<td>Aquatic habitat, especially emergent vegetation in wetlands, ponds, and streams in the Cascade Mountains and in eastern Washington.²⁰</td>
</tr>
<tr>
<td>Common loon</td>
<td>none;</td>
<td>Nests on secluded shorelines of lakes larger than 30 acres; winters on lakes and marine waters.²⁶ Known to occur at Lummi Bay and Lummi Flats.</td>
</tr>
<tr>
<td>Common murre</td>
<td>none;</td>
<td>Winter resident seabird of inland-marine waters. Breeds on outer coast.²⁰</td>
</tr>
<tr>
<td>Fisher</td>
<td>FCO, SE</td>
<td>Very rare forest carnivore closely associated with late-successional coniferous and mixed forests of Olympic and North Cascade Mountains.¹²ᵃ</td>
</tr>
<tr>
<td>Golden eagle</td>
<td>none;</td>
<td>Uncommon western Washington raptor associated with open country. Nests on cliffs or large trees.²ᵃ</td>
</tr>
<tr>
<td>Gray whale</td>
<td>none;</td>
<td>Migratory marine mammal found in coastal waters in spring and summer. Often forages on or near bottom, ingesting sediment.²ᵃ</td>
</tr>
<tr>
<td>Gray wolf</td>
<td>FT, SE</td>
<td>Rare carnivore of forested and open habitat requiring adequate ungulate prey. Occasional recent records from North Cascades National Park.²ᵃ</td>
</tr>
<tr>
<td>Grizzly-bear</td>
<td>FT, SE</td>
<td>Rare omnivore of wilderness areas. Occasional recent records from North Cascades National Park.²ᵃ</td>
</tr>
<tr>
<td>Killer whale (orca)</td>
<td>none;</td>
<td>Resident marine mammal of coastal waters, including Strait of Georgia. Salmon principal prey in Puget Sound.²ᵇ</td>
</tr>
<tr>
<td>Marbled murrelet</td>
<td>FT, ST</td>
<td>Uncommon seabird that nests in late-successional conifer forests within 50 miles of marine shoreline. Winters in nearshore marine waters.²ᵃ</td>
</tr>
<tr>
<td>Northern abalone</td>
<td>none;</td>
<td>Shellfish found in subtidal rock reefs, low abundance, harvest closed.²ⁿ</td>
</tr>
<tr>
<td>Northern goshawk</td>
<td>FCO, SC</td>
<td>Raptor that nests in relatively dense mature conifer and mixed forests. Sensitive to clear-cut timber harvest in nest and foraging stands.²ⁿ</td>
</tr>
<tr>
<td>Species</td>
<td>Status</td>
<td>Habitat Requirements and Distribution</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------</td>
<td>-------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Northern spotted owl</td>
<td>FT, SE</td>
<td>Resident in coniferous forests below 5,000 feet elevation. Closely associated with late-successional forests.</td>
</tr>
<tr>
<td>Olympia oyster</td>
<td>none,</td>
<td>Shellfish found in intertidal gravel, locally extirpated in Whatcom County; restoration effort in progress.</td>
</tr>
<tr>
<td>SC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oregon Spotted frog (Rana pretiosa)</td>
<td>FT</td>
<td>X</td>
</tr>
<tr>
<td>Pacific harbor porpoise</td>
<td>none,</td>
<td>Relatively shy marine mammal of inland-marine waters.</td>
</tr>
<tr>
<td>SC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peregrine falcon</td>
<td>FCO, SS</td>
<td>Year-round resident; nests in cliffs (&gt; 150 feet in height); and feeds on birds, especially shorebirds and waterfowl. Occurrences at Nooksack Delta and Portage Bay.</td>
</tr>
<tr>
<td>Pileated woodpecker</td>
<td>none,</td>
<td>Large resident woodpecker of mature forests requiring trees &gt; 17-inch diameter for nesting and roosting. Important primary excavator providing cavities for a number of species.</td>
</tr>
<tr>
<td>SC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purple martin</td>
<td>none,</td>
<td>A migratory, cavity-nesting songbird that nests over or near water. Will use artificial nest-boxes.</td>
</tr>
<tr>
<td>SC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sandhill crane</td>
<td>none,</td>
<td>Nests and roosts in relatively open, large wet meadows and emergent wetlands. Highly wary and sensitive to disturbance. Will forage in upland meadows, pastures, and agricultural fields. Seen in Washington primarily during migration; a few nesting pairs in eastern Washington.</td>
</tr>
<tr>
<td>SE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Steller (Northern) sea-lion</td>
<td>FT, ST</td>
<td>A sea lion that breeds in the northern Pacific and winters as far south as California. Seen on Washington’s inland waters occasionally in winter.</td>
</tr>
<tr>
<td>Townsend’s big-eared bat</td>
<td>FCO, SC</td>
<td>A year-round resident that inhabits caves and abandoned mines and buildings. Extremely sensitive to human disturbance. Recent records from Chuckanut Mountain.</td>
</tr>
<tr>
<td>Vaux’s swift</td>
<td>none,</td>
<td>A summer resident and breeder of western Washington closely associated with late-successional conifer forests. Requires hollow, large-diameter snags for nesting and roosting.</td>
</tr>
<tr>
<td>SC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western grebe</td>
<td>none,</td>
<td>A winter resident on inland waters, especially Samish and Bellingham Bays.</td>
</tr>
<tr>
<td>SC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western pond turtle</td>
<td>FCO, SE</td>
<td>Occurs in streams, ponds, lakes, and permanent and ephemeral wetlands. In Washington, pond turtles use wetlands that have open uplands and overwinter in mud-bottoms of lakes or ponds or in upland habitats adjacent to water bodies.</td>
</tr>
<tr>
<td>Species</td>
<td>Status</td>
<td>Habitat Requirements and Distribution</td>
</tr>
<tr>
<td>--------------------</td>
<td>---------</td>
<td>--------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Western toad</td>
<td>FCO, SC</td>
<td>Found near emergent wetlands and small lakes from zero to 6,530 feet elevation.²⁶</td>
</tr>
<tr>
<td>Willow flycatcher</td>
<td>FCO, none</td>
<td>An neotropical migrant that breeds in forested or shrub riparian habitat or forests.²⁶</td>
</tr>
<tr>
<td>Wolverine</td>
<td>FCO, SC</td>
<td>A wide-ranging scavenger that requires large tracts of remote boreal or montane habitat. Rare in Washington, but recent Whatcom County records.²⁷</td>
</tr>
</tbody>
</table>

¹ Federal endangered; FT = Federal threatened; FCO = Federal species of concern; SE = State endangered; ST = State threatened; SC = State candidate; SS = State sensitive; SM = State monitor (WDFW 2004a).

Table D-2. Priority Species Known or Suspected to Occur in Whatcom County. For Priority Fish see Table D-3.

<table>
<thead>
<tr>
<th>Species/Sites</th>
<th>Criteria³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band-tailed pigeon—breeding areas, regular concentrations, occupied mineral springs</td>
<td>RCT</td>
</tr>
<tr>
<td>Bats—roosting concentrations of big brown bat, Myotis bats, pallid bat</td>
<td>VA</td>
</tr>
<tr>
<td>Blue grouse—breeding areas, regular concentrations</td>
<td>RCT</td>
</tr>
<tr>
<td>Brant—regular large concentrations</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>California sea lion—haulout areas</td>
<td>VA</td>
</tr>
<tr>
<td>Cavity-nesting ducks (wood duck, Barrow’s goldeneye, common goldeneye, bufflehead, hooded merganser)—breeding areas</td>
<td>RCT</td>
</tr>
<tr>
<td>Columbian black-tailed deer—regular large concentrations, migration corridors</td>
<td>RCT</td>
</tr>
<tr>
<td>Cormorants and alcids—breeding concentrations</td>
<td>VA</td>
</tr>
<tr>
<td>Dall’s porpoise—regular concentrations</td>
<td>VA</td>
</tr>
<tr>
<td>Dungeness crab—breeding areas, regular concentrations</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Geoduck—regular concentrations</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Great blue heron—breeding areas</td>
<td>VA</td>
</tr>
<tr>
<td>Harbor seal—haulout areas</td>
<td>VA</td>
</tr>
<tr>
<td>Harlequin duck—breeding areas, regular marine concentrations</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Manila clam—regular concentrations</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Marten—regular occurrences</td>
<td>RCT</td>
</tr>
<tr>
<td>Mink—regular occurrences</td>
<td>RCT</td>
</tr>
<tr>
<td>Species/Sites</td>
<td>Criteria</td>
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<td>-----------------------------------------------------------------------------</td>
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<tr>
<td>Moose — regular concentrations</td>
<td>RCT</td>
</tr>
<tr>
<td>Mountain goat — breeding areas, regular concentrations</td>
<td>RCT</td>
</tr>
<tr>
<td>Native littleneck-clam</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Nonbreeding concentrations of Barrow’s goldeneye, common goldeneye, bufflehead</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Nonbreeding concentrations of loons, grebes, cormorants, alcids</td>
<td>VA</td>
</tr>
<tr>
<td>Nonbreeding concentrations of plovers, sandpipers, phalaropes</td>
<td>VA</td>
</tr>
<tr>
<td>Pacific oyster — regular concentrations</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Pandalid shrimps — regular concentrations</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Red urchin — regular concentrations</td>
<td>RCT</td>
</tr>
<tr>
<td>Roosevelt elk — regular concentrations, calving areas, migration corridors</td>
<td>RCT</td>
</tr>
<tr>
<td>Snow-goose — regular concentrations</td>
<td>VA, RCT</td>
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<tr>
<td>Trumpeter and tundra swans — regular concentrations</td>
<td>VA, RCT</td>
</tr>
<tr>
<td>Waterfowl concentrations (other than Canada goose in urban areas) — significant breeding areas and regular large wintering concentrations</td>
<td>VA, RCT</td>
</tr>
</tbody>
</table>

1 VA = vulnerable aggregations; RCT = recreational, commercial, or tribal importance vulnerable to habitat loss or degradation (WDFW 1999b).


<table>
<thead>
<tr>
<th>Species/Marine Plants</th>
<th>Federal and State Status</th>
<th>General Location/Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinook salmon (Puget Sound ESU) Oncorhynchus tschawytscha</td>
<td>FT, SC, Priority Species</td>
<td>Habitat: Juveniles and adults require cold, well-oxygenated water. Spawning generally occurs in riffle areas with clean gravel and cobble substrates. Juveniles use pool-habitat and in-stream cover such as LWD, spaces among cobbles, and undercut banks as resting areas and/or for refuge from predators. Cobble substrate and off-channel habitats such as secondary channels, backwaters, or ponds provide important refuge from flows for overwintering juveniles. After river entry, adults on spawning migration use resting pools, which provide refuge from river currents and high water temperatures that are often encountered in the summer and early autumn. Shoreline areas are important for feeding and refuge for juveniles after entering the ocean. Distribution: Whatcom County supports both fall and spring Chinook salmon stocks. Late run (fall) Chinook spawn in portions of the main-</td>
</tr>
<tr>
<td>Species</td>
<td>Federal and State Status</td>
<td>General Location/Distribution</td>
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<tr>
<td>Coho salmon <em>Oncorhynchus kisutch</em></td>
<td>Priority Species</td>
<td><strong>Habitat:</strong> Similar general habitat associations as Chinook salmon (see above). Juveniles use pool habitat and in-stream cover such as LWD, spaces among cobbles, and undercut banks as resting areas and/or refuge. Juvenile Coho salmon overwinter in freshwater, so overwinter habitat such as deep pools and off-channel habitats are of particular importance for survival, especially in coastal streams subject to high fall and winter flows.</td>
</tr>
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<td></td>
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<td><strong>Distribution:</strong> Coho salmon occur throughout all three forks of the Nooksack watershed and associated tributaries, and in many smaller independent drainages including California, Chuckanut, Colony, Dakota, Oyster, Padden, Silver, Squalicum, Terrell, and Whatcom Creeks.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>When habitats are occupied:</strong> Coho salmon adults migrate and are in streams from July to as late as February, and spawn from October to as late as February. Juveniles can be found rearing in streams year-round.</td>
</tr>
<tr>
<td>Chum salmon <em>Oncorhynchus keta</em></td>
<td>Priority Species</td>
<td><strong>Habitat:</strong> Chum salmon rear in freshwater for only a few days to weeks before migrating downstream to saltwater, therefore juveniles have limited habitat needs in freshwater. Migrating spawning adults require cold, well-oxygenated water, resting pools, and clean gravel spawning substrate. Chum salmon also often spawn in shallower, slower-running streams and side channels in low gradient lower reaches of rivers.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Distribution:</strong> Two stocks of chum salmon occur in the Nooksack River Basin. One spawns in the South Fork and mainstem Nooksack Rivers and tributaries, while the other spawns in the North Fork Nooksack River and below the diversion dam on the Middle Fork Nooksack River. Other populations are found in smaller independent watersheds such as the Chilliwack, Lummi, and Sumas Rivers, and in Chuckanut, Colony, Oyster, Padden, Squalicum, and Whatcom Creeks.</td>
</tr>
<tr>
<td>Species</td>
<td>Federal and State Status</td>
<td>General Location/Distribution</td>
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</tr>
<tr>
<td><strong>Pink-salmon</strong> <em>Oncorhynchus gorbuscha</em></td>
<td>Priority Species</td>
<td><em>Habitat:</em> Similar early-life history and freshwater habitat requirements as for chum salmon (see above).</td>
</tr>
<tr>
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<td></td>
<td><em>Distribution:</em> Two stocks of odd-year pink salmon identified in the Nooksack basin as well as small numbers of even-year pink salmon. One stock is found in the mainstem and tributaries of the Middle Fork (up to the diversion dam) and the North Fork up to Nooksack Falls (RM 65). The other stock is found in the South Fork Nooksack and spawn up to RM 25, and also in some tributaries including Deer, Cavanaugh, Hutchinson, Plumbag, and Skaokum Creeks.</td>
</tr>
<tr>
<td><strong>Sockeye-salmon/Kokanee</strong> <em>Oncorhynchus nerka</em></td>
<td>Priority Species</td>
<td><em>Habitat:</em> Similar general in-stream habitat requirements for migration and spawning as other salmonid species. Sockeye salmon are unique in that juveniles rear in freshwater lakes for up to a year prior to migrating to the ocean. Kokanee rear and reproduce in freshwater lakes.</td>
</tr>
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<td></td>
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<td><em>Distribution:</em> Small numbers of sockeye salmon have been documented in the North and South Fork Nooksack Rivers and occasionally recorded in the lower reaches of the Middle Fork. A native population of kokanee reproduces in the Lake Whatcom watershed. A hatchery at the south end of the lake produces native kokanee brood stock for lakes around the world.</td>
</tr>
<tr>
<td><strong>Bull-trout</strong> <em>Salvelinus confluentus</em></td>
<td>FT, Priority Species</td>
<td><em>Habitat:</em> Similar general in-stream habitat requirements as other salmonids except that bull trout require much colder-water temperatures than other salmonid species, and require relatively pristine habitats. Migratory forms of bull-trout inhabit lower river reaches and nearshore marine habitats for migration, rearing, and feeding.</td>
</tr>
<tr>
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<td><em>Distribution:</em> Because bull-trout require very cold-water temperatures for certain life-history stages, the distribution of bull-trout is generally restricted to upper reaches of sub-basins. Bull trout have been found in the North Fork sub-basin up to RM 65, and in Boulder, Canyon, Cornell, Glacier, Kenney, Racehorse, Thompson, and Wells Creeks. In the Middle Fork...</td>
</tr>
<tr>
<td>Species</td>
<td>Federal and State Status</td>
<td>General Location/Distribution</td>
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<tr>
<td>Nooksack River, bull trout</td>
<td>SC, Priority Species</td>
<td>Nooksack River, bull trout are found upstream of the diversion dam, and are either present or presumed to be present in Canyon Lake, Clearwater, Green, Rankin, Ridley, Sisters, and Warm Creeks. In the South Fork Nooksack sub-basin, bull trout are known to spawn in the mainstream of the South Fork and in Bells, Howard, and Wanlick Creeks. Bull trout/dolly varden are also known to spawn in the Chilliwack River system outside of the Nooksack system. However, because portions of bull-trout populations have an anadromous life history strategy and may migrate upstream and downstream for foraging, spawning, and dispersal, all tributaries of the Nooksack and Fraser River watersheds are considered potentially inhabited by bull trout unless data indicates that water quality (primarily water temperature) is impaired to an extent that resident or migratory life-stages of bull trout cannot be supported. In general though, the larger lower reaches of main tributaries and the mainstem Nooksack River are primarily used as migratory corridors for bull trout. When habitats are occupied: Though portions of some populations are anadromous, this behavior is not obligatory and bull-trout adults and juveniles may occur in freshwater year-round.</td>
</tr>
<tr>
<td>Rainbow trout/steelhead Oncorhynchus mykiss</td>
<td>SC, Priority Species</td>
<td>Habitat: Similar general in-stream habitat requirements as other salmonids. Steelhead have an extended freshwater juvenile phase as with Chinook and Coho salmon, but also require habitat for feeding and resting during an extended adult freshwater phase. Distribution: Three winter-run and one summer-run stock are found in Whatcom County. These stocks include the mainstem/North Fork stock, the Middle Fork stock, and the South Fork stock. A summer-run stock spawns in the upper South Fork Nooksack River. Winter steelhead also occur in Chuckanut, Dakota, Padden, Squalicum, Terrell, and Whatcom Creeks, and in the Sumas River. In addition, native resident rainbow trout are found in the upper North Fork and Middle Fork Nooksack River subbasins as well as some South Fork Nooksack tributaries. When habitats are occupied: Resident rainbow trout are found in freshwaters year-round. Summer steelhead adults are potentially found in streams year-round, but spawning occurs from February to April, with surviving adults outmigrating to the ocean shortly thereafter. Winter steelhead are found in streams from October to July, and spawning may occur from December to July. Juveniles of both life-history forms rear in freshwaters year-round prior to outmigrating to the ocean.</td>
</tr>
<tr>
<td>Coastal cutthroat trout Oncorhynchus clarki</td>
<td>Priority Species</td>
<td>Habitat: Cutthroat trout have similar general requirements as all salmonids and display varying degrees of migratory behavior, often moving out to nearshore marine waters and estuaries to feed in the summer and migrating freshwater streams to overwinter prior to spawning in the spring.</td>
</tr>
<tr>
<td>Species</td>
<td>Federal and State Status</td>
<td>General Location/Distribution</td>
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</tbody>
</table>
| River-lamprey *Lampetra ayresi* | SC | **Distribution**: One stock of coastal cutthroat trout is widely found throughout Whatcom County streams, upstream and downstream of most migration barriers. 

**When habitats are occupied**: The life history of coastal cutthroats is highly variable. Portions of populations are anadromous, but this behavior is not obligatory and coastal cutthroat trout adults and juveniles occur in freshwaters year-round. |
| Pacific-herring *Clupea pallasii* | SG | **Habitat**: River lamprey are anadromous and require clean gravel substrate in streams for spawning and egg incubation. After hatching, lamprey burrow in silt and mud, often in off-channel areas, where they typically remain for a period of years. During this stage, lamprey require relatively stable habitats (Close et al. 1995). 

**Distribution**: Found in coastal streams from northern California to southeastern Alaska, but little information available regarding the population status of river-lamprey in Washington. 

**When habitats are occupied**: River lamprey migrate up small freshwater streams in the fall and spawn in the winter and spring. However, the ammocoete (juvenile) stage lasts several years, so river lamprey would be expected to occur year-round in streams where they are found. |
| Pacific-sand lance *Ammodytes hexapterus* | Priority Species | **Habitat**: Most spawning occurs in shallow subtidal zones from zero to 10 feet in tidal elevation. Eggs are deposited on vegetation or other shallow water substrate. 

**Distribution**: Herring are abundant throughout the northeast Pacific Ocean. Significant spawning concentrations are found in the Cherry Point and Samish Portage Bay areas. Puget Sound stocks spend their first year in Puget Sound. Some stocks remain entirely in Puget Sound while others migrate to other coastal areas of Washington and southern British Columbia (Bargmann 1998). 

**When habitats are occupied**: Pacific herring stocks spawn from late January through early April. A notable exception is the Cherry Point stock (the largest in the state), which spawns from early April through early June. |
<table>
<thead>
<tr>
<th>Species</th>
<th>Federal-and State-Status³</th>
<th>General-Location/Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surf smelt <em>Hypomesus pretiosus</em></td>
<td>Priority Species</td>
<td>Habitat: Similar spawning and nearshore habitat requirements as the Pacific sand lance. Surf-smelt have an entirely marine/estuarine life history (Bargmann 1998).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Distribution: The surf-smelt occurs from Southern California to central Alaska and are widespread in Washington. Surf-smelt are found in similar areas as Pacific sand lance.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>When habitats are occupied: Surf-smelt inhabit marine near-shore areas year-round, and spawning may occur year-round.</td>
</tr>
<tr>
<td>Longfin smelt <em>Spirinchus thaleichthys</em></td>
<td>Priority Species</td>
<td>Habitat: Longfin smelt are anadromous and spawn in freshwater streams. Spawning substrate is sand and gravel similar to that used by surf-smelt in nearshore areas.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Distribution: Spawning populations occur locally throughout western Washington, but the species is poorly understood or studied. Spawning is known to occur in the lower Nooksack River, but actual spawning sites have not been identified (Bargmann 1998).</td>
</tr>
<tr>
<td></td>
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<td>When habitats are occupied: The longfin smelt spawning season in the lower reaches of the Nooksack River is thought to only occur from November until as late as April.</td>
</tr>
<tr>
<td>Numerous Rockfish species <em>Sebastes</em> spp.</td>
<td>State-listed or candidate</td>
<td>Habitat, distribution, and when habitats are occupied: Rockfish and other groundfish species can be found in marine nearshore and offshore areas year-round. Estuaries often attract early life phases of groundfish species.</td>
</tr>
</tbody>
</table>

¹ FT = Federally Threatened, SC = State Candidate, SS = State Sensitive. Note: Candidate species are not required to be included in the definition of fish and wildlife habitat conservation areas (WAC 366-190-080).
Appendix E: LOCALLY IMPORTANT HABITAT DESIGNATIONS—MARINE SHORELINES AND CHUCKANUT WILDLIFE CORRIDOR

Planning and Development Services
Whatcom County
11/3/2017
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- Michael Knapp
- David Hunter
- Nicole Oliver
- Andy Rowson
- Gary Honcoop
- Gerald Vekved
- Kelvin Barton
- Natalie McClendon

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- Kate Blystone
- Audrey Borders
- David Haggith
- Wendy Harris
- Wesley Kentch
- Laura Sachs
- Virginia Watson

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- Diane Hennessey, WA Dept of Ecology (last part of project)
- Joel Ingram, WA Dept of Fish & Wildlife
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1.  INTRODUCTION

1.1  PURPOSE

Whatcom County is required to integrate critical areas protection into zoning regulations, clearing and grading provisions, stormwater management requirements, subdivisions regulations, and other applicable plans and policies. The County last updated its Critical Areas Ordinance (CAO) in 2005. The Best Available Science (BAS) on which the 2005 CAO was based at that time is documented in *Whatcom County Critical Areas Ordinance Best Available Science Review and Recommendations for Code Update* (Parametrix, 2005). Said report also describes the process used to develop the proposed amendments.

It is now 2017 and per the Growth Management Act (GMA) the County is required to review, and update if necessary, those set of regulations aimed at protecting critical areas and minimizing risk from hazardous areas using Best Available Science (BAS).

The basic rules described in the 2005 BAS report still pertain. However, in the intervening years some changes have been made to the RCWs, the WACs, and the guidance documents issued by the Department of Commerce (DOC, formerly CTED), the Department of Ecology (DOE), and other agencies. Additionally, the Growth Management Hearings Boards (GMHB) and the courts have ruled on certain cases, furthering our understanding of the rules. And finally, there have been new studies done that contribute to the body of BAS. This BAS is being used as the basis for revising the County’s development regulations and Comprehensive Plan elements pertaining to critical areas.

1.2  HOW THE REQUIREMENTS FOR INCLUDING THE BEST AVAILABLE SCIENCE ARE MET

The statutory requirements for determining what BAS is and how it should be used are found in WAC 365-195.

WAC 365-195-905 is the criteria for determining which information is the "best available science." It states that the characteristics of a valid scientific process include Peer review, Methods, Logical conclusions & reasonable inferences, Quantitative analysis, Context, and References. The studies accepted and used to support amendments have been found to meeting these criteria unless otherwise noted (whereupon an explanation is provided in the tables below).

WAC 365-195-910 is the criteria for obtaining the best available science. As explained in Section 1.4, BAS was initially provided by the Technical Advisory Committee, comprised of representatives of State agencies, Tribal governments, and other experts in their fields. BAS was also submitted by members of the Citizens Advisory Committee. Additional studies were added by staff as the draft code went through Planning Commission and County Council review.

WAC 365-195-915 is the criteria for including the best available science in developing policies and development regulations. These include:

(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:
(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

Response: In the tables of BAS below, the specific study(ies) used to support the amendments are noted.

(b) The relevant sources of best available scientific information included in the decision-making.

Response: Sources of the BAS are noted in the citations of the studies, below. All are available on the County’s CAO website.

(c) Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:

i. Identify the information in the record that supports its decision to depart from science-based recommendations;

ii. Explain its rationale for departing from science-based recommendations; and

iii. Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.

Response: No policies or regulations depart from recommendations derived from the best available science.

(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

Response: The proposed code does not provide for administrative variances; all are quasi-judicial and are decided upon by a Hearing Examiner. However, the code does provide for some administrative relief (other than variances), in the way of minor modifications to standards. However, in either case, a Critical Area Assessment is required and the applicant must demonstrate that the functions and values of critical areas are protected.

It should be noted that the use of BAS is necessary for policies and development regulations that to protect the functions and values of critical areas (WAC 360-195-900). Whatcom County understands that to mean those regulations that set standards for protection (such as setback distances, timing, whether something should be protected or not, etc.). However, we do not understand that to mean that BAS is required to guide administrative processes (e.g., permit processes, who makes decisions, etc.). Therefore, we have not tied those types of decisions to BAS in this report.
1.3 BACKGROUND

This report is being issued as an addendum to the 2005 BAS report as a record of the BAS considered in updating the County’s Critical Areas Ordinance in 2017. This report should be read in tandem with the previous one, as much of the background information and legal bases for the work will not be repeated. However, unlike the 2005 report, the proposed amendments to the code are documented in a strikeout/underline version of the CAO (Appendix A), with only some of the more substantive amendments described within the body of this report. Thus, it too should be read in tandem with this report.

1.4 REVIEW PROCESS

This report was prepared by Planning and Development Services staff and reviewed by a Technical Advisory Committee (TAC) and a Citizens Advisory Committee (CAC) before being reviewed (and amended) by the Planning Commission and County Council. The Technical Advisory Committee was composed of experts from federal, state, tribal, and local agencies, and the CAC was composed of local citizens representing various stakeholder groups. These committees conducted their reviews during a series of public meetings in 2014-2016, both meeting twice a month, wherein they heard presentations from various staff (and others) covering the various topics. Staff explained how they do their permit review, how they implement the code, and their suggestions for improvement. From this, the Committees helped develop a list of potential issues. The TAC members then each took on sections of the code (within their area of expertise), made the first cut at amendments, provided the scientific studies as BAS to support their proposals, and reviewed them with the committees. Though many studies were submitted and reviewed, not all were ultimately used. These are separated out in the lists below under the headings “Documents Specifically Relied On” and Documents Reviewed But Not Specifically Relied On.” Documents fall into this latter category if a proposed amendment was rejected by the Committees.

These two committees reviewed and approved the proposed code amendments. Interests were wide and varied on the CAC in particular, and many issues led to animated debates. Decision making was mostly consensus based, though votes were taken on a few issues. There were few issues on which the two Committees disagreed (though some members may have). The draft code only contains those proposed amendments for which there was a majority in favor, sometimes requiring a formal vote to determine. Those on which consensus couldn’t be reached were flagged and the Planning Commission and Council made aware of the disagreement.

The recommended code amendments were then submitted to the Planning Commission for public review. They held a series of 7 workshops from March to June 2016, and two public hearings, one on May 12 and one on June 9, 2016, before sending their recommendation to the County Council.

Before starting their review, the Council held a public hearing on October 25, 2016 to gather input from the public. They then held 19 public study sessions between September 20, 2016 and October 24, 2017, making motions the various proposed amendments as they went along. This culminated in the final

---

1 See Acknowledgements for a list of members.
draft of the code, which was introduced on (Date) 2017, with a second public hearing held (Date) 2017.

1.5 RELATIONSHIP TO THE SHORELINE MANAGEMENT PROGRAM
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. This reference (23.10.060) is being updated to reflect the 2017 updated CAO.

2. ARTICLE 1 – PURPOSE AND INTENT

2.1 SYNOPSIS OF AMENDMENTS
Some new language has been added to 16.16.100.

<table>
<thead>
<tr>
<th>Section</th>
<th>Amendment</th>
<th>Associated BAS</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.16.100</td>
<td>Adding additional language to further clarify the CAO’s intent and authority.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2.2 UPDATED BEST AVAILABLE SCIENCE REFERENCES
No BAS is required for the changes to this Article.

3. ARTICLE 2 – ADMINISTRATIVE PROVISIONS

3.1 EXISTING WHATCOM COUNTY POLICIES AND CODE PROVISIONS
County policies regarding administrative provisions are contained throughout the Comprehensive Plan. In general, the policies guide us to:

- Keep regulations and procedures as simple but effective and efficient as possible,
- Include regulatory and non-regulatory mechanisms for protecting the environment,
- Support public education as a means of encouraging environmental protection and stewardship,
- Promote cooperation and coordination among government agencies to as to minimize duplication and confusion.

3.2 SYNOPSIS OF AMENDMENTS
In general, most of the amendments pertain to correcting grammar, updating references to other documents or laws, clarifying procedures, etc. These minor or self-explanatory changes are explained in the comments embedded in the draft code (Exhibit A). Additionally, a few subsections were moved to sections they seemed to fit into better. While there are other changes embedded in the draft code that are self-explanatory, changes of note include:
<table>
<thead>
<tr>
<th>Section</th>
<th>Amendment</th>
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</tr>
</thead>
<tbody>
<tr>
<td>16.16.205 Authorization Required</td>
<td>Amending the language to better clarify that critical areas cannot be altered without having proper authorization.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.230 Exempt Activities</td>
<td>Clarifying that even if exempt from this Title one cannot violate the requirements of it.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.230(F) Exempt Activities</td>
<td>Moving tree felling activities from Exempt Activities to 16.16.235(B)(4) Activities allowed with notification, as a tree risk assessment is a submittal requirement to determine if a tree meets the definition of Hazard Tree.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.230(G) Exempt Activities</td>
<td>Moving restoration activities to Exempt Activities (from Activities allowed with notification), as these types of activities are exempt per RCW 77.55.181(4)).</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.235(B)(4)</td>
<td>Requiring that a tree risk assessment, son by a qualified professional, be done prior to removing hazard trees from a critical area or buffer.</td>
<td>92</td>
</tr>
<tr>
<td>16.16.235(B)(8) Activities Allowed with Notification</td>
<td>Deleting the use of pesticides in buffers as an “Activity allowed with notification” since insects are important to the food chain. Also clarifying that herbicides are only allowed for eradicating invasive species, not native plants.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.240(A)(2) &amp; (C)(2) Technical Administrator and Hearing Examiner Authority</td>
<td>Amending to give the Technical Administrator decision-making authority over all Reasonable Use Exceptions for single family residential uses, including those in geohazard area, so as to minimize cost to the typical homeowner.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.250 Submittal Requirements and Critical Areas Review Process</td>
<td>Amending section to reflect process developed under Kaizen review procedures and now used. Also adding language to make it clear that decisions should provide written explanations of how they were made (findings).</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.260 General Mitigation Requirements</td>
<td>Amending to make it clearer that, even though mitigation sequencing has always been a requirement, that alternatives and cumulative impacts be analyzed.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.260(E) General Mitigation Requirements</td>
<td>Adding a paragraph explicitly stating that mitigation areas are to be permanently protected, though that if future development is proposed on the mitigation site, any restrictions can be removed as long as the final plan meets the requirements of this chapter for all cumulative impacts.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.261, 262, and 263</td>
<td>Three different alternative mitigation strategies (Alternative or Innovative Mitigation Plans, Watershed-Based Management Plans, and Mitigation Banking) were contained in one section. These have been broken into three sections now, and a new section 263(D) (Use of Bank Credits) added based on DOE guidance.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.264 In-Lieu Fees</td>
<td>Adding a new section authorizing a mitigation in-lieu fee program. This language, which comes from DOE guidance documents, allows for such a program to be established, though such a program would still need to be developed and approved by Council.</td>
<td>N/A</td>
</tr>
<tr>
<td>Section</td>
<td>Amendment</td>
<td>Associated BAS</td>
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</tr>
<tr>
<td>16.16.265(B) Critical Areas Protective Measures</td>
<td>Adding language that would allow the Technical Administrator to waive the notice on title requirement for certain, low risk geohazards.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.265(E) Critical Areas Protective Measures</td>
<td>Adding a requirement that applicants indemnify the County when a permit is granted for development or use within a geologic, flood, or other hazard area.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.265(F) Critical Areas Protective Measures</td>
<td>Adding a paragraph notifying applicants that temporary protection measures are required during construction.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.270 and 16.16.273 Reasonable Use Exceptions and Variances</td>
<td>In the existing code, the rules for reasonable use exceptions and variances were contained in the same section. However, these are very different mechanisms, and each deserve their own section so have been split. Most changes in these sections have to do with separating them out.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.270(B)(g &amp; h) Reasonable Use Exceptions</td>
<td>Splitting g &amp; h into two sections. Amending (g) to state that any proposed activities won’t cause damage to other properties, and (h) to state that the activities won’t increase risk, as opposed to guarantee no threat, which is an impossibility (earthquakes and other geohazards may still happen; no one can guarantee they won’t).</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.270(B)(2)(k) Reasonable Use Exceptions and Variances</td>
<td>Amending the language to set a Maximum Impact Area of 4,000 sf for CAO reasonable use exceptions and Shoreline Management Program variances, and to not include utilities and non-native landscaping in that calculation.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.275 Nonconforming Uses/Buildings</td>
<td>Increasing the time for completing reconstruction of nonconforming structures from 18 months to 5 years</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.280 Appeals</td>
<td>Amending the language to require that any issues brought on appeal to the courts were raised and heard by the County’s appeal body. This is a standard legal practice for appeals these days.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.285 Penalties and Enforcement</td>
<td>Changing the time for property owners to respond to code violations from 30 calendar days to 30 business days</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.285(G) Penalties and Enforcement</td>
<td>Adding an “After the Fact Permit Fee.” Charging “after the fact” fees is consistent with how PDS handles “after the fact” building permits. It should be cheaper to ask for permission than forgiveness.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.290 (Conservation Program on Agriculture Lands)</td>
<td>The CPAL provisions (16.16.290 and Appendix A) have been combined and moved to a new Article 8.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
3.3 UPDATED BEST AVAILABLE SCIENCE REFERENCES

The following documents were submitted by a member of CAC in support of their recommended amendments:

<table>
<thead>
<tr>
<th>Ref. #</th>
<th>Document</th>
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<tr>
<th>Ref. #</th>
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</thead>
<tbody>
<tr>
<td>76</td>
<td>Harris, W. <em>CAO Exemptions for Passive Low Impact Activities</em>, April 2015. (Not BAS per se, but references a dozen or so studies) Ms. Harris submitted these studies as evidence as to why low impact uses, such as hiking, birdwatching, canoeing, etc., should not be an exempt use in critical area buffers (16.16.230(D) Exempt Activities). While these studies do show that such low impact activities can have in impact on wildlife, most were addressing either wilderness areas, heavily visited areas, or habitats of at-risk species. Most critical area buffers in Whatcom County do not fall in these categories (being in people’s back yards and such) and are not at such risk. Furthermore, issuing permits or policing such activities would be impossible, and the existing exemption recognizes this.</td>
</tr>
</tbody>
</table>

4. ARTICLE 3 – GEOLOGICALLY HAZARDOUS AREAS

4.1 EXISTING WHATCOM COUNTY POLICIES AND CODE PROVISIONS

County policies concerning geologically hazardous areas are contained in the Comprehensive Plan, Chapter 11 – Environment. The Plan highlights the responsibility local governments have for balancing private property rights and the need to protect the public’s health, safety, and welfare. The Plan also establishes specific policies aimed at:

- Minimizing public investments for infrastructure in known hazard areas,
- Using best available science to research and investigate hazards and educate the public,
- Informing the public of the potential effects of geological hazards,
- Establishing decision-making criteria for development in hazard areas based on established levels of risk,
- Uses that do not require human habitation when adverse impacts can be minimized or mitigated, and
- Prohibiting critical public facilities in known natural hazard areas unless the public benefits outweigh the risk.

Whatcom County manages and protects geologically hazardous areas primarily by implementing the standards contained in WCC 16.16.300, *et seq*. The stated purpose of the regulations is to minimize hazards to the public and to reduce the risk of property damage from development activities on or
adjacent to geologically hazardous areas. The regulations also regulate land use so as to avoid the need for construction of flood control devices on alluvial fans and allow for natural hydrologic changes.

4.2 SYNOPSIS OF AMENDMENTS

Overall the regulations have worked well and few substantive changes are proposed. Many changes have to do with clarifications, incorporation of standard practices, and updated references. These minor or self-explanatory changes are explained in the comments of the draft code (Exhibit A). While there are other changes embedded in the draft code that are self-explanatory, changes of note include:

<table>
<thead>
<tr>
<th>Section</th>
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<tbody>
<tr>
<td><strong>Throughout</strong></td>
<td>Changing the terminology from “buffers” to “setbacks” for geohazard areas throughout the article. The reason for this is that whereas for most critical areas development is kept a certain distance away so as to protect the critical area’s functions and values (i.e., it “buffers” the critical area). In the case of geohazards, keeping development away from the hazard is not to protect the hazard, but rather to keep development from encroaching into a hazardous area (i.e., to protect life and property).</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>16.16.300 Purpose</strong></td>
<td>Purpose section changing slightly for simplicity, and recognizing that elimination of all risk is not achievable.</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>16.16.310.B Designation,</strong></td>
<td>Amending to better acknowledge that the County’s maps are not definitive, and that there may be hazardous areas that we don’t know about.</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Mapping,</strong> <strong>and</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Classification</strong></td>
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<td></td>
</tr>
<tr>
<td><strong>16.16.310.C.1 Designation,</strong></td>
<td>Amending to better classify and describe landslide areas and better take into account the surface and subsurface hydrology (a disturbance to which often causes landslides).</td>
<td>From Dan McShane, consulting geologist</td>
</tr>
<tr>
<td><strong>Mapping,</strong> <strong>and</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Classification</strong></td>
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<td></td>
</tr>
<tr>
<td><strong>16.16.310.C.2 Designation,</strong></td>
<td>Because the International Building Code and International Residential Code contain the only mitigation (construction standards) for typical, widespread earthquakes, the CAO need not address those areas. However, there are specific areas that may need to be avoided; these are left in to be regulated via this code.</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Mapping,</strong> <strong>and</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Classification</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>16.16.310.C.3 Designation,</strong></td>
<td>Amending the text to better describe alluvial fan areas.</td>
<td>From Dan McShane, consulting geologist</td>
</tr>
<tr>
<td><strong>Mapping,</strong> <strong>and</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Classification</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>16.16.310.C.4 Designation,</strong></td>
<td>Amending the text to better describe volcanic hazard areas.</td>
<td>From Andy Weiser, County Geologist</td>
</tr>
<tr>
<td><strong>Mapping,</strong> <strong>and</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Classification</strong></td>
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<tr>
<td>Section</td>
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<td>Associated BAS</td>
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</tr>
<tr>
<td>16.16.310.C.5 Designation, Mapping, and Classification</td>
<td>Deleting typical, minor to moderate surface erosion areas as a critical area since the risk of erosion from development proposals should be and is addressed under clearing and grading regulations, stormwater plans, regulations for special watershed management areas, as well as farm plans and agricultural practices. Erosion of surface soils is best addressed in those areas.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.310.C.6 &amp; 7 Designation, Mapping, and Classification</td>
<td>Splitting the tsunami and seiche hazard area sections, as they are different types of hazards, each with different risks, occurrence probability, and avoidance measures.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.320 Geologically Hazardous Areas – General Standards</td>
<td>Rearranging and adding new standards to this section making what’s required clearer, though policies are not changing.</td>
<td></td>
</tr>
<tr>
<td>16.16.325 Landslide Hazard Areas – Standards</td>
<td>Three landslide hazard area sections (325, 330, and 335), each with standards, have been combined into one section. 16.16.325.C.3 reiterates that a mitigation plan may be required, and that the setback should be covered by an easement (like other critical areas) so as to inform future purchasers of this hazard.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.350 Volcanic Hazard Areas – Standards</td>
<td>After hearing from testimony from USGS experts, Emergency Management staff, the County geologist, and citizens, property owners, and businesses, then and weighing all the pros and cons, Council decided that the risk of a major lahar is too minimal to justify development restrictions in the lahar hazard zone, and reduced said restrictions to just having businesses prepare an emergency evacuation plan.</td>
<td>81</td>
</tr>
<tr>
<td>16.16.365 &amp; 367 Review and Reporting Requirements</td>
<td>The section has been split into two, as it covered two topics (tsunamis and seiches).</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.375 Review and Reporting Requirements</td>
<td>The language has been simplified.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
4.3 UPDATED BEST AVAILABLE SCIENCE REFERENCES

<table>
<thead>
<tr>
<th>Ref. #</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>81</strong></td>
<td>Central Puget Sound Growth Management Hearings Board. <em>Tahoma Audubon Society, People for Puget Sound, and Citizens for a Healthy Bay v. Pierce County, Park Junction Partners, and Snohomish County, Final Decision and Order</em>. CPSCMHB Consolidated Case No. 05-3-0004c, 05304c Tahoma-Puget Sound FDO.doc (July 12, 2005)</td>
</tr>
</tbody>
</table>

**Documents Reviewed But Not Specifically Relied On:**

<table>
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<tr>
<th>Ref. #</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>80</strong></td>
<td>Whatcom County Natural Hazards Mitigation Plan, Whatcom County Division of Emergency Management, June 1, 2015</td>
</tr>
</tbody>
</table>

5. ARTICLE 4 – FREQUENTLY FLOODED AREAS

5.1 EXISTING WHATCOM COUNTY POLICIES AND CODE PROVISIONS

County policies concerning Frequently Flooded Areas (FFAs) are contained in the Comprehensive Plan, Chapter 11 – Environment. The Plan emphasizes using natural processes to manage floods, moving away from trying to control flooding through major engineering projects. The Plan also establishes specific policies aimed at:

- Minimizing the potential loss of life, damage to property, the expenditure of public funds, and degradation of natural systems resulting from development in hazardous areas.
- Discouraging new development in the floodplain.
- Protecting and enhancing natural systems when flood hazard management measures are used.
- Recognizing natural wetlands such as swamps, bogs, saltwater marshes, and ponds for their value in cleaning water, reducing flood damage, providing valuable habitat for plants, fish and wildlife, and as sites for groundwater recharge.

Flood hazard regulations are contained in both the WCC Chapter 16.16 (Critical Areas) and in WCC Title 17 (Flood Damage Protection). WCC Chapter 16.16 designates FFAs as critical areas, provides some general development standards, and specifies review and report requirements, while WCC Title 17 contains the majority of the development standards. The two portions of the code are used jointly to regulate development in the floodplain.
5.2 SYNOPSIS OF AMENDMENTS

Because the majority of development standards for development in the floodplain are found in WCC Title 17, WCC 16.16 Article 4 is quite short, mainly stating that any development must meet the requirements of Title 17. And procedurally, PDS staff relies on DPW staff to review proposals in the floodplain. In the not-too-distant past, most if not all of the review focused on the mechanics and engineering of minimizing the risk a proposed development might have on itself or on other properties due to increased flooding potential. However, since the issuance of the Biological Opinion (BiOp) on FEMA’s National Flood Insurance Program (NFIP) in 2008, the County must now consider the effects of its decisions on endangered species as well. Such review has been implemented; however, WCC Chapter 16.16 has not been updated to reflect this.

Thus, the majority of changes in this Article are aimed at integrating the FEMA National Flood Insurance Program (NFIP) Biological Opinion (BiOp) requirements into the regulations. The existing code doesn’t even mention it, as the BiOp was implemented after the last CAO update. The changes made reflect the process staff uses, and specify which Department has what review authority. While there are other changes embedded in the draft code that are self-explanatory, changes of note include:

<table>
<thead>
<tr>
<th>Section</th>
<th>Amendment</th>
<th>Associated BAS</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.16.400 Purpose</td>
<td>It is required that we comply with the FEMA BiOp, and we do. However, the existing CAO doesn’t even mention it, as the BiOp was implemented after the last CAO update. This change adds compliance with the NFIP as one of this chapter’s purposes. In 2008, the NOAA Fisheries Service issued a Biological Opinion establishing significant harmful impacts to Puget Sound fish, wildlife and habitat that result from floodplain development. NOAA’s Fisheries Service determined that it was the broad availability of federal flood insurance in Puget Sound that stimulated development in the floodplains, increasing loss of floodplain species and habitats. Changes were required to the National Flood Insurance Program (NFIP) in order to meet the requirements of the federal Endangered Species Act within Puget Sound. Local governments must limit the types of development allowed in floodplains in order to remain eligible for continuing federal flood insurance coverage and to receive other federal benefits. For example, under some circumstances no development is permitted. In others, greater restrictions are placed on bulkheads and shoreline modifications. Three basic options, each with its own guidelines and recommendations were issued by FEMA and continue to be updated. These options include: 1) adopting a model statute; 2) incorporating new requirements into existing environmental statutes such as the CAO and SMP, or 3) establishing compliance on a permit by permit basis, subject to the approval of the National Marine Fisheries Service. (Known as the reasonable and prudent alternative.)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1, 2</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Amendment</td>
<td>Associated BAS</td>
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</tr>
<tr>
<td>FEMA recommended that communities with CAOs and SMPs update their regulations, and has issued a checklist of the bi-op requirements. This is the simplest option and the one adopted by most jurisdictions. It allows the greatest flexibility, and where existing regulations fail to address an element of FEMA compliance, the model ordinance section can be adopted.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whatcom County participated in the development of an updated program to comply with the biological opinion (March 2011 NFIP conference). The County selected Option 3 (Door 3), which is similar to a site specific EIS for habitat assessment for individual permits, which is the most cumbersome and expensive way (for the developer) to proceed. For example, it must address issues such as cumulative impacts generated from the site.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At least as of 2013, most of the permits submitted by the county involved subdivision and development not within a floodplain. A few mitigation projects were approved, but the thornier issue of floodplain structural development remains to be addressed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The local jurisdiction with permitting authority must demonstrate to FEMA that any proposed development in the FEMA designated floodway, the CMZ plus 50 feet (as identified according to Ecology 2003), and the riparian buffer zone (RBZ, as described by the Department of Natural Resources 2007 stream typing system and WDFW's 1997 stream buffer guidelines) does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids. The proposed changes address that.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.16.420 Frequently Flooded Areas – General Standards</td>
<td>Adding a requirement that development within FFAs be consistent with the National Flood Insurance Program and Article 7 (Habitat Conservation Areas).</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.430 Review and Report Requirements</td>
<td>Changes herein better clarify which County department (PDS or DPW) has what review authority, and adds reporting requirements to critical areas assessment reports for FFAs.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

5.3 UPDATED BEST AVAILABLE SCIENCE REFERENCES

The following documents were submitted by members of either the TAC or the CAC in support of their recommended amendments:

<table>
<thead>
<tr>
<th>Ref. #</th>
<th>Document</th>
</tr>
</thead>
</table>
6. **ARTICLE 5 – CRITICAL AQUIFER RECHARGE AREAS (CARAS)**

6.1 **EXISTING WHATCOM COUNTY POLICIES AND CODE PROVISIONS**

County policies concerning Critical Aquifer Recharge Areas (CARAs) are contained in the Comprehensive Plan, Chapter 11 – Environment. The Plan emphasizes protecting groundwater quality from contamination, protecting quantity by protecting wetlands, which help recharge aquifers, and working cooperatively with other jurisdictions given that aquifers cross boundaries.

Regulations protecting aquifers are found in WCC 16.16 Article 5 (Critical Aquifer Recharge Areas), which designate CARAs as critical areas, preclude certain types of (potentially hazardous) development near CARAs and regulate other types of development, higher density development, and septic systems when near CARAs.

6.2 **SYNOPSIS OF AMENDMENTS**

No proposed changes other than a cross-reference.

6.3 **UPDATED BEST AVAILABLE SCIENCE REFERENCES**

<table>
<thead>
<tr>
<th>Ref. #</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Documents Specifically Relied On:</strong></td>
<td></td>
</tr>
<tr>
<td>82</td>
<td>Department of Ecology EIM Well Data, 2016. Analyzed 6/11/2017 by the Whatcom Conservation District. This data was obtained from the Department of Ecology. While it has not yet been published, it is pending, according to Barb Carey, LHg, DOE author of the soon-to-be-released report. The data shows that nitrate concentrations in many of the DOE test wells are declining.</td>
</tr>
</tbody>
</table>
Documents Reviewed But Not Specifically Relyed On:

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Authors</th>
<th>Publication Details</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="http://www.ecy.wa.gov/biblio/1203026.html">www.ecy.wa.gov/biblio/1203026.html</a></td>
</tr>
<tr>
<td></td>
<td>glacial aquifers of Whatcom County, Washington, and British Columbia,</td>
<td>Kahle</td>
<td></td>
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<tr>
<td></td>
<td>Canada. U.S.</td>
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<tr>
<td>70</td>
<td>Poster: Nitrate Contamination in the Sumas-Blaine Aquifer, Whatcom</td>
<td>Redding, M., B. Carey,</td>
<td>Presented at the Eighth Washington Hydrogeology Symposium on April 26, 2011, in</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>11-03-027. <a href="http://www.ecy.wa.gov/biblio/1103027.html">www.ecy.wa.gov/biblio/1103027.html</a></td>
</tr>
</tbody>
</table>

7. ARTICLE 5.5 – AREAS WITHIN THE RURAL RESIDENTIAL DISTRICT OF LUMMI ISLAND

7.1 EXISTING WHATCOM COUNTY POLICIES AND CODE PROVISIONS

There are no specific Comprehensive Plan policies regarding the protection of wells on Lummi Island.

7.2 SYNOPSIS OF AMENDMENTS

Other than grammatical, no changes are proposed.

7.3 UPDATED BEST AVAILABLE SCIENCE REFERENCES

No additional documents were submitted.

8. ARTICLE 6 – WETLANDS

8.1 EXISTING WHATCOM COUNTY POLICIES AND CODE PROVISIONS

County policies concerning wetlands are contained in the Comprehensive Plan, Chapter 11 – Environment. The Plan recognizes the importance of wetlands in protecting water quality and quantity and providing habitat for wildlife. The Plan also establishes specific policies aimed at:

- Striving to achieve no net loss of functions and values of wetlands
- Using Best Available Science to evaluate and avoid impacts
- Mitigating unavoidable impacts

Wetland regulations are contained in WCC Chapter 16.16 (Critical Areas). WCC Chapter 16.16 designates wetlands as critical areas, classifies wetland types, describes what type of activities are permitted near wetlands under certain conditions, provides standard buffers for their protection (while allowing some modifications under certain circumstances), prescribes assessment procedures and standards, and provides appropriate mitigation methods.
8.2 SYNOPSIS OF AMENDMENTS

As with other articles, many of the changes have to do with clarifications, incorporation of standard practices, and updated references. These minor or self-explanatory changes are explained in the comments of the draft code (Exhibit A). Changes of note include:

<table>
<thead>
<tr>
<th>Section</th>
<th>Amendment</th>
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</tr>
</thead>
<tbody>
<tr>
<td>16.16.600(D) Purpose</td>
<td>Adding “establishing minimum delineation standards” as one of the Article’s purposes.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.610 Wetlands Designation, Rating, and Mapping</td>
<td>Deleting the description of wetlands, deferring instead to the definition contained in Article 8.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.610(C) Wetlands Designation, Rating, and Mapping</td>
<td>Updating the wetlands classification system to meet the Department of Ecology’s newer rating system. Ecology has updated the Washington State Wetland Rating Systems for eastern and western Washington. These updates replace the 2004 versions of the rating systems including the annotated versions. The effective date of the 2014 rating systems is January 1, 2015. This effective date means that if you rate a wetland on or after that date, you will be required to use the 2014 updates for projects needing Ecology authorization.</td>
<td>14</td>
</tr>
<tr>
<td>16.16.610(C) Wetlands Designation, Mapping, and Classification</td>
<td>Reducing the minimum size of a regulated Class IV wetland from 4,356 to 1,000 square feet. The 4,356 sf standard was from previous Department of Ecology guidance (more than 10 years old now). The TAC says this exemption isn’t scientifically sound, and was made more as a policy choice. We now know that some species (e.g., fairy shrimp) are predominately found in smaller wetlands, and that even small wetlands serve important hydrologic functions.</td>
<td>5, 9, 10, 11, 83, 84, 85, 86, 87, 88, 89</td>
</tr>
<tr>
<td>16.16.620(G)2(iv) Wetlands – General Standards</td>
<td>Limiting stormwater dispersion outfalls to the outer 25% of a buffer, per DOE guidance.</td>
<td>11, 13</td>
</tr>
<tr>
<td>16.16.620(H) Wetlands – General standards</td>
<td>Adding new standards for trails, including a maximum width for private trails, limiting trails to the outer 25% of a buffer (instead of 50), and avoiding significant trees.</td>
<td>11, 13</td>
</tr>
<tr>
<td>16.16.620(K) Wetlands – General standards</td>
<td>Adding a provision to allow phosphorus reducing BMP structures approved and installed through the Homeowners’ Improvement Program within the Lake Whatcom watershed to treat runoff from existing development to be permitted within the outer 50% percent of wetland buffers.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.630(A) Wetland Buffer Widths</td>
<td>Adding standards for what type of existing nonconforming uses or infrastructure may allow a portion of a standard buffer to not be considered buffer.</td>
<td>N/A</td>
</tr>
<tr>
<td>Section</td>
<td>Amendment</td>
<td>Associated BAS</td>
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<tr>
<td>---------</td>
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<td>----------------</td>
</tr>
<tr>
<td>16.16.630(C) Wetland Buffer Widths</td>
<td>Merging the 3 existing tables of buffer widths into one, and formatting it to fit with the new DOE scoring system. However, standard buffers are not changing.</td>
<td></td>
</tr>
<tr>
<td>16.16.640 Wetland Buffer Reduction</td>
<td>In Table 1, merging Category IV wetland buffer requirements into one standard, since regardless of the habitat score the Department of Ecology recommended buffer widths are the same.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.640(D) Wetland Buffer Reduction</td>
<td>Adding language from the new Ecology guidance (land use intensity table) regarding what type of implemented measures will reduce use intensity. The idea behind these mitigating measures is that use of them will decrease the intensity of the proposed adjacent land use so the buffer would be decreased from high to moderate or moderate to low land use intensity with associated buffers.</td>
<td>15</td>
</tr>
<tr>
<td>16.16.670(B)(6 &amp; 7) Review and reporting requirements</td>
<td>Adding language to specify what should be contained in a wetland report, making it clearer for applicants and consultants.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.670 Review and reporting requirements &amp; 16.16.690 Compensatory Wetland Mitigation Plan</td>
<td>Revising the wetland review and reporting requirements to allow various components to be submitted separately, if the Technical Administrator believes it will lead to a more efficient review.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.680(C) Wetland Mitigation</td>
<td>Replacing wetland replacement ratio table with new one based on new DOE classification system, as this table allows a greater combination of mitigation types. The ratios remain pretty much the same.</td>
<td>12, 13, 14, 15</td>
</tr>
<tr>
<td>16.16.680(D) Wetland Mitigation</td>
<td>Limiting the Technical Administrator’s ability to reduce buffers on replacement wetlands because it is not appropriate to require one person to have less buffer requirement than another just because they chose a more constrained site. If there is not enough room on a site for the full mitigation buffer, then they need to find additional mitigation in another location or go to the bank for the remaining area.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.680(E)(3) Wetland Mitigation</td>
<td>Changing one of the criteria for reducing replacement ratios from “when meeting them would adversely affect other characteristics” to “when using the DOE guidance manual results in a lower mitigation ratio than the standard.” Reducing the standard ratios should be based on the degree of impacts and whether functions are being replaced, not on the size of the mitigation site. If the ratios are too small, and functions are not being adequately replaced, the mitigation bank should be considered for the remainder of credits.</td>
<td>11, 12, 13</td>
</tr>
</tbody>
</table>
## 8.3 UPDATED BEST AVAILABLE SCIENCE REFERENCES

The following documents were submitted by members of either the TAC or the CAC in support of their recommended amendments:

<table>
<thead>
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<td></td>
</tr>
</tbody>
</table>
9. ARTICLE 7 – HABITAT CONSERVATION AREAS

9.1 EXISTING WHATCOM COUNTY POLICIES AND CODE PROVISIONS

County policies concerning fish and wildlife Habitat Conservation Areas (HCAs) are contained in the Comprehensive Plan, Chapter 11 – Environment. The Plan recognizes the importance of protecting threatened, endangered, and other listed species and habitat. The Plan also establishes specific policies aimed at:

- Protecting and enhancing natural systems.
- Maintaining riparian corridors and their vegetation.
- Encouraging the use of soft armoring along shorelines.
- Protecting water quality entering out streams, lakes, rivers, and marine environment.
- Supporting the Salmon Recovery Board’s efforts.

HCA regulations are contained in WCC Chapter 16.16 (Critical Areas). WCC Chapter 16.16 designates HCAs as critical areas, classifies the types of HCAs, describes what activities are permitted near HCAs under certain conditions, provides standards and buffers for their protection (while allowing some modifications under certain circumstances), prescribes assessment procedures and standards, and provides appropriate mitigation methods.

9.2 SYNOPSIS OF AMENDMENTS

While there are other changes embedded in the draft code that are self-explanatory, changes of note include:
<table>
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<tbody>
<tr>
<td>16.16.700</td>
<td>Amending the purpose statement to include “protect and restore” as well as maintain fish and wildlife populations. The County Council has endorsed the WRIA 1 Salmonid Recovery Plan and is committed to implement actions under the plan as part of the Puget Sound Chinook Recovery Plan under the ESA. The goal of the plan is to restore self-sustaining salmon populations that result in de-listing and which will support a harvestable surplus. Current spring Chinook, bull trout, and steelhead populations are critically low. Most other salmonid populations, such as Lake Whatcom kokanee salmon and Lake Whatcom cutthroat trout are also depressed so “maintaining” a depressed population is not the purpose we should state.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.710(B)</td>
<td>Clarifying that while maps show known areas of HCAs, they don’t show the unknown areas, and thus applicants are still responsible for doing their own reconnaissance.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.710(C)(1)</td>
<td>Converting to the DNR stream classification system and clarifying which types of streams are regulated. While what is regulated is not changing, there has been some confusion, especially regarding ditches vs. ditched streams so we’re trying to make it more clear and consistent with DNR and WDFW criteria.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.710(C)(2 - 5)</td>
<td>Adopting the WDFW priority habitat and species lists in lieu of including the listed species and habitats (which change over time) in an appendix (which can’t change without a code amendment as the lists change). PDS will keep a current list of those species and habitats found in Whatcom County on line and at the counter for customers’ convenience.</td>
<td>16, 23, 24</td>
</tr>
<tr>
<td>16.16.710(C)(6)</td>
<td>Combining commercial and recreational shellfish, Shellfish Habitat Conservation Areas, kelp and eelgrass beds, and fish spawning grounds under the heading of “state listed saltwater critical areas, which they all are.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.710(C)(7)</td>
<td>Amending so that manmade or artificial ponds (not including ag, fire, or stormwater ponds) are considered HCAs because there are a lot of older ponds that have naturalized and become important habitat. Ponds that derive their water from streams are no longer allowed to be created per WDFW and CAO regulations, thus any ponds created after 9/30/05 would be illegal. The date was chosen because 9/30/05 is 10 days after the Exec signed Ord 2005-068, which contains the first instance of this section. Also added “fire protection” ponds as an exemption.</td>
<td>WDFW recommendation</td>
</tr>
<tr>
<td>Section</td>
<td>Amendment</td>
<td>Associated BAS</td>
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<tr>
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</tr>
<tr>
<td>16.16.710(C)(9) Designation, Mapping, and Classification</td>
<td>Adding Aquatic Reserves to the list of DNR protected aquatic environments.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.710(C)(10) Designation, Mapping, and Classification</td>
<td>Updating the list of what parts of the San Juan Islands National Monument are within Whatcom County, and thus protected.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.710(C)(11) Designation, Mapping, and Classification</td>
<td>Adding Frequently Flooded Areas that are subject to the Federal Emergency Management Agency’s National Flood Insurance Program Biological Opinion (FEMA BiOp) so as to help implement the FEMA BiOp.</td>
<td>1, 2</td>
</tr>
<tr>
<td>16.16.710(C)(12)(a) Designation, Mapping, and Classification</td>
<td>Deleting the list of Species of Local Importance, as no one knows where this list came from. The current list includes the dace and sucker, which are already on the WDFW priority species list, and thus are already protected, and the TAC questioned the inclusion of osprey and turkey vulture. In previous versions of the CAO the list was longer, but it appears that species were removed once they appeared on WDFW’s PHS lists. Furthermore, without specific management plans different than what WDFW already recommends, staff can’t impose any additional restrictions than what’s already required by this Article. However, the listing criteria are maintained so that proponents may propose to add some in the future.</td>
<td>16, 23, 24</td>
</tr>
<tr>
<td>16.16.720(C) General Standards</td>
<td>Updated the reference to the WDFW guidelines and added their current design standards for bridges these days to ensure bridges don’t get clogged with debris during floods.</td>
<td>WAC 220-660-190(4)</td>
</tr>
<tr>
<td>16.16.720(G) General Standards</td>
<td>Added reference to 303(d) impaired waterbodies (already a requirement, just not stated here), and the standard to design outlets to exclude fish from entering a stormwater system, which is already required by WDFW for an HPA.</td>
<td>WAC 220-660-260(4)</td>
</tr>
<tr>
<td>16.16.720(H) General Standards</td>
<td>Added a reminder to give special scrutiny to certain Water Resource Special Management Areas as per WCC 20.80.735 when clearing and grading. Also cross-referenced the DOE Stormwater Manual for BMPs.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.720(I) General Standards</td>
<td>For streambank stabilization and shoreline protection, added that it needs to be designed to WDFW guidelines, which is already a requirement via the HPA.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.720(J) General Standards</td>
<td>Amending to allow trails only in the outer 25% (rather than 50%) of an HCA buffer, per current WDFW guidelines. Also limiting private trails to 4 feet wide and public trails to 12 feet wide, which are the standard trail widths these days (was 30 feet, the width of a road).</td>
<td>75</td>
</tr>
<tr>
<td>16.16.720(K) General Standards</td>
<td>Updating the standards for putting utilities into an HCA, consistent with more current standards.</td>
<td>N/A</td>
</tr>
<tr>
<td>Section</td>
<td>Amendment</td>
<td>Associated BAS</td>
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<tr>
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</tr>
<tr>
<td>16.16.720(N) General Standards</td>
<td>Deleting the ability to install private launch ramps in HCAs, as all lakes now have public access and no more new private launches should be permitted.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.720(S) General Standards</td>
<td>Continuing to allow the removal of beaver and their dams, but requiring that an analysis must be done first and the code met. Studies have shown that beaver works provide a lot of ecological benefit, including water quality, flood prevention, groundwater infiltration, etc., and this is borne out by the Best Available Science. Furthermore, there has been a Growth Management Hearings Board decision (GMHB 14-2-0009) regarding this matter, which says that the County should not just exempt beaver dams and rely on an HPA, but should do its own analysis of the effects of removal, which we in Whatcom County do require. Furthermore, state law (RCW 77.36.030) still authorizes the removal of wildlife (including beaver) that negatively impacts property.</td>
<td>30, 31, 32, 33, 68, 69, 70, 71</td>
</tr>
<tr>
<td>16.16.720(T) Habitat Conservation Areas – General Standards</td>
<td>Amending the submittal requirements for bald eagle permits on Eliza Island, since the state and federal designations and requirements have changed.</td>
<td>Letter from WDFW</td>
</tr>
<tr>
<td>16.16.720(U) Habitat Conservation Areas – General Standards</td>
<td>Adding a provision to allow phosphorus reducing BMP structures approved and installed through the Homeowners’ Improvement Program within the Lake Whatcom watershed to treat runoff from existing development to be permitted within the outer 50% percent of wetland buffers.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.740(D)(4) Buffer Standards</td>
<td>Adding mitigation ratio for HCA buffer impacts. There was no mitigation ratio specified, and applicants should know what to expect.</td>
<td>Developed by Natural Resources staff</td>
</tr>
<tr>
<td>16.16.740(E)(7) Buffer Standards</td>
<td>Adding ability of Technical Administrator to require buffer enhancement where buffer has been reduced so as to provide a fully vegetated buffer, thus minimizing impacts and helping with no net loss.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.750 Review and Reporting Requirements</td>
<td>Removing reporting exemption for development outside of buffers within upland portions of shellfish conservation areas, as it makes no sense given that development within the areas but outside their buffers could have impacts.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.750(A) Review and Reporting Requirements</td>
<td>Removing reporting exemption for single family development of less than ½ acre, as clearing of a half-acre could have impacts and should go through and analysis and mitigation sequencing.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.750(B) Review and Reporting Requirements</td>
<td>Adding language to better clarify what needs to be addressed in an HCA assessment report.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
9.3 UPDATED BEST AVAILABLE SCIENCE REFERENCES

9.3.1 Maps and Data
The following documents were submitted by members of either the TAC or the CAC in support of their recommended amendments:

<table>
<thead>
<tr>
<th>Ref. #</th>
<th>Document</th>
</tr>
</thead>
</table>
### 9.3.2 Wildlife Corridors

<table>
<thead>
<tr>
<th>Ref. #</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Documents Reviewed But Not Specifically Relied On:</strong></td>
<td></td>
</tr>
</tbody>
</table>

### 9.3.3 Beavers

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>Documents Specifically Relied On:</strong></td>
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</tbody>
</table>

### 9.3.4 Fish

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Documents Reviewed But Not Specifically Relied On:</strong></td>
<td></td>
</tr>
</tbody>
</table>
### 9.3.5 Nearshore

**Documents Reviewed But Not Specifically Relied On:**

<table>
<thead>
<tr>
<th>Ref. #</th>
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<tbody>
<tr>
<td>Ref. #</td>
<td>Document</td>
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<tr>
<td>-------</td>
<td>----------</td>
</tr>
</tbody>
</table>
| 54    | Lanksbury, Jennifer, Laurie Niewolny, Andrea Carey, and James West (2014). *Toxic Contaminants in Puget Sound’s Nearshore Biota: A Large-Scale Synoptic Survey Using Transplanted Mussels (Mytilus trossulus)*. WDFW Report Number FPT 14-08.
9.3.6 Miscellaneous

Documents Specifically Relied On:


Documents Reviewed But Not Specifically Relied On:


10. ARTICLE 8 – CONSERVATION PROGRAM ON AGRICULTURE LANDS (CPAL)

10.1 EXISTING WHATCOM COUNTY POLICIES AND CODE PROVISIONS

County policies regarding the protection of the agricultural sector and the environment are contained in the Comprehensive Plan, Chapter 11. These policies aim to harmonize what some see as conflicting goals. Historically, agricultural uses have drastically altered the natural landscape, and some continue to pose certain problems if not managed properly. However, in Whatcom County, both hold great value to our citizens; thus, the County continues to seek solutions to promoting agriculture while minimizing environmental impacts.

- Ensure that resource industries (such as agriculture) minimize erosion and sedimentation and significantly reduce pollutants.
- Require landowners to protect surface water quality.
- Allocate water sufficiently for fish, agricultural (and other commercial) uses, and domestic use.
- Protect property rights.

One strategy the County developed early on was to allow the standard critical area requirements be modified for ongoing agricultural uses so long as the farm operators acted as good stewards and used farming Best Management Practices, which are memorialized in a conservation farm plan. This strategy is embodied in the Conservation Program on Agriculture Lands (CPAL) program of the Critical Areas Ordinance.

10.2 SYNOPSIS OF AMENDMENTS

Up to this point the CPAL provisions were found in two places: Section 16.16.290 and Appendix A of the CAO. However, there was concern about having what appeared to be regulations in an appendix, so these two sections have been combined and moved to a new Article 8.

In general, many of the amendments pertain to correcting grammar, updating references to other documents or laws, clarifying procedures, etc. These minor or self-explanatory changes are explained in the comments embedded the draft code (Exhibit A). But while new sections have been created, and a few subsections moved to sections they seemed to fit into better, there really aren’t many substantive changes proposed. Changes of note include:

<table>
<thead>
<tr>
<th>Section</th>
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</tr>
</thead>
<tbody>
<tr>
<td>16.16.800 Purpose</td>
<td>Updating the purpose statement to explicitly state the purpose of the program, and what is expected in exchange for having flexible standards.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.814 Exemptions</td>
<td>Adding exemptions to the CPAL program for landowners who do not exceed a ratio of 1 animal unit per 3 grazable acres and avoid a direct discharge of sediment or fecal matter to surface waters, and for participants in youth agriculture education programs.</td>
<td>72</td>
</tr>
<tr>
<td>16.16.820 Classification and Applicability</td>
<td>Renaming farm operation types from low, moderate, and high impact to Type 1, 2, and 3 to avoid value-laden words.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.820(D)(1)(a) Classification and Applicability</td>
<td>Adding a clarifying sentence that “Row and berry crops do not qualify as low intensity.” Though this type of agriculture already falls within the moderate intensity by its definition, it was felt that it would be best just to clarify.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.820(D)(1)(c) Classification and Applicability</td>
<td>Adding the ability for a Type 1 operation to do a custom (Type 2) plan if they so desired. Though it may take more work to develop, a custom plan done through the Whatcom Conservation District would allow an operator to use prescribed grazing of the vegetative filter strips. Otherwise they may get overgrown with invasive species (e.g., blackberries) which don’t provide the filtering action that herbaceous plants do.</td>
<td>N/A</td>
</tr>
<tr>
<td>Section</td>
<td>Amendment</td>
<td>Associated BAS</td>
</tr>
<tr>
<td>---------</td>
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</tr>
<tr>
<td>16.16.830(B)(2) Conservation Farm Plans – General Standards</td>
<td>Deleting the small (incomplete) list of what one must ensure when building a new structure. Even under CPAL all new structures must be constructed in compliance with the applicable standard requirements of this chapter and the Whatcom County Code, and are thus addressed by other section.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.830(B)(3) Conservation Farm Plans – General Standards</td>
<td>Adding a paragraph that explicitly states that a new or expanded drainage system cannot be added via CPAL. This was already the case, but should be explicit.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.830(B)(4) Conservation Farm Plans – General Standards</td>
<td>Adding a sentence that explicitly states that undeveloped land cannot be converted to agricultural uses via CPAL. This was already the case, but should be explicit.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.830(C) Conservation Farm Plans – General Standards</td>
<td>Allowing 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 to 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.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.840(A)(5) Conservation Farm Plan Requirements</td>
<td>Regarding the requirement to retaining native vegetation in critical areas and their buffers, the phrase “to the extent practicable” is proposed to be stricken because the definition of ongoing ag says that no new area will be converted.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.840(A)(7) Conservation Farm Plan Requirements</td>
<td>Adding “fertilizers other than manure” to the list of issues that must be addressed in a Conservation Farm Plan.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.850(B) Preparation and Approval of Conservation Farm Plans</td>
<td>Tabularized the list of who can prepare what type of farm plan.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.850(C) Preparation and Approval of Conservation Farm Plans</td>
<td>Incorporated PDS Policy PL2-85-001C into the code.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.860(A) Monitoring and Compliance</td>
<td>Incorporated PDS Policy PL1-85-003Z into the code.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
10.3 UPDATED BEST AVAILABLE SCIENCE REFERENCES

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</tr>
<tr>
<td>Documents Reviewed But Not Specifically Relied On:</td>
<td></td>
</tr>
</tbody>
</table>
### 11. ARTICLE 9 – DEFINITIONS

#### 11.1 SYNOPSIS OF AMENDMENTS

As with other articles, most of the changes have to do with clarifications, incorporation of standard practices, and updated references. These minor or self-explanatory changes are explained in the comments of the draft code (Exhibit A). Changes of note include:

<table>
<thead>
<tr>
<th>Section</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Throughout</td>
<td>Renumbering this Article from 8 to 9, as we added a new Article 8.</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Deleting the definition of “actively farmed” as it is not used in the code</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Adding definition of “Bankfull width” from WAC 222-16-010</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “critical facilities” to keep maximum occupancy of uses under 500 and to exclude cell towers from the definition (needed if an emergency occurs).</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Adding definition of “Critical Saltwater Habitat”</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Adding definitions of “Designated Species, Federal” “Designated Species, State,” pertaining to federal and state listed species.</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “drainage ditch” to try to clear up the public confusion between ditches and streams.</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending the definition of “Fish and wildlife habitat conservation areas” to more closely match the state’s definition</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “geologically hazardous areas” to make consistent with the GMA definition in RCW 36.70A.030(9).</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “Grazable acres”</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Adding definition of “habitats of local importance” from WAC 365-190-030.</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “high intensity land use” to include Class IV Special forest practices (conversion of forest to development).</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “hydric soil” by changing the reference to that used by everyone these days.</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Adding definition of “Maximum Credible Event,” a term used in the geohazards section.</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Adding definition of “May”</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “moderate intensity land use” to exclude nurseries and logging roads, both of which the TAC believe should be in the high intensity land use category.</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “Planning Advisor” (rather than qualified PA). Used in the CPAL section, “qualified” is not used in the text so it was hard to find in the definitions.</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Adding definition of “Prior Converted Croplands”</td>
</tr>
<tr>
<td>16.16.900</td>
<td>Amending definition of “qualified professional” to increase the years of professional experience needed for wetland biologist from 3 to 5 years, and to exclude those consultants who’ve had their certification revoked.</td>
</tr>
</tbody>
</table>
11.2 UPDATED BEST AVAILABLE SCIENCE REFERENCES

None applicable. Changes have to do with rectifying Whatcom County’s definitions with state and federal definitions, adding words that hadn’t been defined, or deleting ones no longer used.

12. APPENDICES

12.1 APPENDIX A: CONSERVATION PROGRAM ON AGRICULTURE LANDS

Being deleted, though incorporating the requirements into new Article 8.

12.2 APPENDIX B: NOTIFICATION EXAMPLE

Being deleted, as such details ought not to be in code, but rather delegated to the Director of Planning and Development Services to develop and maintain.

12.3 APPENDIX C: NATIVE GROWTH PROTECTION EASEMENT SIGN INSTALLATION GUIDELINES

Being deleted, as such details ought not to be in code, but delegated to the Director of Planning and Development Services to develop and maintain.

12.4 APPENDIX D: SPECIAL STATUS FISH AND WILDLIFE SPECIES PROTECTED PURSUANT TO ARTICLE 7 OF THIS CHAPTER

Being deleted, as such a list ought not to be in code given that they change over time. Article 7 (Habitat Conservation Areas) now adopts the state and federal lists and delegates authority to the Director of Planning and Development Services to maintain such lists for ease of public use.

12.5 APPENDIX E (NOW B): LOCALLY IMPORTANT HABITAT DESIGNATIONS – MARINE SHORELINES AND CHUCKANUT WILDLIFE CORRIDOR

Being deleted, though giving authority to PDS to publish this map. The map’s data isn’t proposed for amendments, though the format has been updated.
13. RECOMMENDATIONS FOR FOLLOW-UP PROJECTS/AMENDMENTS

There are several follow-up actions that either the TAC or the CAC suggested be taken. Many are administrative actions that Planning and Development Services can advance on its own. However, some are larger potential projects that would need Council directive and/or budgetary support.

13.1 ADMINISTRATIVE FOLLOW-UP ACTIONS:

1. Add a better disclaimer to our Critical Area maps, saying they are based on best available information at the time that they were produced, that they may not be precisely accurate, and that not showing something does not eliminate the need for individual site review.

2. Rescind PDS policies that were incorporated code (PL1-85-002Z, PL1-85-003Z, and PL2-85-001C).

3. Develop protected species and priority habitat lists for the public (for the counter and website) based on state and federal agencies’ lists and periodically update.

4. Update the geohazard map:
   a. So that the classes of hazards shown on it reflect those of the updated code
   b. Add areas that are identified as underlain by liquefiable soils and due to local topography are also subject to or interpreted as being potentially impacted by lateral spreading
   c. Areas located within 500 feet of Quaternary fault zones with surface offsets
   d. Add lahar inundation zones
   e. Map tsunami hazard areas north of Sandy Point (e.g., Birch Bay, Pt. Roberts, etc.) as the DNR maps don’t include them

5. Update the Habitat Conservation Areas map
   a. Show Stewart Mountain as part of the Chuckanut wildlife corridor (it is already included via the text of the Critical Areas Ordinance; it’s just not shown on the map properly).
   b. Add more recent data from state and federal agencies regarding protected species and priority habitat.

6. Update the Wetlands Map. With each new delineation the map should be updated to show previously unknown wetlands and remove any wetlands filled. Require applicants to submit electronic versions of delineations that can easily be added to the GIS system.

13.2 FOLLOW-UP ACTIONS THAT WOULD NEED COUNCIL SUPPORT:

7. In-Lieu Mitigation Fee Program. Explore and potentially implement an in-lieu mitigation fee program, which would allow applicants causing minor, unavoidable impacts that cannot be mitigated otherwise (after pursing the mitigation sequencing in 16.16.260(A)) (e.g., for exempt activities, cumulative impacts, etc.) to pay into a fund that the County would use to purchase and protect critical areas in priority locations. Coincidently, some of the local jurisdictions (Bellingham, Ferndale) are also exploring this strategy, and a multi-jurisdictional working group has been convened to explore it.

8. Geohazards Mapping, Risk Analysis and Emergency Planning. In the near future we are expecting new LiDar data for much of the County (that the County is helping fund), which will be
useful for several geohazard actions. First, it will help better delineating lahar inundation zones. This would allow the County to develop travel time zones and formal emergency management and evacuation plans, which could potentially allow the County to permit more, or more types of, development within certain areas of the lahar inundation zones (i.e., Glacier) while still protecting the public health, safety, and welfare. It can also be used to update the alluvial fan and landslide inventory GIS layers, to map potentially unstable landforms, and to develop landslide susceptibility maps; updated maps can be administratively adopted under 16.16.310.B. The new mapping will support landslide runout models to help delineate landslide runout hazard zones where risk to current or future development may not be well defined.

9. **Hazards Geospatial Database.** Fund and develop an internal process and resources to systematically update and maintain the hazards geospatial database, train staff on its use, and make the information available to the public via the internet will be needed.

10. **Landscape-Based Planning.** Develop a watershed/landscape-based planning system. The watershed/landscape-based approach to community planning involves consideration of air, land and water and living organisms – including humans – as well as the interactions among them to achieve integrated outcomes. In its simplest expression a watershed/landscape-based approach to community planning is aimed at the:

- Protection of people and property from natural hazards.
- Preservation and conservation of self-sustaining ecosystems.
- Continuation and growth of resource based economic activity.
- Provision of an affordable, sustainable and maintainable infrastructure.

This approach involves decision-making that:

- Uses science-based, local, and cultural knowledge about the relationships among physical, biological and human processes.
- Applies precautionary and risk avoidance principles to growth management and day to day human activity decisions which affect environmental health, ecosystems and resource production capability.
- Clearly defines expected outcomes with reference to a realistic and reasonable understanding of what can be achieved efficiently and effectively in different development settings and timeframes.
- Is based on careful and thorough assessments of the distribution of costs and benefits of planning and regulatory goals, objectives, policies, and programs.
- Promotes the fair and equitable use of voluntary, regulatory, incentive, and public investment approaches to the achievement of public and private interests.

Yet it goes beyond this set of objectives and looks for triple bottom line social, economic, and environmental outcomes. In many respects, this is “what municipal planners already do.” In other respects the approach builds on lessons learned from past and more recent practice with respect to the need to integrate environmental, social, and economic considerations throughout the planning and implementation process. As a result it is more comprehensive, and it focuses on effective and efficient integration and performance. It starts with an assessment of community social, economic, and environmental interests, moves step-by-step through a set of
“external influences” and “on the ground” considerations and ends with an integrated community development plan and implementation strategy.

11. Better Critical Areas Monitoring. Develop a better critical areas monitoring system. Members of both the TAC and the CAC bemoaned the fact that Whatcom County does not have a robust, long-term monitoring program in place. While the rules are set up to achieve no net loss of ecological functions, services, and values, everyone has a tale of an incident where it appeared that this wasn’t the case, or a “feeling” that we’re not meeting that goal. And while PDS does monitor mitigation sites for 5 years, none of the data is accumulated in one place or report. Thus, the committees suggest that the County develop a formal monitoring program, with a periodic report presented to the Council (and public).

It should be noted that such a robust monitoring program is not a requirement. A search of the RCWs and WACs produced only one result, which was:

WAC 365-195-905 Criteria for determining which information is the "best available science."

(6) Counties and cities are encouraged to monitor and evaluate their efforts in critical areas protection and incorporate new scientific information, as it becomes available.

Likewise, a search for Growth Management Hearings Board cases resulted in zero results (though there were several that referred to monitoring, none imposed a requirement).

Critical Areas monitoring reports have only been produced by two jurisdictions: King County and Snohomish County. Both were one-time, though multi-year, studies funded through grants.

12. Mitigation Bank(s). Develop one or more County-sponsored mitigation banks, possibly in cooperation with other local jurisdictions. Currently there is only one mitigation bank in Whatcom County, owned and operated by the Lummi Nation. However, committee members noted how expensive credits are through this bank, and recommend that the County investigate and potentially start its own so as to introduce competition and potentially lower the cost per credit.

13. Develop an Annual CPAL Report. Given that conservation farm plans are, for the most part, not subject to public disclosure, there was concern from some committee members that it’s hard for the public to know whether CPAL is actually working like it’s supposed to. PDS is able to glean certain data from the farm plans for use in bulk analysis and reporting, but this has not been done. It was suggested that PDS start doing so, and present an annual report to the Council so that the public can determine the programs efficacy.

14. Conservation Farm Plan Training. It was suggested that Whatcom County should offer training on preparing a Type 1 Conservation Farm Plan so that other consultants can qualify. It wouldn’t make them Planning Advisors able to do Type 2 or 3 Conservation Farm Plans, but would spur competition.

15. Channel Migration Zones. Determine boundaries of and formally adopt Channel Migration Zones on the County’s major waterways. Doing so would alert property owners to potential risks, as well as assist in floodplain and ESA-listed species management.
16. **Update Landslide Hazard Classification System.** Section 16.16.310.C.1 contains descriptors for some landslide types and hazard areas. These can be useful when conveying general indicators of past or potential slope instability to the lay audience. However, once the updated landslide mapping is available (see item 8), adoption of a standard landslide classification system that is well established in the scientific and engineering communities would create a common framework for describing landslide hazards and risks in a structured, reproducible, and defensible manner. Such a system will be used by Washington State Department of Natural Resources to update landslide maps in Whatcom County and elsewhere in Washington and is incorporated into changes to the Washington Forest Practices Board Manual. Use of a standard classification for landslide hazards is administratively very similar to how the wetlands rating system contained in 16.16.610.D is used.

17. **Publicly Adopt Geohazard Acceptable Levels of Risk.** An ongoing challenge for staff administering the geological hazards section of the CAO is defining an acceptable level of risk. Updated and new geological data will better define hazards (e.g. the potential for an event) and risks (e.g. consequences if an event happens) but cannot answer the policy question of whether that risk is acceptable. Other jurisdictions nationally and internationally have adopted risk guidelines; such a system could be evaluated for local adaptation, adoption, and use.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<tr>
<td>Originator:</td>
<td>Council</td>
<td>11/14/2017</td>
<td></td>
<td>11/21/2017</td>
<td>Introduction</td>
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<td>12/5/2017</td>
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<td>Prosecutor:</td>
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<td>Executive:</td>
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**TITLE OF DOCUMENT:**
Appointment to Lummi Island Ferry Advisory Committee

**ATTACHMENTS:**
application

**SEPA review required?** ( ) Yes ( ) NO
**SEPA review completed?** ( ) Yes ( ) NO
**Should Clerk schedule a hearing?** ( ) 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.)
Applicant for the County Resident not living on Lummi Island is Scott Aspman.
The Committee provides review and recommendations to the County Council and Executive on issues that affect the ongoing operations and infrastructure of ferry service to Lummi Island. Review includes: proposed changes to ferry operations and fares; an annual review of the ferry fund; demands of and improvements to ferry services; and ferry replacement options. Meets monthly.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
11/21/2017: Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Scott Aspman

Street Address: 2100 D ST.

City: Bellingham, WA

Zip Code: 98225

Date: 11/9/17

Mailing Address (if different from street address): _______________________________________________________________________

Day Telephone: (360) 788-5220 Evening Telephone: (360) 788-5220 Cell Phone: _______________________________________________________________________

E-mail address: scottaspman @ msn.com

1. Name of board or committee-please see reverse: L.I.F.A.C.

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? (If applicable, please refer to vacancy list.) ☒ yes ( ) no

4. Which Council district do you live in? ☒ One ( ) Two ( ) Three ( ) Four ( ) Five

5. Are you a US citizen? ☒ yes ( ) no

6. Are you registered to vote in Whatcom County? ☒ yes ( ) no

7. Have you ever been a member of this Board/Commission? ( ) yes ☒ no

If yes, dates: _______________________________________________________________________

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) yes ☒ no

If yes, please explain: _______________________________________________________________________

9. Have you declared candidacy (as defined by RCW 42.17A.055, see instructions) for a paid elected office in any jurisdiction within the county? ( ) yes ☒ no

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

10. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education. Please See Attached

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

11. Please describe why you're interested in serving on this board or commission: Please See Attached

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

References (please include daytime telephone number): Robin Aspman - O'Callaghan (360) 319-5162

Signature of applicant: ________________________

THROUGH PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.
Scott Aspman
2100 D Street
Bellingham, WA 98225

Occupation: Retired (2014)

Education/professional designations:
- Master of Business Administration, University of Washington
- Project management professional (PmP), Project Management Institute

Relevant professional experience:
- Vice president and manager, Credit Management Real Estate, Rainier National Bank. Responsible for the acquisition, rehabilitation, and sale of bank-owned commercial real estate assets, focused on the financial and legal analysis of project alternatives. Representative projects included office buildings, apartments, shopping centers, hotels, resorts and industrial facilities. Projects ranged from $1MM--$100MM throughout the Western United States.
- Vice president, Risk Policy, Commercial Real Estate, Security Pacific Corporation. Responsible for the administration of risk policies for Security Pacific units throughout the corporation.
- Senior consultant, KPMG consulting. Responsible for the design and implementation of consumer risk management models, Hanvit Bank, Seoul, South Korea.
- Senior consultant, Specialty People, LLC. Responsible for project definition, design and programming, testing and implementation for major commercial loan system enhancements. Clients included:
  o State Street Corporation
  o Credit Lyonnais
  o GE Corporate Finance
  o Merrill Lynch
  o Bank of America

Reason for interest in this position:

My sister and brother-in-law live on Lummi Island, and I am a frequent passenger on the Whatcom Chief.

All Whatcom County residents have an important interest in the maintenance and future planning for this important County transportation system.

I attended the most recent LIFAC meeting on November 7, and was impressed at the depth of the expertise already committed to this project. I hope my experience in finance and project management can contribute in some small way to this endeavor.

Sincerely,
Scott Aspman
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  Scott
Last Name  Aspman
Date  11/9/2017
Street Address  2100 D St
City  Bellingham
Zip  98225
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  3607885220
Secondary Telephone  3607885220
Email Address  scottaspman@msn.com

Step 2
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>1. Name of Board or Committee</td>
<td>Lummi Island Ferry Advisory Committee</td>
</tr>
<tr>
<td>Lummi Island Ferry Committee (Part 2)</td>
<td>County resident not living or owning property on Lummi Island</td>
</tr>
<tr>
<td>Lummi Island Ferry Advisory Committee</td>
<td>No</td>
</tr>
<tr>
<td>2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?</td>
<td>Yes</td>
</tr>
<tr>
<td>3. Which Council district do you live in?</td>
<td>District 1</td>
</tr>
<tr>
<td>4. Are you a US citizen?</td>
<td>Yes</td>
</tr>
<tr>
<td>5. Are you registered to vote in Whatcom County?</td>
<td>Yes</td>
</tr>
<tr>
<td>6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?</td>
<td>No</td>
</tr>
<tr>
<td>7. Have you ever been a member of this Board/Commission?</td>
<td>No</td>
</tr>
<tr>
<td>8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?</td>
<td>No</td>
</tr>
<tr>
<td>You may attach a resume or detailed summary of experience, qualifications, &amp; interest in response to the following questions</td>
<td>Field not completed.</td>
</tr>
<tr>
<td>9. Please describe your experience</td>
<td>I have 15 years of commercial real estate experience as a</td>
</tr>
</tbody>
</table>
occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

banker and analyst. MBA, Finance, University of Washington. I also have extensive project management experience.

Experience: Vice President and Manager, Credit Management Real Estate, Rainier National Bank (now BofA) Consultant, KPMG consulting, PMP designation, Project Management Society. Senior consultant, Specialty People LLC.

10. Please describe why you’re interested in serving on this board or commission

The ferry is an essential service to both Island and County residents. I have relatives on the Island and visit frequently. The plan to upgrade the ferry needs input from both Island and County residents to ensure all involved parties are properly represented. I believe my background in the analysis of complex financial projects, and project management expertise, can help with that.

References (please include daytime telephone number):

Robin Aspman O’Callaghan 360.319.5162 I have attended the most recent LIFAC meeting and Nancy Ging encouraged my application.

Signature of applicant: Scott Aspman

Place Signed / Submitted Bellingham, WA

Email not displaying correctly? View it in your browser.